REP. STAFSTROM (129TH): Everyone, I’d like to call to order the Judiciary Committee public hearing from March 18, 2019. Representative Blumenthal for the safety announcements.

REP. BLUMENTHAL (147TH): Good morning, everyone. In the interest of safety, I would ask you to note the location of and exits to this hearing room. The two doors through which you entered the room are the emergency exits and are marked with exit signs. In the event of an emergency, please walk quickly to the nearest exit. After exiting the room, go to your right and proceed to the main stairs or follow the exit signs to one of the fire stairs. Please quickly exit the building and follow any
instructions from the Capitol police. Do not delay and do not return unless and until you are advised it is safe to do so. In the event of a lockdown announcement, please remain in the hearing room and stay away from the exit doors until an all-clear announcement is heard.

REP. STAFSTROM (129TH): All right. Good morning, everyone. As is our custom, our public hearing will -- the first hour will be devoted to chief elected officials and state agency heads, and then after the first hour, we will alternate between the public list and the elected official list. So, with that, I’d like to begin with Commissioner Delphin-Rittmon, please. Commissioner. And, folks, we’ll have three minutes on the timer, and there will be a bell. When the bell dings, we’d ask you to wrap up. Good morning, Commissioner. How are you?

COMMISSIONER DELPHIN-RITTMON: I’m good. Good morning, Representative Stafstrom.

REP. STAFSTROM (129TH): Thanks for being with us.

COMMISSIONER DELPHIN-RITTMON: And, distinguished members of the Judiciary Committee. Again, I’m Miriam Delphin-Rittmon, Commissioner of the Department of Mental Health and Addiction Services. I’m joined by Dr. Mike Norko, the DMHAS Director of Forensic Services. We’d like to thank you for the opportunity to testify before you on -- on Senate Bill 1055. DMHAS provides psychiatric treatment for individuals acquitted of a crime by reason of mental disease or defect referred to as acquaintees under the jurisdiction of the Psychiatric Security Review Board. Treatment is provided at Whiting Forensic Hospital, a 229-bed hospital, which is composed of Whiting Maximum-Security Unit and the Dutcher
Enhanced Security Unit. Treatment is also provided in the community. The PSRB monitors the treatment and supervision of acquittees receiving --

REP. STAFSTROM (129TH): Commissioner --

COMMISSIONER DELPHIN-RITTMON: Yeah.

REP. STAFSTROM (129TH): Can I interrupt you? Can you just get a little close to the microphone, maybe? We’re having -- unfortunately, this room is not the most conducive. We’re all the way up here, and it’s hard -- hard to hear.

COMMISSIONER DELPHIN-RITTMON: Yeah. Is that better? Okay. Awesome. Treatment is also provided in the community. The PSRB monitors the treatment and supervision of acquittees receiving treatment from DMHAS. As part of the security system at Whiting Forensic Hospital, cameras are installed in portions of the buildings for the safety of patients, staff, and visitors. The cameras are monitored continuously by a private security firm. Patients are made aware of these security measures upon admission to the hospital. DMHAS is very concerned with section 2 of the bill. As a healthcare organization, DMHAS follows state and federal patient confidentiality laws. These laws maintained medical records and media that relate to any patient regardless of legal status cannot be released without the written permission of the patient or the patient’s conservator.

Section 2 does not adequately address this protection because it does not reference the necessity of gaining consent from any of the individuals identifiable in the recording. Given that the stated purpose of the review by council as related to representation before the PSRB, it does
not take into consent consideration of the nature of the PSRB proceedings. Granting access to council for the acquittedee will thus result in access to the state’s attorneys assigned to the cases and to the PSRB for the purpose of their hearing. Those hearings are also open to the public, and so therefore, disclosure to council ultimately becomes disclosure to the public at large.

As drafted, the bill does not limit the meaning of council for the acquittedee to the attorney representing the acquittedee before the PSRB, which makes the potential release of confidential information more widespread than the request from the public defenders representing the acquittedee before the PSRB. Additionally, it’s important to recognize that some recordings are considered evidence in a criminal investigation for prosecution and must therefore be treated differently so as to not violate the integrity of the criminal proceedings.

DMHAS is in the processes of developing a policy related to video recordings. In anticipation of -- of that document being fully executed, we have already agreed to allow the public defender to review requested video. [Bell]. DMHAS will continue -- will consider requests from legal counsel to review protected health information contained on available video or recorded media with appropriate consent from all patients captured in the recording.

REP. STAFSTROM (129TH): Commissioner, can I just ask what -- maybe I missed it because we couldn’t hear the first minute or so of your testimony. What bill number are you testifying on?
COMMISSIONER DELPHIN-RITTMON:  This is 1055.

REP. STAFSTROM (129TH):  Okay.

COMMISSIONER DELPHIN-RITTMON:  Yep.  1055, and I know I’m running short on time, so I -- I would just like to offer that we have substitute language that we recommend be included in the bill, and I’ll just review some of the points that are included in that substitute language. Essentially, the -- the language that we offer or recommend would clarify, identify acquittees and other patients in the recording be given full -- fully -- fully informed consent to viewing, knowing that access to council might lead to access to the state’s attorney and to the PSRB hearings. The language would also ensure the sharing of recordings is compliant with privacy laws. It would also reflect that the recordings are the property of the Department and limit access in the case of an ongoing criminal investigation or prosecution. So, again, thank you for -- for the opportunity to testify this morning, and we’re happy to answer any questions that you might have.

REP. STAFSTROM (129TH):  Thank you, Commissioner. And, I -- I note you submitted written testimony. I’m just looking through it now, and the request of revisions are on page two of your testimony?

COMMISSIONER DELPHIN-RITTMON:  Yes.

REP. STAFSTROM (129TH):  Okay.

COMMISSIONER DELPHIN-RITTMON:  So, the -- the requested revisions it’s the last paragraph on page two.

REP. STAFSTROM (129TH):  Got it. Thank you.

COMMISSIONER DELPHIN-RITTMON:  You’re welcome.
REP. STAFSTROM (129TH): Questions from the committee? Representative Dillon.

REP. DILLON (92ND): Good morning, Commissioner. I’m sorry I -- I have not gotten to the end yet of your testimony, but I was -- when I first saw the legislation, I was concerned about whether it got into that area where there were two professors who wanted to sort of -- from Central -- who wanted to reopen all the records of -- of people from the Civil War. Does that -- does this language reach that particular case?

COMMISSIONER DELPHIN-RITTMON: I -- I don’t believe so. So, we’re -- this language is primarily about the video recordings that are part of the -- the media that we have for -- connected to Whiting Forensic Hospital and also the rest of CVH. Other -- other areas have video recordings as well, but this pertains primarily to -- to Whiting.

REP. DILLON (92ND): I know it generated the language [Laughing], but I’m sorry. Excuse me. I know it generated the language, but -- but have your folks reviewed it to see how broad the application of the language would be?

COMMISSIONER DELPHIN-RITTMON: I mean we can look into that. As stated here and as stated in the bill, it’s primarily referring to the video recordings. We can see whether it would have other -- or create other precedent for other instances. Dr. Norko, did you have a comment?

DR. MIKE NORKO: The bill refers specifically to media, so that certainly wouldn’t cover medical records dating back to the 19th Century, and it also refers to the council representing the acquittee getting access, not anyone else.
REP. DILLON (92ND): Right. Well, media -- it just saying that a written document is not media?

DR. MIKE NORKO: Not the way it’s defined here.

COMMISSIONER DELPHIN-RITTMON: So, in -- in this, the language in this bill we’re primarily talking about the video recordings that are captured in Whiting Forensic Hospital to include both the maximum-security unit and the Dutcher step-down unit as well.

REP. DILLON (92ND): Well, I’ll take a look at it again, but I did want to flag that as a concern, and I know that’s not the most -- well, you never know what courts will do with what we give. Anyway, thank you very much.

COMMISSIONER DELPHIN-RITTMON: Thank you.

REP. STAFSTROM (129TH): Thank you, Representative. Further questions from the committee? I’m seeing none. Thanks for being with us Commissioner. I appreciate it. Next up will be Representative Petit. Is Representative Petit here? Natasha Pierre, the Victim’s Advocate.

NATASHA PIERRE: Good morning, Representatives Stafstrom and Rebimbas and members of the committee. I’m Natasha Pierre, the Victim Advocate for the State of Connecticut. Thank you for raising House Bill No. 7349, AN ACT CONCERNING IDENTITY THEFT VICTIMS’ ACCESS TO RECORDS. Crime victims in Connecticut have a state constitutional right to information about the arrest, conviction, sentence, imprisonment, and release of the accused. For victims of identity theft, a defendant’s application for the pretrial accelerated rehabilitation program impedes the victim’s ability to obtain information
about the criminal case when the victim attempts to correct the damage done by the identity theft.

Currently, when a criminal defendant makes an application for the pretrial accelerated rehab program, the court file is sealed and any information in the file is no longer available to the crime victims. Raised bill 7349 would create an exemption for identity theft crime victims to ensure that the victim’s complaint and any report by law enforcement concerning the offense are available to the victim. While attempting to correct erroneous information caused by the identity theft, crime victims are required to provide copies of affidavits and police reports to financial institutions, credit reporting agencies, credit card companies, and other entities. This information is critical for crime victims to correct information and to seek redress for fraudulent activity on the impacted accounts.

I brought this issue to the attention of legislators because we have a client whose identity was stolen to open several credit cards. Our client is currently barred from receiving any of this information to repair her credit history after the offender was granted entry into the pretrial accelerated rehab program. She has at least seven years before she can erase the negative credit history. The offender’s criminal record will be clear in a year as long as she completes the program.

So, I strongly urge you to pass this bill. It will really impact victims -- or positively impact victims of identity theft. And, this will not help my client, but she still is going to submit some written testimony to you, and it only won’t help her because it won’t be retroactive if it passes.
REP. STAFSTROM (129TH): Thank you, Ms. Pierre. I -- I was -- that was going to be my question is sort of whether -- who -- who actually is going to benefit from this and whether there are folks out there, but you’ve got at least one client who would --

NATASHA PIERRE: Well, we get at least three or four identity theft client’s a year.

REP. STAFSTROM (129TH): Okay.

NATASHA PIERRE: Any of them could -- depending on what their history is -- apply for the rehab program.

REP. STAFSTROM (129TH): Right.

NATASHA PIERRE: And, it’s very rare that a victim would get copies of everything at a beginning of a case at this point in the case or ever really unless you really need the documentation.

REP. STAFSTROM (129TH): And, my understanding is actually the ability to catch a perpetrator of identity theft is fairly rare in and of itself.

NATASHA PIERRE: It’s fairly rare. The ones -- the cases where we’re substantial frankly are family members.

REP. STAFSTROM (129TH): Okay.

NATASHA PIERRE: So, they you know order the stuff at the correct address, the correct phone number, and somewhere along the line they change the information so that it’s not going to the cardholder’s place and maybe to their place. Those -- they’re easier to catch than just a random stranger.
REP. STAFSTROM (129TH): The ran -- the random over the internet somebody steals your identity.

NATASHA PIERRE: Yeah, actually one of my staff people it’s happened to at least three times in the last four years with the debit card thing.

REP. STAFSTROM (129TH): Right.

NATASHA PIERRE: And, in a couple cases she was able to get video of the person using it, and -- but the video you would be amazed it’s so grainy and bad, but they were enough to show that she didn’t make the transaction.

REP. STAFSTROM (129TH): Right.

NATASHA PIERRE: But it happens quite a bit.

REP. STAFSTROM (129TH): And, a lot of times those -- the perpetrators of those are out of state, so --

NATASHA PIERRE: Yeah. They take your card and go somewhere else.


REP. REBIMBAS (70TH): Thank you, Mr. Chairman. And, good morning.

NATASHA PIERRE: Good morning.

REP. REBIMBAS (70TH): I just wanted to thank you for taking the time to be here to provide the testimony because as you had indicated it’s either family members, sometimes caretakers, or just the random person who steals the purse and then continues to use the person’s identity and open cards thereafter. So, I think it is a real need and even though that one example you did provide,
obviously moving forward this would be a great assistance to people because credit history can go anywhere from housing, purchasing a house, you know obviously renting a house, vehicle, and even a job. So, it does have a huge impact, so I think any little bit that we can do to assist victims in this regard is the least we can do. So, thank you for your testimony. Thank you, Mr. Chairman.

NATASHA PIERRE: Thank you.

REP. STAFSTROM (129TH): Further questions? I’m seeing none. Thanks so much for being with us.

NATASHA PIERRE: Okay. Thanks.

REP. STAFSTROM (129TH): Next up will be Senator Kushner. Senator Kushner.

SENATOR KUSHNER (24TH): Maybe I’ll sit over here because you guys can’t see me behind that. I’m kind of short.

REP. STAFSTROM (129TH): Yeah. The lamps and then also the -- for whatever reason that microphone over there is tough to pick up.

SENATOR KUSHNER (24TH): Good morning -- good morning Representatives Stafstrom and Blumenthal and Rebimbas. How do you say your name? Ma’am? Through you, Mr. Chair.

REP. REBIMBAS (70TH): That was actually correct. Rebimbas. Thank you.

SENATOR KUSHNER (24TH): Oh. Cool. Good morning. I am here this morning to testify on the captive audience bill that is before you, Senate Bill 440, AN ACT PROTECTING EMPLOYEE FREEDOM OF SPEECH AND CONSCIENCE. I actually have submitted testimony, but I would prefer not to read the testimony but to
simply tell you that I’ve had over the number of years that I was involved in organizing worker’s into unions so they could have a voice at work, I found that one of the most disturbing aspects of their -- during their efforts to come together was that they were forced into these meetings that were extremely detrimental, extremely harassing, and often forced them to hear misinformation and untruths about their colleagues and their efforts to unionize. And, I think it was one of the factors that has held back our nation and our economy the most in terms of allowing people the freedom of expression at work and allowing people the opportunity to form unions.

And, I don’t think I have to tell you how strongly I believe, and I think has been proven over the years that coming together and engaging in collective bargaining has helped build the middle class in this country and you know, there’s all kinds of evidence that when workers are joined together in collective bargaining wages improve, conditions improve, there’s more democracy in the workplace, and people are in a position to -- to express their rights, and -- and that has been really restricted over many years and decades of -- of efforts to really limit people’s ability to form unions, and so you know, my years as a union organizer, I found this to be one of the most difficult situations. People would come back from captive audience meetings where they were required to sit in and listen to their employers barrage them about their efforts to form a union. I’ve seen young workers come out of those meetings crying because they made an effort to ask a question of their employer and were, you know, really beaten down emotionally in that process.
One of the things that often happens is that it’s very selective, so if you are somebody who is a known leader of the union you’re not included in that meeting, and the employer has the right to do that. They get to pick and choose who comes to that meeting and who has to listen to the information from the employer, and who is restricted from coming. Often times, people are not given the freedom to answer questions that are raised in the meeting. It’s completely controlled by the employer. And, you know, I think that this kind of behavior in the days leading up to a union election -- which by the way that’s typically when it happens. I’ve been in campaigns that have gone on for a year and a half, and the employer is silent, and there are no meetings called, and then two weeks before the election there’s a barrage of meetings, sometimes every day, sometimes every hour. Every worker is invited in or selected workers are invited in and -- and forced to sit through these meetings. And, you know where there could have been a constructed dialogue for months in advance of the union election, it all happens at the very end where people have a hard time, you know, making decisions about how they’re going to vote in a very important election, so this bill would allow a worker to have the ability to -- to not attend a meeting, and to me, this is a basic workplace fairness issue. It’s a very basic issue [Bell] that would provide a greater opportunity for people to make a freedom of choice on the question of whether or not to engage in collective bargaining.

So, I’d be glad to answer any questions that you might have, but I do urge you to pass this bill out of this committee.
REP. STAFSTROM (129TH): Questions from the committee? Representative Rebimbas.

REP. REBIMBAS (70TH): Thank you, Mr. Chairman, and good morning.

SENATOR KUSHNER (24TH): I’m just looking over the language of the bill, and in section b -- 2b, it talks about an employee being threatened with discipline or discharge on account of -- and it enumerates the situation. Isn’t that currently already protected?

SENATOR KUSHNER (24TH): So, there are protections under federal law that are designed to -- or in name, they actually do protect someone from threatening behavior by the employer. The problem is that it’s very, very hard to enforce those laws, and frequently, what happens, especially if it was a one-on-one meeting, it’s very hard to prove that you were harassed or intimidated or threatened because it’s just you and the employer, your supervisor. So, that’s particularly hard. Even if you do have evidence, sometimes it takes months and years, and there’s appeal processes, and you know, what we found over the years is that employers are actually advised go ahead and break the law -- by consultants -- because the penalty is reinstatement with backpay if it gets to that point. Frequently, the worker is so long gone from that situation that they don’t want to return to work, and so the penalty even if you have to pay some backpay is far less than what you would have if you were actually -- you know, under their point of view -- if you were engaging in collective bargaining.
So, I think part of the problem is that the federal law is broken, and it doesn’t really work for workers.

REP. REBIMBAS (70TH): With that premise whether it’s federal law or state law, wouldn’t the employer and the employee still have a right to obviously defend themselves, bring their claim in court, and have it heard?

SENATOR KUSHNER (24TH): It’s actually done through the National Labor Relations Board, and as I said, it doesn’t really work for workers, and I think this bill would prevent some of that from having to happen because people would have the opportunity if you were invited to come into a meeting by your employer you -- you get in there and you hear it’s about the union you would have the right to say, I’m sorry, but I’m not interested in sitting in on this meeting, and you would have -- you would have that ability then to leave without being disciplined or penalized in any way.

REP. REBIMBAS (70TH): But, as I read the language here, it says that the primary purpose of the meeting, so it wouldn’t be the sole purpose. Could you give me a definition of a primary purpose?

SENATOR KUSHNER (24TH): I think that -- I think that the intention there is to -- to point out that that would be a captive audience meeting where the employer’s calling you in to discuss your union dues or to discuss the -- his union or her union dues.

REP. REBIMBAS (70TH): But again, I think there’s vagueness when it comes to primary purpose. So, if there is ten items to be discussed, one item is maybe an opinion or a statement regarding union, would that be the primary purpose?
SENATOR KUSHNER (24TH): It could be. It depends on what the other items were.

REP. REBIMBAS (70TH): If the other items were not union related?

SENATOR KUSHNER (24TH): It could be if the other items were really not essential to that meeting and they were just a ploy. I mean I think that an employer could try and circumvent the law by getting -- you know, putting a bunch of items on the agenda and then really but fully intending to just address the union question, so I think there would be an opportunity to argue that that was the primary purpose of the meeting.

REP. REBIMBAS (70TH): I guess my concern again is even in your description of that what would be essential and who would be determining what’s essential and what actually is related to it. I think I -- I understand the intent. I think the language of the proposal before us would be very confusing and probably would lead to more issues -- the resolution, so I hope as -- as it moves forward, we can provide a little bit more clarity.

SENATOR KUSHNER (24TH): Thank you.

REP. REBIMBAS (70TH): Thank you, Mr. Chairman.

REP. STAFSTROM (129TH): Further questions from the committee? Representative Smith.

REP. SMITH (108TH): Good morning, Mr. Chairman. Good morning, Senator.

SENATOR KUSHNER (24TH): Good morning. How are you?

REP. SMITH (108TH): I’m well, thank you, and --
SENATOR KUSHNER (24TH): We’ve had an opportunity to discuss this before. [Laughing].

REP. SMITH (108TH): We have. So, that’s why -- then that’s really the impetus to my question. As Chairman of the Labor Committee, we had a captive audience bill that we just sent to the -- I believe to the House last week -- and I’m just wondering how that bill out of Labor is different than this bill that’s before this committee?

SENATOR KUSHNER (24TH): Well, I hope that your committee will have an opportunity to discuss this. I haven’t sat down and done a line-by-line comparison of the two bills. I know there are some differences, but I couldn’t point them out, but I’d be glad to work with you on that if that’s something you’re interested in.

REP. SMITH (108TH): I’m just interested in seeing why we’re getting two bills out for the same concept, so if we could take a look at them and see if -- if there’s a need to get two bills out -- one to the Senate, one to the House -- when we -- there’s so many other bills out there. So, I’m happy to take a look at it and see how they are different with you.

SENATOR KUSHNER (24TH): But I -- I -- I could be wrong, but I believe that isn’t uncommon, that sometimes different committees take up, you know, different variations of the same bill or the same issue.

REP. SMITH (108TH): It’s all too common, which is one of the problems in my mind. Thank you, Mr. Chairman.

SENATOR KUSHNER (24TH): Thank you. Representative Winkler.

REP. WINKLER (56TH): Chairperson Stafstrom, Vice Chairs Bergstein and Blumenthal, Ranking Member Rebimbas and distinguished members of the Judiciary Committee, I’m Representative Mike Winkler of the 56th District within Vernon. With me today is Alexander Hertel-Fernandez, Assistant Professor of International Public Affairs at Columbia University. And, with the committee’s indulgence, I’ll --

REP. STAFSTROM (129TH): Rep -- Representative, can you just -- just before you get started just repeat the name a little slower for who you got with you? ‘Cause I don’t think we have it, and I want to make sure the -- the clerks have --

REP. WINKLER (56TH): Alexander Hertel-Fernandez.

REP. STAFSTROM (129TH): Okay.

REP. WINKLER (56TH): Assistant Professor of International Public Affairs at Columbia, University, and with the committee’s indulgence, I’ll seed my time to him.

REP. STAFSTROM (129TH): Thanks.

ALEXANDER HERTEL-FERNANDEZ: Great. Thanks so much, and members of the Judiciary Committee, thanks for the opportunity to share my research with you. My name is Alexander Hertel-Fernandez, and I teach on the faculty of the School of International and Public Affairs at Columbia University, and I’ll be testifying on behalf of SB 440. The views that are
expressed today are my own and do not reflect those of Columbia University.

Over the past five years, I have been conducting research into the question of political communications in the workplace between the employers and their workers, and so what I want to do in my testimony is to add context to the other dimensions of worker’s rights that are protected by this legislation. While Senator Kushner spoke to how this bill would protect workers against undue coercion from employers on labor issues, I want to speak to the protection that it offers to workers on political issues. The research that I’ve been doing over the past five years indicates that employers are increasingly communicating to their employees about elections and public policy issues and asking their workers to participate in the political process. I believe that this bill would offer Connecticut workers important protections that would permit them to follow their own political views without undue influence from their employers. The reason why I’m concerned is that political communications from managers to their workers are not like other kinds of political messages. That’s because employers control the wages and employment of the workers that they supervise. As a result, workers are going to be especially sensitive to the messages or requests that come from their managers whether or not managers are taking away an explicit threat or not.

And, in the domain of politics, the concern is that workers will have a difficult time setting aside messages and requests that they might disagree with but that their employers direct them to engage in -- in politics in particular ways. Now, this wouldn’t
be a problem if federal and state law gave workers protection against political pressure, but this is not the case in many states. The United States actually stands largely alone against other advanced democracies in Western Europe for instance in its lack of legal protections at the national level against discrimination on the basis of political views and actions in the workplace. Based on current federal law and state law in Connecticut, workers are unprotected if their employer requires them to listen to political communications and threatens to discharge or discipline them if they do not participate.

In fact, at a national level, employers have gained more, not less, latitude for communicating with their workers about politics since the 2010 Citizens United vs Federal Election Commission Supreme Court decision. Before that decision, private sector employers with political action committees [Bell] could only communicate with elections and political candidates on a very limited basis, but that’s changed, and my research that I’ve been conducting indicates that about a quarter of American workers have received any political communications from their employer about elections and public policy debates, and moreover, a nontrivial portion of employees, about 25 percent, indicate that they think that there is a possibility that their employer might punish them for their political views, and about 16 percent of employees said that employer retaliation had actually occurred. This is the sort of employer behavior that I am particularly concerned about and that I believe that SB 440 would address. Thank you.

REP. SMITH (108TH): Thank you, Chairman. Just two questions. Are you being paid to be here today to testify?

ALEXANDER HERTEL-FERNANDEZ: I am not. No.

REP. SMITH (108TH): And, who asked you to come testify today? Did you do that on your own or was somebody ask you to come here today?

ALEXANDER HERTEL-FERNANDEZ: I’ve been working with the AFL-CIO to coordinate my testimony.

REP. SMITH (108TH): Okay. And, these -- these percentages of employees that feel threatened, potential some type of retaliation by the employer, do you have a further breakdown on that in terms? Could you discuss that a little bit more?

ALEXANDER HERTEL-FERNANDEZ: Yeah. So, this comes from research that I’ve conducted using original nationally representative samples of the American workforce where I ask employees 1) Do you think that there is a possibility that you might miss out on promotions or employment at your job because of your political views and actions? And, slightly over a quarter of American workers reported that they felt that way. About 16 percent of workers said that they had seen some form of political retaliation where a worker had been treated differently or missed out on opportunities for advancement or was even fired as a result of their political reviews, and more importantly, lower income workers were substantially more likely to report either those fears of being treated differently because of their
political views or that retaliation had actually occurred as compared to higher income employees.

REP. SMITH (108TH): So, did your research go across the entire spectrum of union jobs and nonunion jobs as well?

ALEXANDER HERTEL-FERNANDEZ: So, my research encompassed both union shops and nonunion shops and workers from both types of employers were represented in this survey sample.

REP. SMITH (108TH): Thank you, sir. Thank you, Mr. Chairman.

REP. STAFSTROM (129TH): Thank you. Senator Bergstein.

SENATOR BERGSTEIN (36TH): Thank you, Mr. Chair. Thanks so much for your testimony. I’m really intrigued by your comment about Citizens United and how that was sort of a seminal case, not just for political donations but also for political speech. So, I just wonder if you could elaborate on what exactly in the holding of that case embolden employers to now speak or engage in political discussions with their employees that were viewed by employees to be coercive?

ALEXANDER HERTEL-FERNANDEZ: Thanks so much for that question. You know, it was not something that I had appreciated when I first read that decision, nor was it an issue that was brought up in the oral arguments or in any of the amicus briefs that were filed as a result of the decision. But shortly after, it became clear that companies were going to be able to interpret the decision as allowing them to expend corporate resources on explicit partisan communications to employees. The decision makes it
possible for employers to expend their own resources outside of the political action committees that they might direct towards partisan electoral politics, so long as they’re not coordinated with -- with campaigns. And, in fact, in the written testimony that I submitted to this committee, I cite a leading political lawyer at a Washington D.C. law firm that describes how the clients that he advised now feel more comfortable talking about politics with their employees because they know that the line has been moved and the Federal Election Commission is not going to regulate that kind of behavior, and that could include for instance issuing voter vibes where it’s clear which candidates the employer has endorsed or for instance, asking employees to explicitly support candidates more directly.

SENATOR BERGSTEIN (36TH): And -- and what sort of actions are the employers expecting and how do they enforce it? Obviously, they can’t go into the voting booth with people and see how they vote. So, how does that relationship develop and in what form does retaliation take?

ALEXANDER HERTEL-HERTEL-FERNANDEZ: Thank you for that question. And, you’re right that as a result of national law and Connecticut law workers are protected against retaliation in the workplace based on their votes, but -- and votes are of course secret in the United States -- but employers have a variety of other ways of ascertaining worker’s political views and actions. Some of them are informal and in my workplace for instance, it’s very clear the candidates and issues that people support because they talk about politics. In other cases, employers use online and computerized tools for sending out this information, action alerts, these
voter guides, and they can see which employees open them, which employees donate to candidates, which employees send a letter to an elected official at the state or the national level, and they can use that information either to target messages more efficiently or even to reward workers who participate in these sorts of initiatives.

And the book that I’ve authored I go through a number of case studies where employers have offered rewards for workers who are more engaged in the sort of political requests that their employers make of them, and they might be rewarded with, for instance, a trip to Washington D.C. where they can lobby members of congress but also get to see the Capitol.

SENATOR BERGSTEIN (36TH): And, is it the corollary that those who do not participate are penalized, and obviously, they don’t get the bonuses of -- of trips, etc. but are there cases where they’re actually penalized or -- you know, financially or lose their jobs, or how does that work?

ALEXANDER HERTEL-FERNANDEZ: Yeah, so this is a difficult question to answer with survey research given that people might feel uncomfortable revealing that this sort of thing has happened, and so pinning down a precise number is -- is challenging, but as I mentioned, the survey questions that I designed asked if people had experienced this at their workplace, and about 16 percent of people felt as though someone at their workplace had missed out on opportunities for advancement or promotion as a result of not towing a particular line given by their employer.

SENATOR BERGSTEIN (36TH): All right. Thank you so much. Thank you, Mr. Chair.
REP. STAFSTROM (129TH): Professor, let me just ask on a point. Are -- in your research, have you discovered any sort of lower court precedent or case law on where either employers or employees -- workers have sort of tested the extent to which Citizens United allows employers to spend resources on partisan activities?

ALEXANDER HERTEL-FERNANDEZ: So, I should say that I’m not a lawyer by training. I’m a social scientist, but the case law that I understand to be most relevant comes from the Federal Election Commission, and in particular, cases revolving around Murray Energy, which is a coal mine in Ohio that for a number of years has required employees to attend fund raisers for a particular candidate. They’ve even held rallies for particular candidates, most notably Romney when he was running for the presidency, and required employees to attend that rally, whose decisions went before the -- and cases went before the Federal Election Commission and the Commission deadlock. Effectively meaning that there was no ruling, and that has been interpreted by lawyers who advise private sector companies that -- that they can really proceed without any sort of check from the Federal Election Commission.

REP. STAFSTROM (129TH): And, that was after Citizens United came down? Further questions? Representative Blumenthal.

REP. BLUMENTHAL (147TH): Thank you, Mr. Chair. Thank you for your testimony, Professor. I was just wondering if you’d talk a bit -- you talked a bit about Citizens United and how that’s impacted trends in this area, and I was wondering if you would talk a bit about any other forces you think if they exist
-- any other forces that are affecting the trends towards increased political speech by employers?

ALEXANDER HERTEL-FERNANDEZ: Thank you for that question, and -- and it allows me to clarify that even though Citizens United was a turning point for partisan electoral communications, companies had been talking about electoral issues in not as explicitly partisan ways and legislative debate, certainly before Citizens United. I observe in my research that this really took off in the 1990s and especially the early 2000s. I think more favorable legal context is certainly one of the reasons why it took off as a result of Citizens United, but I think another major reason is the decline of worker bargaining power at many places of employment that in earlier decades, particularly in the 1930s, 40s, and 50s companies had just as much as stake in elections and public policy debates, but were they to ask their employees to participate in politics in explicit ways or even issue threats, there were more often than not either unions at those employers or employers were concerned about a union coming in. Workers certainly had more bargaining power, and that allowed them more -- or allowed employers less leeway to sort of make demands and message to their employees.

REP. BLUMENTHAL (147TH): Thanks, Professor. And, Representative Smith asked you about your research whether it included union and nonunion shops, and I was wondering if they differentiated or found any differences between union and nonunion shops?

ALEXANDER HERTEL-FERNANDEZ: So, that’s a helpful followup question, because it allows me to further probe whether or not workers and work sites with greater bargaining power are less likely to see
these kinds of coercive requests, and that is born out in the data that not only are unionized workers less likely to receive these sorts of political messages that they deem to be especially threatened, but workers across the board who have more skills and are at lower risk of -- of being laid off are much less likely to receive political messages that they deem to be uncomfortable and threatening from their employers.

REP. BLUMENTHAL (147TH): Thank you, Professor.
Thank you, Mr. Chair.

REP. STAFSTROM (129TH): Further questions?
Representative Rebimbas.

REP. REBIMBAS (70TH): Thank you, Mr. Chairman, and good morning. I guess just to start with your last comment that the -- those shops that had unions’ greater bargaining powers, they were less likely. Why were they less likely? What were the factors in that regard?

ALEXANDER HERTEL-FERNANDEZ: So, as I was eluding to in my previous response I think an important calculus that employers make when they send political messages to their employees is what the likely reception is going to be, and in a context where there is a union or when workers have strong exit options from a firm, they know that if they don’t like working conditions they can leave, then it makes it harder for employers to make requests or send messages that they think workers might not respond well to. In a context where you know you can find another job very easily or complain to a union representative about our employer’s behavior, it raises the cost to employers of sending those sorts of messages to -- to employees, and so that’s
why I think you see those correlations that workers with greater bargaining power are less likely to receive these sort so threatening messages from employers.

REP. REBIMBAS (70TH): And, understanding that, in your testimony, you did acknowledge the fact that you’ve been requested to speak before us from a union. I don’t expect you to speak negatively regarding unions, but have you found where individuals who are members of unions have ever felt the same pressure from unions in order to agree with them in any political position?

ALEXANDER HERTEL-FERNANDEZ: Yeah, and I addressed this topic in -- in the book as well. My view -- and this is borne out by the data that I’ve collected -- is that at core employer requested messages are different from union messages because at a time when private sector union membership is so low, unions just simply don’t have the same economic control over the workplace that employers do that if we were look at the 1930s and 40s, for instance, and the historical research that I did for the book, you could certainly find cases of unions being particularly heavy-handed and exercising greater say over their employee’s political choices, but in a context where union density is so weak and where unions have much less say over who’s employed and the sort of wages and conditions that -- that many private sector employees receive, my view is that they’re sort of comparing apples and oranges.

REP. REBIMBAS (70TH): Actually, doesn’t unions in fact advocate for the conditions in wages?

ALEXANDER HERTEL-FERNANDEZ: In the workplace and in politics, certainly, but the -- the clout that they
have has diminished greatly since the -- since the new deal era when union density and strength was both wider in the workplace and -- and in politics as well.

REP. REBIMBAS (70TH): So, as you sit here today, you’re saying that unions are weak? Is that what I’m hearing? Currently, today as opposed to the history, and therefore, they are not as empowered as employers?

ALEXANDER HERTEL-FERNANDEZ: That’s correct, and I think that’s consistent with a broad body of social science that shows how the union membership has declined steadily since the 1930s and 40s from a peak of over 30 percent over 10 percent today, for instance, in the private sector, and as a result of that, they say that they have in -- across the economy and in individual work sites and in politics has diminished as well.

REP. REBIMBAS (70TH): I guess let’s just take a hypothetical based on your description. The big bad employer and the bad union but maybe not as strong as the employer; don’t you believe that any employee that would be subjected to the same speech by either one of them then should be prevented from having to be subjected to it equally?

ALEXANDER HERTEL-FERNANDEZ: So, I think you’re right to point out that under certain circumstances unions when they have say over sort of people that can be hired in working conditions you could imagine these messages being equally threatening to workers, but in this context where it is employers, not unions that decide who gets hired and the sort of terms of condition in most of the private sector
workforce, I think that comparison is less valid today.

REP. REBIMBAS (70TH): So, shouldn’t we have a proposal that prevents unions from having these conversations at the workplace as well?

ALEXANDER HERTEL-FERNANDEZ: It depends on what your concern is. If your concern is the economic leverage that employers have over their workers, then I think the focus is rightly on managers and supervisors because they’re the ones who have the final say over workers, working conditions, and it ink that’s what makes these messages distinct from messages that come from unions or from churches or from other organizations.

REP. REBIMBAS (70TH): Okay. I don’t think employers in all cases have the final say. Sometimes there are court proceedings that are brought in that regard. Do you propose banning any candidate for office or any current serving representative or politically elected official whether on the local level, state, or federal from going to companies?

ALEXANDER HERTEL-FERNANDEZ: No. I don’t, and I don’t -- again, I’m not a lawyer, but my understanding is that would not be barred by -- by this legislation unless the employer was -- was requiring that employees participate in, for instance, that meeting or -- or that event. And, I should be clear that the vast majority of cases where employers talk politics are likely to be not as threatening as the segment that I’m focused on, that I find most concerning, that in many of these cases an employer might be encouraging their workers to register to vote or to turn out to vote, and I
think we can generally agree that that is a net positive. With that said, I think the cases that are problematic are the ones where workers feel as though they have to tow the line on a particular issue or election, and they’re worried that if they don’t that their employer might retaliate against them.

REP. REBIMBAS (70TH): Would a statement by a union or an employer simply saying that this portion of the meeting is going to be regarding our elections and potentially, the candidates who are running and some information regarding it, you are welcome not to stay for this portion; would that suffice?

ALEXANDER HERTEL-FERNANDEZ: I should be clear that I -- I -- I’m not equipped to weigh in on the legal -- on how that compares to the legal language that is in SB 440, but I would say that I would be concerned that its employees feel as though their employer’s keeping track of who decides to stay and who doesn’t, that that could weigh on the minds of employees as they are deciding whether or not to participate.

REP. REBIMBAS (70TH): Did you read SB 440?

ALEXANDER HERTEL-FERNANDEZ: I did.

REP. REBIMBAS (70TH): Okay. ‘Cause the last caveat before your response gave me the impression that you hadn’t because you don’t need to be an attorney to know what’s in there, and my asking you based as a professor and your research what your opinion is regarding a statement of that sort. Because when you talk about well then the employer’s gonna keep track or the union keep track of that employee that may disagree with their opinion, and it doesn’t mean that there’s a threat, but they simply disagree, I
think it’s something that we can’t control in an individual’s mind. You also in your testimony had indicated that maybe they’ll be looking at which candidate that they donated to. That’s public record. There’s no proposal before us or any proposal before us that could change that, so there’s certain things that we can control and certain things we can’t. In any of your surveys, were they conducted in the state of Connecticut?

ALEXANDER HERTEL-FERNANDEZ: They were national samples, so a worker in Connecticut had an equal probability of being samples. All else equal as -- as workers elsewhere.

REP. REBIMBAS (70TH): Do you have actual statistics in the state of Connecticut?

ALEXANDER HERTEL-FERNANDEZ: Unfortunately, to speak to a particular state, you would need to field the survey that was exclusively focused on that one state, and to draw inferences about one state from a national sample could be problematic because you just don’t have enough respondents to -- to isolate one state. And, I have not done that sort of survey on Connecticut alone.

REP. REBIMBAS (70TH): Okay. So, we don’t know if we have enough respondents because we haven’t done it in Connecticut? You haven’t done it in Connecticut?

ALEXANDER HERTEL-FERNANDEZ: The results --

REP. REBIMBAS (70TH): So, you don’t have the statistics for Connecticut. I think that was your last response. Correct?

ALEXANDER HERTEL-FERNANDEZ: Yes. The results that I’m speaking to you apply to the United States more
generally. Although, I would make the hypothesis that given the structure of industry in Connecticut and the structure of the workforce that we would have reason to think that -- that the picture in Connecticut looks similar to the national picture.

REP. REBIMBAS (70TH): And, similarly, someone can give the hypothesis that in Connecticut with all of our current laws on the books that have certain protections, specifically to these points, it may differ from other states nationally as well; correct?

ALEXANDER HERTEL-FERNANDEZ: That’s a hypothesis that could certainly be tested with empirical data.

REP. REBIMBAS (70TH): Thank you for your testimony. Thank you, Mr. Chairman.


SENATOR CHAMPAGNE (35TH): I don’t think I heard you. Where you compensated to be here today?

ALEXANDER HERTEL-FERNANDEZ: I was not.

SENATOR CHAMPAGNE (35TH): In no way? Okay. You said that Connecticut should be the same as the rest of the country when it comes to research. So, you feel that if you took a -- a sample question in Texas it should be the same results should apply to Connecticut?

ALEXANDER HERTEL-FERNANDEZ: No. I am hypothesizing based on the national --

SENATOR CHAMPAGNE (35TH): I understand you’re hypothesizing.
REP. STAFSTROM (129TH): Folks. Hold on. Hold on one second. We need to make sure we get an accurate transcript, so try not to talk over each other. So, Senator Champagne, go ahead and ask your question.

SENATOR CHAMPAGNE (35TH): I understand you’re hypothesizing, but you’re giving research results to us here on -- on 440 -- bill 440 in Connecticut, and you’re doing it with information that could come from one part of the country such as I’m giving the example as Texas. Would Texas give the same results as the state of Connecticut if you did the exact same study? That’s what I’m asking you.

ALEXANDER HERTEL-FERNANDEZ: So, I can’t speak to that comparison, but my suspicion is that Texas would not look like Connecticut. The question though is whether the national average would look like any one particular state.

SENATOR CHAMPAGNE (35TH): Well, this is a law in Connecticut. That’s why I asked that. So, you keep giving a national study. Can you tell me specifically right now how many people in Connecticut you talked to?

ALEXANDER HERTEL-FERNANDEZ: No. I cannot.

SENATOR CHAMPAGNE (35TH): How about in Texas?

ALEXANDER HERTEL-FERNANDEZ: I cannot. No.

SENATOR CHAMPAGNE (35TH): California?

ALEXANDER HERTEL-FERNANDEZ: No. I --

SENATOR CHAMPAGNE (35TH): So, basically -- and, I’m sorry I talked over you again -- but what it comes down to --’cause you know most of us have probably done some sort of research in school. When you come forward and you’re -- you’re giving us examples or
you’re talking about a specific item that you researched and you’re applying it to -- in this case a law in Connecticut. You’d figure that you would have done research in Connecticut before you came here, so that you can actually give us accurate information, not hypothesis, not you know some guess which is pretty much the same as what we said. So, I’m finding it a little difficult taking any of the information you gave me relating to these studies as something that’s going to apply to Connecticut.

ALEXANDER HERTEL-FERNANDEZ: So, the -- the knowledge that I have gathered that I believe is the strongest footing in -- to make -- to make predictions of how a legislation might affect a state comes from the national level with sufficient time and resources. I could certainly do a study that was targeted at one state. At this point, there is so little research that’s been done into this question of employer communications in the workplace, that I think we’re on the strongest footing looking to national data at this point.

SENATOR CHAMPAGNE (35TH): Okay. How many people were involved that you had in the research? How many people did you talk to?

ALEXANDER HERTEL-FERNANDEZ: So, I fielded in total over five surveys on national samples. The first survey was a nationally represented telephone survey of over 1000 individuals who were surveyed for that. There were additional surveys that were done online. Some of them were of 500, 600, 700, and an additional sample of 1000 respondents. I conducted additional surveys of firm managers of over 500 firm managers who participated in that study, and then I interviewed over 30 top government affairs officers at a number of private sector companies to
understand from inside companies what did this look like? Why were companies communicating about politics to their workers? And, if they weren’t engaged in the political process, why they weren’t?

SENATOR CHAMPAGNE (35TH): You probably related with the numbers that you gave me probably about 10 or more, and you said there were five surveys that you were talking about. And, out of these surveys, they specifically dealt with all language contained within Senate Bill 440?

ALEXANDER HERTEL-fernandez: So, these surveys asked a variety of questions about employers talking politics with their workers, and so I think that touches on the question of political communications that workers might find threatening in the context of Connecticut.

SENATOR CHAMPAGNE (35TH): I’m sorry, Professor, but you keep using words like I believe, might, touches upon. If one of your students turned in a statistical survey and gave answers like that how much credit would you give to that survey?

ALEXANDER HERTEL-fernandez: So, this may be a cultural difference. As a social scientist, I feel as though it’s appropriate to be cautious in the sort of inferences that one drives from one’s research.

SENATOR CHAMPAGNE (35TH): Okay. And, even the numbers you relayed is less than 15,000, and we’re talking about millions of employees. So, I mean really is that really a proper sample? And, obviously -- and I’m going to continue on when I say proper sample because we don’t know how many you took from Connecticut. We don’t know how many you took from the Northeast or the Southeast or the
Northwest or you know -- do you truly feel that that is an accurate sample to come and speak for Senate Bill 440?

ALEXANDER HERTEL-FERNANDEZ: I think it’s an appropriate sample for understanding how common this is in the country as a whole and the sort of broad correlations that relate to it, the sort of firms and workers that are most likely to be involved with it, and I think for the research that I was engaged in that was an appropriate sample. Now, if you’re interested in understanding inferences just for Connecticut, I think it would make sense to field a survey just on the Connecticut population; however, that was not part of my research, and so I’m not equipped to speak to that today. As for the size of the national samples, polls that are done regularly to draw inferences about national population generally have around 1000 respondents.

SENATOR CHAMPAGNE (35TH): You know, no matter what the topic is, no matter what the subject is, when somebody comes in and they start talking about numbers and statistics and they can’t back them up thoroughly, that’s when I have a problem. And, again, you keep talking nationally. Okay. nothing specific to Connecticut. All right. And -- and you don’t know what the issues are here in Connecticut, so I’m -- I’m gonna end it there, but when I look at this and just listening to what you said, I don’t see that what you’re saying really relates to what we’re doing in Connecticut at this time. Thank you.


REP. PORTER (94TH): Thank you, Mr. Chair. And, thank you for your testimony today. I want to go
back to Citizens United to talk about how employers have escalated their workplace communications around politics. How frequent are these captive audience medians regarding politics going on; do you know?

ALEXANDER HERTEL-FERNANDEZ: So, I did not ask about captive audience medians explicitly in the research, but I did ask about whether or not workers had received messages from their employers about politics and then asked them was it about electoral issues or legislative issues, and I report the specific breakouts in my written testimony. But in all, about one in four American employees reported that they had ever received political messages and of those I report that about 28 percent of them had received messages explicitly about political candidates.

REP. PORTER (94TH): Politics.

ALEXANDER HERTEL-FERNANDEZ: And elections. Separate from workers who reported receiving information about legislation or public policy debates and separate from get-out-to-vote messages that were unrelated to partisan elections.

REP. PORTER (94TH): And, were there any reports that this happens around religious status as well or just political?

ALEXANDER HERTEL-FERNANDEZ: So, I did not ask about religious issues in my --

REP. PORTER (94TH): Okay.

ALEXANDER HERTEL-FERNANDEZ: In the questions that I fielded or in the research that I did for -- for the book or related articles.
REP. PORTER (94TH): And, in your research [Clearing throat] -- excuse me. What did you find? Who were the typical employers that would engage in this kind of activity? Small businesses, retailers, large corporations?

ALEXANDER HERTEL-FERNANDEZ: So, there was variation across these employers along relatively predictable lines. So, for instance, more regulated industries were more likely to engage in politics. Industries that, for instance like mining or extracted industries were especially likely to engage in these sorts of practices. Companies that where workers had relatively less bargaining power, so companies with relatively less educated workforces or nonunion workforces, for instance, were more likely to send out this source of messages. And, so those were two of the features that -- that predicted what sorts of companies were most likely to be involved. And, lastly, companies that were more involved in other ways in politics were much more likely to talk to their employees. The managers that I interviewed for the research reported that if they were operating a political action committee, if they had lobbyist in the State Capitol in Washington D.C. they saw this as a compliment to those other sorts of political practices.

REP. PORTER (94TH): Thank you, and you actually answered one of my other questions because I was going to ask you how does this impact low-wage workers, but I would imagine what you just stated that they would be a prime target for this kind of practice, and I also wanted to ask you -- you were talking about in your written testimony around how the federal law leaves workers unprotected, so I wanted to know why have so few states taken the
steps to do what the federal government has not done?

ALEXANDER HERTEL-FERNANDEZ: I think part of it is lack of information. That until recently this wasn’t something that many people outside of -- of politics narrowly construed around the company knew was occurring, and so, therefore, was less likely to see a need for it, but I think since Citizens United you’ve seen an increase in the number of -- of newspaper articles and news reports about these sorts of practices within companies. And, you know, in my written testimony I give a number of these examples, and I think as more and more of these cases are revealed by investigative journalist or by the news media that you’ll see more demand for this kind of legislation.

REP. PORTER (94TH): Thank you for that, and I think that’s why important that we get ahead of it as we’re known to be a leader. This would be a great thing to be leading on. And, to your knowledge, have any workers successfully won a case -- an employer where they were dismissed after ignoring an employer’s political speech or advice?

ALEXANDER HERTEL-FERNANDEZ: I generally focused on the federal level, and so I -- as far as I can tell, there were no cases that I came across. It may be different at the state or the local level.

REP. PORTER (94TH): Okay. And, just to wrap up, and this is your opinion, but I’m gonna ask you because you’ve done the research. If the General Assembly fails to enact this legislation, how do you feel it will impact the workers in Connecticut?

ALEXANDER HERTEL-FERNANDEZ: I think it would leave workers vulnerable to additional pressure to behave
in particular ways in politics, and it would allow employers to go further in potentially pressuring employees to support political issues and candidates, and I think having the legislation in place would -- would protect against that kind of pressure.

REP. PORTER (94TH): And, I tend to agree, and I -- I’d like to just thank you for taking the time to be here today and to bring forth the information that was derived from your research. I think it’s important that we take that into consideration, so thank you. And, thank you to Representative Winkler for having you before us. Thank you, Mr. Chair.

REP. STAFSTROM (129TH): Thank you. Further questions? Representative Blumenthal for the second time, followed by Representative Rebimbas again.

REP. BLUMENTHAL (147TH): Thank you, Mr. Chair, and thanks for your indulgence allowing me to ask a second set of questions. I just have two brief questions, and the first one I ask with a bit of trepidation as somebody who became a lawyer mostly to avoid math [Laughter], but in response to Senator Champagne’s line of questioning, I’m just wondering if there are statistical tools that would allow you to extrapolate from your data to certain states or you know, across the country, and if you might want to describe those to the committee briefly?

ALEXANDER HERTEL-FERNANDEZ: All right. So, as I mentioned, I didn’t focus on particular states in my research. I was focused on the national picture, but one could imagine either fielding a survey exclusively in one particular state or a subset of states or using the national surveys to extrapolate estimates for one particular state. That’s an
increasingly common practice in social science is to take a survey that was designed for a national sample, and then try and build basically a statistical model to predict what the result would be at the sub-state level. That’s not something that I did as part of my research, but one could imagine using national surveys, particularly if you pulled together multiple national samples to generate those kinds of estimates.

REP. BLUMENTHAL (147TH): Thank you, and Representative Rebimbas asked you about coercive tools of unions and -- or I guess potential coercion from unions and employers, and I was just wondering if you could describe, you know, what coercive tools employers have as compared to unions, and what your research may have said about those tools?

ALEXANDER HERTEL-FERNANDEZ: I think this gets at the fundamental asymmetry between employer political messages and other kinds of political messages, and why I think we should pay particular attention and direct particular scrutiny to employers as opposed to other actors, and you know, that’s not a standard that has been unrecognized by our legal system. In fact, a Supreme Court decision related to union organizing, the Justices wrote in the majority opinion that employers’ speech is not like union speech or other kinds of speech, and therefore, needs to be regulated more heavily because employers ultimately control the wages, employment, and working conditions of employees in a way that unions or other actors do not. I’m not gonna be able to cite the specific phrase that’s in my written testimony, but the Supreme Court in that decision mentioned that a sort of passing phrase that one actor might give to another actor might go
unnoticed, but when it comes from an employer to an employee, that employee is going to pay particular attention to what employers are saying, and that’s because employees rationally realize at the end of the day that employers control their wages and employment and working conditions.

REP. BLUMENTHAL (147TH): Thank you, Professor. And, thank you, Mr. Chair.

REP. STAFFSTROM (129TH): Representative Rebimbas.

REP. REBIMBAS (70TH): Thank you, Mr. Chairman. Thank you for a second time. I just wanted to follow up on one of your responses that you gave to a question posed. You said that there would be additional pressure if this proposal was not passed, and I know earlier you had indicated that you’re not an attorney, you haven’t done a survey in the state of Connecticut, and I’m going to assume -- and you can correct me if I’m wrong -- that you haven’t done an evaluation of all the statutes that we have that pertains to this exact topic. So, what do you base that on besides the fact that you’re here on behalf of the union that requested you to testify on behalf of bill that was proposed by a legislator?

ALEXANDER HERTEL-FERNANDEZ: So, I’m not a lawyer as you pointed out, and I will continue to underscore, but in the preparation for this testimony, I did look at the specific statutes that govern political communications in the workplace, and I cite these in my written testimony that -- that Connecticut law protects the 1st Amendment rights of workers in the workplace, as well as protects against retaliation from an employer based on an employee’s votes in an election, but that still leaves a great deal of
ground that’s uncovered, and I think this legislation would go far in covering that ground.

REP. REBIMBAS (70TH): And, the legislation that’s before you when you -- when it indicates primary purpose, do you have a definition for primary purpose?

ALEXANDER HERTEL-FERNANDEZ: Of my own creation or - - or in addition to the primary purpose that has been given?

REP. REBIMBAS (70TH): The intent of the wording of primary purpose in the proposal before us.

ALEXANDER HERTEL-FERNANDEZ: I don’t have the specific language in front of me to comment on, but.

REP. REBIMBAS (70TH): Okay. But you had indicated that you had reviewed the statutes, so I’ll elaborate. It says, that the meeting with the employer, its agents, representative, or designee the primary purpose of which is to communicate the employer’s opinion concerning religious or political matters or -- and it goes on. So, primary purpose in that regard?

ALEXANDER HERTEL-FERNANDEZ: The primary purpose is, in my view, to protect against undue influence from an employer over employees related to political, religious, and labor issues.

REP. REBIMBAS (70TH): I’m asking what is primary purpose? What is the primary purpose? How do you define that? So, you’re calling a meeting and you’re talking about a variety of issues that the employer sees that is fit, and would the primary purpose be 10 percent of the meeting be discussed regarding religious or political, 50 percent of the
meeting? What would be the definition of primary purpose?

ALEXANDER HERTEL-FERNANDEZ: That sounds like the sort of question that would require legal interpretation of the relevant statute that I’m not equipped to answer.

REP. REBIMBAS (70TH): Okay. Thank you. Thank you, Mr. Chairman.

REP. STAFSTROM (129TH): Further questions? I’m seeing none. Thank you both for being with us. I appreciate it. We’ve exhausted the first hour, so we are going to alternate between the public list and the elected official list. First up on the public list is Kelly O’Donnell.

KELLY O’DONNELL: Thank you, Representative Stafstrom. I’m here today on Bill 7272, AN ACT CONCERNING THE DISPOSITION OF A DECEDED’S BODY. This bill adds a new subsection (b) as a clarifying amendment, which is now necessary in light of some of the advances in our medical technology. When passed, this statute did not intent to allow a person having custody and control of a decedent’s remains to include the ability to preserve reproductive tissue. Today, the terms cryogenic preservation in subsection (a) of the statute could be construed to include the preservation of reproductive tissue. This amendment makes clear that that is not the case. This clarifying amendment is important due to the time-sensitive nature of decisions regarding reproductive tissue and the custody and control of decedent’s remains.

REP. STAFSTROM (129TH): Attorney, O’Donnell, can you give us an example or typical case where this statute may be important?
KELLY O’DONNELL: Sure. So, if we had a situation in which the family of a decedent wanted to preserve their reproductive tissue, they might seek to go to a probate court under the current statute and get an order giving them custody and control of the remains, which they then may argue the statute under subsection (a) cryogenic preservation would allow them to retrieve and cryogenically preserve the reproductive tissue of the decedent, and that’s not the proper avenue at this point for that sort of decision.

REP. STAFSTROM (129TH): So, this bill -- let me ask you this. Would this bill prevent someone from planning for the future and having their reproductive tissue be preserved upon their death?

KELLY O’DONNELL: No. Not at all. It just clarifies that this particular statute and an order of custody and control of remains is not a proper avenue.

REP. STAFSTROM (129TH): So, the default role under the statute would be that whoever has the custody and control of the decedent’s body would not have authority to preserve the reproductive tissue, but if the -- if someone planning ahead decided to write that into their will or healthcare directives they could do so?

KELLY O’DONNELL: I think that’s actually an open issue that requires a little bit more exploration. Other states are confronting this, and New York has a case coming up right now about that very issue, and I think that that would take some more consideration as to where in the statute that sort of authority should go.

KELLY O’DONNELL: Thank you.

REP. STAFSTROM (129TH): Next up, I have Christine Rapillo, Chief Public Defender. Attorney Rapillo, welcome.

CHRISTINE RAPILLO: Thank you. Members of Judiciary Committee, I’m Christine Rapillo. I’m the Chief Public Defender. I’m here to testify today on raised bills 1055 and 1056. I’ll address 1056 quickly because we’re actually asking the committee to take no action on Section 1 of this bill. Senate Bill 964, AN ACT CONCERNING COURT OPERATIONS addresses -- we submitted testimony on this last week. This is aimed at addressing some issues with how budget reductions get allocated to the public defender’s office through the judicial branch. We’ve been working with our partners at judicial to try to come up with a fair way to allocate this. I think that the language in 964 addresses this, so we would ask the committee not to take any action on Section 1 of 1056.

Section 2 deals with how court files are sealed when the individual enters the diversionary program. Currently, these diversionary programs are designed to allow people to get a consequence, seek treatment, do something to address the underlying reason that brought them into the criminal court and leave without criminal records so that the stigma of being in court doesn’t follow them. And, what section 2 would do would be to seal the records for all the diversionary programs at the same time upon the filing of the application to really give action
to the legislative intent of these programs, which is to allow people to get a consequence for an activity and then to move forward unscathed with a criminal record.

Raised bill 1055 has several sections. The first one establishes a task force to study jury selection process. This was actually a bill that came out of this committee and passed the House last year. What it would do is it would create a task force that would allow us to look at how records of the race and ethnicity of jurors are maintained. There was a right to challenge the racial makeup of a jury. We don’t currently maintain any of that information past the time that the jury comes in for questioning. So, we’re looking for ways to be able to maintain that information in a cost-effective and fair manner.

The second section of this you heard from the commissioner of DMHAS this morning related to access to videos from the PSRB. This bill really is tailored towards getting access to the video surveillances at the hospital for the attorneys who represent individuals at the board. We’ve been working again with DMHAS to try to craft language that would be acceptable to everyone that could be presented to the committee. We made some progress. They gave us some language on Friday that we’re looking at. We’re going to continue to talk to them, and we’re hoping that we can reach something that we can present to the committee that would be consensus language between our agency and their agency.

The last section of 1055 would propose changes to the way individuals charge with persistent larceny offenses are sentenced. So, Connecticut has a
persistent felony offender sentence that if you come in and you have two prior felony convictions and you are charged as a persistent offender, you could have a heightened sentence that would move you up to the next level of a felony, so if you’re charged with a C felony, you could be sentenced at a B felony if you’re a persistent offender. For larceny offenses, and this is addressing misdemeanor larceny offenses, you immediately jump up to a D felony under the persistent larceny offender statute. And, what Section 3 of 1055 would do would be to institute a gradual increase in the sentences [Bell], the same as with the felony offenses.

So, that is a quick summary of what is in those bills. We would ask the committee to act favorably upon them, and I’m happy to answer any questions.

REP. STAFSTROM (129TH): And, well-timed at three minutes and two bills. How about that?

CHRISTINE RAPILLO: [Laughing] I’m getting good at this.

REP. STAFSTROM (129TH): Questions from the committee? I’m seeing none.

CHRISTINE RAPILLO: Thank you very much.

REP. STAFSTROM (129TH): Thank you for being with us, Attorney Rapillo. Next up I have Christopher Hutchinson. Can you just hit the button in front of you there?

CHRISTOPHER HUTCHINSON: Yeah.

REP. STAFSTROM (129TH): There you go.

CHRISTOPHER HUTCHINSON: My full name is Chris Hutchinson. My middle name is Joseph. I go by Joe. I’m a front desk agent at the Sheridan Hotel in
Stamford, Connecticut and a member of Local 217 Unite Here. I’m speaking to SB 440. A little more than -- more than three months ago, my co-workers and I voted to form a union and join Local 217 Unite Here at the Sheridan Hotel in Stamford, Connecticut. Stamford and the surrounding towns make up one of the wealthiest counties in the United States; yet, many of my co-workers and most nonunion hotel workers in Fairfield County struggle to see a decent future for ourselves and our families because many of us work two or even three jobs. Some of us were saddled with medical debt while others barely took home a paycheck to pay the bills. The process of rank and file workers forming a union took months of hard work and meetings. We were forced to meet in secret because we knew that our bosses wouldn’t tolerate union talk. We knew that our livelihood would be stripped away if it was found out we were exerting our legal right to organize our union. And, organizing our -- that was democratic where all had a say and organized by Stamford -- by other Stamford hotel workers. When we finally gave notice of our intent to file for union election to the Davidson Company that runs the Sheridan Hotel in Stamford, we learned just how nasty the big bosses can be. What followed leading up to the election was four weeks of psychological torment in the form of captive audience meetings. I’m here today to give my testimony to the truly dehumanizing methods of captive audience meetings.

In Stamford, hotel workers have been -- have beaten Lupe Cruz and Associates, one of the top union-busting firms in the country, twice. I want to say the union-busting consultants names for the record because they travel around the country making a fortune, trying to trick workers out of a better
future. And, every worker should be on the lookout if they pop up in their places of work -- Wildine Pierre, Eduardo Padilla, Jamie Brambilla, and Luz Slim were chosen to target and trick the Haitian and Latino housekeepers in particular who make up the majority of workers at the Hilton and Sheridan in Stamford. These firms intimidated workers with captive audience meetings in the following ways: They had 24-hour access, staying inside the hotels and would hold workers with -- workers in captive audience meetings for two to three hours or more at a time. Sometimes as late as 3 a.m. Each meeting they would try to trick us. They told us that the union was a business. They told us there was something sinister about the union, that the union was hiding something, in some cases targeting our religious co-workers. They tried to make people believe that the union was the work of the devil. They tried to make it seem that the union was a third-party [Bell], trying to disrupt our lives. The company insulted our intelligence and underestimated our tenacity. We knew the hours of sweat we had put in and volunteered away from our family and friends. We know that unions don’t organize workers but workers unionize unions. The union-busting consultants held a co-worker Arturo, who’s diabetic, in meetings so long his blood sugar levels dropped that he thought he was going to pass out. Despite the trial, he continued towards forming the union. The company spread rumors about myself and my co-workers being spies who were paid by the union, but we weren’t tricked and we held together.

So, for four weeks of captive audience meetings, they were emotional and people’s nerves were down,
some people took off their union buttons just to stop the torment.

REP. STAFSTROM (129TH): Sir --

CHRISTOPHER HUTCHINSON: And, if you haven’t been through one -- I’ll wrap up right now -- if you haven’t been through one, it’s hard to imagine what it’s like. What we really need is a shorter period of time between the time we file for elections and the time the election happens, but we also really need an end to these captive audience meetings. Thank you.

REP. STAFSTROM (129TH): Thank you. Questions from the committee? Representative Blumenthal.

REP. BLUMENTHAL (147TH): Thank you, sir, for -- I thank you, Mr. Chair. And, thanks for being with us today, sir, and I just want to say congratulations.

CHRISTOPHER HUTCHINSON: Thank you.

REP. BLUMENTHAL (147TH): I -- I attended some of the rallies at the Sheridan, and we heard some stories about what was happening in some of these captive audience meetings, some of the circumstances in addition to what you mentioned. And, I was just wondering if you could give some of those to us as well?

CHRISTOPHER HUTCHINSON: Sure. You know, we -- and thank you for your support in our fight to form the union. The biggest thing that they -- that they tried to do was try to make it seem like the union was something outside of our workplace, that it wasn’t us who had done all the organizing. If you looked -- and I can’t speak to other union locals -- but I can speak to Local 217. The vast, vast majority of the work was done by the rank and file
members of the union, and at every single meeting, they tried to change the dialogue to make it seem like the union was a third party coming in to disrupt the relationship between management and workers, and they used things like the National Labor Relation Act and they used the union constitution, and they would cherry pick phrases from those documents that made it seem in some way that the union was going to harm our -- our co-workers. But we had really prepared and studied, and I think this bill is a recognition of the fight that we lead at the Sheridan and before that at the -- at the Hilton. We learned from the -- the struggle at the Hilton on the captive audience meetings how to -- how to stay together and stay strong, so I think this is a recognition of those -- of those fights, and -- and if you haven’t been through a captive audience meeting, it’s not just one time and you’re done. It’s the four weeks leading up to the vote, and every single day for four weeks you’re put through these meetings, and people are selected, so for someone like myself who would -- who would fight back and give it back to the union -- those union-busting consultants, they would disinvite me from the meetings. They wouldn’t allow me to come into the meetings anymore, but then they would take our co-workers who might have been quiet and listening, and they would subject them for days and days and days, and it wore people down. After four weeks, it’s -- it doesn’t sound like a long period of time, but when you’re in there for two or three hours a day, it’s -- it’s horrific.

REP. BLUMENTHAL (147TH): I also I heard some stories about consultants following cleaners --

CHRISTOPHER HUTCHINSON: Yeah.
REP. BLUMENTHAL (147TH): Into rooms they were cleaning at late hours of night. I heard some stories about individual workers who may be immigrants or speak English as a second language being in long meetings with high-powered lawyers and multiple consultants. Was that concordant with your experience?

CHRISTOPHER HUTCHINSON: Absolutely. These guys really special -- specialize in trying to trick workers out of joining the unions. They go all over the country, and they use all different types of tactics. Not only did they follow people into rooms and close the door behind them -- housekeepers -- and try to, you know, intimidate them, and they specifically brought in consultants who spoke Spanish and Haitian Creole. Not only did they follow them into the rooms, but there was also cases where they visited them at their homes or at their churches, and this is something that we -- we had to deal with on a -- on a regular basis. I should say these same consultants came before we even had made the intention to unionize public. They came and did surveys at the hotel, and then showed back up again as soon as, you know, we had made our announcement public, so the company had been probing to see if, you know, we were trying to form a union, trying to intimidate us, like all different types of things for, you know, this entire process. But you know, the act of going into the rooms and closing the door behind them was -- it’s -- it’s terrifying. There’s so many cases of sexual harassment in the hotels in general whether it be from -- from guests or from superiors or anything, you know. This type of thing just plays on those general fears that a lot of housekeepers in particular have of being brought into a closed-door one-on-one meeting.
REP. BLUMENTHAL (147TH): Thank you, Mr. Chair.

REP. STAFSTROM (129TH): Further questions? I’m seeing none. Sir, I want to thank you for taking the time to come up here and -- and be with us and share your testimony with us today.

CHRISTOPHER HUTCHINSON: Thank you.


ELLEN LECHANCE: Good morning, Representative Stafstrom and distinguished members of the Judiciary Committee. I’m Ellen LeChance the Executive Director of the Psychiatric Security Review Board. I’m here to provide information about the board as it relates to Section 2 of Senate Bill 1055 regarding access to videos in the possession of the Department of Mental Health and Addiction Services. The board is an independent state agency charged with the oversight of individuals found not guilty by reason of mental disease or defect by the Superior Court established in 1985 by the legislature. To address lapses and oversight of this population the board determines by way of a public hearing the appropriate placement, treatment, and supervision of those acquittees hospitalized or living in the community. The board is not taking a position on the proposal. I appear before you today simply to provide information or answer any questions that you have and to tell you how we manage confidential information and about how we might manage hospital video that an acquittee -- excuse me -- that an attorney may wish to introduce as evidence into a board hearing. The board’s statutory mandate is public safety, but public safety is not its only concern. The board also considers the treatment needs of those persons
committee to its jurisdiction as an important element in their recovery process. The board conducts its business in an open forum at public hearings throughout the year. At those hearings, protected information, protected psychiatric information enters the public domain by way of testimony from treaters at Whiting Forensic Hospital.

Although information from psychiatric records is discussed at those hearings, the documents themselves remain protected. While the details of how the board would manage video evidence at a hearing had yet to be worked out, I would envision a similar scenario. Defense attorneys, state’s attorneys, and board members would have access to the videos, but the videos themselves would not be available to the public. The board strives to balance the right of the public to remain informed about how the board reaches its decision with the privacy rights of patients under the board’s jurisdiction. I’m happy to answer any questions or provide any additional information.

REP. STAFSTROM (129TH): Thank you.

ELLEN LECHANCE: You’re welcome.

REP. STAFSTROM (129TH): And, thanks for being with us. Questions from the committee? Senator Lesser.

SENATOR LESSER (9TH): Thank you, Mr. Chairman. And, thank you for your work at the Psychiatric Security Review Board. What are the criteria that the board uses to evaluate whether or not it’s appropriate for an acquittee to be released?

ELLEN LECHANCE: Well, when you say released, I think we need to make sure we understand what the
same -- what the term means. If you’re talking about release from the board’s jurisdiction, that is at the discretion -- the sole discretion of the Superior Court. We don’t make those decisions.

SENATOR LESSER (9TH): In terms of -- in terms of recommendation -- recommending a release from treatment at an in-patient facility.

ELLEN LECHANCE: So, if you’re talking about let’s say a stepdown from in-patient to outpatient and the patient would still remain under the board’s jurisdiction, the test is really not -- whether or not that stipulations that the person’s going to be living under would represent a danger to themselves or others as a result of their mental illness, so people living in the community have a variety of stipulations, some more, some less depending on their individual’s needs, so it’s really all individualized.

SENATOR LESSER (9TH): Currently, under -- given -- who customarily reviews the media recordings of patient treatment under -- or just under day-to-day circumstances?

ELLEN LECHANCE: Are you referring to the video that’s subject of this bill today?

SENATOR LESSER (9TH): Yes.

ELLEN LECHANCE: Right now, that’s only the -- as I understand it, the sole discretion of Whiting Forensic Hospital and DMHAS. The board does not have access to those videos.

SENATOR LESSER (9TH): And, the patient who has counsel doesn’t have access either?
ELLEN LECHANCE: That’s correct. That’s the purpose of the bill -- to allow the counsel to have access to those videos. If the counsel -- the attorney has access and wants to then enter that information into a board hearing, it would serve as evidence, and then as evidence the state’s attorney would have access to that video and the board members would also have access to that video.

SENATOR LESSER (9TH): Okay. Thank you very much.

ELLEN LECHANCE: You’re welcome.


SCOTT SHEPARD: Good morning. I’m Scott Shepard. I’m the Policy Director at the Yankee Institute, and I speak today in opposition to Senate Bill 440. I might almost say -- I can’t say -- but I might almost say that I speak for the Attorney General’s office because as we all know Attorney General Jepsen wrote an opinion letter opposing the last version of 440, explaining that it clearly violated the National Labor Relations Act. It still violates the National Labor Relations Act, and would be preempted under federal law if it were passed. It would also very likely violate the 1st Amendment of the Constitution. The 1st Amendment allows for some limited restrictions on speech, but only to protect the public safety and only restrictions in time, manner, and place that are not targeted at either speakers or content and topics. This legislation doesn’t do that. It focuses on employers, but not other speakers, and on specific topics. It doesn’t relate in a neutral way to time, manner, and place; therefore, in a line of cases running back to and
before the second world war, we expect that -- we expect that this legislation -- if it were to be passed -- would be found to violate the 1st Amendment, which would set up the State of Connecticut to pay attorney’s fees, and if I understand the bill that was up before this committee on Friday, if it were to -- to pass as well -- then the new attorney general would find himself in the position of stepping into the shoes of these plaintiffs against bill 440 in order to defend the 1st Amendment rights that would be -- would be undermined of the passage of 440.

And, so with great respect, I suggest that the State of Connecticut already knows that it wants to avoid this captive audience bill, and it knows why it wants to avoid this captive audience bill, and we should avoid violating the constitution of the United States, and should let this bill die a deserved death. Thank you.

REP. STAFSTROM (129TH): Sir, do you work for the Attorney General’s Office?

SCOTT SHEPARD: [Laughing] No. I don’t.

REP. STAFSTROM (129TH): Okay. So, when you say you can speak for the Attorney’s General’s Office, that’s --

SCOTT SHEPARD: No. I said, I almost could speak for the Attorney General’s Office.

REP. STAFSTROM (129TH): Almost could.

SCOTT SHEPARD: And, I absolutely cannot. I’m just speaking the words of the Attorney General’s Office for the committee.
REP. STAFSTROM (129TH): Okay. The Attorney General’s Office has weighed in on this bill?

SCOTT SHEPARD: Yes.

REP. STAFSTROM (129TH): This particular bill before us?

SCOTT SHEPARD: It has weighed in on the subject matter last year -- Attorney General Jepsen did.

REP. STAFSTROM (129TH): Okay. But the current Attorney General on this particular bill?

SCOTT SHEPARD: The current -- to the best of my knowledge, the Attorney -- the Attorney General has not weighed in on the current bill.

REP. STAFSTROM (129TH): So, you can’t speak for the current Attorney General, and you can’t put words in his mouth of what he might weigh in on this particular bill.

SCOTT SHEPARD: And, I never planned to. What I said was that I almost could say that I speak for the Attorney General, but in fact, I cannot. I didn’t say I do speak for the Attorney General, sir.

REP. STAFSTROM (129TH): But you don’t. I mean we seem to be pursuing this line today of what folk’s motives for testifying before this committee may or may not be. You’re in fact employed by the Yankee Institute; is that correct?

SCOTT SHEPARD: That’s right.

REP. STAFSTROM (129TH): Okay. And, you’re paid a salary by them?

SCOTT SHEPARD: I am, indeed.
REP. STAFSTROM (129TH): Okay. You’re a paid employee, so you’re paid to be here to testify on behalf of the Yankee Institute?

SCOTT SHEPARD: I suppose that’s correct, yeah.

REP. STAFSTROM (129TH): Okay. And, the Yankee Institute generally takes positions adverse to collective bargaining in the state of Connecticut; is that correct?

SCOTT SHEPARD: I think as today we tend to take positions in line with federal law and constitutional principle.

REP. STAFSTROM (129TH): That wasn’t my question. My question was does the Yankee Institute generally take positions adverse to those of labor in the state of Connecticut?

SCOTT SHEPARD: It depends on how you define labor. We take positions in favor of the workers of Connecticut every day.

REP. STAFSTROM (129TH): Okay. But it’s fair to say you’re being paid to be here today to take a position adverse to this bill?

SCOTT SHEPARD: I am being paid to take positions on bills and as the Policy Director of the Yankee Institute, I took the position in favor of the constitution and the NLRA against this bill.

REP. STAFSTROM (129TH): But that’s for a special interest in the state of Connecticut that you work for, not for the Attorney General’s Office.

SCOTT SHEPARD: As I absolutely said from the word go, I do not work for the Attorney General’s office.
REP. STAFSTROM (129TH): Okay. I just want to make sure the record is very clear on that because the way you started your testimony it was somewhat confusing. Further questions from the committee? Representative Blumenthal.

REP. BLUMENTHAL (147TH): Just following -- I thank you, Mr. Chair. Following on the Chair’s line of questioning. In fact, you can only speak even hypothetically for one Attorney General because another Attorney General came out in favor of a captive audience bill previously in terms of the legal analysis; correct?

SCOTT SHEPARD: I think that what Attorney General Blumenthal said was that he would defend it. He didn’t come out in favor of it. He didn’t say it wasn’t preempted by the NLRA. He said that he would put the -- the Treasury of the State of Connecticut in the defense of it. That -- that -- that declaration was also made before a key United State Supreme Court decision that clarified the unconstitutionality -- well, clarified that the bill as proposed last year and as similarly proposed this year is in fact preempted by the NLRA.

REP. BLUMENTHAL (147TH): Okay. So, the opinion itself actually said, in addition to the fact that he would defend the bill, it also said he believed it was not preempted by the NLRA, and also have you reviewed the bill we’re considering today? The language we’re considering.

SCOTT SHEPARD: I have.

REP. BLUMENTHAL (147TH): Okay. What are the differences between the bill that was submitted to Attorney General Jepsen last year and the one that we are considering this year?
SCOTT SHEPARD: Well, I think that the key similarities are that this bill focuses on restricting speech of employers but not of unions despite the fact that this is a captive audience state, and it picks its speech restrictions not in the interest of time, manner, and place for public safety, but it limits the speech of certain speakers in certain context, in certain content, and that violates the basic principles in a long line of precedent from the 1st Amendment.

REP. BLUMENTHAL (147TH): Did this bill actually prohibit any speech at all?

SCOTT SHEPARD: I’m certainly under the understanding that it does.

REP. BLUMENTHAL (147TH): What language in the bill does that?

SCOTT SHEPARD: I don’t have the bill in front of me, so.

REP. BLUMENTHAL (147TH): Okay. Would it surprise you to learn that the bill actually prohibits no speech at all?

SCOTT SHEPARD: I would be interested in the interpretation that reaches that conclusion.

REP. BLUMENTHAL (147TH): Would it surprise you to learn that the bill actually prohibits threatening or taking punitive action against somebody who declines to participate in a meeting where speech is considered rather than any speech at all?

SCOTT SHEPARD: Well, that is certainly a restriction on a speaker, especially a speaker who’s paying to make the speech. A speaker’s opportunities to speak, if it’s limited -- if it’s
directed at specific speakers and specific content as this bill does. We know that the 1st Amendment doesn’t just prohibit direct -- it doesn’t just protect against gagging, it protects against chilling of speech, and this is certainly a bill that chills speech.

REP. BLUMENTHAL (147TH): So, it would violate the 1st Amendment to prevent someone from firing someone for not being forced to listen to speech?

SCOTT SHEPARD: It would violate both the constitution and the NLRA to do that in a context that focuses on one set of speakers and one set of speech rather than all relevant speakers and all speech. We are a closed-shop state in Connecticut. This is a bill aimed at stopping the speech of employers, but allowing the speech of unions. That violates the NLRA, that violates the 1st Amendment.

REP. BLUMENTHAL (147TH): So, any -- any regulation that has anything to do with speech that deals with -- that prevents an employer from doing something but doesn’t prevent a union from doing something violates the 1st Amendment and the NLRA?

SCOTT SHEPARD: I’m not talking about any possible bill or any possible proposal. I’m talking about the one before the committee, and in my understanding, that is preempted by the NRLA, and it would be violative of longstanding principles of the 1st Amendment.

REP. BLUMENTHAL (147TH): Thank you, Mr. Chair.


SENATOR BERGSTEIN (36TH): Thank you for your testimony. I just for my own notification, can you
please tell me what you think the distinction is between an employer and a union? As far as I can tell a union does not pay salaries to union members. Memberships is voluntary, so there seems to be a very clear distinction, but I’d like to know what your view is.

SCOTT SHEPARD: I think that I could get into a fairly detailed disquisition on how unions and employers different in various ways, but for the purposes of the NLRA and for the purposes of the 1st Amendment, they are similar in the sense that their speech must be regulated neutrally or and in fact under the NLRA the State of Connecticut doesn’t have the power to regulate the speech in any way. It’s preempted by the NLRA, and the supremacy clause in the Constitution of the United States.

SENATOR BERGSTEIN (36TH): Thank you for your view.

SCOTT SHEPARD: Thank you.

SENATOR BERGSTEIN (36TH): Thanks, Mr. Chairman.

REP. STAFSTROM (129TH): Further questions? I’m seeing none. Thanks for being with us. Next up is Representative Petit.

REP. PETIT (22ND): Good morning, Chairman Stafstrom and Ranking Member Rebimbas, members of the Judiciary committee. I am here in support of Senate Bill 969, AN ACT CONCERNING A REDUCTION OF ECONOMIC DAMAGES IN A PERSONAL INJURY OR WRONGFUL DEATH ACTION FOR COLLATERAL SOURCE PAYMENTS. And, thank the committee for bringing this important bill to a public hearing. I’m here to testify as a -- as a physician and a citizen of the state of Connecticut on the big picture. I am not a lawyer, and there will be lawyers later on speaking to the nuances of
the legal issues. I think Senate Bill 969 will be helpful in terms of tort reform in Connecticut. For many years, the physician community has asked this committee and others to examine tort reform in a comprehensive way, and there have been multiple proposals over the years. Many of these bills have not had a public hearing. My hope that in addition to the language here that the committee consider adding language to this bill to create a task force to examine why year after year Connecticut is ranked in the top five worst states in which to practice medicine, and why Connecticut has paid out the highest noneconomic awards in the nation.

In the Public Health Committee here in the LOB, there is a bill constraining physician shortage in the state that is moving forward to take a look at those issues as well to see what we can do to attract more physicians to the state. Connecticut, unfortunately, for all of us remains one of the older states in the nation, and we have some of the oldest physicians in the nation with an average age in the 50s. Senate Bill 969 addresses one small piece to contribute to needed tort reform. The last comprehensive look was about 15 years ago when the state was on the verge of losing a number of OB-GYNs due to the malpractice premiums that they faced. OB-GYNs, for those not aware, pay somewhere between $150,000 and $200,000 dollars a year for malpractice coverage. Meaning they have to generate between $15,000 and $20,000 dollars net per month to cover malpractice before they open the doors, and for a point of comparison, general surgeons are in the range perhaps of $65,000 to $95,000 dollars a year, and some internist and endocrinologist in the range of $20,000 to $45,000 dollars per year.
I think its frustration to people to recruit people to Connecticut to see the unprecedented list of noneconomic damages that contribute to some of the runaway economic verdicts. New York State has taken a comprehensive look at this and given relief to providers, and has reduced exorbitant payouts and control to rising cost of medical liability insurance. I think this is one of the reasons that we get the rankings that we do. I’m really concerned as I’m now 62 years young, about attempting to find primary care providers, internal medicine, family practice, pediatrics, OB-GYN, as well as psychiatrists, not to mention sociologists near and dear to us and peer Pain Management given the opioid epidemic and Endocrinology given the epidemic of obesity and diabetes.

So, I think in my opinion and I think in the opinion of the medical community and defense attorney community, we need to make some changes to try to attract and keep the brightest doctors in our state, and I will defer to the attorneys to discuss the critical legal issues here. Attorney Riggs is going to testify later on in the Marciano versus Humanis case and the collateral source loopholes, so I hope you’ll take a thoughtful look at this legislation and go forward to try to make Connecticut a little bit better place for folks to practice medicine. Thank you.

REP. STAFSTROM (129TH): Thank you, Representative. What -- what’s the source of your citation to the fact that we’re one of the five worst states to practice medicine in?

REP. PETIT (22ND): There’s been a variety of surveys by a number of organizations where we end up
running 45th, 46th, 47th. I can get it for you. I did not -- did not include it in the testimony.

REP. STAFSTROM (129TH): What are the factors that go into that?

REP. PETIT (22ND): Typically, it’s cost of living where we’re relatively high. On the other hand, we pay reasonably well. Housing affordability, malpractice, availability. For some specialties, issues in the state such as certificate of need where people are able to specifically say ENTs are able to obtain CT scanners or MRIs for large group practices. In Connecticut, you have to go through a certificate of need process, and some people weigh their options when they have different job offers and go to states where they don’t have to do that, so a variety of issues.

REP. STAFSTROM (129TH): How will the bill before us help with lowering the cost of living for doctors in the state?

REP. PETIT (22ND): Well, in addition to not being a lawyer, I’m not an actuary, but I’m hopeful if we could reduce the noneconomic damages over the long haul that malpractice rates will continue to settle and perhaps decline over time. It has to do with awards being based on what is billed as opposed to what people pay or what insurance companies pay when you’re strapped like that over many, many years. It ends up being a very large number, and it contributes to when the insurance companies look to reinsure people, rising premiums when they look at their actuary analysis of what’s going out and what’s coming in.

REP. STAFSTROM (129TH): I guess -- I guess, you know, ‘cause the -- you know, we can get into the
legal nuances of this, and I understand you’re not here to testify to that, but just in terms of the overall picture, you know, you seem to want to testify more on sort of the overall tort compensation instruction in the State of Connecticut all together, and -- and I’m just -- I’m wondering whether -- you know, whether and to how this particular bill before us and this particular language before us gets to the issue you want to talk about?

REP. PETIT (22ND): Well, I think -- I think, Mr. Chairman, that’s a good point. I think it’s a beginning. I think it’s a small piece of it. There’s probably other pieces that need to be addressed as well, but small steps, you know one agreeing, one step at a time. So, hopefully, if we can make a change here, that this will be helpful and a small piece.

REP. STAFSTROM (129TH): And, you know, not being a lawyer, not a doctor, as I understand it, sort of one of the concerns in the state is -- is a lack of primary care physicians, that that seems to be sort of one of the -- one of the major issues we hear the most about; is that accurate?

REP. PETIT (22ND): Without a doubt, it’s a -- I feel those calls every week.

REP. STAFSTROM (129TH): Right.

REP. PETIT (22ND): From friends, peers, and former patients who can’t find primary care physicians.

REP. STAFSTROM (129TH): So, are there other ways that either your committee on Public Health or we as a Judiciary committee can be encouraging folks to -- encouraging folks to -- to seek other resources
other than a primary care physician? For example, a lot of folks are continuing to see the need to go to naturopathic doctors, and if we would give naturopathic doctors a limited prescriptive ability so that they could sort of alleviate the burden on some primary care physicians in our state?

REP. PETIT (22ND): I think the issues we’ve talked about, at least on a subcommittee level and in my prior roles as the Chairman of the State Medical Society, were loan forgiveness programs for people coming back into the state ‘cause many people pile up debt that is, you know, sometimes $200,000, $300,000, $400,000 dollars, so to practice in certain areas of the state for a period of time with -- with loan forgiveness is part of it. Part of it is something for which we don’t -- we don’t have control. It’s market. Traditionally, insurers have paid far more for procedures than for cognitive care meaning -- meaning to say a short surgical procedure may be paid far more than someone visiting with my nearly 85-year-old dad and spending 30 or 40 minutes going over multiple medications and multiple scenarios, so cognitive care has never been reimbursed at the same level that procedural care has been compensated for.

The -- the -- I -- I actually I’m not sure specifically to your question. I don’t know if naturopaths want to provide primary care or -- or -- or would. I think the steps that certainly the legislature has taken, APRNs now have independent practice, and many primary care offices work with APRNs and physician assistants to try to extend their reach, so many offices follow sort of a team approach where the patient may be seen by the physician on one visit, and then PAN a second, an
APRN on a third, depending on how the practice is set up, or certain people may do the sick calls and certain people may do the well care. So, there’s been a variety of team approaches using different members of the team. Where naturopaths would fit in, I’m not completely sure.

REP. STAFSTROM (129TH): Right. I guess -- I guess and maybe I’m getting a little far field here, so I’ll cut this off -- but I think the, you know, I think we should -- we should just -- we should just be cognizant as we’re talking about sort of issues in one particular industry to point to factors such as the cost of living or student loan -- the cost of student loans. I mean we all face that. You know, lawyers face that the same as doctors do in the state of Connecticut, so I just want to make sure we’re zeroing in on the actual issues before us, and that we’re looking at, you know, if we’re gonna talk about ways to increase physician recruitment or retention in the state, that we’re looking at other issues besides just the tort issue that seems to be the one that folks continue to come to this committee with when there are obviously other factors out there as well.

REP. PETIT (22ND): Well, Mr. Chairman. I think your point is well taken, and I think it’s only a small piece -- small piece of the puzzle for sure.


SENATOR LESSER (9TH): Thank you, Mr. Chairman. And, thank you, Representative, for your testimony. I think we’re both playing hooky from the Public Health Committee right now, but -- but good to see
you in Judiciary. What problem are you trying to fix with this bill?

REP. PETIT (22ND): This has to do with the economic awards and hopefully, it’s within protocol. Attorney -- defense attorney, Michael Rigg is going to testify later today, and it has to do with the collateral source statute, and it has to do with the way it words out calculated specifically. As you’re well aware, the people here, if you look at your EOB, your explanation of benefits, it often says the charges say $200 dollars, and it says the usual and customary is $120 dollars, and we’re paying you $60 dollars. So, I think this personally gets to the issue of in terms of future care that needs to be include in the word, it would be based on the $60 dollars that is actually paid as opposed to the $200 dollars that is -- that is bill as part of the issue.

SENATOR LESSER (9TH): But you referenced that there was a relationship to physician retention, recruitment, workforce needs. Is that a problem that you see in -- in Connecticut?

REP. PETIT (22ND): That’s something that we discussed. As noted, I was previously chair of the Connecticut State Medical Society Council, and we often had people in testifying before our -- our council about the difficulty recruiting into a variety of primary specialties and subspecialties because people would get similar offers. Obviously, cost of living is a big issue and tough to -- tough to control, but.

SENATOR LESSER (9TH): But is there a quantitative metric that you can point us to that could -- that could show that -- that Connecticut’s having
difficulty recruiting folks?  Because I’m looking right now, I’m trying to look at how states are doing in terms of physician retention and recruitment, and I’m looking for a metric to compare us to other states that might be helpful.

REP. PETIT (22ND):  Sure. I will -- I will obtain that for you from the state -- state medical site. I did not include it in my testimony, trying to stay as close as I could to the bill at hand as opposed to extending it to the big picture.

SENATOR LESSER (9TH):  Of course. So, just -- I’m looking at -- I don’t know what data’s out there -- I’m looking at a 2016 sort of report card on all the states, and it’s from the -- it’s from the American Association of Medical Colleges, and it ranks the states based on physicians per capita, on primary physicians per capita. I see Connecticut ranked 6th nationally for physicians per capita, 10th if you look at primary care physicians, and then I’m looking at other states like Texas I know is notable for its really aggressive pursuit of legislation I think similar to this, and Texas is ranked 41st per capita in physicians and 48th, I believe, for primary care physicians. So, I see Connecticut at sort of the opposite end of the spectrum from your -- from Texas, so I didn’t know if that -- if there were other factors that contributed to that or if you see that as -- it seems that we’re in contrary to sort of the -- you know, if we were to embrace with Texas, it seems that we would -- I mean correlation isn’t causation I understand, but those don’t seem to be correlated with physician recruitment.

REP. PETIT (22ND):  I think the common phrase around this building is the devil is in the details, so
that’s the problem with data like that. There’s -- we have two significant medical schools that have been here a long time, in Yale and UCONN, and now have the Frank Netter school at Quinnipiac, and so there’s thousands of physicians at Yale, some people that are involved in research, so when you look at the data, you have to make sure that you’re looking at practicing physicians versus those doing research or people working at a pharmaceutical house or some Jackson Labs for instance in Farmington. You have to find out who’s practicing full time versus part time, who’s job sharing. So, I would always say you have to be cautious in looking at just the global number, and you know, as a side note, it’s typical that often the public or people that vote don’t know because many times people get voted the best physician in a specific area, and I’ll look at it, and I’ll say, wow, that person is a smart person but they see two people a week. The guy that -- you know, the guy or the gal down the street that’s seeing 120 people a week is not getting that -- that applaud, but they’re doing -- they’re doing the work most the time, so it’s important to distinguish what type of practice people are doing and how clinically active they are.

SENATOR LESSER (9TH): That’s -- that’s an excellent point, and I will just note that if -- when you look, instead of just active physicians but total active patient care physicians, we do fall is exactly your point, but from 6th to 7th in the country, which is still pretty good, so I hopefully -- hopefully, things aren’t -- aren’t too, too bad in this state in terms of access to primary care and just general specialties as well. But definitely appreciate your testimony, and thank you for answering my questions.
REP. BLUMENTHAL (147TH): Any further questions from the committee? I’m seeing no further. Thank you, Representative Petit.

REP. PETIT (22ND): Thank you very much.

REP. BLUMENTHAL (147TH): Next, is Keri Hoehne. Did I get that right?

KERI HOEHNE: Hoehne.

REP. BLUMENTHAL (147TH): Kona?

KERI HOEHNE: Hoehne.

REP. BLUMENTHAL (147TH): Followed by Representative France.

KERI HOEHNE: Good afternoon, Representative Blumenthal and members of the Judiciary Committee. My name’s Keri Hoehne. I’m a union representative with the United Food and Commercial Worker’s Union, Local 371. We proudly represent about 8000 members in Connecticut in 38 contracts, and our members work in Stop&Shop supermarkets and other supermarkets. We work in nursing homes, food processing, and Foxwoods Casino to name a few. According to a poll conducted in 2017 by MIT researchers, 48 percent of workers would vote to join a union if they had the opportunity. That’s a dramatic increase from the approximately one-third who would join a union when the last poll was taken in 1995. However, there’s still only slightly more than 10 percent of workers in private sector unions today. One of the biggest reasons why is the fact that employers routinely intimidate, coerce, and lie to their employees in an effort to get them to vote against joining the union. The employer communicates nearly all of their antiunion messages in captive audience meetings, either in groups or one-on-one. Prior to
working as a union representative, I spent over a decade working as a union organizer and an organizing director, and I’d like to share some real-life Connecticut examples of such intimidation. I could fill pages with these stories, but I’ll pick out just a few from the recent history.

There’s a tortilla chip factor in Hartford where employees were forced into meetings until the plant would be unable to compete with tortilla chip manufacturing plants in the south where there was lower pay and would be forced to close if workers organized. There’s a pork rind manufacturer in Hamden where the CEO held a mandatory meeting with half of the work force where he told workers they do not need the union, they will not gain anything from organizing, that they would lose overtime pay if they joined the union, and that he would give workers a raise if they voted no. Workers who were supportive of the union were denied access to those meetings. At an ice cream manufacturing plant in New Britain, workers were told in captive audience meetings that they would lose their work visas and face deportation if they joined the union. At a granola factor in Orange, the employer tried to coerce employees by telling them in captive audience meetings that they would get a more relaxed dress code, full time for the second-shift workers, and added breaks, free lunches, and a relaxed disciplinary procedure if they just voted against the union. At a supermarket in New Haven, the employer gathered the employees into group meetings and threatened them with job loss, cutting of hours, withhold of benefits, reduced benefits, and deportation. And, at a beverage manufacturer in East Haven, the employer gathered all the employees in a room the day after the union petition was
filed, and gave everyone a $10-dollar-an-hour raise. They had previously been earning just slightly over minimum wage. They told them if they got the union they could no longer work together as a team and help accommodate their other family obligations with their work schedule.

And, you may think to yourself aren’t such tactics already against the law? And, yes, sometimes they are. However, by the time the union files a charge with the National Labor Relations Board and such charges are investigated, the union organizing campaign has been long over, and most of the time, the union has lost the election. Furthermore, the penalties far outweigh the benefit for employers. [Bell]. Most of the time, the remedy is a rerun election, so there’s no incentive from the employer to refrain from holding such meetings. This legislation merely allows employees the opportunity to leave the room if they don’t want to participate in such meetings. It doesn’t prevent the employer from sharing their opinions about the union. Please support SB 440, AN ACT THAT ALLOWS AN EMPLOYEE THE OPPORTUNITY TO REFRAIN FROM ATTENDING SUCH INTIMIDATING MEETINGS HELD BY THEIR EMPLOYERS.

Thank you.

REP. BLUMENTHAL (147TH): Thank you. Questions from the committee? Representative Rebimbas.

REP. REBIMBAS (70TH): Thank you, Mr. Chairman. Thank you for your testimony. Just a quick question. I don’t know if you were in the room earlier, but someone who testified earlier, I believe it was a professor, had indicated that you know an employer could keep count as to you know whether or not the person is present or not present or their opinion on issues. With this proposal in
front of us that allows someone to not participate in a meeting that may have the topic that’s enumerated here political or religious, do you feel that that still would have a chilling effect or retaliation in that regard?

KERI HOEHNE: I can speak to some of the meetings that have been held where an employer actually will tell the employees, here wear these antiunion buttons, wear their vote no t-shirts, and they can therefore see a vote count basically by having people have to stand out and wear those, and often times, workers are obviously afraid to not wear whatever the employer’s giving them because they’re afraid that the person who cuts their paycheck or is responsible for their livelihood might terminate their employment if they opt not to do that, so the employer has a lot more power over them because their very livelihood is tied very closely to them.

REP. REBIMBAS (70TH): Okay. And, taking you to the language of this bill regarding your testimony, you said that the person doesn’t have to participate in the meeting.

KERI HOEHNE: Right.

REP. REBIMBAS (70TH): So, I know you gave an example of the buttons.

KERI HOEHNE: Yep.

REP. REBIMBAS (70TH): But my example is not attending the meeting. Don’t you believe that there still could be the same chilling effect that the employer would remember who’s participating in the meeting and who’s not?

KERI HOEHNE: Absolutely. I would like for there to be much stronger legislation, but I believe that we
need to take incremental steps to making Connecticut a more safe-working environment for all of our employees and all of our workers in the state.

REP. REBIMBAS (70TH): And, the reason I ask that is because as legislators when we evaluate the purpose and the intent and the way that it’s written and it’s — if it’s really getting to the problem issue, some of which you highlighted some examples, then that’s stuff that we have to look at because the past legislation — just the past legislation and have no real effect is a concern. Those examples that you gave; how many of those actually were pursued?

KERI HOEHNE: All of these -- these workers were all made to stay in the meetings, so none of those things happened. Those workers joined the union in most cases, and none of the threats that came -- that the company made came through.

REP. REBIMBAS (70TH): Okay. So, we don’t know truly what the facts are in those specific cases except for what you highlighted here, than if they were in pursuit?

KERI HOEHNE: We know that the facts are that when the workers were trying to join the union the employer brought them into a meeting with all of their co-workers and threatened them in many cases with job loss and loss of benefits, which made it so that while many of these workers did join the union, they didn’t always join it the first time. Often, we had to have a second election a year later when some of the promises that the company made to make things more beneficial towards them did not come through. The workers then joined together and formed the union the second time out.
REP. REBIMBAS (70TH): Okay. I guess my measure isn’t whether or not then they decided to join a union or not, as to whether or not the allegations that were made were factual. I guess I’m trying to base the facts on if there was something that was actually pursued administratively or in a legal court and that there was an outcome, but that was not the case; correct?

KERI HOEHNE: There were several workers that were in these meetings that came out and reported what was stated by their boss, so they are factual because there are multiple people that heard the statements. They were not necessarily pursued in court to determine whether they were factual or not. They just had firsthand knowledge and then relayed it to the people outside of the meeting.

REP. REBIMBAS (70TH): That was my question, so I believe you answered my question that these were not pursued, so I don’t know the actual outcome after an investigation. Thank you. Thank you, Mr. Chairman.

REP. BLUMENTHAL (147TH): Further questions from the committee? Representative Dubitsky.

REP. DUBITSKY (47TH): Thank you, Mr. Chairman. Thank you for coming in.

KERIU HOEHNE: Thank you.

REP. DUBITSKY (47TH): The scenarios that you just gave all relate to union activity. This bill goes much, much further than that dealing with all sorts of things, elections, political parties, legislation, regulations, etc. Do you have -- you just pulled out the list of horribles with regard to union activity. Do you have anything with regard to any of those other things?
KERI HOEHNE: I’m here to speak about my experiences as it relates to union activity, so I don’t have any experiences to share with you about the other pieces of this bill.

REP. DUBITSKY (47TH): Okay. Is it your feeling as a union representative that all those other things need to be in this bill?

KERI HOEHNE: I haven’t given it that much thought to be honest with you. I haven’t thought on that. My perspective is that if a worker goes to work they should be expected to do their job while they’re there. Their job shouldn’t be to sit and listen to their boss sit and talk about their opinions that are unrelated to their job.

REP. DUBITSKY (47TH): But what if they are related to the job?

KERI HOEHNE: Well, in this case, they wouldn’t be. This is not about how to do their job. This is about the employer’s perspective about how the union might affect their work, but it’s not about how to do their job or how to produce what they’re there to produce.

REP. DUBITSKY (47TH): Okay. Again, I’m not talking about the union. I’m talking about all this other stuff that could well affect whether or not the business stayed in business. All right. Legislation -- let’s say -- let’s say for example two -- you know, a couple of things that are in the news right now. You’ve got a contractor that has federal military contracts, and they believe that legalization of marijuana would make it impossible for them to get a work force. Do you -- would it be inappropriate for them to have a meeting and explain that to their workers?
KERI HOEHNE: Again, I’m here to share my experiences from a perspective of union workers, so I don’t have any expertise to share with you. I’m gonna stay in my lane on that one.

REP. DUBITSKY (47TH): Okay. So, from your standpoint, you have no -- no dog in the fight with regard to any of the other things expect the -- the one small piece, which is the union piece?

KERI HOEHNE: For me. Yes.

REP. DUBITSKY (47TH): Okay. Thank you, Mr. Chairman.

REP. BLUMENTHAL (147TH): Further questions from the committee? I’m seeing none. Thanks for being with us.

KERI HOEHNE: Thank you.

REP. BLUMENTHAL (147TH): Representative France.

REP. FRANCE (42ND): Thank you, Chairman Stafstrom, Ranking Member Rebimbas, and other distinguished members of the Judiciary committee. I’m here to speak in favor of House Bill 7095, dealing with grandparent’s rights. I will submit my written testimony following my presentation here. As a recognizer of two agency effectively that have oversight representing the government interest in Child’s Welfare, the family court of the judicial branch and the Department of Children and Families they both in different ways have the interest of the child as the principle reason for making decisions for that child. One of the challenges with the existing testimony is still the challenge of demonstrating a parent-like relationship.
And, I’ll share my own personal story. I gave testimony before this committee in the past on this bill, but my parents divorced when I was young. I lived with my mother, and when things in that situation devolved, I ended up living with my grandparents through high school. If situations that I’ve heard from constituents and others across the state related to denying grandparents the ability to see their grandchildren had existed, I don’t know that I would have had any place to go, and here’s why. My dad was in the Navy still going to sea. My stepmother had not had any children, and my mother was not telling the whole story of the truth about what was going on in the household and implied that I was abusing my mother. So, my stepmother, given that my father was going to sea didn’t feel that she could control a rambunctious 13-year-old, and didn’t want to deal with that, so I literally would have had no place to go.

Fortunately, I had a very close relationship with my grandparents. I was able to go there, go through high school. I ended up moving on with my life, but some of the situations I’ve heard and one anecdotal story I’ve had from one constituent who had the daughter and the granddaughter in her house for 2-1/2 years, and then the daughter found a boyfriend, moved out, and then removed the child from the grandparent’s house, and then avoided contact. Trying to demonstrate a parent-like relationship two years later is difficult when the child is five and the last two years -- as an example -- and the last two years have had no contact because by the parent. So, that’s -- that’s a challenge with how we structure things. I understand there’s leeway because it says examples within the statute that provide opportunity of, not to be limited to, these
examples, but it is a challenge hurdle for some
grandparents.

So, I would encourage you to bring forward this bill
as a step forward but also consider how to
facilitate relationship that are not impeded by
actions of the parent, and I do understand that
that’s a very challenging task for this legislature
to even consider, but it is a -- it is a real
problem in our state, and it is something that has
been brought forward a number of times. My own
personal story would my life would be very
dramatically different if not for the relationship I
had if my mother had decided not to have that --
allow me to have that contact, my grandparents would
have been very challenged to live up to the standard
that’s in our own statute. I would encourage you to
consider that [Bell] in support of House Bill 7095.
Thank you.

REP. BLUMENTHAL (147TH): Questions from the
committee? Representative Rebimbas.

REP. REBIMBAS (70TH): Thank you, Mr. Chair. And,
Representative, thank you for your testimony.
Logically, regarding this bill, at times we hear
from parents that say, well wait a minute I don’t
want someone coming into my home and telling me then
you know what’s gonna happen with my child in that
regard. Do you feel that there’s, you know, enough
safeguards there and that the court would
ultimately, again, make what’s in the best interest
of the child, and when you do have a responsible
parent that they wouldn’t be negatively affected?
What’s your thoughts and opinions regarding that?

REP. FRANCE (42ND): Well, I think the process that
is outlined where you make a petition, so the
grandparents would make a petition to the court. Certainly, the parents would also provide evidence testimony as to their rational for not allowing contact, and the judge would have to weigh that. I think the challenge with the description of a parent-like relationship if the parent has, you know, essentially removed the grandchild from visitation for a period of time and while that grandparent is exhausting all avenues short of going to court, by the time they get to court, the judge may look at that and say, well you don’t have a parent-like relationship because it’s been two years or more some length of time, so that’s still the purview of the court to make that decision, but I think the restriction of a parent-like relationship is a high hurdle for many grandparents because they don’t want to go to court. They don’t want to seek out legal action against their child who is understandably maybe having a reasonable reason for not having visitation, so I think that’s -- and once again, it’s a challenging balancing act of the government coming into a home and telling a parent what and what not to do, and I do recognize that that challenge exists.

REP. REBIMBAS (70TH): And, to that point -- and I certainly have heard the same in the sense of so when there is a grandparent that they see that they could be of some assistance, some resource, and they’re deterred really from filing a petition currently with the current law because of the fact that they know that based on that lack of time that hurdle of parent-like relationship is not going to be met; therefore, any time, effort, or expense that they might have in bringing the case certainly would probably fail unfortunately, and that’s why we don’t see -- and otherwise probably very good situations -
- grandparents coming forward, and that’s the unfortunate. Because many times a lot of the questions we have is well how is this going to address your situations? When I say your situation, so stories that we hear and whether or not they’ve brought actions in court, and unfortunately, haven’t been met, but when you’re already told from the beginning that you don’t -- you’re not going to be successful, then certainly you don’t want bringing upon the additional burden or expense then to bring something that you know that has already been evaluated, and because of that hurdle that you’ve indicative, the parent-like relationship wouldn’t be met, then it’s not brought forward. So, thank you again for your -- for your testimony, and certainly, for sharing your personal experience as well. Thank you, Mr. Chairman.

REP. FRANCE (42ND): And, if I could respond and add one thing too on that note? My own grandchildren I haven’t seen in a number of years because my oldest daughter decided to cut off ties, and I’ve chosen not to go through the court system, and hopefully, as my grandchildren grow up, they will know that -- and regain ties with us, but it is -- it is a struggle because I think with the definition of parent-like relationship in this state I would not prevail, but there are whether it be financial or other benefits to the grandchildren that are not available because the parents have cut off ties, it makes it very difficult.

REP. BLUMENTHAL (147TH): Representative Dubitsky.

REP. DUBITSKY (47TH): Thank you, Mr. Chairman. And, thank you for coming in. I am a little confused by this bill. The -- it doesn’t remove the requirement for a parent-like relationship; does it?
REP. FRANCE (42ND): It does not.

REP. DUBITSKY (47TH): Okay. So, how does it make things better?

REP. FRANCE (42ND): I think it -- I don’t know that it goes far enough. It does, you know, have clause in it that I guess I think enhance -- at least the committee’s perspective -- when you enhance the role of the grandparent to have a specific ability to petition, but the challenge is still the hurdle of the parent-like relationship, which has not changed, and I believe that the -- at least the anecdotal stories that I’ve heard from constituents and others, the challenge that grandparents face, the high hurdle or the burden of proof, if you will, of a parent-like relationship is difficult within the standard that’s either within law or even accepted practice within the family court.

REP. DUBITSKY (47TH): Okay. So, you -- but you feel this is an incremental betterment of the law?

REP. FRANCE (42ND): It -- it -- on my read, it looks like it. I mean we certainly will have, if it’s passed, we’ll have time to evaluate its efficacy and whether it does actually improve the situation, but I would also encourage the committee to look at that definition of parent-like relationship because in the example of many grandparents where they try and work it out with their child to see their grandchildren there is some time that passes, and generally, it’s at the younger age. It’s not generally in the teenage years that this happens, and so in my example of first two and a half years, including one year where the grandmother as solely responsible for the care of the child -- the grandchild, but then two to three
years passes by the time she feels that she’s exhausted all means to encourage a renewal of that relationship, she files a petition with the court, and the court says, but you haven’t seen your child -- your grandchild in over half her life. You have -- you don’t have a parent-like relationship, and that’s the dilemma that many grandparents I think find themselves in because generally these things happen not at, you know, late elementary school or teenage years, they generally happen at the younger age, and -- and I do recognize judges are put in a difficult position of trying to evaluate that, which is why I encourage, you know, taking a look at the parent-like relationship, and seeing if there’s a way to characterize a passage of time while the grandparent attempted to regain and the efforts the grandparent tried to do and factor that in potentially.

REP. DUBITSKY (47TH): All right. Okay. Well, thank you. Thank you, Mr. Chairman.

REP. BLUMENTHAL (147TH): Further questions? I’m seeing none. Thanks for being with us.

REP. FRANCE (42ND): Thank you very much.

REP. BLUMENTHAL (147TH): Sal Luciano.

SAL LUCIANO: Good afternoon, Senator Winfield, Representative Stafstrom, and members of the Judiciary Committee. My name is Sal Luciano. I’m the president of the AFL representing 220,000 union members across the state, private sector, building trades, and public sector. The United States Supreme Court has recognized it is a form of coercion to make people listen and that no one has the right to press even good ideas on an unwilling recipient. Those are violations of the 1st
Amendment; yet, that is exactly what happens when employers convene mandatory meetings during work hours to discuss the employee’s position on religion -- employers position on religious or political matters. SB 440 protects worker’s constitutional rights of freedom of speech and conscience by establishing a minimum state labor standard that allows employees to refuse to attend captive audience meetings.

Captive audience meeting is a mandatory closed-door meeting held during work hours by the employer. It is designed to discourage workers from joining the union by instilling fear. These meetings are intimidating in nature because they are often conducted one-on-one or in small groups by the employer. In addition, to dissuading employees from joining the union, managers use these meetings to identify and build lists of employees who support the union. Though often described as informational by employer, these meetings are always coercive. Common threats and mistruths by employers during captive audience meetings include if you vote to join a union you’ll lose your job. Voting for a union will endanger your legal work status. The union will undermine labor management relations and prohibit workers from speaking directly with their employer. Almost without limits, employers can force workers to attend these captive audience meetings. Employers can even fire workers who do not attend or get up and leave. An economic policy institute study found that 63 percent of employers interrogate workers one-on-one captive audience meetings, and 54 percent of employers threaten workers in such meetings. It also found the average employer holds more than 10 captive audience meetings during the union organizing drive.
In my testimony, I listed five specific Connecticut situations where these have happened. The U.S. Supreme Court in 2001 Citizens United decision not only allowed corporations to spend unlimited dollars, it also expanded the 1st Amendment right of corporations giving employers greater ability to force their political views in the workplace. As you heard in earlier testimony from Alexander Hertel-Fernandez, political scientist at Columbia University School of International and Public Affairs, companies frequently try to persuade and mobilize their employees to support politicians and policies beneficial to the corporation.

SB 440 does not impede the employer. It does not infringe on employers 1st Amendment right. Rather, it affirms the employers right to call on employee meeting at any time on any subject. It does not prevent employers or anyone else for discussing religion, politics, or other topics. [Bell]. It only prohibits employers from firing or disappointing employees who leave the meeting because they do not wish to listen to the employer’s position about religious or political matters. SB 40 protects the workers fundamental right of freedom of speech against employers who misuse their authority by coercing speech concerning core matters of individual conscious unrelated to their jobs. We urge the committee to provide much needed protection to those who have been subjected to employer harassment and intimidation that tread on their 1st Amendment rights. Please support SB 440. Thank you.

REP. BLUMENTHAL (147TH): Thank you. Questions from the committee? Representative Dubitsky.
REP. DUBITSKY (47TH): Thank you, Mr. Chairman. I’d like to ask you the same question I asked the other union representative. Is -- are you -- are you speaking just about the portion that deals with labor organization, or are you speaking about all of the various things that are prohibited in this bill?

SAL LUCIANO: I’m speaking about all three. My job as AFL concentrates on the union piece of it, but as a religious person, I don’t want to -- any employer to tell me what religion I should be subjected to. In addition, I don’t want any employer to tell me what political candidates to support.

REP. DUBITSKY (47TH): Okay. Well, this also includes prohibition on speaking about legislation, so I’ll give you the same scenario I gave her. If you’re a -- a military -- a federal military contractor and you are concerned that the legalization of marijuana will make it impossible for you to get employees lest you lose your military contracts; would that be something that should be prohibited to explain that to your employees?

SAL LUCIANO: I’m not sure the connection, but it doesn’t stop the employer -- this bill does not stop the employer from saying anything they want to say, just directly allows an employee to get up if there is something that is not related to their job. In your situation, if there’s a nexus, then -- then I believe that that person would need to stay in the room.

REP. DUBITSKY (47TH): Okay. So, if there’s a nexus, such as if you’re a trucking company and you believe the imposition of tolls would put your company out of business, that would be a subject that you would
be able to bring your employees into a room and explain that to your employees?

SAL LUCIANO: Correct.

REP. DUBITSKY (47TH): All right. Well, thank you. Thank you, Mr. Chairman.


REP. PORTER (94TH): You miss me every time, but I’m gonna insist this time. Thank you, Mr. Chair. Just -- just to kind of piggyback off of what’s been discussed, you know, around infringing on an employer’s 1st Amendment rights, and you know, does this bill prevent employers from talking to employees about their business and that kind of thing. Can you just elaborate why we would need such legislation in the state of Connecticut, and -- and you know, what’s the big push? There’s a lot of talk about political, religious, captive audience type situations in the workplace. How does this impact the employee? Why doesn’t the employee just walk out? And, I know that we’ve said that they’re afraid of being singled out, but I mean like past that; what is the impact? And, I’m talking, you know, emotionally like you know mentally having to be at a job and be under this kind of direst, and you know, having to be subjected to persuasion outside of your religious choice or having to be persuaded outside of your political views and feeling that your health benefits or your livelihood, the way that you provide for yourself and our family may be in jeopardy because your employer actually has the power, right, to make some things happen that you might not necessarily agree
with. The direst that an employee can go through. Can you just kind of speak to those kind of issues?

SAL LUCIANO: I thought Joe Hutchinson did a great job explaining the kind of pressure and coercion and ugliness that happens. Many of the people who are trying to organize a union can’t miss a paycheck. They struggle to put food on their table. They struggle to keep a roof over their head, and the threats to be able to do that, for people to have so little, is just so momentous and even greater if they have children that depend on them. This is really a wealth inequality, an attempt to help deal with the wealth inequality in the state, and to help the most vulnerable of among us to be able to have a voice at work.

REP. PORTER (94TH): And, just to reiterate the point was made that this is -- and I want to know if you agree with this -- that the people that are primarily impacted by this kind of tactic are low-wage workers; would you agree with that statement?

SAL LUCIANO: Yes. The -- the examples that I gave are hotel workers, cleaning people in my testimony. Foxwood Casino cleaners, Becton Dickinson and Company Manufacturing workers, Severance Food workers. These are minimum wage workers. Stamford Hilton Hotel service workers and Stamford Sheridan Hotel workers.

REP. PORTER (94TH): So, you would agree that there is a power play that definitely goes on in these situations where people are --

SAL LUCIANO: They’ve even gone as far as threatened that ICE would be called if -- if they unionized, and they would be deported.
REP. PORTER (94TH): And, what kind of actions have been taken in those kind of situations?

SAL LUCIANO: Luckily, in that situation, that was the -- the group that Trump has used. That’s the -- and that was named before the Cruz and Associates, a union-avoidance firm, as we said previously employed by Donald Trump, and luckily, they voted to unionize and nothing has happened to them.

REP. PORTER (94TH): Thank you for that response. Do you know if there have been any other instances where there hasn’t been the draw of that kind of luck?

SAL LUCIANO: Not off hand.

REP. PORTER (94TH): Okay. Well, thank you for your testimony this morning, Mr. Luciano.

SAL LUCIANO: Thank you, Representative Porter.

REP. PORTER (94TH): Thank you for being here, and thank you, Mr. Chair.

REP. BLUMENTHAL (147TH): Thank you, Representative. Representative Godfrey.

REP. GODFREY (110TH): Thank you, Mr. Chairman. Good afternoon. A followup to a couple of questions that were raised by some of my colleagues a little bit earlier today. This whole question of marijuana, which is kind of a red herring as far as I’m concerned, but there is nothing in any of the states that I’m aware of where marijuana has been legalized for recreational use where that means you can smoke on the job. You can’t drink on the job, you can’t smoke on the job, you can’t smoke tobacco on the job in many places, and I understand that. So, that’s not politics in my humble opinion.
That’s -- that’s the quality of life in the workplace, so I would differentiate that from the kind of -- of bad behavior in a captive audience. That’s just promulgating internal workplace rules. So, I -- I would -- I would say that that’s not covered. That kind of thing’s not covered in this suggested legislation. Differently, you raised the issue of tolls. That’s clearly not within the -- the situation in a workplace. That’s strictly political, and I would suggest that while employers have a right to send out fliers or arguments or take public positions, forcing workers to come in in a captive audience whether it’s in a group or singly is -- is within the prohibitions in -- in -- in some of the suggestions that have been floating around regarding captive audience. Do you see where I’m going?

SAL LUCIANO: I kind of do, and so I guess -- and I thought I answered it by saying if there’s a nexus.

REP. GODFREY (110TH): Yeah.

SAL LUCIANO: So, for instance, if you work for Coca-Cola and you thought that maybe sugary drinks might impact the company, then I would say there is a nexus, and -- and you could tell your employees in that situation that -- that you have concerns that if this goes in and people buy less Coca-Cola it could result in layoffs. So, if there’s a nexus, I don’t think there’s --

REP. GODFREY (110TH): Yeah.

SAL LUCIANO: Anything that prohibits that kind of a situation. The marijuana one I was a little confused with because it -- my connection would be the same as for instance alcohol which is legal. In
most situations, it isn’t to imbibe alcohol while you’re working.

REP. GODFREY (110TH): Right. Very good. Thank you. I just -- I really needed to clear that up. Thank you so much.

REP. BLUMENTHAL (147TH): Representative Rebimbas.

REP. REBIMBAS (70TH): Thank you, Mr. Chairman. Not even a question, just actually a comment. I just wanted to thank you and compliment you on your honesty when you talk about the nexus aspect of it no matter what the topics are from marijuana to tolls to sugary drinks, whatever the case is, so I just want to thank you for your honesty.

SAL LUCIANO: Thank you.


JOYCE WALSH: Good afternoon, my name is Joyce Walsh. As you can see, I’m Asian and bilingual, and Asian-American. I’m here to support the bill HB 7095, a grandparents’ right to visitation, and just to read a little bit of what I wrote here, and to give some background what my story is and why I’m here, and about supporting this bill. Of course, between grandparents and grandchild, the family issues that can be resolved within, you know, natural family and by having a dialogue on the standing, and that kind of things. But in my case with my grandson, it was not the case. It was difficult, and also there are some more complicated issues that happened when mother who is separated from my son after child was born 2010. He was born in June. He is now eight years old, and I haven’t
seen him since 2017, January, by court order saying no contact, and I have the background that I’m about to explain some of them.

I have not seen my eight-year-old child for over two years now by court order. I have taken care of him. He was born premature as a twin. One has died and soon after the one survived. Often sometimes, five or even six days for help my grandchild’s mother since 2012. My son and child’s mother never married. They broke up right before child turn one year old and has lived apart. The child lived at hers as the primary residence. I have been a big part of his life. I have spent a lot of time, more time than has been scheduled given for father. I have lived with my son to help him take care of the child while father worked and mother who relied on me closely. Little-by-little, something was noticeable. I am not -- I’m about to say about her boyfriend or man in her life. I don’t want people to misunderstand me. I’m not against the mother to have the boyfriend or man in their lives, but when it comes to problems when the child start exhibiting behavior and something has started to become noticed, day and night I’ve been taking care of this child when he was such a young age, and then that’s when I started to become alert and there’s red flag, and there’s been very, very concerning.

So, and here’s the two big incidents that was more noticeable by [Bell] police involved, DCF involved and all that, but nothing really helped. It just went by. I believe in dialogue, and from having this parent -- or grandparents’ visitation right and things like that. I hope this will open up to having a more -- give me something, so I can open up
and be able to have a dialogue to, you know, child’s mother, and --

REP. BLUMENTHAL (147TH): Thank you, ma’am.

JOYCE WALSH: For me believing grandparents’ right to visitation is one important reason for many to give the children, our future generation peace, happiness, and love. I want my grandson to know and believe their love is not -- should not be owned -- trapped by only one person. Love extends humanity. It’s not ownership.

REP. BLUMENTHAL (147TH): Thank you.

JOYCE WALSH: Grandparents are part of that.

REP. BLUMENTHAL (147TH): Thank you, ma’am.

Appreciate it. Questions from the committee? I’m seeing none. Thank you much for being with us today.

JOYCE WALSH: Thank you.

REP. BLUMENTHAL (147TH): Next up will be Dan Livingston.

DAN LIVINGSTON: Good afternoon, Chairman Stafstrom and members of the Judiciary Committee. I’m here as an attorney and a longtime activist who works with many labor communities, civil rights, and advocacy groups to testify in favor of Senate Bill 440. Before I start, I just want to note I attach a legal memorandum about preemption. As you know, this bill is part of the national effort to bring the rights of working people into the 21st Century. Why? Because state law still deems working people to be the property of their employers during the workday. In fact, if you want to learn about the rights of employees and many esteemed legal treatises, don’t
look up employer/employee, look up master servant. You might say that notion is fundamentally inhumane on democratic, even on American, and you’d be right. While no one doubts it, a boss should be able to call an employee to discuss the employee’s work. One can give a fair day’s work for a fair day’s pay without becoming the political or social property of one’s employer.

The abuse of this ancient power is not limited to union organizing drives. We know that a number of large national business organizations and right-wing religious groups urged employers to use their positions of power to educate employees on the need to vote for George W. Bush in 2004, and we just heard the testimony of Professor Alexander Hertel-Fernandez about how much this has continued and in fact, increased since the passage of Citizens United. It’s very hard to get employees who have been the subject of this kind of treatment to come to the General Assembly to testify because they don’t have unions to back them. This committee can be their voice. Don’t we say a word about some of the opposing groups like the Yankee Institute claiming to be concerned about the National Labor of Relations Act preempting this legislation. Under the NLRA workers have a right to organize, and employers have a right to speak against organizing, but the NLRA does not grant or even mention the employer’s power to compel workers to listen. That comes from state law, and can be changed by state law.

Indeed, a unanimous Supreme Court tells us the NLRA leaves to the states, not the federal government, the job of providing the minimum labor standards that protect working people. That’s the unanimous
Supreme Court that said federal law in this sense in interstitial supplementing state law where compatible and sub-planting it only where it prevents the accomplishment of purposes of the Federal Act. Nothing in our bill interferes with the purpose of the NLRA. The bill only provides workers don’t check the modicum of view and dignity that all adult Americans possess when they enter the workplace, which is the ability to refuse, to hear speech that they don’t want to hear.

Let me say a final word about opposition of this bill cloaking itself as concern about preemption. We’ve been fighting for this bill or bills like it for more than a decade. Fourteen years ago after this bill passed the Senate by a two-to-one vote, we were asked by key leaders in the House to meet and seek a compromise with the opponents of the bill who were representatives of the large business community. After they failed to agree to a number of proposed compromises, one of us said, correct me if I’m wrong, but no change we suggest is going to work because your people like having this power, and they don’t want to give it up. Nobody in that meeting corrected us. This is America in the 21st Century. This kind of power over another human being is fundamentally inhumane on democratic and yes, on American. I urge this committee to say you may like your power, but we like our democracy. Please vote for Senate Bill 440. Thank you.

REP. BLUMENTHAL (147TH): Thank you, Attorney Livingston. Questions from the committee? I have a question or a couple questions. So, were you here for the gentleman from the Yankee Institute’s testimony earlier?

DAN LIVINGSTON: Yes. I was.
REP. STAFSTROM (129TH): So, he testified that this bill would contra -- would be preempted by the NLRA, and would violate the 1st Amendment. And, I wonder how you would respond to that?

DAN LIVINGSTON: Well, I responded to the and only preemption argument in the memorandum I provide the committee. The reference he made to the opinion of George Jepsen who I have great respect for, but he’s not a labor lawyer, and I read the opinion of now Senator Blumenthal, who I also have great respect for who also isn’t a labor lawyer, but I will tell you that Senator Blumenthal’s opinion was much better reason because it cited and relied upon the Massachusetts case that I -- the Supreme Court case about Massachusetts law that I -- that I quoted from. So, Metropolitan Life very clearly establishes the minimum labor standards exception to labor law preemption. This is very clearly a bill within that, and so, unfortunately, George Jepsen’s opinion was not well reasoned. We’ve made that even clearer in the current version of the bill by situating it within 3151(q) of the general statutes, which itself is a minimal labor standard.

I did not in the memorandum address the 1st Amendment argument. It is in my view -- I didn’t address it because I hadn’t heard his testimony at the time, but it is a completely frivolous argument. The 1st Amendment provides no power to compel people to listen to speech. In fact, compelled speech is -- the Supreme Court has said numerous times is inconsistent with the 1st Amendment, so the notion that -- that we violate the 1st Amendment when we limit an employer’s power to compel people to listen, I think is absolutely frivolous argument. I understand why the Coke Brothers support it. Coke
Brothers support Yankee Institute, and they have been -- they have very strong political beliefs that they have been urging employers all over the country to use their power to advance those political beliefs. I think that’s inconsistent with American Democracy. It’s certainly inconsistent with the rights that workers ought to haven’t work with.

REP. BLUMENTHAL (147TH): Thank you, and an additional question I had was so there have been a NLRA and court decision essentially saying that employers have a right to make a speech to their employees about union matters under Section 8(c) I believe of the NLRA. And, I guess I would just ask, how do you think this bill avoids that rule?

DAN LIVINGSTON: So, this bill is not about employer speech. This bill puts absolutely no restriction on the ability of employers to speak about anything they want. It’s about employers using their power to hire -- fire, discipline workers to force workers to listen. Section 8(c) was passed in order to assure that employers have the right to tell workers if they want to that they are against the union. Employers have many ways to do that including inviting workers to a meeting, but there’s a difference between inviting and compelling. There’s something fundamentally disempowering and dehumanizing about knowing that someone can force you to listen to what they say whether it’s about five hours of Nazi propaganda or five hours of any political issue. We are -- as Americans, we ought to be free to say, I don’t want to talk about that, and unfortunately, under state law, we’re not free to say that. It’s not the NLRA that provides that power of employers, it’s state law, and that’s why,
of course, the State Journal said we could change it.

REP. BLUMENTHAL (147TH): So, an employer could continue -- continues to have the right even under this bill to make a speech about whether or not to join a union, they just can’t force the employee to sit there and listen to it?

DAN LIVINGSTON: Right. Whether it’s whether to join the union, whether it’s about a particular bill at the General Assembly that they favor, or whether it’s about marijuana, or whatever it is. They have that ability -- this -- this legislation wouldn’t change that. What they can’t do is is then pull the trigger when I say, you know what, I don’t want to hear this -- you know, your views about marijuana or I don’t want to hear your views about the union or I don’t want to hear your views about whatever. They -- all it says, is okay, I’m free to leave, you can’t discipline me.

REP. BLUMENTHAL (147TH): Okay. And, does the NLRA protect employer speech that’s coercive?

DAN LIVINGSTON: So, no. The NLRA doesn’t protect employer speech that’s coercive, but I just want to be clear that this is a different line because this is not about employer’s speech at all. This is purely about employer power, so -- so we’re not going to be looking, we’re not going to be parsing the words. It doesn’t matter whether the employer said I hate unions or unions are bad or I hate marijuana or marijuana is bad. What matters is the subject is not about doing work and the worker says, well, I’d rather not listen to that, and then the employer says, well, then you’re fired or then some other adverse disciplinary action is taken.
REP. BLUMENTHAL (147TH): Thank you, sir. Any further questions from the committee? Thank you very much, Mr. Livingston.

DAN LIVINGSTON: Thank you.

REP. BLUMENTHAL (147TH): Or, Attorney Livingston. I’m sorry.

DAN LIVINGSTON: Either one’s good. [Laughing].

REP. BLUMENTHAL (147TH): Next is John Brady, followed by Emidio Cerasale.

JOHN BRADY: Good afternoon, Representative Blumenthal and members of the committee. My name is John Brady. I’m a registered nurse, and I’m the executive Vice President of ATF Connecticut. I come to urge support for SB 440, AN ACT PROTECTING EMPLOYEE FREEDOM OF SPEECH AND CONSCIENCE, and I have submitted written testimony, and I urge you to look at that, but I’d like to speak to you from my experience so that you maybe can understand a little better because I’m hopeful and probably pretty sure that none of you have -- have undergone a captive audience meeting. In 2011, the nurses of Backus Hospital had felt like we had lost our voice to advocate for our patients, and we felt that the only way to get that back was to organize and form a union, and we did that. The hospital was not in favor of us organizing, and they spent a lot of money and a lot of time letting us know that. We estimated that they had spent several million dollars. They finally admitted they had spent somewhere around $800,000 dollars plus in consulting’s fees - consulting work and literature. Many trees died in the literature that came out against the union. One of the things they used in their campaign, one tactic was a captive audience
meeting against the leadership of the unionizing drive. I was the victim of three of those captive audience meetings, and I’ll tell you briefly about the last one.

The last captive audience meeting I had was on my way out of my -- my shift. I had given report, and I was leaving the building. I had not yet clocked out, and as I walked towards the breakroom, which is where our timeclock was, my manager and her assistant manager asked to speak to me, and I said, of course, and we walked up the room -- walked up the hallway. Instead of going to what I thought would be the breakroom, they stepped into a supply closet. The supply closet was about 10 foot by 10 foot. It had a door on one end. The door closes automatically, it’s spring loaded, it’s lined with IV supplies and oxygen supplies and such. I was in that room with my back against the wall. The two managers stood at the doorway blocking my exit, and they spent I don’t know how much time it was going up one side of me, down the other explaining how I was neglecting my patients and neglecting my colleagues, which they knew would be button issues for me, in doing this work of trying to organize our hospital. I had no ability to leave until they were done speaking. At which point, I did leave, at which point I clocked out, and I immediately called my organizer and debriefed, and he had told me that when these things happen you need to call me immediately.

At one point, one of our -- my co-workers came in to get something out of the off -- out of the buil -- out of the room, and they backed out of the room after they had opened the door. They told me that you could feel the tension, you could cut it with a
knife when they did it. Even after debriefing, it took me quite a while before I felt comfortable going back into that room. It was a traumatic experience. The single purpose of this meeting in the series of three meetings that I underwent was to shut down the movement, and to shut down the voices of the nurses who are only trying to advocate for their patients.

This bill is a good step towards trying to stop that. If an employer has an opinion, an employer has a right to express that opinion. We have staff meetings all the time. We expect our staff to show up. I expect Matt to show up unless he’s here taking pictures, but I do not think I have the right, nor would I ever do that, nor would I ever express my opinion on a political or religious matter to them and not let them leave the room, not that they’d tolerate that. So, I urge your support for this. I thank you for listening to me and the opportunity to speak.

REP. BLUMENTHAL (147TH): Thank you, Mr. Brady. Are there questions from the committee? I’m seeing none. Thank you for -- oh, sorry. Representative Porter. [Laughter].

REP. PORTER (94TH): I’m trying to figure this out. I sit right up front. [Laughter]. And, all day -- but I digress. Thank you, Mr. Chair. But basically, I don’t really have a question. It’s more like a comment because you know I’ve been sitting here listening to this dialogue throughout the morning and now the afternoon, and basically, in a nutshell what I’m taking from this is that people are actually coming into petitioners committee to actually allow them the opportunity to be treated the way that they would treat others, right? We
always say, you know, treat people the way you want to be treated, and you nailed it with -- with the end of your statement and saying, you know you wouldn’t impose this kind of thing on your employers, so you’re only asking that we give you the leverage to actually have your employer not have the power to do the same to you; is that correct?

JOHN BRADY: I think that’s good summary.

REP. PORTER (94TH): All right. Well, thank you.

JOHN BRADY: Thank you.

REP. PORTER (94TH): I really do appreciate you taking the time to be here, and to share your personal stories with us and how they have impacted you on your job, and I’m sorry that you had to go through that.

JOHN BRADY: Thank you.

REP. PORTER (94TH): Thank you, Mr. Chair.

REP. BLUMENTHAL (147TH): Thank you, Representative Porter. Are there any further questions from the committee? I’m now seeing none. Thank you, Mr. Brady.

JOHN BRADY: Thank you.

REP. BLUMENTHAL (147TH): Emidio Cerasale, followed by Kelly Kraft.

EMIDIO CERASALE: Good afternoon to you all of the Judiciary Committee, respectfully to the chairs and members. My name is Emidio Cerasale, founder and director of Grandparents’ Advocate of America Organization, a national 501(c)(3) organization based in Connecticut. I’m here respectfully to ask you to pass HB 7095 bill so grandparents may have
the right of visitation of their grandchildren in a nonintact family. This bill is very serious and should be a red flag noticed to all you elected officials who have the power and the influence -- influence in the vote to make things right and just for us grandparents and grandchildren in this state of Connecticut, which it is not.

From the governor’s office to the House of Representatives to the Senate Chambers, we are not taken seriously at all. We are not in fact being -- we are in fact being alienated by our own Connecticut government as seen. It seems and do not want to be being upfront with the awareness of grandparent alienation in this state, which is very pronounced. For example, two years in a row, I was denied -- our organization was denied by the governor’s office for a simple proclamation for a grandparent alienation awareness day. I know our Governor Lamont has grandparents and I don’t think he would have liked this done, but his office did it to us, and the reason being they said they avoid controversy. Grandparents don’t avoid controversy. They bring love and affection and togetherness. To me, this is very disrespectful.

Also, we have been denied three years in a row bills identical to 7095, which are already in 30 states throughout the USA. Connecticut is in a dangerous territory of not treating the family in respect -- with respect and dignity. They are humiliating the grandparent/grandchild special family bond and going against the U.S. Constitution. By this bill, we are not going against the U.S. Constitution. We are going with the U.S. Constitution. Thirty states have it already like I’ve said. Another example, the federal government is watching us, Connecticut.
Connecticut is in a $3.7-million-dollar deficit, and worse in the coming near future. The existing bondage statute, 46b-59, so called grandparents rights of visitation has never ever given us [Bell] our visitation rights for the judicial application filing in the state of Connecticut from 2012 to 2019. That’s a fact. I’ve done my homework. I’ve called the people. We haven’t gotten visitation rights at all. With our population --

REP. BLUMENTHAL (147TH): Mr. Cerasale, if you would just summarize the remainder.

EMIDIO CERASALE: Pardon?

REP. BLUMENTHAL (147TH): If you could just summarize the remainder of your testimony?

EMIDIO CERASALE: With our population of around 3.7 million and people over 65 being 21 percent of population, and with over 600,000 plus grandparents living in the state, and with 242,000 plus children living in nonintact families, you’d think we would be taken seriously on this alienation issue of grandchildren, but we are not. We are overlooked, and I’m looking for the Judiciary Committee to pass this most important bill for grandparents’ rights here in Connecticut. It is way overlooked and way overdue. Thank you.

REP. BLUMENTHAL (147TH): Thank you for your testimony, Mr. Cerasale. Are there questions from the committee? Representative Rebimbas.

REP. REBIMBAS (70TH): Thank you, Mr. Vice-Chairman, and good afternoon. I just wanted to take the opportunity just to thank you obviously for your advocacy on this proposal. I know it’s one that you’ve been working very hard on and certainly, has
successfully had it come out of this committee and certainly, also called on the House floor, so I just wanted to commend you on all of the hard work that you’re doing in this regard, and certainly, we’ll see how this proposal progresses.

EMIDIO CERASALE: Thank you. Could I just respond? You asked a question to Representative France on the parent-like relationship. That’s what this law is supposed to do, really eliminate it. Grandparents don’t have a parent-like relationship. It’s very different from a grandparent to a grandchild relationship, and what 46b does -- 59 -- is a very contradictable law where it says you have to prove that you have a parent-like relationship. Then, it contradicts itself and says we have to prove that we will not interfere in the bringing up of a child. That’s what we don’t want. We just want visitation. Our intentions are not to interfere with the parents -- raising of the child with the parents. It just pertains to visitation only and has worked in South Carolina. This exact same bill has been in law for 2014 and is doing great, and I just want to get that straight. We’re not going to be involved in raising of the child. We’re looking for a pathway to visitation, which to me is only right to do.

REP. REBIMBAS (70TH): Thank you for your testimony.

EMIDIO CERASALE: Thank you.

REP. REBIMBAS (70TH): Thank you, Mr. Vice-Chair.

REP. BLUMENTHAL (147TH): Thank you, Mr. Cerasale. Are there any further questions? I’m seeing none. Kelly Kraft, you’re up, followed by Jay Moore.

KELLY KRAFT: Good afternoon, Representative Blumenthal and the entire Judiciary Committee. My
name is Kelly Kraft, and I’m from Waterbury, and I’m a certified nurse’s assistant. I am here today to testify in favor of SB 440, AN ACT PROTECTING EMPLOYEE FREEDOM OF SPEECH AND CONSCIENCE. I support SB 440 because it will protect workers like myself from being disciplined or terminated for exercising our constitutional rights. I am lucky enough to have a union in my workplace, and as a result of my union contract, we have fair scheduling, regular raises, and extremely affordable healthcare. Several weeks ago, a group of nurses at my place of employment who do not have representation from a union or the protection of a contract sought me out in hopes to have a meeting with the union representatives in order to show their interest in unionizing. I set up a meeting between those workers and the union representatives. Following this meeting, nearly 100 percent of those workers signed union authorization cards indicating their desire to unionize. As in the case of most union elections, management quickly became aware of the workers’ campaign to organize. As soon as management became aware, these nurses received a phone call from management saying we have great news. We got you guys a raise. We need you to come in, and we need you to sign for this raise. This was a bait-and-switch tactic. These nurses asked, okay, can it wait until my day that I’m next scheduled to work to come in? No, no, no. You need to come in now. You need to sign for this raise. It’s great news. So, these nurses one-by-one were brought into the office. When they got to the office, they were -- this was supervisor’s office. They were behind closed doors. The first words out of the supervisor’s mouth was, did you hear me and the administrator are gonna get walked out of here?
When the employee said to them, well why would you guys get walked out of here? They said, because we know of your secret meeting you had and we know that you guys signed union cards, and we also know of each and every one of you that were at that meeting, and we need you to change your mind. They said that they union would take everything away from them. They told them that if they joined a union they would be treated as badly as the CNAs were. They also told them that they created a team, a team of people that would now change everybody’s mind, and that’s what that team was set out to do -- change the minds of these employees.

The supervisor continued to do this throughout the day -- bringing in each worker, systematically mixing interrogation, threats, and then finally buying them off with a huge wage increase. The workers could not leave the boss’ office because if they did so they would be discipline with insubordination or punished in the form of maybe reduced hours or work schedule being assigned to a floor that was the worst floor to possibly work. [Bell]. So, immediately following this meeting, these employees then asked to take their union card back. They now then said they were no longer interested in the union. Statistic show that if people have the opportunity to join the union, they would. So, these type of captive audience meetings take -- take the -- make the playing field uneven. They take -- they tilt the balance away from the workers and towards management. So, all that we’re asking for in this bill is for you to allow an employee to leave such a meeting and without having retaliation or retribution from the employer for doing so. Please support SB 440, AN ACT PROTECTING
EMPLOYEE FREEDOM OF SPEECH AND CONSCIENCE. Thank you for your time.

REP. BLUMENTHAL (147TH): Thank you for your testimony. Are there any questions from the committee? I’ll ask one question. So, did you consider that situation that you described -- do you consider that coercive?

KELLY KRAFT: Well, you know, the thing about it is -- is the bait-and-switch. At no point in time was this meeting to talk about new nursing protocols. That meeting was specifically -- they were lied to. Basically, come get your raise, get you here, lock you in, and then say, we know what you did, we need you to change your mind. At no point was that meeting for any other purpose but that, so no.


GLEN MALONEY: Good afternoon.

REP. BLUMENTHAL (147TH): Good afternoon.

GLEN MALONEY: Thank you for allowing me the opportunity to speak here today. My name is Glen Maloney from Coventry, Connecticut, and I am in support of Senate Bill 440. I am the Chief Steward for ATF Connecticut Local 5121 located at Manchester Memorial Hospital, and I had the opportunity to assist and organizing the labor movement at Rockville General Hospital where I am based. We here are all aware of the captive audience meetings that are mandated and executed by management without the employee’s knowledge. The employees are coerced into attending mandatory department meeting, and soon after the employee’s arrival, administrative
officials walk in. The employees are then held captive in order to listen to antiunion and sometimes false rhetoric about the union from their employer. This surprise tactic by management occurred recently to some of my co-workers in another department, and it made them feel intimidated, bullied, and fearful for their jobs all because they expressed their federal right to seek union representation. The memory of management standing there and intimidating some of our lowest paid workers in our facility has forever impacted my convictions of Senate Bill 440. It is my understanding that businesses claim that Senate Bill 440 hinders the employers right to free speech. I disagree wholeheartedly with that. I believe very strongly in free speech. I believe employers who choose to voice their antiunion opinions to employees have the right to do so, that is their right to free speech, but let’s change things and allow those in attendance to be their voluntarily under their own free will. I do not believe [Clearing throat] -- believe that employees should be mandated, tricked, or held against their will to do -- to attend any employer meetings.

In closing, I’m new to these proceedings and how this all works. However, from the outside, I see this ongoing issue as an easy fix. Both parties, employees and employer have rights -- free rights. Neither should have the upper hand, but currently, one does. I seek to change that. Please support Senate Bill 440. I’d be happy to take any questions. Thank you.

REP. BLUMENTHAL (147TH): Thank you, Mr. Maroney for your testimony. Just following on the theme you were just talking about, you said this wouldn’t
prevent any speech. As far as you’re concerned, nothing in this bill would prevent an employer from making a speech even — you know, nothing in this bill would prevent the employer from making a speech on their premises to workers who were there; right?

GLEN MALONEY: That’s correct. We have open forum meetings where our CEO will discuss business, and you’re free to come or go. It’s not mandated that you attend. We also do electronic fliers. Every Wednesday, we did management — you know, whatever’s going on in the company, and then future meetings if you want to attend.

REP. BLUMENTHAL (147TH): Okay. So, nothing in this bill, as far as you know, would obstruct that free flow of debate in the unionization context?

GLEN MALONEY: I don’t believe so. I think the question is -- is tricking people and mandating that they have to attend and then listen to them, be subjected to that.

REP. BLUMENTHAL (147TH): Thank you for your testimony, sir.

GLEN MALONEY: Thank you very much.

REP. BLUMENTHAL (147TH): Did Jay Moore return? Nicole -- excuse me. Nicole Paquette. Did I get that right?

NICOLE PAQUETTE: You did.

REP. BLUMENTHAL (147TH): Okay. Thanks.

NICOLE PAQUETTE: Good afternoon, Representative Blumenthal. My name is Nicole Paquette. I’m a licensed funeral director and the legislative chair of the Connecticut Funeral Directors’ Association, CFDA, which represents 220 funeral homes. CFDA is
here today to express opposition to Senate Bill 1059, AN ACT CONCERNING THE UNAUTHORIZED PRACTICE OF LAW AND THE PREVENTION OF FALSE LONG-TERM CARE, LEGAL PLANNING, AND ADVERTISEMENT. Section 1, Subsection (a)(8), (a)(9)(a) and (b) of the proposed bill involve matters of providing advice about statutes, regulations, or state or federal administrative policies that affect the rights of a person under the law revocable and irrevocable trusts, advanced directives, and certain planning tools in order to meet Medicaid income and resource eligibility thresholds. These areas of the bill will directly inhibit the ability of a funeral director to work within the scope of his or her practice and serve the needs of consumers. To be clear, funeral directors do not advise consumers on the intricacies of Medicaid and the state planning. Funeral directors advise consumers in one area relative to Medicaid, the preparation and prepayment of irrevocable and revocable service funeral contracts.

Due to very specific Medicaid regulations for funeral service contracts in Connecticut, funeral directors must advise consumers on the relative statutes, eligibility regulations, and policies. This information is also commonly shared by funeral directors to educate consumers at public seminars by phone, email, mail, websites, and printed supplements such as brochures. Furthermore, funeral directors assist preplanning consumers in the preparation of certain advanced directives for the disposition of the consumer’s remains and an appointment of agent as custodian of remains upon death. These directives are more prevalent today considering the increase in consumers who are choosing cremation services or have family
relationship conflict. Finally, it is unclear in section 9(f) if it is intended to allow funeral directors to be exempt from these proposals when conducting business for which they are regulated. We ask for clear clarification by exemption to continue to allow funeral directors to work within the scope of our businesses in providing relative Medicaid information to consumers. I appreciate this opportunity to testify, and I would be pleased to answer any of your questions.

REP. BLUMENTHAL (147TH): Thank you for your testimony. There’s no one else here, and I don’t have any questions --

NICOLE PAQUETTE: [Laughing].

REP. BLUMENTHAL (147TH): So, thank you very much. [Laughter].

NICOLE PAQUETTE: Thank you.

REP. BLUMENTHAL (147TH): Brendan Faulkner.

BRENDAN FAULKNER: Is this on?

REP. BLUMENTHAL (147TH): Yep.

BRENDAN FAULKNER: Great. Good afternoon. Thank you for having me. My name is Brenden Faulkner. I’m a trial lawyer, partner at Riscassi & Davis right down the street here.

REP. BLUMENTHAL (147TH): Would you mind just -- I’m sorry to interrupt. Would you mind just speaking more directly into the microphone --

BRENDAN FAULKNER: Sure.

REP. BLUMENTHAL (147TH): So, we can get the transcript. Thanks.
BRENDAN FAULKNER:  Yep. And, I’m here to speak in opposition to raised bill 969. I think -- and so by way of background I was the trial lawyer in the Marciano case that ultimately went up to the Supreme Court, and that decision, which was a 6:0 unanimous decision by the Supreme Court, is what this bill 969 is intended to address, and our position is that there is no need to address the Marciano decision because it didn’t change anything. And, so a little bit of background is needed to understand the context.

In 1986, the Connecticut legislature passed a very large bill known as Tort Reform 1, and that was the product of extensive negotiations among all interested parties including the insurance industry, business, and the trial lawyers, and so those were complexed in lengthy negotiations. And, this bill focuses on one piece of that statutory scheme, and it seeks to change and upend what was negotiated 33 years ago, and tip the equities in favor of careless wrongdoers and against those who are injured or killed by negligent conduct, and so it’s important that that framework be kept in mind because when the Connecticut Supreme Court decision in Marciano -- when that decision came down, it changed nothing. It said that the legislature meant what it said in 1986, and that is when there is a right of subrogation for a health plan or Medicare or Medicaid -- those are the three types of insurance this would apply to -- there is no collateral source reduction, and so that is essentially what the rule has been for hundreds of years and continues to be in Connecticut and many other states except for what has been carved out by the statute, and so it’s not right to now carve -- change that part that’s been
carved out for no reason and without consideration of the rest of the statutory scheme.

So, Marciano -- you’re familiar with the holding of Marciano -- but it essentially -- it was a reinforcement of the collateral source rule, and that is the venerable concept that the tortfeasor should not garner the benefits of his victim’s providence, and so it’s -- it’s useful to take an analogy or a representative case. So, if a drunk driver causes a car crash and hurts me and I lose my leg, and the medical bills are [Bell] $500,000 dollars, but I happen to have health insurance, and so the actual cost is only $100,000 dollars, then the same thing happens with someone who doesn’t have health insurance. That drunk driver is going to pay $500,000 dollars; whereas, the one who hit me is only going to pay $100,000 dollars, and so why should we have reduced accountability for some defendants depending only by who they happen to have injured, and I’d be happy to answer any questions you have.

REP. BLUMENTHAL (147TH): Thank you, and thank you for your testimony. I guess would -- if we pass this law, would it create a windfall for somebody else and could you explain how that would work?

BRENDAN FAULKNER: So, the biggest problem that I see for the state in terms of passing this bill would be the fiscal responsibilities that would come with answering what requests to figure out what the offset would be for a collateral source. So, for instance, if someone was on Medicaid and there was a verdict and the court is now doing the collateral source hearing, the plaintiff or the injured party is going to have to submit information about the cost of having that insurance in place, and so,
there’s gonna be hundreds of requests to state and federal agencies, and private employer health plans to find out what those costs are, and it’s not always as easy as just figuring out what the premium is because you have to find out all the costs that go into administering that plan. But essentially, if there is a windfall, and the Marciano decision says really it’s not accurate to characterize it that way, but if there is one to be had, what this is doing is transferring it to the state funds and liberty mutual of the world because those are the companies that are most often involved in the garden variety car crashes, premises liability claims that are most of -- of the civil justice system as it relates to personal injury claims, and so the suggestion earlier that this is going to change the ability of physicians to practice in the state was not well received by me, but essentially, if there is a transfer of a “windfall”, it’s putting it in the pocket of the wrongdoer and the insurance industry.

REP. BLUMENTHAL (147TH): Thank you. One more question, which was in your experience as a trial lawyer, is the size of medical bills often a proxy for the severity of the injury?

BRENDAN FAULKNER: So, that’s a really good question. So the jury -- if it’s going to a jury trial, the jury will be charged by the court that they can use past medical bills as a measure of future medical bills. Because as you know, the injured party only has one bite at the apple so to speak, and so they have to be compensated for expenses that they have already incurred, but also are more likely than not to incur in the future, and so that’s an important role that medical bills do
have in the trial, but you could of course have no medical bills in a wrongful death case, right, and so the medical bills would be zero but you’d have the loss of a life, so they are important in many ways, but they’re not necessarily determinative of the amount of damages. It really depends on the case.

REP. BLUMENTHAL (147TH): Thank you. Further questions from the committee? Thank you very much for your testimony.

BRENDAN FAULKNER: Thanks very much.

REP. BLUMENTHAL (147TH): Next, is Raphael Podolsky.

RAPHAEL PODOLSKY: Thank you very much, Representative Blumenthal, members of the committee. My name is Raphael Podolsky. I’m an attorney with Connecticut Legal Services as part of the legal aid programs. I’m here on behalf of all the legal aid programs in regard to two bills, House Bill 7289 and 7095. I’ll try to get through both of them in my time.

7289, is a bill about summary process. Summary process is the name for our eviction statute. Under the eviction -- under what the bill would do -- under the eviction laws, the only thing you can do in the summary process case is bring an action for possession. It’s considered a special statutory proceeding. It’s accelerated, and there are many reasons why you cannot do things other than get a judgement for possession in the eviction cases and tend to be very narrow. This bill would open that up to a whole range of other issues -- back rent, possible property damage, other kinds of issues. It’s presented as a bill to speed things up and make it easier for a landlord. The bill will have
exactly the opposite effect, and to understand that, you do have to understand why we have this special summary process statute. There are -- there are other consequences that come from having it, so for example, one reason you don’t have a right to a jury trial and summary process is because there’s no -- you cannot get money damages. Money damages will attach the right to a claim for a jury trial. If you put an end to the summary process action, you will end up with loads of requests for a jury trial, and you will have a very, very slow proceeding, when right now, we have a fast proceeding. If you open it up to back rent instead of litigating the particular month -- you know, nonpayment eviction the issue is did you pay the rent or did you have a good reason for not paying it in a particular month. If you say, well we’re gonna litigate the entire history of the landlord tenant relationship, we have disputes about various costs, you’re gonna open that up much, much broader. It will have an impact -- serious impact on the processing of cases, and the way this bill is written, you will also end up trapping people who move as they are asked to do an eviction -- who move; therefore, end up defaulting on the eviction judgement because they’ve already gone, so you don’t need to -- so why bother -- for some people at least to defend the litigation over possession they will in the end have a default judgement against them for whatever amount the landlord claimed they owed. It simply is -- it’s not a good idea, and I think you will find that it will have a very, very disruptive effect on the court system itself that will have the adverse implication of slowing things down.

The other bill I want to mention is House Bill 7095, which deals with grandparent visitation. You’ve
heard a couple of witnesses in favor of the bill. There’s a reason why you have not passed this bill in prior years, and that is -- two reasons really. One is because there’s applicable Supreme Court law that deals with the right of family integrity, which is constitutional right. And, I would [Bell] -- I would ask you to take a look at my written testimony, and at the court decisions because it is very, very clear that this bill is directly contrary to what has been decided by the Supreme Court. The statute was written to codify the decisions. The second thing is it is important to understand why you reach a point where you would end up in litigation over visitation because a grandparent and -- and their own child cannot agree on visitation. I am happy to answer any questions I can, and thank you very much for the right to testify.

REP. BLUMENTHAL (147TH): Thank you -- thank you, Mr. Podolsky. Questions from the committee? [Clearing throat]. Excuse me. I have one. What’s the current process for settling a money damages issues in court with eviction proceedings?

RAPHAEL PODOLSKY: What normally will happen is after an eviction is over, if there is a dispute about anything connected with it, and it can be any, any -- typically would be a landlord claim. Typically, they’ll bring a small claims action unless they’re claiming more than the small claims limit, which is $5000 dollars. Sometimes in negotiation or settlement, there may be -- there may be various agreements about payment, various agreements or disagreements about what’s owed or what’s not owed, but you can’t get a judgment out of that. That goes beyond the scope, so that -- so that you do not have the situation where a judgement
is entered on any kind of money damage. If that happens, you change the whole character of the proceeding, and -- and you will then have collateral consequences that affect all the proceedings in the housing court, and sometimes in a negotiation session, they will talk about -- I mean certainly in negotiation you can talk about anything you want, you can agree to anything you want, but this bill is about the structure of the statute, not what people can talk about. It’s about what the court can do, not what the private parties can work out, and that’s an important distinction because it affects all sorts of other collateral impacts of the procedure. I don’t know if that answers your -- I think -- there may be something else you were trying to get at. I’m not quite sure what, but.

REP. BLUMENTHAL (147TH): That was responsive. I guess an additional followup would be -- what was it -- oh, so sorry. I mean you were talking about how people would opt for jury trials, and I was wondering is it your opinion that this bill would violate the state constitutional right to jury trial?

RAPHAEL PODOLSKY: Well, what it would do is it would throw the summary process statute I believe into conflict with the constitutional right to trial by jury. In other words, there’s no conflict now. You can -- the state can and by statute does deny litigants in a summary process action the right to have a jury trial. It can do that and that is constitutional under the existing court law in part because there is no claim for money damages, so if you now say in such a case as this there is a right, then if you can claim money damages it will then trigger the right to trial by jury, so I’m not
saying that now it doesn’t, but once you add it on, you will then create that conflict that wasn’t there before, and I think it’s actually one of the reasons why you have the statutory proceeding rather than some other kind of a procedure to do -- to obtain eviction.

REP. BLUMENTHAL (147TH): Thank you, Mr. Podolsky. I see no further questions. Thank you very much for your testimony.

Raphael Podolsky: Thank you.

REP. BLUMENTHAL (147TH): Did Jay Moore return? Jasmine Fender. Did I get that right?

JASMINE VENDREDI: Good afternoon --

REP. BLUMENTHAL (147TH): Jasmine, did I pronounce your name right?

JASMINE VENDREDI: My name is Jasmine Vendredi.

REP. BLUMENTHAL (147TH): Oh, my goodness. [Laughter].

JASMINE VENDREDI: [Laughing].

REP. BLUMENTHAL (147TH): Someone -- someone mis-transcribed your name on here.

JASMINE VENDREDI: Yeah. That happens all the time. It’s okay. I am an organizer with AFT Connecticut. I have been an organizer for the last seven years. I am submitting testimony on Bill 440, AN ACT PROTECTING EMPLOYEE FREEDOM OF SPEECH AND CONSCIENCE, on behalf of two union members. They recently organized with AFT, and I was one of the organizers on the campaign. The first is Wendy Cruzman [phonetic]. She works at Rockville General Hospital for the last 29 years, and she is a
phlebotomist. “I love my job and patients. Those are two reasons I go to work every day. During the union campaign, I saw and witnessed some surprising behavior from management. Maybe I was naïve in thinking things would run smoothly, quietly, or respectfully. I was wrong. As things got started for the union campaign, a member of Human Resources came down to the ground station, keep in mind this had never happened before. She came down because she was concerned that we would have questions about the new benefit package that was available for the coming year. Again, this visit or concern has never happened before. She went on to say we would have to pay for our own short-term disability insurance because ECHN could no longer afford it. Of course, that was if we wanted short-term disability insurance. She then goes on to say that many of our benefits may change like this should a union be voted in. She continues to say if a union has to be voted in we would be paying $800–900 dollars a year in dues. When asked to show us collaboration evidence, she said she would have to take her word for it -- we would have to take her word for it. Each day during the campaign new fliers would show up giving misinformation on the union. They would be in employee breakrooms and alike. We were told not to remove them, and find all union fliers removed. I understand there are some total ideas that bullying does not take place during a union campaign or maybe management does not discourage the idea of a union. In my experience, this is not true. Management will discourage and bully employees to try and get a no vote for union representation. Our patients deserve a voice. We as employees deserve better paid training and respect. In the end, we won our union, but
management did not make it easy. We supported each other through this because we believed we needed a voice. Our patients needed a voice. Our fight is over, but what about the next guy. [Bell]. The bullying is real folks. It did happen at ECHN make no mistake about it.”

The second member of the union is Tamika Ganho [phonetic] from the same hospital.

REP. BLUMENTHAL (147TH): Ma’am, if you could just summarize the rest of your testimony, please.

JASMINE VENDREDI: And, Tamika’s testimony is quite similar, except that -- and I quote she said, “I was in denial” she said when she was called in by a manager to show up to a meeting in closed doors to be spoken to about the union. “The days that followed the utmost definitely changed and she was unfortunately not just with the boss she had but with others that always spoke to her started giving her the cold shoulder, and she had to lay at night and say, okay, Tamika, that’s just what it is and now you have to really win this union. Thank you.

REP. BLUMENTHAL (147TH): Thank you, ma’am. I have just one question. Well, actually, first, I’ll ask the committee. Any questions from the committee? I’m seeing none. I’ll ask mine. So, what’s been your experience after the successful unionization drive?

JASMINE VENDREDI: So, usually what happened in previous campaigns because this has not been my first campaign, what happens and it happened also at Rockville, some people -- some members of the union -- some workers they are so, you know, frightened by those intense meetings that they stop being involved because the fear doesn’t end with the organizing
win. Sometimes it takes people a lot of time to get back on track and be part of the conversations who actually change their working conditions because that’s solely what workers, you know, are looking for when they are trying to organize the union, so it -- we did win, but there are still, you know, some trauma out of that experience that is going to take a long time for the workers to, you know, to deal with.

REP. BLUMENTHAL (147TH): Thank you very much for your testimony.

JASMINE VENDREDI: No problem. Thank you.


DARREN PRUSLOW: [Clearing throat] Excuse me. Good afternoon. My name is Attorney Darren Pruslow. Thank you to the committee for hearing my testimony. I represent the Connecticut Veterans’ Legal Center. We are a medical legal partnership that represents veterans in recovery from homelessness medical health issues. So, as a legal services for Veterans, we are very concerned about the proposed 7289, and are here to speak against it. As someone who represents Veterans in recovery from their service and the disabilities that come of that, we are very concerned about the mixing of some reprocess with the collection of debts in landlord/tenant cases. We submitted testimony. There are just three points to this I wanted to touch upon to kind of summarize that. In general, we think there are some serious due process issues if this bill was to go forward. It strikes us as highly inefficient, and there are some equity issues as well.
Just to give an idea of a Veteran in mind, we often have Veterans because they are either PTSD or other mental health issues, have to go in-patient for a period of time, average stay can be sometimes 21 days while they’re in getting treatment. This summary process can go by without them noticing it. They come out now not just homeless or they come out with -- settled with more debt than they went in, and some of these cases Veterans are already on vouchers, so the landlord may only be missing a small percent of the rent each month that goes through either HUD or other organizations are covering those bills. Either way, they still get the right in this case just the possession.

Then, there’s another step involved if they actually want to collect damages if they exist at all, so from the due process standpoint as was mentioned earlier, due process is very limited in its time and its pace, and certain due process rights are given up like a jury trial. Certain other pieces as you normally do in a longer litigation. It’s a lot more. It’s faster. It’s quicker. It’s more efficient. It may not feel like it in the judicial system, but compared to most of the other cases in there, it is definitely more efficient.

So, from an inefficient standpoint, we start mudding in the water with what’s going on. Sometimes some people just want to move on. They will vacate either of notice of quit state or I want to get someone to complain and just walk away; therefore, the case is technically over. The landlord can re-rent the property. If someone is now having to start arguing over with what the money debts are, this case could go on much longer. Usually, they can only get money out of a summary process if they
agree to stay and keep a tenancy as part of that agreement, but the court itself cannot enforce money judgment through summary process.

And, there’s also an equity issue. Many landlords go into summary process represented. My clients are lucky to have an attorney going with them to court, but many Veterans do not and many other citizens in the state do not have representation. So, now, when there’s a decision of just dealing with their homelessness issue and the pending losing of their tenancy, they’re also now trying to figure out where all this debt is and what’s coming on, and many are not able to understand the process as it is, and some of my clients have some deficiencies, mental health that make this process complicated to begin with. Add on three or four more layers of complication, many will just not deal with that issue. [Bell].

In summary, I would just like to say that we strongly oppose this, and we do not think it’s in the interest of Veterans in the state of Connecticut for this bill to go forward, and if there are any questions, I’d be happy to answer them.

REP. BLUMENTHAL (147TH): Thank you, Attorney Pruslow. Questions from the committee? I see none. I’ll just say as a law student I had the opportunity to work with CVLC in the Veterans’ Legal Services Clinic, and I just want to say thank you for all the work you do for Veterans in the state of Connecticut.

DARREN PRUSLOW: Thank you. Thank you for everyone’s time.

REP. BLUMENTHAL (147TH): Susan Warzecha, and please correct me if I got your name wrong.
SUSAN WARZECHA: It’s Susan Warzecha, but thank you.

REP. BLUMENTHAL (147TH): Warzecha. I’m sorry.

SUSAN WARZECHA: Good morning. It’s all good. My name is Susan Warzecha. I currently am a union representative with Local 371 out of Westport. I reside in Oakdale, Connecticut. I am here on behalf of SB 440 and PROTECTING EMPLOYEE FREEDOM OF SPEECH AND CONSCIENCE. Prior to being hired with the union this past winter, I was an employee at Foxwoods for 25 years. In 2008, we tried to organize a union. We began a multiyear campaign to organize our workplace. We did so because our healthcare costs were out of control. We had not received a substantial raise in years, and our supervisors had threatened that we would be replaced by younger workers because we were older and our appearance was not what they wanted. Starting our union campaign, the employer held captive audience meeting with us every couple days. Human Resource representatives were there along with antiunion consultants. Due to the way our work is -- we pick our work, we were divided into groups of more senior and less senior employees, so -- and they would also separate the bartenders and the bar porters from us. So, in meetings with less senior workers, they told us that workers that we would lose -- they would lose their rights to the more senior employee. With newer employees, they told them that -- no. Excuse me. With older employees, they told them that we wouldn’t be able to protect them from -- I’m sorry. Let me start again. In meetings with less senior workers, they told the workers that getting a union would mean they would lose their rights to the older workers. In meetings with newer employees, they told them union would not be able to protect them,
and that they would have to share their tips with the less senior employees. They told the bartenders they wouldn’t have any rights because they were more servers, and in a union, majority always rules. They always -- they always told us that we needed to trust the bosses, that our management team was on our side, and we were a family, and working with the director was the only way to get gains at work. We were also told that we would lose or have the risk of losing our health insurance benefits, and the union would be to -- the union would lead us to make less money, and we would be paying more money in fees and dues, and that also we were not even protected under federal law, so joining a union would be a waste of time.

The employer was successful with these meetings, and in our first election, we lost. A year later, nothing had improved at work, so thankfully and successfully, we voted in Local 371 USBW, and we are currently in our second contract. I believe had we -- we had so many union supporters initially before these meetings took place that I believe we would have won our first campaign had our people not been cornered, talked to, spoken to, and scared, and used scare tactics. They turned us on one another. They turned more senior people against the newer employees, and they turned [Bell] different classifications against each other. If this law had been in place when we were seeking our union, those of us who didn’t want to listen to company’s rhetoric would have had the choice to opt out, and maybe we would have won our first election. Please vote this law so that the workers who want to seek a better life for themselves can do so free from coerce and intimidation from the employer. Thank you.
REP. BLUMENTHAL (147TH): Thank you very much.
Questions from the committee? I have a question.
So, management’s statements about what would happen
if you unionized; did they come true?

SUSAN WARCHEZA: Well, no. No. ‘Cause their
promises didn’t come true either, so they had
promised, you know, better wage increases, we’d get
better health insurances, and things, and that if we
just got together and we stuck with them our lives
would improve vastly, and a year -- about a year
went by and nothing had changed, and our insurance
prices had gone up some more, and so luckily, we
were able to band back together and vote union in a
second election.

REP. BLUMENTHAL (147TH): Thanks, and I guess one
question someone who had -- who is skeptical about
this bill might have for you given your testimony,
they might say, well you didn’t get it the first
time but you had another election and then you
unionized the second time; so what -- what problem
would this bill solve?

SUSAN WARCHEZA: Well, I just feel like in the year
that we waited from the first election to the second
election our increases in our insurance went up
dramatically, and we were not able to change that
with a contract, so if we could go back
retroactively to the first election had we won, I
feel like we would have more money in our pocket,
less money out of -- you know, for our insurances.

REP. BLUMENTHAL (147TH): So, you would have had
more money, more benefits all that for a year
essentially? Yeah.

SUSAN WARCHEZA: Yes.
REP. BLUMENTHAL (147TH): Any further questions from the committee? I’m seeing none. Thank you very much for your testimony. Did Jay Moore return now? All right. Louise DiCocco.

LOUISE DICOCCO: Good afternoon, Representative Blumenthal and members of the Judiciary Committee. My name is Louis DiCocco, and I am counsel with Connecticut Business Industry Association. I’m here to testify today in opposition to Senate Bill 440. I want to state prior in many sessions beforehand you’ve seen many representatives from CBIA come out and testify against a variety of captive audience bills that were introduced in both this committee and in the Labor Committee. We are still opposing it due to the fact that we believe that it is preempted by federal law. States are recruited from governing into communications between employer and employee. Those areas are covered by the National Labor Relations Act. While they can get in and get involved in work safety issues, wage standards, etc., state imposing on areas where traditional police powers are when they transverse with the National Labor Relations Act is preempted. I’d like to point to there was a court case -- a United States Supreme Court case, United States Chamber of Commerce Vs. Brown, which held at California and involved California contractor, some state funding issues that was against unionization. The U.S. Supreme Court held that California had impermissibly sought to restrict partisan employer’s speech in the state deemed undesirable in conflict with Section 8(c) of the National Labor Relations Act. I want to touch upon something though beside putting aside the preemption issue. I’d like to tell you a viewpoint on some of our employee -- employers and members of CBIA. We’ve listened to the stories for years now.
I think last year while is at through a public hearing it involved the casinos. This year I’m hearing a lot with the hotels. Like I said, the vast majority of our members we aren’t opposed necessarily and say, you know, putting aside the preemption issue what really gets them wrinkled a little is the way even written right now how it interferes truly with their ability to communicate with their employees.

For instance, it curtails discussions about legislation impacting their jobs. Political matters is still in here in legislation. I’ll give you a quick example. So, it’s a manufacturer that wants to talk about a bill that would allow for manufacturing apprenticeship tax credit through past through entities. That would affect their business. In here right now, that would still affect them. Also, I wanted to say it’s -- it actually imposes on an employer’s ability to communicate their viewpoints on unionization issues. I believe even under the National Labor Relations Act an employer can come out against their position whether its pro or con against unionization. The only time they cannot do that, I believe, is within 24 hours of an election. With that, I’ve submitted testimony. I’d be happy to take any questions, and that’s it.

REP. BLUMENTHAL (147TH): Thank you very much, Attorney DiCocco. Questions from the committee? I have a couple. So, you mentioned that bills like this would interfere with the -- with an employer’s ability to communicate with employees about requesting legislation that may affect the business, and there’s a line of questioning about that before from I believe Representative Dubitsky, and I’m just wondering wouldn’t it make more sense for an
employer to communicate those concerns to their legislators or to the public at large rather than their employees?

LOUISE DICOCCO: Arguably though, I think I’m going to bring you back to a point where I’ve said sometimes too putting again -- once again, I hate to feel like a broken record -- but the preemption aside, I wonder myself why it’s not sufficient just to say let’s submit and I’ll touch base with the committee. I think it’s one of those things where there’s so many bills out there that are -- would have a negative effect on businesses. This gets under their skin with the fact that it almost seems like okay, so you’re gonna -- I’m taking the risk, I’m running this business. Understandably, this version also has it it’s just that you can’t force. That still gets under their skin to say why -- I want to communicate with my employees. No. I’m not locking them in closets or some of the truly horrible stories that we’ve heard on some of the issues, but I want to be able to freely speak to my employees, and like I said, getting it across, it really gets under their skin.

REP. BLUMENTHAL (147TH): Okay. I appreciate that, but you would agree, right, that the conduct that’s been described in this hearing today, some of that would qualify as coercive?

LOUISE DICOCCO: Right, and the NLRA already says you cannot. You cannot do coercive. You cannot coercively talk to your employees. This is not truly what -- I’m sorry even this bill I will say, speaking for myself, it’s improvements over drafts that we’ve seen. I actually had a number of companies contacting me saying still oppose it in Judiciary. I hate to say it, but it’s a lot better
than the version that was in the Labor Committee just this -- I forget the number of it, but I think it’s maybe 64, but in the Labor Committee, still -- still problems with it. Still feel like it’s really affecting their free speech, etc., and the ability to talk to them. And, I mean yes arguably you’d hope if it’s something an issue, especially similar to something like a manufacturing tax, you know, credit where they can whereby hire more apprentices, you would think they’d do that in addition to contact their employees or legislators, elected officials.

REP. BLUMENTHAL (147TH): And, so I think I heard you say, and I agree that -- that NLRA does not protect employer speech that’s coercive, right?

LOUIS DICOCCO: Right.

REP. BLUMENTHAL (147TH): Would you consider a statement by an employer, you know, come to this meeting where we’ll talk about unionization or you’ll be fired; would that qualify as coercive in your eyes?

LOUISE DICOCCO: Yeah, and I -- I would think you would be fired that’s a threat. I would think that’s illegal. I mean I feel bad for any employee -- employer of mine that would say that. I think the problem is sometimes saying and you know this version of the bill -- the Judiciary’s, I’m not sure. I’ve read both but the Labor one did this. This one does say you can’t force -- again though, it brings you to the issue. I’m the employer. I have a whole host of things that I want to discuss with my employees. I don’t want to speak. I don’t want to pretend to speak on all of our members, but I’m being honest when I tell you that. I’m like you
don’t. You know, I’m thinking here going you really get twisted over this year after year. You’re not locking people in closets. You’re not threatening them saying don’t come to work tomorrow if you do that. It goes back to just that -- that issue of defining and really trying to get in there and tell them, you know, whether it’s a primary purpose, etc. that this is -- you cannot talk about these issues.

REP. BLUMENTHAL (147TH): Okay. Thank you for your testimony, and thank you for representing a majority of businesses that don’t engage in this kind of behavior.

LOUISE DICOCCO: Thank you.

REP. BLUMENTHAL (147TH): John Murphy.

JOHN MURPHY: Good afternoon, Representative Blumenthal.

REP. BLUMENTHAL (147TH): Good afternoon.

JOHN MURPHY: And, members of the Judiciary Committee. It’s always a pleasure to follow the Connecticut Business and Industry Association. My name is John Murphy. I’m the organizing director and assistant business manager for International Brotherhood Electrical Brokers Local 1228. We represent broadcast workers at television stations in five New England states, and supports broadcast technicians who bring us UCONN sports, all the Boston major sports, and this Thursday and Saturday our technicians will be working at the XL Center bringing the NCAA first and second round tournament games to the -- to the nation. We strongly support SB 440 because it’s freedom of speech for both workers and employers alike protected by the U.S. Constitution but not under Connecticut law. We have
had two elections in the last six years in Connecticut that with employers that engage in multiple captive audience meetings, and coercion is an interesting word to -- you know, to define whether or not it meets the standard test. Our workers felt uncomfortable, pressured, coerced -- our workers words -- and scared that their jobs were in jeopardy if they refused to participate. No one believed they could make a pro-union state or ask hard questions without retribution. They were constantly told that you can do better without the union, you can come directly to talk to us, you don’t need an intermediary. Those are standard basic things, but as opposed to the question you were just asking the representative from CBIA, the way it happened in our two stations where this happened was a favorite trick was to tell employees the meetings were about work assignments, and they would be talking about work, and then they would shift over into antiunion rhetoric prepared by the union-avoidance firms.

We were successful in winning the election in both instances, but our members still felt tremendous pressure and stress because their jobs and livelihoods were threatened, not only during the period of the election, but as someone else said earlier, it lasted for the next year or two after receiving these repeated meetings. The inequities of our Connecticut law allow free speech from employers without retribution, but denies free speech protection for employees to endure -- forcefully endure captive audience meetings under the threat of discipline up to and including dismissal.
We need to change our state laws to allow equal protection of the right to free speech for both employees and employers alike. Contrary to what some may say today and did say today, SB 440, and other worker’s rights bills are not a factor in company’s decision to locate or remain in Connecticut. Oregon has had a captive audience law since 2009. Their economy is booming, and their employment rate is at all-time low. Their laws has not impeded economic growth or job creation and retention. Please extend the right to free speech to employees for voting for SB 440. Thank you.

REP. BLUMENTHAL (147TH): Thank you, Mr. Murphy. Questions from the committee? What was the name -- or what was the stat that passed the law you talked about just now?

JOHN MURPHY: Oregon passed the law in 2009 -- a captive audience bill. The wheels of capitalism are still turning. [Laughing].

REP. BLUMENTHAL (147TH): Thank you very much.

JOHN MURPHY: Thanks.

REP. BLUMENTHAL (147TH): Dan McInerney, followed by Bonnie Stewart.

DAN MCINERNEY: Good afternoon, Representative Blumenthal and members of the Judiciary Committee. My name is Dan McInerney, and I’m submitting testimony today on behalf the International Brotherhood of Electrical Workers, Local 3590 and 488. We’re in support of Senate Bill 440, AN ACT PROTECTING EMPLOYEE FREEDOM OF SPEECH AND CONSCIENCE. The IBW believes that employees should be allowed freedom of speech and conscience,
especially when it comes to trying to form a union in the work place.

I’m going to talk about one of campaigns that I was involved in. It was a subcontractor of a major satellite tv company, and these workers were strictly piecework. They didn’t have an hourly rate. Everything was done by piecework. There was about 64 or 65 people in this unit when they reached out for help, and the reason being was that they were being forced to work seven days a week, anywhere from 12 to 14 hours a day. They didn’t work it, they were disciplined, they were fired. So, we started the campaign and basically, what they did is they broke the group up into individual groups of like 10-12. They used to come in every day -- once a week I should say Monday through Friday, the different groups, and basically, what they would do is they’d be there for about half an hour. It was their opportunity to pick up materials for the jobs that they were gonna do, and if there was any new technology or any changes that they were making that was the basis of the meetings. Meetings were usually they start at 6 o’clock in the morning, and they usually were over by 20 after 6, 6:30. Once the company found out that there was a campaign going on against them, those meetings turned into anywhere from three and a half to five hours a day.

Now, you have to understand these guys were working on piecework, and they weren’t getting paid for the time that they were there, so that meant that they had to work even longer days to try to make any money at all, and what they would do is they would get a lot of misinformation about organizing and becoming union members and one of the biggest things they did was they were able to kind of pick out who
the union supporters were, and after they would leave, they would follow them around to the different jobs they were going to, and they would, you know harass them. You could always find something that they were doing wrong or one of their other tactics was that they used to send them to jobs that they knew were not going to be able to be completed. Now, they covered the entire state of Connecticut and part of Massachusetts, so you know, the first stop a guy might have could be in New London, and then he doesn’t have any -- he can’t do the job because it’s impossible, trees are in the way, whatever that they called the line of sight, so the dish wouldn’t pick up any signal. So, from there, they would turn around and send him up to Winstead, which is at the opposite end of the state, or they’d send him up to Massachusetts, so the guy would be driving around all day, so by the time we got to an election, we had lost -- we were down to like under 50 guys, but we had lost -- they keep replenishing their workforce, but we had lost probably about 30 or 40 supporters at the time, so you know, the captive audience meetings really had a large effect on them, and they should have had the opportunity to walk out once the informational part was over, so you know, the IBW feels the captive audience meetings are an unfair labor practice in which employees retaining course [Bell] -- or employers retaining course and employers are exercising their right to organize. We would ask that you support Senate Bill 440. Thank you.

REP. BLUMENTHAL (147TH): Thank you, Mr. McInerney. [Clearing throat]. Questions from the committee? I’m seeing none. Thank you for your testimony.
DAN MCINERNEY: Thank you. I’d also like to thank — I don’t know if it was ’cause yesterday was St. Patrick’s Day, but that name doesn’t get pronounced right. [Laughing].


BONNIE STEWART: Good afternoon, my name is Bonnie Stewart, and I’m the Executive Director at the Connecticut Society of CPAs. I’m here today to express our opposition to Senate Bill 1059, which concerns the unauthorized practice of law. This measure as drafted would take away the informality that exists at the administrative agencies right now, which is part of the executive branch, not the judicial branch. We’ve always tried to have more informal hearings before people have to go to court to actually decrease litigiousness and make sure people feel welcome at the hearing level. I know that now I represent the CPAs, but in my past life, union representatives that were not attorneys represented their union members at Worker’s Compensation hearings. You have social workers that often times go before the Department of Labor when it comes to unemployment hearings, and employers often times hire non-attorneys at the unemployment level as well just their experts when it comes to un-insurance matters as well.

So, this measure as drafted would say that any administrative agency would not allow a lay person in to speak to them regarding a matter. You would have to bring an attorney to represent you, so the people I just mentioned, as well as PPAs who work routinely with the Department of Revenue Services and the Department of Community and Economic
Development would be barred from representing their clients.

If you get further into the bill, it gets into the whole issue of a state planning, nursing homes, etc., and while we don’t usually plan for people to go into nursing homes, etc., we do work with families on a regular basis regarding whether it be children with special needs, talking about tax consequences if you’re leaving something to them to ensure for their future, or you’re talking about a state planning, gifts, etc. CPAs play a vital role in that -- that process, so as drafted, the role that CPAs and financial planners and attorneys have played for a long, long time would be drastically changed and only permit attorneys to participate.

We do not provide legal advice in the way most people think about it, but the way it’s drafted here if we comment on any statute, which the tax code is part of, we would be committing the unauthorized practice of law.

So, I encourage you to reject this measure. It is incredibly broad and incredibly harmful to Connecticut and our administrative process.

REP. BLUMENTHAL (147TH): Thank you very much. Questions from the committee? I have a question. So, you mentioned several times that the statute as drafted would have this harmful affect. Do you have any suggestions for how we could draft it differently so it is not to have the harmful effects that you discussed?

BONNIE STEWART: I would say that if you’re trying to get at Medicaid planning in particular, I don’t believe it belongs in the unauthorized practice of law section. You’re really talking about who’s
qualified to help people of those planning. As you heard earlier, you’ve got a lot of professionals at nursing homes, etc. that do that. I think what would be better to do is to put something in the Human Services statutes if that’s what the concern is -- is that those people aren’t being represented properly now, and we haven’t heard that, and that’s one of my concerns as well. So, we’ve heard how the funeral homes help individuals, how the nursing homes help them, etc., but if that’s the area, I wouldn’t get into the unauthorized practice of law and start trying to make the executive branch part of the judicial branch. Instead, I would address the specific issue, and I would do it within the Human Services statutes. I think if you did it there and talked about who is permitted to do it, I do think it should be broader than basic attorneys. I’m an attorney as well, but we do know that banks work with people all the time on setting up trusts for their children. You heard today how the funeral homes work with individuals, and we know that the nursing homes do. I think that that’s probably a better area, is to -- if there’s specific concerns regarding Medicaid and people’s needs not being met, address those in those Human Services statutes because otherwise you’re kind of opening Pandora’s box here by really messing up the administrative agency meeting process only. If you look at this, it’s not just hearings they’re talking about.

So, for example, at the Worker’s Compensation Commissioner, if you’re going to their final level of appeals, it’s considered that the commission or the compensation review board -- I haven’t been there for a while -- they require attorneys because at that level you are creating a record that someone’s gonna base an appeal upon if they decide
to go forward. But at the other levels, at the formal hearing, at the -- the informal hearing, etc., those are more like meetings and stuff, so you don’t really want to modify that -- that system. If the problem that we know exists -- if it exists is with Medicaid alone, I would take it to the Human Services statutes and address, you know, what qualifications are required to represent someone in that case. I don’t think I would limit it to attorneys though because you heard how many people are well-represented currently by nursing homes, funeral homes, CPAs, etc.

REP. BLUMENTHAL (147TH): Thank you much -- very much, Attorney Stewart for your testimony.

BONNE STEWART: You’re welcome.

REP. BLUMENTHAL (147TH): Next, is Ralph Blessing, followed by Kathy Flaherty.

RALPH BLESSING: Good afternoon, Representative Blumenthal and distinguished members of the Judiciary Committee. My name is Ralph Blessing, and I’m the Land Use Bureau Chief of the city of Stamford. I’m here today representing the city of Stamford to testify in support of raised bill 7344, AN ACT CONCERNING THE IMPOSITION OF PENALTIES FOR REPEATED VIOLATIONS OF MUNICIPAL REGULATIONS OR ORDINANCES. Raised bill 7344 addresses the issue of repeated zoning violations by individuals who have complied with an enforcement or subsequently engaged in conduct that constitutes a violation of the order. These types of violations can involve for example persons who after removing commercial vehicles and equipment pursuant to administrative or court order reestablishing the violation. By adding Subsection (b) to the general statutes section 8-12,
municipalities may seek fines of up to $5000 dollars without demonstrating willful conduct. The fine is in addition to the $2500-dollar civil penalty presently provide for in the statute. I want to emphasize that raised bill No. 7344 does not abridge to process rights or require a court to impose a $5000-dollar fee. A court may impose a fine in any amount up to $5000 dollars if it finds that an individual has reengaged in conduct that constitutes a violation of an order, and injunctively remains the primary means to compel compliance with an order.

In Stamford, approximately 40 percent of our zoning enforcement officer’s time is devoted to enforcing orders related to repeat violations. Often these matters involve lengthy and costly litigation that takes years to resolve. In one case, the city has spent almost a decade trying to obtain compliance from an individual who has repeatedly violated its regulations and ignored its orders. Raised bill No. 7344 will deter repeat offenders by increasing the potential financial exposure of repeat violations, and hopefully, make it less likely that repeat offenders will look at the exposure of a subsequent find simply as a cost of doing business. This in turn will help reduce the time and expense occurred by municipalities in their efforts to achieve compliance. For these reasons, we ask that you favorably report our raised Bill No. 7433 to address the issue of repeat zoning violations by individuals who have complied with an enforcement order but subsequently engaged in conduct that constitutes a violation of the order. And, I’m happy to take any questions.
REP. STAFSTROM (129TH): Thank you. Representative Fox.

REP. FOX (148TH): Thank you, Mr. Chairman. Good afternoon, Mr. Blessing. Thanks for being here today. Just a few quick questions, if I may? Do you have an example of repeated violation in the city of Stamford that you’re trying to address? You mentioned one vaguely in your testimony. Do you have any specific examples?

RALPH BLESSING: So, yeah, we -- we have a couple of candidates in Stamford who -- it’s not a large number, but it’s a number of offenders who take up a whole lot of time. We had one instance where we have to deal with basically rock crushing in an area where rock crushing is not allowed, and the issue here is that by operating this business that individual makes a whole lot of money and the -- the amount of fines that we have essentially not enough to deter that individual from repeatedly engaging in a behavior, and there’s a couple of other instances where this is happening.

REP. FOX (148TH): Thank you, and through you, Mr. Chairman. Would it be fair to say that this is not a -- would not be a tool for a city to generate revenue through if it’s more of an enforcement mechanism; is that correct?

RALPH BLESSING: I mean I think what this really addresses is that we have a lot of neighbors who are rightfully enraged and -- and bothered by unlawful behavior. Once again, the number of -- of repeat violators/offenders is relatively small, so it’s not by any means a way of making money. It’s really a means of getting more compliance with the zoning
regulations and increasing the quality of life of neighbors of those repeat offenders.

REP. FOX (148TH): Thank you, and one final question through you, Mr. Chairman. What is the current process for the city now without this law in pursuit of repeat offenders? What does the city do now -- or municipality?

RALPH BLESSING: So, what we can do now is basically giving them the same fine over and over again or issuing a cease and assist order that then ends up in the court system, but what has happened in some of the instances that I just eluded to was that it went to court. In court, it lingered for years. the city was actually won in court, but the court then subsequently didn’t award any damages, so there’s absolutely no deterrent for -- for zoning offenders to comply with the rules at this point in time.

REP. FOX (148TH): Thank you. Thank you for your testimony. Thank you, Mr. Chairman.


REP. BLUMENTHAL (147TH): Thank you, Mr. Chair. And, thanks, Mr. Blessing for coming all the way up here from the great city of Stamford. So, it sounded in your response to Representative Fox’s questions like you -- you don’t care -- the city doesn’t care as much about the size of the fine or where the money goes, but is more focused on the idea of creating a deterrent enforcement mechanism.

RALPH BLESSING: I would think the size of the fine is an important consideration so far as many people just see a fine as a cost of doing business, so
obviously, if the fine is too low compared to the amount of money they make with that illegal activity, there needs to be a relationship between them, but no it’s not -- not for creating revenue.

REP. BLUMENTHAL (147TH): Okay, and so if there were some I guess shall we say just some wrinkles in terms of the current language how it interacts between the judicial system and administrative fine, the city would have no problem with fixing that as long as a fine of similar size that could be a deterrent --

RALPH BLESSING: Yes.

REP. BLUMENTHAL (147TH): Would -- would be part of the bill?

RALPH BLESSING: Absolutely. We as a city we don’t care where the money of the fine goes to. We think the fine needs to be appropriately sized to make sure that it works, but once again, it’s not a revenue-making measure.

REP. BLUMENTHAL (147TH): Thank you very much, Mr. Blessing. Thank you, Mr. Chair.


REP. PALM (36TH): Good afternoon, sir. Thank you for being here. In your understanding, is there any provision or any way to ascertain people who are willful -- well scofflaws -- to use an old-fashioned word -- who have impunity about the law versus those who have a mental impairment that makes them incapable of abiding by civic norms? Aren’t there some people in our -- in our judicial system who just really are troubled and can’t help themselves? Do we know the difference?
RALPH BLESSING: I mean the -- the cases that we’re dealing with are usually business owners who have quite successful businesses, and in -- in those instances I think -- and once again, it’s for repeat offenders, so I think everyone has the right or cannot know about a regulation the first time around but once they -- they have been explained that there is a violation that is certainly then we can I think speak about scofflaw. The zoning enforcement process in Stamford has provisions in it that allows to take into account certain disabilities or inabilities of individuals to partake in the process. One example that we just had recently was an elderly couple that resides for part of the year in -- in Florida and we worked with them on a plan to have them come back into zoning compliance and worked out a time schedule with them to take that into account, so I think there’s provisions in there so that it’s not just summary justice, and there’s fairness in the system.

REP. PALM (36TH): Thank you. Thank you, Mr. Chair.

REP. STAFSTROM (129TH): Thank you. Further questions from the committee? I’m seeing none. Thanks for being with us.

RALPH BLESSING: Thank you.

REP. STAFSTROM (129TH): Kathy Flaherty.

KATHY FLAHERTY: Good afternoon, Representative Stafstrom, Representative Blumenthal, and other members -- distinguished members of the Judiciary Committee. My name is Kathy Flaherty, and I’m the Executive Director of Connecticut Legal Rights Project, and I join my legal aid colleagues in opposition to HB 7289, but I want to take the majority of my time to talk about our support of
Section 2 of HB 1055, which is the bill put forward by the public defenders. The reason why we are here is because CLRP also represents people who are currently patients at Whiting Forensic Hospital, and I have to put a huge disclaimer on this testimony, especially having read the testimony from the Department of Mental Health and Addiction Services. I want to believe that the department is acting in what it believes are the best interest of the people they serve and with the best of intentions, but the reality is that people reach out to us for assistance when they’re having problems with the department, and it has been our experience that DMHAS uses HIPAA as a shield to protect themselves rather than a sword to protect the privacy of the patients they serve.

While I was sitting here waiting to testify, I was texting our legal director to find out how many times we have made requests for recordings because our clients come to us and say you have to take a look at the tape. We’ve made three. Two of them they said no, and have given no explanation whatsoever of the reason no, and the third is still pending. We made that request on February 15, and the AG said she would put a hold on the tape and would make arrangements with the DMHAS police for us to view that tape. We still have yet to see that tape, and I asked our legal director to make the request again because people may or may not know that the recording tapes over every 30 days. It would not surprise me if DMHAS were to suddenly say, oh, we can’t let you see the tape because oops we made a mistake and we taped over it even though we specifically asked them to save it, and it really shouldn’t be like that. The -- when it comes to Connecticut Legal Rights Project, we have a consent
decree. We represent every patient in that state-operated facility, and they often say, well, you know, we have to get the consent of people, and everybody on the tape, but there are ways to deal with technology about protecting people’s privacy. I also think they’re engaging in a bit of catastrophic thinking that just if they disclose it to us or to the public defenders that automatically means it’s going to make its way to the public.

So, I would just encourage this committee to pass the bill in its current form with the language that’s requested and be appropriately skeptical of the objections of DMHAS.

REP. STAFSTROM (129TH): If -- just a quick question.

KATHY FLAHERTY: Sure.

REP. STAFSTROM (129TH): If the -- if you’ve made a request to the agency, and the agency then after that time tapes over the tape, wouldn’t you necessarily have a spoliation and adverse inference claim?

KATHY FLAHERTY: Oh, absolutely, but I mean I think -- and that’s, you know, and people have to be aware CLRP is not usually engaging in litigation over every incident that could even be caught on tape. The way the tape is setup right now my understanding is that there are cameras in the common areas, there’s one particular patient who has video recording in his area, and also in the restraint and seclusion rooms because those are the places where things are most likely to go wrong. And, you know, I absolutely agree there would be all those inferences, but sometimes it’s really, unfortunately, when it comes to the department what
happens is the department is in sole control of the medical records, which is given a lot of weight when people look at well what happened. Our clients tend to not be believed, so if their disputing something that’s in the record, something that’s in the sole control of the department often the only thing available to figure out what actually really happened is that videotape, and I just really would hope that the department, especially considering what happened, would consider being a little bit more open with the people who are representing the people in their care.


KATHY FLAHERTY: Thank you.

REP. STAFSTROM (129TH): Mike Rigg.

MICHAEL RIGG: Good afternoon, my name is Michael Rigg.

REP. STAFSTROM (129TH): I just need you to hit the microphone button in front of you. There you go.

MICHAEL RIGG: Can you hear me now? Again, my name is Michael Rigg. I’m an attorney, and I specialize in representing physicians and hospitals who were sued for medical malpractice, and I’m here on behalf of various medical specialties, organizations of Eye, ENT, Dermatology, and Urology, and I’m here to speak on behalf of SB 969, AN ACT CONCERNING THE REDUCTION OF ECONOMIC DAMAGES AND PERSONAL INJURY OR WRONGFUL DEATH ACTION FOR COLLATERAL SOURCE PAYMENTS. I think this is a good bill that will remedy the loophole that was revealed by the Supreme Court’s decision in Marciano, but I would suggest that the bill doesn’t go far enough. As was pointed
out in Marciano, the plaintiff in that case was permitted to submit to over $84,000 dollars in medical bills that were not actually what had been incurred. His insurance company had only incurred $6940 dollars, and therefore, requested that he pay that back to them from the proceeds of the personal injury action. The result was that he got a net windfall of $77,344 dollars, so this bill will remedy that situation.

But the other problem that exists and the collateral source statute is directed solely at past economic damages, but particularly in medical malpractice actions juries are often asked to award future economic damages. They have to estimate what a person may incur by way of medical bills in the future, and the law doesn’t account for that, and typically, judges don’t allow evidence of insurance payments or what their actual fair market value is of medical services actually are. Actually, juries don’t hear about the fact that it’s not the patient who actually is going to be paying for the medical bills, so I would suggest and at the end of my written testimony, I supply language -- simple language that I think would remedy the situation for future economic claims as well because justice juries have been awarding amounts of money that exceed the actual out-of-pocket expenses of plaintiffs for past economic damages because they’re basing their future estimates on the face value of the bills as opposed to what the actual fair market value is of the medical services. Just as the prior economic awards are inflated so are the future economic awards, and that I think needs to be addressed by way of legislation because it’s consistent with what the original purpose of the collateral source statute is, which is to eliminate
the windfall that existed in the common law at least with respect to medical bills. Thank you. I don’t have anything more. If you have any questions, I’d be happy to answer them.

REP. STAFSTROM (129TH): Questions from the committee? Representative Blumenthal.

REP. BLUMENTHAL (147TH): Thank you, Mr. Chair. Thank you for your testimony. I have a couple questions. So, the physicians you represent when they submit bills for payment, those are real bills, right?

MICHAEL RIGG: Yes.

REP. BLUMENTHAL (147TH): So, I was a little confused by your statement earlier saying potentially that the amounts bill that later made their way into the lawsuit and medical expenses were not real, so could you explain that for us?

MICHAEL RIGG: Sure. What happens is physicians don’t actually get to collect what they bill. The standard in Connecticut and throughout the nation is that health insurance companies negotiate significantly lower rates, so the insurance companies don’t actually pay what the billed amounts are, so the actual bills are far more inflated as to what the cost of healthcare really is. The fair market value is really determined by health insurance plans because those are the entities that actually pay medical expenses, so Medicare, Medicaid they often will pay substantially less than say other private insurance companies, and I have it on good knowledge that you’re going to be hearing from a physician fairly soon who can explain why physicians often will bill much more than what they know they would get from health insurance companies
because they’re such a vast disparity as to what one particular insurance company will pay for a particular service as compared to others, so for example Medicaid will pay substantially less than say ConnectiCare, but if you issue a bill that’s much lower, well then you might be losing out on what the insurance company would be willing to pay, so the typical practice is to issue bills at a much higher rate and then agree to take less and the balance of that is written off, and this -- this was actually addressed by this committee in the General Assembly in 2012. This committee passed a very good bill back in 2012 to eliminate the practice whereby patients were actually entitled to get a windfall of the difference between the billed amount and what’s written off by hospitals and doctors. That was eliminated in 2012. This bill that’s currently before you is consistent with what was done in 2012. They just didn’t foresee this particular loophole.

REP. BLUMENTHAL (147TH): So, if I heard you right you’re saying that physicians like the ones you represent are purposely inflating their bills?

MICHAEL RIGGS: No. No. They’re billing what they believe is an appropriate value for their services, but the reality is that insurance companies are able to negotiate payments that are -- are far less than what the physicians as a profession believe their services are worth, but they -- through contracts, agree to take whatever the insurance companies are willing to pay them. Just like when doctors agree to take Medicaid patients. It’s well known that’s the lowest rate that a doctor is ever gonna get. That’s why doctors often refuse to take Medicaid patients because they know that Medicaid will pay them substantially less, and they have no ability to
challenge a decision by a health insurance company or Medicaid that says this is how much we are going to pay you for this service.

REP. BLUMENTHAL (147TH): So, that makes more sense. But did the bills they’re submitting are bills for the actual value of their medical services, right?

MICHAEL RIGG: It’s what they have -- right. It’s what they have billed. It’s the face of the bill that they’re issuing, but as we all know, the patient -- at least certainly in my personal experience. I might pay a co-pay or a deductible, but I don’t pay the whole bill. That’s why I have health insurance. In fact, it’s mandatory that every American now has to have health insurance because we don’t pay our medical bills. We have health insurance. That’s the law, and those health insurance companies negotiate lower rates, and the idea of course is to pass on some of the savings to us as consumers so that we don’t pay interest rates -- or health insurance premiums that are so high. We want insurance companies to be able to negotiate those better rates, and certainly, government health plans like Medicaid and Medicare do that as well. They -- because they insure a large demographic, they’re able to negotiate even -- or negotiate is a term of art here. I think they’re able compel physicians to simply take substantially less than what they would otherwise charge.

REP. BLUMENTHAL (147TH): Okay, so just tell me if I summarize this -- your testimony accurately or your position accurately. Is that the amounts that physicians bill -- I’m sorry. Let me rephrase that. That physician services are worth the amount that they’re billed, but insurance companies, health
insurance companies are able to negotiate lower rates.

MICHAEL RIGG: Yes. Yeah. Through contracts because this is established in the case. Doctors through contract they will become an approved provider. You know, often probably in your own experience, you know, you find out if your doctor accepts your particular type of health insurance. Well, if -- if the doctor accepts your particular type of health insurance what that means is the doctor has agreed pursuant to contract to take whatever your health insurance tells your doctor that he’s going to get paid, but because there’s such a variance as to what different health plans will pay, it’s really impossible for doctors to figure out what the particular health plan is going to be willing to pay for a particular procedure, so the tendency is for the bills to be higher, okay, than what doctors ultimately collect.

REP. BLUMENTHAL (147TH): Thank you.

MICHAEL RIGG: And, that’s why that was remedied back in 2012 by this committee that passed a bill that changed the law because it used to be that when a -- a plaintiff was allowed to submit the bills for what the face value was and if his -- his or her health insurance paid a fraction of that -- a third of that, the collateral source would only apply to what the health plan actually paid as opposed to the other say two-thirds of that, and the patient was allowed to pocket that difference. This committee fixed that back in 2012. The Marciano case reveals a similar loophole because of course federal law preempts state laws. See under Connecticut state law, state plans are not allowed to demand that patients repay them from the proceeds of personal
injury actions, but federal plans are not subject to state law. They are allowed to do that, so the Marciano case said if a federal plan is even entitled to $1 dollar of the -- the medical bills that were submitted to the jury, there’s zero reduction. That’s what Marciano held, so in the Marciano case, there’s over $84,000 dollars in medical bills that were submitted to the jury. The jury doesn’t get to hear about oh what’s the actual health insurance and what’s the market and how do they actually decide and how much is the plaintiff actually gonna have to pay out of pocket. The jury doesn’t hear any of that. That happens after the jury’s verdict. The judge gets the evidence as to what the reduction should be. the Supreme Court said if there’s a federal health plan that has any right to recoup any amount, then there’s a zero reduction, and that was based upon the language that they read in the statute, so this bill as written will remedy that. I’m suggesting strongly that this committee consider remedying the situation with respect to future economic damages because that’s the same situation that we have or have had with past economic damages.

REP. BLUMENTHAL (147TH): The jury doesn’t hear about whether -- about the defendant’s insurance either though, right?

MICHAEL RIGG: No. They’re prohibited from hearing about insurance, but you see the -- the determining what a plaintiff’s out-of-pocket expenses is gonna be -- in recognition is that your out-of-pocket expenses really need to take into account the fact that the health insurance is picking up at least a portion of the cost, so you certainly get to be reimbursed for any co-pays that you made, any
deductibles, and any amount of money that you have to repay to a federal plan like Medicare or an ERISA plan. You -- you -- that would certainly be unfair to say that the plaintiff doesn’t get to keep that money ‘cause that’s an actual out-of-pocket loss, and that’s the whole point of economic damages is it’s supposed to be an estimate at least as to what’s the plaintiff’s out-of-pocket costs.

REP. BLUMENTHAL (147TH): So, I guess my question would be if -- if there’s going to be a windfall on one side because health insurers negotiate a better rate, you know, in a tort case if there is a verdict, then the defendant has then judged to be a wrongdoer in that case, and why should it be the defendant rather than the health insurer or the person who is wrong who receives the benefit of the health insurer’s negotiation at which the plaintiff paid for through their health insurance premiums?

MICHAEL RIGG: Well, I forgot to mention the plaintiff gets to deduct the amount that he and his employer paid in premiums, so if it costs you $10,000 dollars to buy the health insurance plan including -- not just the money that you as the employee paid but your employer, so that gets -- so the employee -- the plaintiff actually gets the benefit of all the premiums that were paid by himself and his employer, so that reduces the amount of the -- the collateral source reduction. I forgot to mention that to you, so -- so the plaintiff still gets to maintain that benefit. So, for example, if you have an $84,000-dollar award for medical bills, what happens is the amount of money that was spent to secure that health insurance, you know, reduces what the defendant can claim as a collateral source reduction, so I --
REP. BLUMENTHAL (147TH): I get that, but my question is more so we got a situation where there’s an injury. The -- that injury has resulted in medical services. Those medical services have a value, and the accurate value has been billed for those medical services. Then, a health insurer has negotiated those -- those bills down, and the plaintiff whose health insurance that is has paid for that health insurer’s services through their premiums. They paid for that negotiating acumen. We’ve got all that going on and that’s all well and good, and there is a benefit to that, but why should it -- the wrong doer be the one that gets the benefit of it?

MICHAEL RIGG: Well, you know, that was the decision certainly that was made back in 1986 when the Collateral Source statute was created, and the whole idea and also Connecticut state law prohibits health plans from having contracts that say to their insurance if you come into money -- let’s say by way of a personal injury action for this, you’re gonna pay us back. That’s generally prohibited. So, that was part of the I think the balance that was made by the General Assembly back in 1986 was on the one hand health plans were gonna be prevented from asserting a lean on -- on personal injury actions. Essentially, they’re not gonna be allowed to piggyback onto a plaintiff’s personal injury action, so the plaintiff gets the benefit of not having to pay the money back, and there’s not gonna be a lawsuit, a subrogation action by the insurance company.

So, for example in a different context, let’s say there’s an insurance company that pays out money from a liability proceeds. They’re entitled to get
reimbursed. They’re allowed to bring what’s called a subrogation action, but Connecticut law bans that for health insurance companies, so I think that’s the critical difference is that the insurance companies don’t get to recover generally. But when there’s a federal plan that says we do get to recover, then the federal plan and whatever that amount of money should be credited. The plaintiff can’t be penalized for that, but the idea is to continue on, not giving that windfall to plaintiffs at least when it comes to medical bills.

[Crosstalk]. Because of the balance that was struck back in the mid-1980s about health insurance, and --

REP. BLUMENTHAL (147TH): You’d be giving it to the defendant, though, right?

MICHAEL RIGGS: Pardon me?

REP. BLUMENTHAL (147TH): You’d be giving it to the defendant, though, right?

MICHAEL RIGGS: Well, the defendant gets the benefit of -- of not paying to the plaintiff the windfall, but whatever the insurance company actually paid and is -- and is entitled the recover, the defendant has to pay for that. They have to pay that money that would go to the insurance company. They have to pay that, and also the point is that the money that we’re talking about, again, is not -- the bill is not the medical bills. The actual -- the jury doesn’t get exposed to really what -- you know, what the fair market value of the services are or what -- what the likely out-of-pocket expenses are because the face value of the bill is really through experience shows that it -- that’s not, you know, what is actually paid out. That’s not what the fair market value is. Just because somebody sends a bill
doesn’t mean that that necessarily represents the fair market value, [Crosstalk] but there’s an inability to establish that for a jury because we’re not allowed to present evidence of insurance.

REP. BLUMENTHAL (147TH): Okay, so that’s -- but the bill was a valid bill in a correct amount for medical services.

MICHAEL RIGG: When you say a valid bill. It’s a bill that was issued. For example, if a -- if an auto mechanic issues a bill for -- for repairing a car. That’s a valid bill, but it doesn’t necessarily mean that it’s the fair market value of the auto mechanic’s services.

REP. BLUMENTHAL (147TH): But I thought I heard you saying earlier that the bills submitted by these physicians are an accurate reflection of the value of their medical services.

MICHAEL RIGG: It’s an accurate reflection of what they’ve billed, and certainly, they’re not committed fraud. They’re saying what they think they should be paid, but the reality is that because the over -- almost all medical services are not self-paid, they’re paid by insurance companies, the jury doesn’t hear about the fair -- about the market. The market is -- is who would -- would pay a particular sum of money for a service or an item, and so in healthcare, the market really is the insurance carriers, and the jury doesn’t get to hear any of that. Connecticut is unique that way. Most states actually allow the jury to hear about it.

REP. BLUMENTHAL (147TH): Okay. I’m going to try not to go on too much longer. But it’s true also that if a person is not insured for whatever reason or does not being covered for the medical procedure
for whatever reason, that person could end up on the hook for the entire medical bill.

MICHAEL RIGG: And, what would happen then is they would get the recovery of whatever they’re on the hook for. There would be no reduction because there’s no collateral source that paid anything or is entitled to be repaid.

REP. BLUMENTHAL (147TH): And, our current rule -- under our current rules of evidence, the jury doesn’t get to hear if the defendant is -- has insurance that will -- liability insurance that will apply to whatever judgement they have against them, right?

MICHAEL RIGG: That’s correct because it -- the reason is because it’s irrelevant to the issue of liability, but if -- but it’s highly relevant, I think, to the issue of damages. I would be fine if the legislature wants to change the law on that and say, you know, for damages, you know, let’s say we’ll have the liability phase decided by the jury first, and they won’t hear about insurance then, but in the damages portion, they’ll hear about insurance including liability insurance. I’m all for it.

REP. BLUMENTHAL (147TH): Thank you, and I just -- I have one -- it’s more of a statement than a question. I appreciated your testimony on Marciano and how basically it I mean didn’t make a change but interpreted the judgement that the legislature made back in 1986. I saw a number of testimonies in the written testimony pile that characterized Marciano as kind of a reinterpretation or some sort of departure from what the legislature did, and I didn’t think that that was an accurate characterization, so I appreciated your testimony.
You know, I agree with you that the legislature made a very calculated decision about how they wanted to lay down responsibility between these different parties, and you know, we can all make policy judgements about how that should be done, but you know, I appreciated you accurately characterizing those decisions.

MICHAEL RIGG: Yeah. I don’t -- I don’t think that the Supreme Court necessarily was wrong in its interpretation of the language that was in front of it. Just like the courts were not wrong previously when they allowed plaintiffs to pocket the difference, and then that was rectified by this committee in 2012. I’m not -- I’m not criticizing those -- those prior decisions that were legislatively overruled in 2012. That’s the way that the statute was written. I don’t think it’s -- I just don’t think it was what was considered. My understanding of the original intent when the Collateral Source statute was passed was to say that the plaintiff will be compensated for the out-of-pocket losses, but anything that’s not an out-of-pocket loss won’t get compensated for. That’s always been my understanding of what the general purpose of the statute is, but the courts have to apply the actual language of the law.

REP. BLUMENTHAL (147TH): Thank you, Attorney Rigg. Thank you, Mr. Chair.


SENATOR FASANO (34TH): Thank you, Mr. Chairman. Thank you, counsel for testifying. I think you may have answered some of my questions in this last exchange with Representative Blumenthal because I
heard you testify, and use the word loophole, and whenever I hear that, I automatically start to get worried. My short experience here I find that during testimony we hear that term a lot, and when I hear the word loophole, it automatically makes me think that there’s some unintended gap in the legislation, and I think uh oh what did we miss, we collectively hear, or what did the court miss. And, then usually what happens is once we start peeling back the layers we realize it’s not a loophole at all. It’s just, you know, one party or another is advocating for either an expansion or a reduction in existing legislation, so I’m going to ask you just to walk me through whether you think that there actually is a loophole because I’m concerned. I hear you testify -- you know, you talk a little bit about the tort reform in the 1980s. Now, I’m too young to know what was going on at the time there, but you know, I started thinking well all right you may have a point, but how do we know what was negotiated at the time? I mean how do I know that that what you call a loophole is not just some carefully thought out compromise between the existing -- you know, the competing interest at the time in the 80s? So, if you -- if you’d like to comment on that, I’d appreciate your thoughts.

MICHAEL RIGG: Sure. and, I do think it’s a loophole and here’s why. Because -- consider this, if you have -- if you have a -- a health insurance plan that’s just governed by state law there will be no right of recovery by your plan. They’re not entitled to one dime of your personal injury proceeds, so under state law, you -- your -- your claimed medical bills will be reduced by exactly the amount that you don’t have to pay for in terms of the medical care, so if you look at the Marciano
case, the only reason why by -- why Mr. Marciano got a windfall of $77,343 dollars is because he had a federal plan. If he had a state plan, he wouldn’t have gotten a nickel, not one nickel because that’s what this committee decided in 2012 ought to happen. I find it very difficult to believe this committee decided well we want to give a windfall to people who have a federal plan, but if you have a state plan, no we don’t want you to get any money. So, that’s what I would define as a loophole. I can’t believe this committee decided to distinguish between plaintiffs on the basis of who they’re insurance company is. That you’re a good person if you have a federal plan, but you’re bad if you have a state plan. That’s really the effect here. That’s -- that -- that’s the disparity that exists currently. And, that same problem I see exists for calculating future economic expenses because the jury is -- is presented with the fiction that this is it, that this is what is actually going to be paid in medical expenses, and it’s not accurate. It’s not an accurate portrayal. Back in the 1980s, Connecticut made the decision -- the legislature made the decision -- I’m not advocating that you change this -- but they made the decision that we wouldn’t be exposing the jury to information about insurance and all the like. That it will be handled by the judge after the fact. Fine, but you didn’t address the future, and future -- and economic damages doesn’t distinguish between past and future, and it’s a reality that somebody’s gonna continue on perhaps needing medical care that’s related to the negligence. I think everyone would agree that’d be unfair to say, well the trial’s held now, so that’s it. That’s the arbitrary cutoff, but yet, what we’re saying is the jury isn’t gonna hear about
anything about what the actual expenses really will be, so I think it -- I think it is -- in my opinion, I characterize it in my written testimony as a loophole, particularly the Marciano one. I think that’s a loophole at least when you consider the change that this legislative body made in 2012 to eliminate that and to say but if you have a federal plan that -- that there will be no reduction, but if you have a state plan, there’s a 100 percent reduction. I hope that answers your question.

SENATOR FASANO (34TH): It does. Thank you. Thank you, Mr. Chairman.

REP. STAFSTROM (129TH): Further questions? I’m seeing none. Thanks so much.

MICHAEL RIGG: Thank you.

REP. STAFSTROM (129TH): Omar Ibrahimi.

OMAR IBRAHIMI: Good afternoon, distinguished members of the Judiciary Committee. My name is Omar Ibrahimi. I am a physician practicing in Stamford, Connecticut. I am here today representing over 100,000 physicians in the Connecticut medical specialties of Ophthalmology, Otolaryngology, Dermatology, and Urology in support of SB 969. We feel it is an important bill that addressed the injustices of economic damages based on the fictitious billable face amount rather than on a factual reimbursed amount that the physician or healthcare provider receives as compensation for taking care of the plaintiff’s medical issues. Medical billing can be quite confusing, but here are some important facts that the committee should be aware of.

The amount billed by a physician is not what the physician is actually paid by an insurer. In fact,
a physician only gets paid what an insurance company’s fee schedule permits for a given procedure or service. The physician is under a contractual duty to accept the insurer’s fee and cannot balance bill a patient for the different between the amount billed and the amount that the insurer actually pays the provider. Provider contracts including Medicare make the billable amount irrelevant. It is solely the insurance fee schedule that determines the actual payment for any medical service or procedure. As an example, assume a Medicare patient comes in for the removal of a skin lesion and my billing system bills Medicare for $2000 dollars. Will I get paid $2000 dollars? No. I will get the Medicare reimbursement rate regardless of the amount I bill. The insurer only looks at the CPT or current procedural terminology code that I have chosen for the particular service or procedure, and pays me an amount that is assigned for the code in the fee schedule. So, despite submitting a charge for $2000 dollars, I am paid the established reimbursement rate for that code, which may be around $100 dollars. What happens to the rest of that so-called receivable? It is written off by my practice and never billed to the patient and never received by me. Why do physicians submit charges with such discrepancies between the billable amount and the actual reimbursement? It’s not something any of us like to do or enjoy doing. Our computer processing billing systems use only one billable amount for each code, and each insurance plan can have numerous different types of plans and benefits, and so keeping track of what we’re going to be reimbursed is nearly impossible, and there’s different fee schedules within many different insurance plans. If we submit a bill to insure a company that is less
than what the insurer has agreed to reimburse us, we will lose, and we will get a reduced reimbursement from what they agree in their fee schedule. Some insurers would argue that physicians should simply bill fair market value and not use an inflated rate. However, there are many reasons why this is not feasible or practical as a physician.

In order to determine fair market value of a service [Bell], physicians would have to communicate with each other on what they feel a service is worth, which would be in violation of antitrust laws regarding that communication. Thank you.

REP. STAFSTROM (129TH): Thank you. Doctor, so picking up on this I guess I’m a little confused. So, how do -- back to your skin lesion example -- how do you decide that that service is worth $2000 dollars? If Medicare is only going to pay you $100 bucks for it - I think is the example you used. How -- how do you decide it’s worth $2000 dollars to code into your system as a $2000-dollar procedure?

OMAR IBRAHIMI: So -- so that’s a great question. So, our -- our office we take probably somewhere in the neighborhood of ten different insurance plans. Each insurance plan has different offerings that they offer to their members, and we have a fee schedule agreement with each of those insurance plans. Now, if one of the insurance plans says they’ll pay $100 dollars and then another insurance plan says they’ll pay $125 dollars, and there may be eight other plans that pay different amounts -- if we, for example, bill $110 dollars, and we had an agreement with that specific insurance company that they would pay us $125 dollars, they are going to give us the lower of the amount, so because of that reason because it’s so complicated -- and look I’m a
-- I’m a single practitioner physician. It is very difficult to practice in the state of Connecticut, and you know, often these kinds of things eat into making a small business sustainable. If we don’t charge an amount that we know is going to be above the reimbursable amount for most insurance plans, they’re going to give us the lesser of the two, so - -

REP. STAFSTROM (129TH): So, I understand that sort of in the okay if you have one insurance plan that will charge -- that will pay $100 dollars, somebody else will pay $110, somebody else will pay $125. I could almost understand that you code that in your system as $150-dollar procedure, but my question is how do you get to $2000 dollars?

OMAR IBRAHIMI: Well, you know, me specifically I wouldn’t -- I wouldn’t bill $2000 dollars for that procedure.

REP. STAFSTROM (129TH): Okay.

OMAR IBRAHIMI: But it doesn’t -- it doesn’t matter. I could bill $2 billion dollars. I’m still only going to get $100 dollars from the insurance plan.

REP. STAFSTROM (129TH): Right, and then you’re gonna write off the rest of it as unreceivable and take a tax benefit for it.

OMAR IBRAHIMI: I don’t take a tax benefit for what we don’t receive.

REP. STAFSTROM (129TH): You could. Right?

OMAR IBRAHIMI: I -- I like staying out of jail, so.

REP. STAFSTROM (129TH): Okay. [Laughter]. Me too. I -- you know, I guess -- I guess maybe it’s the difference between the medical field and the legal
field, but if my normal hourly rate is $400 dollars an hour and I agree to take a case at $200 dollars an hour, I’m only gonna get -- I’m only gonna bill at $200 dollars an hour for that case because that’s what I agreed to take the case at.

OMAR IBRAHIMI: Right, but you’re -- you’re not bound by insurance companies stating that you are forced to charge a certain amount or that you can’t -- we’re contractually bound by the insurance company to say that we’re not allowed to charge them or somebody with a different insurance a different amount, so we’re not allowed to -- we don’t have the liberty of saying, okay you can pay us this amount without getting into trouble with a difference insurance company, so it’s a little more complicated than -- than --

REP. STAFSTROM (129TH): Right, but I guess the bottom line of my question -- maybe I should just phrase it differently -- is when you set a billing rate for a particular procedure, are you setting it based on what the highest amount one of the eight or ten insurance companies you’re paying will pay you for that or are you setting it above that rate?

OMAR IBRAHIMI: So -- so typically, the intent is that your -- your billing amount is -- is higher than what’s the allowable for the insurances that you take. However, you know, there’s, you know, a few hundred CPT codes that each physician uses, and insurance a might pay more on a specific code than insurance b, and insurance d and e, and so the goal is to have your billable amount that’s above the highest reimbursable value of any of the insurances. However, we’re not -- you know, we’re not allowed to kind of discuss or -- or share this information with other physicians, so it’s a little bit of a black
box, and so I’m -- I’m sure there are instances in where the fee is kind of set higher, but it really doesn’t make a difference because it’s -- it’s what the contractual agreement is between the physician and the insurance company.


REP. BLUMENTHAL (147TH): Mr. Chair, and thank you, doctor for being with us today. When if you -- and we’re just still on the hypothetical -- if you bill $2000 dollars for that skin lesion procedure, you believe that you’re entitled to that remuneration for your services, right?

OMAR IBRAHIMI: The amount that we bill is -- is merely set so that we are making sure that we’re not being underpaid by what we are contractually agreed to with an insurance company, so that’s -- that’s usually the intent with the amount billable.

REP. BLUMENTHAL (147TH): I appreciate that, but I guess what I’m saying is you’re not -- you’re not submitted a fraudulent bill for something you don’t deserve -- you don’t think you deserve to be paid, it’s just that you end up having to negotiate with the insurance company or pay this contractual rate, so you end up getting paid less and having to write it off, but that doesn’t mean it’s the wrong amount to bill, right?

OMAR IBRAHIMI: Do I think I should be paid thousands of dollars for something that will take me 15 seconds to do? No. But do I think I need to be paid something that’s fair? Yes.

REP. BLUMENTHAL (147TH): And, when you submit a bill for something, do you -- do you think that’s a
fair amount to bill for that procedure, right? I’m not --

OMAR IBRAHIMI: Well, that -- that’s kind of a hypothetical example. You know, I -- I think the point is whether it’s a $500-dollar bill or $1000-dollar bill or $2000-dollar bill or $2-million-dollar bill everybody knows what -- what the reimbursement’s gonna be with that particular insurance if you look at the fee schedule.

REP. BLUMENTHAL (147TH): Yeah, I get that, but if the fee schedule -- if you submitted that bill, you believed in that bill, right? I mean you may not ever get paid that amount, but you believe that the services you provided were worth that amount, right?

OMAR IBRAHIMI: I mean I can speak for myself personally. I can’t speak for everybody.

REP. BLUMENTHAL (147TH): Right. I’m just asking you personally.

OMAR IBRAHIMI: Sure. Yes.

REP. BLUMENTHAL (147TH): So, we’ve got a system where you know someone was injured by someone’s negligence or wrongdoing, and they had to come to you ‘cause they were hurt and they needed medical services. You provided those medical services and you billed an amount that you thought was fair for them, and you -- because of contractual relationships and the insurers negotiating power, you didn’t get paid that amount. You have to write part of it off. If the person who hurt your patient is judged to be negligent or a wrongdoer in that situation where they hurt your patient, doesn’t it make more sense for the difference between what you got billed -- I’m sorry -- the difference of what
you billed, which is the value of your medical services as you see it -- the difference between that and what you actually got paid; shouldn’t that benefit accrue either to the person who is hurt or you rather than the person who did the wrong?

OMAR IBRAHIMI: I mean I don’t think I should be paid higher for somebody that was injured than any other patient. That would be discrimination, so I would say I would disagree with that.

REP. BLUMENTHAL (147TH): Thank you for your testimony. I’d just say one more thing. I know you. I don’t think you would do this, and I really do appreciate you coming up to Hartford and testifying on this, but there are medical providers who will bill patients even after insurance has been presented. In fact, I won’t name any names, but it’s happened to me where I used to be on Tricare, which negotiates very good rates, and I received medical services, and I submitted to my Tricare insurance on behalf of the government, and I’m sure that Tricare paid a lot less than that medical provider would have liked to have been paid for it, but they still submitted multiple bills to me for the full amount, and so I -- you said that the -- the patient would never be billed an amount other than what the insurer paid, and I know what you were talking about a general practice, but there are times when a provider less scrupulous than yourself might attempt to recoup the difference from the patient even when they’re not entitled to, and there might be times when that patient was not a law student at the time and is well-equipped to defend himself as I was, and may end up paying that amount, so I just want --
OMAR IBRAHIMI: Sure. Sure. There’s people that are out of network. There are also pharmaceutical companies that charge a lot more for their medications than they cost to make, so you know, I think that’s a reflection of the system and not anything that’s, you know, solely limited to just physicians.

REP. BLUMENTHAL (147TH): Absolutely, and I thank you for your testimony.

OMAR IBRAHIMI: Thank you.


KAREN NOBLE: Good afternoon, Chairman Stafstrom, Representative Blumenthal, Representative Rebimbas, Senator Champagne, Senator Bizzarro, and the distinguished members of the Judiciary Committee. My name is Karen Noble, and I’m the President of the Connecticut Defense Lawyer’s Association, an organization of over 200 civil defense lawyers in Connecticut. I am here to testify in strong support of SB 969.

In 2016, the Connecticut Supreme Court in Marciano Vs. Humanis found a gap in the Connecticut General Statute 52-255a known as a Collateral Source Statute. And, this gap provides unjust enrichment by plaintiff’s in lawsuits. This statute was enacted to make plaintiffs whole, which is what we want, but it always was enacted to prevent double recovery or a windfall. This is what was actually stated in the legislative history if you look at it from 1986. Collateral Sources are payments made by health insurance companies for medical expenses. The statute allows a judge to deduct from a verdict any payments made by a health plan, which a
plaintiff does not have to pay back. The legislative history describes the law as creating fairness for plaintiffs and defendants. Plaintiffs are made whole while defendants pay only the amount spent by the plaintiff, not the amount spent by the health plan or written off.

So, if there was $100,000 dollars in medical bills and the plaintiff paid $10,000, but the health insurance paid $30,000 with the rest of that written off by the doctor, the defendant would be ordered to pay $10,000 dollars to compensate the plaintiff for his actual losses since the plaintiff in that scenario doesn’t have to pay back the insurance company. However, the Marciano Supreme Court found that as the law is currently drafted if the entity paying the medical bills has a lien against the plaintiff to pay back benefits, then the judge is not allowed to reduce the amount of the money awarded at all regardless of the amount of the lien. So, if we take that same $100,000-dollar example in medical bills, and Medicare paid for and has a lien for $30,000 dollars, but the rest of that is written off -- $70,000 dollars written off by the doctor.
Under the current law, the judge would order the defendant to pay $100,000 dollars, even though $70,000 dollars was not paid by the plaintiff or anyone else. The doctor wrote it off. It is not owed to anyone or to any entity. These, ladies and gentlemen, are phantom damages. The plaintiff would be unjustly receiving a $70,000-dollar windfall from phantom damages, and this totally defeats the purpose of the Collateral Source Statute. SB 969 corrects the gap that was identified by the Supreme Court. It requires defendants to pay for any liens, but it also provides for a reduction of phantom damages, which are amounts paid by no one. In short,
it protects the purpose and intent of the Collateral Source Statute.

There may be those who oppose the bill, but I ask you to consider their motivation for doing so [Bell], and whether they will also be unjustly enriched by the statute as it currently stands. The Marciano decision has hampered the ability to settle some cases and assures such as doctors, car owners, property owners may be concerned about increases in premiums to account for the increased settlement in verdict awards from these phantom damages. Thank you for listening to me, and I would welcome any questions.


CARLOS MORENO: Good afternoon, Representative Stafstrom, Representative Blumenthal, Representative Rebimbas, and members of the Judiciary Committee. My name is Carlos Moreno. I’m the state director for the Working Families Organization of Connecticut. We’re a progressive political organization based in Hartford. I’m here today to testify in favor of SB 440, AN ACT PROTECTING EMPLOYEE FREEDOM OF SPEECH AND CONSCIENCE. Since Citizens United, employers have increasingly engaged their workers in the political process. Numerous reports have been made about employers having tried to force their views onto employees. Usually, these attempts come in the form of mandatory meetings or internal messages delivered to employers with indirect threats about possible layoffs, benefits, cuts, and business closure if certain candidates were to win an election.
In 2016, the CBIA urged business owners to talk to their employees about the upcoming election. CBIA President, Joe Brennan, said, we’re not suggesting that employers tell their employees how to vote, but that they inform them about what kinds of policy decisions can help the companies thrive and keep jobs in Connecticut, and which ones would have the opposite effect. Obviously, there’s implicit statements in that kind of a comment and that kind of a practice puts unfair pressure on employees from someone in position of power over them to vote against their own interest potentially. Without a union, a management holds all the power in employee/employer relationship. Failure to comply with employer directives could possibly mean discipline, discharge, and loss of income and security. The best way to deter employers from forcing their views on employees is to pass legislation protecting employee’s freedom of speech and conscience. SB 440 establishes a state labor standard prohibiting employers from disciplining or terminating employees who refuse to attend employer-sponsored meetings or listen to speech communicating the employer’s opinion about a religious or political matters. It’s no different than providing a state minimum wage standard or creating state health and safety standards. I ask you to support workers and protect their constitutional rights. And, thank you for the opportunity to testify before you today.

REP. STAFSTROM (129TH): Thank you. Questions from the committee? I’m seeing none. Thank you very much.

CARLOS MORENO: Thank you.

REP. STAFSTROM (129TH): Tony Walter.
TONY WALTER: Good afternoon, Senator Winfield, Representative Stafstrom, and members of the Judiciary Committee. My name is Tony Walter, and I’m an organizer with the International Association of Machinist and Aerospace Worker’s Union. We represent over 10,000 active and retired manufacturing workers in Connecticut. I’m here today to testify in favor of Senate Bill 440, AN ACT PROTECTING EMPLOYEE FREEDOM OF SPEECH AND CONSCIENCE. I support Senate Bill 440 because it will protect workers from being disciplined or terminated for exercising our constitutional rights. Many workers try to form unions in their workplace because they want a voice on the job and the ability to fairly negotiate wages, benefits, and working conditions with their employers. What should be a dignified and empowering exercise for workers, ultimately turns into a disarray and chaos as employers and union busters repeatedly attempt to divide and coerce workers into voting against their own best interest. As a union organizer, I have run many organizing campaigns in Connecticut and participated in many across the United States, and found employers will spare no expense to keep a union out of their place of business. One of the best techniques management and the union buster uses to harass and intimidate workers is a vigorous campaign of closed-door captive audience meetings during work hours. These meetings were built as mandatory informational sessions, but the reality they were fully scripted by a union-busting consulting form. Union-busting consultant delivered misinformation, made false claims, issued threats, and attempted to instill fear. Fear is the union-busters number one friend. I have attached a video called Confessions of a Union Buster. Marty Levitt
was a union buster or 20 years, and in this video, he talks about how he used fear and how important it is in antiunion captive audience meeting.

International Labor Relations Board under the Obama administration set up a union election from 30 days to about 14 days. These captive audience meetings play an even more important role for the union buster.

The goal of the captive audience meeting is to get workers to mistrust the union more than the company and to get workers away from the real issues, which they called the union in for the first place.

Without a union, management holds all the power in the employee/employer relationship. Failure to comply with an employer directive, means discipline, discharge, and loss of income and security. Union avoidance is a multibillion-dollar industry where law firms like Ogletree, Dickins, and Jackson Lewis specialize in these antiworker tactics. The best way to deter employers from posting their views on employees is to pass legislation protecting employee’s freedom of speech and conscience. Senate Bill 440 establishes a state labor standard prohibiting employers from disciplining or terminating employees who refuse to attend employer-sponsored meeting or to listen to speech communicating the employer’s opinion concerning religious or political matters. It’s no different than providing a statement minimum wage standard or creating state health and safety standards. I ask you to support workers and protect our constitutional rights. Thank you for the opportunity to testify today.

TONY WALTER: That was me.


JOY AVALLONE: Okay. Representative Stafstrom, Representative Blumenthal, Representative Rebimbas, Senator Champagne, and Senator Bizzarro, my name is Joy Avallone. I am the general counsel of the Insurance Association of Connecticut, a state-based trade association serving the interest of the insurance industry in Connecticut. I would like to thank you for the opportunity to come before you and offer comments in strong support of Senate Bill 969, AN ACT CONCERNING THE REDUCTION OF ECONOMIC DAMAGES AND PERSONAL INJURY OR WRONGFUL DEATH ACTION FOR COLLATERAL SOURCE PAYMENTS. Senate Bill 969 will likely enable defendant’s insurers to lower their insurance premiums and prevent double recovery and windfalls to plaintiffs.

Now, the purpose of personal injury law is to fairly compensate a person injured due to the wrongful acts of another for financial losses as well as emotional and physical losses that they’ve suffered. Damages awarded after a trial typically fall into two general categories -- economic damages and noneconomic damages. Now, economic damages are awarded based on an injured party’s quantifiable financial loss as evidenced by medical bills, payments made by or on behalf of the plaintiff, and their lost wages. Now, noneconomic damages are all other kinds of damages such as pain, suffering,
emotional distress, etc. Now, with Senate Bill 969, will only impact awards of economic damages and will have no impact on awards of noneconomic damages. This bill seeks to have economic damages calculated based on actual financial damages and not phantom damages. It really just seeks to have cases where right of subrogation exists, treated the same where no right of subrogation exists.

Now, way of background -- as you’ve already heard testimony on this, I’ll try to make it brief -- but a plaintiff in a personal injury case sees a healthcare provider for injuries sustained. The providers have different rates for the same procedure. Negotiator rates with preferred provider organizations, Medicaid, Medicare, Worker’s Comp, etc. Now, the full price -- the sticker price of the procedure is similar to that of the sticker price of an automobile. It almost always exceeds the amount a consumer pays, and that’s because many consumers have the benefit of private insurance, Medicaid, Medicare, Worker’s Comp., etc. Now, just as consumers negotiate lower rates for care purchases, insurers negotiate lower rates for medical care. Now, providers routinely accept payment of the negotiated discounted rates in full satisfaction of the sticker price of their bill. So, for example, a private insurance will pay $30,000 dollars for medical provider in satisfaction of $100,000-dollar bill. Now, the balance of that $70,000-dollars then becomes a write off for the medical care provider, and no one, including the injured party, has a responsibility to pay that $70,000 dollars. That $70,000 dollars is what we refer to as phantom damages. Now, when you go -- when you have a civil action involving a personal injury or wrongful death claim, evidence of the
$100,000 dollars in billed medical services -- that sticker price is presented at the trial. Now, SB 969 -- I think to your question, Representative Blumenthal -- does not change the amount that is presented during that trial, so that figure will still impact the award of damages. It’s not gonna end up reducing the award whatsoever.

Now, in order to prevent plaintiffs from receiving windfall recoveries [Bell], and to ensure awards are based on the actual financial losses -- I’ll try to wrap up quickly -- 52-225 provides an economic award be reduced by the total amount of collateral sources, which have been paid for the benefit of the claimant. Now, collateral sources include not only payments made by the plaintiff’s insurance company, but also the amount that was written off, and this makes perfect sense to me and I think to the legislature as well because if the plaintiff has suffered no financial loss, there is no basis for an economic award for those phantom damages. So, in summary, we strongly urge you to support this bill.

REP. STAFSTROM (129TH): Thank you. Questions from the committee? Representative Blumenthal.

REP. BLUMENTHAL (147TH): Thank you for your testimony. I’m just gonna ask you a similar question to what I’ve been asking other people. So, you know, I think we’ve heard testimony that doctors submit these bills in good faith, and I guess the question -- and believe that their medical services are worth that amount, and I guess the question I would have is in a situation where someone’s taking a cut, taking essentially a write off -- the doctor or the person that you represent --

JOY AVALLONE: Correct.
REP. BLUMENTHAL (147TH): As the insurer on the defense side, why it should be -- why should it be the defendant who did something wrong who gets the benefit of the discount negotiated by the health insurer?

JOY AVALLONE: We’re talking about compensatory damages here. Economic and noneconomic damages are -- are to compensate people for their losses, so there is no windfall to be had in this case. This money -- the $70,000 dollars is not going to the provider who wasn’t paid the full amount of the bills that -- of the medical bill that they actually issued. It’s going to an injured party who suffered -- who did not suffer that loss, so I’m -- I’m a little confused by the questions and the discussion around these windfalls because there really is no windfall to anybody. These are not punitive damages that we’re talking about.

REP. BLUMENTHAL (147TH): I would agree to that. I don’t think there’s a windfall either. I think -- my point is merely if that right for the provider to get paid the difference existed, wouldn’t that -- wouldn’t it make a lot more sense for that right to exist than for the defendant to get the benefit of the discount that the insurance company -- the health insurance company has negotiated?

JOY AVALLONE: No. Because there is no benefit to be derived from -- by the defendant. The defendant’s role here is just to make the injured party whole, and in paying the benefits in accordance with the collateral source reduction, that’s exactly what they’re doing. By paying them anything more than what was paid on their behalf or written off by them or what they paid in premiums or deductibles, that is an injustice.
REP. BLUMENTHAL (147TH): Thank you for your testimony.

JOY AVALLONE: Thank you.

SENATOR WINFIELD (10TH): Thank you. Are there questions from others? Senator Champagne.

SENATOR CHAMPAGNE (35TH): I think I -- I think I got this a couple of speakers ago --

JOY AVALLONE: [Chuckling].

SENATOR CHAMPAGNE (35TH): But I just want to verify. So, we all get our medical bills, and the medical bills are always higher than obviously, there’s a write off, and whatever’s left my insurance pays, and if I have a large deductible -- I got a $2000-dollar deductible -- I got to pay the first $2000 dollars, and I’m happy I don’t have to pay the whole doctor’s balance. But if I get into a car accident and you know, the doctor sends in a bill of $100,000, I -- my insurance company pays it but he only pays -- they pay $30,000 because they negotiated it.

JOY AVALLONE: Right.

SENATOR CHAMPAGNE (35TH): The rest of that doesn’t exist because the doctor just writes it off. If I go to trial because the other guy hit me, right -- in today’s law, I can say I -- I’m at a loss for $100,000 because that’s what the doctor billed me.

JOY AVALLONE: If there’s a right of subrogation.

SENATOR CHAMPAGNE (35TH): Okay.

JOY AVALLONE: Right, but so in either case -- like we’re not trying to change the evidence that you’re able to present to the jury or the judge, so you
have the benefit of showing hey listen my medical services cost $100,000 dollars regardless of how much was actually paid in satisfaction of that.

SENATOR CHAMPAGNE (35TH): Okay.

JOY AVALLONE: So, we’re not trying to change that at all. This collateral source reduction comes after that award phase, so there’s a secondary like phase where they say, okay, like this is the award — like, we’re gonna award you $100,000 dollars in medics, then there’s a second part, and they show -- you show the judge basically what was actually paid on your behalf.

SENATOR CHAMPAGNE (35TH): Okay.

JOY AVALLONE: So, -- so --

SENATOR CHAMPAGNE (35TH): Which is the $30,000 dollars?

JOY AVALLONE: Right, so the $30,000 dollars, and then if it was $70,000 dollars that we have written off, then that comes off the $100,000 dollars. But then you have the benefit of having whatever you paid in premium or deductibles or copays, that gets added back in so that you’re made whole.

SENATOR CHAMPAGNE (35TH): Right.

JOY AVALLONE: And, I think we’re kind of -- we’ve stepped away from that, like we’ve lost that, but -- so you are being made whole, and the provider is made whole because they’ve already been paid per the contract terms with the insurance company -- Medicaid, Medicare, etc.

SENATOR CHAMPAGNE (35TH): Okay. And, if I had -- if I have to continue to pay the $100,000, like which has been going on for some time or you know,
just the whole amount, that’s figured into what I have to pay every year in my car insurance?

JOY AVALLONE: Well, if you had to pay -- if you had to pay -- if there was some kind of obligation, an outstanding bill, that would also be presented, so that’s not going to be -- you’re not going to like write off or get a reduction for the full $100,000 because there is still a right of subrogation or a right of reimbursement.

SENATOR CHAMPAGNE (35TH): Right. Right.

JOY AVALLONE: You still have an obligation.

SENATOR CHAMPAGNE (35TH): Yeah. I went through that before.

JOY AVALLONE: Yeah.

SENATOR CHAMPAGNE (35TH): Because after the insurance paid it, you know, the driver ended up paying, and then the insurance company makes a deal with you or with the settlement so that they get paid. But my point is the $70,000 that’s left regardless of anything else, under the current law right now, that $70,000 dollars would still go to who if we didn’t change this law?

JOY AVALLONE: It goes to the plaintiff.

SENATOR CHAMPAGNE (35TH): Okay.

JOY AVALLONE: So, they would not only get the $70,000 dollars, but they also would get the benefit of having whatever premiums they paid, copays, deductibles as well.

SENATOR CHAMPAGNE (35TH): Yeah. And, that part of the law basically is a reimbursement for what was actually expended, not to get extra money? Is it --
JOY AVALLONE: Not what was expended because that money was never expended. Nobody ever paid that money.

SENATOR CHAMPAGNE (35TH): No. No. I understand that.

JOY AVALLONE: Yeah.

SENATOR CHAMPAGNE (35TH): I understand. Maybe I’m giving the wrong -- wrong example, but the way I’m understanding it is there’s $100,000 dollars, $30,000 dollars of it was actually paid.

JOY AVALLONE: In full satisfaction of the $100,000 dollars.

SENATOR CHAMPAGNE (35TH): But the doctor’s bills show $100,000, so it -- am I correct up to that point?

JOY AVALLONE: The bill is $100,000 dollars, but it’s satisfied by $30,000-dollar payment.

SENATOR CHAMPAGNE (35TH): Right.

JOY AVALLONE: So, there’s a zero balance.

SENATOR CHAMPAGNE (35TH): So, there’s a zero balance.

JOY AVALLONE: Yep.

SENATOR CHAMPAGNE (35TH): But with the law today, somehow that extra $70,000 is going to whoever filed the lawsuit?

JOY AVALLONE: It is if there’s a right of subrogation.

SENATOR CHAMPAGNE (35TH): Okay.

JOY AVALLONE: So, only --
SENATOR CHAMPAGNE (35TH): Okay.

JOY AVALLONE: If you’re a private insurer paid -- so, you’re an injured party, you have insurance.

SENATOR CHAMPAGNE (35TH): Right.

JOY AVALLONE: Your private insurance would -- it’d be the one paying the $30,000 dollars to the doctor for the $100,000-dollar medical bills.

SENATOR CHAMPAGNE (35TH): Right.

JOY AVALLONE: There is -- I don’t know how to -- there would be a right of -- right of subrogations -- there’s no right of subrogation, so there’s going to be the collateral resource reduction, yes. The change is -- that we’re trying to make here is if there is Medicare or Medicaid or Worker’s Comp and $30,000 dollars has been paid on your behalf in full satisfaction that you’re gonna get the full $30,000 dollars to reimburse --

SENATOR CHAMPAGNE (35TH): Them?

JOY AVALLONE: The provider.

SENATOR CHAMPAGNE (35TH): Right.

JOY AVALLONE: Right, but still there’s really no change. There’s still $70,000 dollars in phantom damages there.

SENATOR CHAMPAGNE (35TH): Yeah.

JOY AVALLONE: So, why should you get it in a case where there’s a right of subrogation when you wouldn’t get it in a case where you had a private plan?

SENATOR CHAMPAGNE (35TH): And, that’s what I’m talking about.
JOY AVALLONE: Yeah.

SENATOR CHAMPAGNE (35TH): That $70,000 dollars.

JOY AVALLONE: Yeah.

SENATOR CHAMPAGNE (35TH): So, really this is to fix it so I don’t get the $70,000 dollars because I didn’t pay that.

JOY AVALLONE: Yes.

SENATOR CHAMPAGNE (35TH): That -- that’s why [Crosstalk].

JOY AVALLONE: [Laughing] I’m very sorry, yes.

SENATOR CHAMPAGNE (35TH): That’s the whole point I was trying to make here.

JOY AVALLONE: That’s exactly right.

SENATOR CHAMPAGNE (35TH): So, yeah, so if everything’s taken care of just under this part of the -- the lawsuit, the $70,000 dollars I don’t deserve it.

JOY AVALLONE: Correct.

SENATOR CHAMPAGNE (35TH): Because that part of it is just reimbursing me for the $30,000, which I have to turn over to somebody?

JOY AVALLONE: Right.

SENATOR CHAMPAGNE (35TH): Okay.

JOY AVALLONE: You suffer no financial loss, so there should be no --

SENATOR CHAMPAGNE (35TH): Got it.

JOY AVALLONE: Award to --
SENATOR CHAMPAGNE (35TH): All right.

JOY AVALLONE: Yeah. [Laughing].

SENATOR CHAMPAGNE (35TH): Thank you.


SENATOR BIZZARRO (6TH): Thank you, Mr. Chairman. Just with respect to the formula for adding back the premiums that are paid, how do you calculate -- how do you calculate premiums in cases where there was Medicaid or Medicare or a self -- you know, some kind of like self-funded plan or something like that?

JOY AVALLONE: I don’t --

SENATOR BIZZARRO (6TH): Would you be able to?

JOY AVALLONE: I don’t believe so.

SENATOR BIZZARRO (6TH): Okay.

JOY AVALLONE: I’m unsure though, so I don’t want to answer incorrectly.

SENATOR BIZZARRO (6TH): So, then wouldn’t that be an argument for, you know, I probably should have asked this of Attorney Rigg, but during my -- I don’t know if you were here during my exchange with him --

JOY AVALLONE: I was.

SENATOR BIZZARRO (6TH): But wouldn’t that be an argument for treating those two circumstances differently? In other words where there is a right of subrogation versus where there isn’t? ‘Cause he and I were engaging in a little back and forth about whether or not this was, you know, actually a
loophole, and I took issue with his characterization of it as a loophole. But wouldn’t that be an argument for treating those two scenarios differently? I mean in one case you can -- you might be able to calculate premiums that even add back and use it in your formula, and in another, you can’t.

JOY AVALLONE: Well, but the whole point is just to make the person whole -- the injured party whole, so let’s say Worker’s Comp is involved. You’re not paying anything in premiums for Worker’s Comp. You’re not paying anything in premiums for Medicaid, so there’s nothing to be added back, so it’s kind of like a mute issue.

SENATOR BIZZARRO (6TH): Somebody’s paying it though, right?

JOY AVALLONE: Somebody is paying, yeah, but regardless of whether or not there’s a collateral source reduction, the person who’s paying that is not the one who’s being reimbursed, so it wouldn’t be your employer who’s getting reimbursed for Worker’s Comp.

SENATOR BIZZARRO (6TH): Right. It’s like I understand your point. I think it -- it is relevant to my earlier points about whether this is actually something that was negotiated where you have you know one group surrendering some rights in exchange for something else, and the argument back was well no, you know, this body, this committee actually tightened up some language some years ago, and then inadvertently forgot to make provisions for a different scenario, and so I just as you’re talking about it and going through the formula it occurs to me that perhaps there’s a reason for that, but
anyway. Thank you very much for your testimony. Thank you, Mr. Chairman.

SENATOR WINFIELD (10TH): Thank you. Others? I’m seeing none. Thank you very much for your testimony.

JOY AVALLONE: Thank you.

SENATOR WINFIELD (10TH): Next, we’ll hear from James Young, followed by Rod Mantell.

ROD MANTELL: Good afternoon, Mr. Chairman and other distinguished members of the Judiciary Committee. My name is Rod Mantell. I’m the current Secretary of the Connecticut Defense Lawyer’s Association, and I’ve been a practicing defense attorney for close to 30 years here in Connecticut. I’m here to testify in support of SB 969. Thank you for allowing us the time to comment on this bill. I know it’s been a long afternoon for your folks, and this bill does not seek a radical change of the Collateral Source Statute. Rather, it addresses what most of the practicing attorneys in the state thought was meant by the legislature with the collateral source rule, which was to promote fairness and prevent windfalls for economic damages that no one truly suffered. SB 969 simply clarifies that a collateral source reduction is in fact available for sums that are not subject to a lien. The bill keeps the concept that if there is a lien there is no right to a collateral source for the amount of that lien. That’s fair. If the plaintiff has to pay somebody back, the defendant should pay for that ‘cause those are damages that were actually suffered by the plaintiff.

What SB 969 addresses is the concept as stated by the Supreme Court Marciano that all bills charged
whether paid or not are exempt from collateral source reduction if there is any lien involved whatsoever. Those are the phantom damages that no one has paid. Marciano applied a strict reading of the statutory language itself, and declined an invitation made by the defendant’s attorney in that case to review the legislative history to see what the legislature meant when passing the collateral source rule.

So, Marciano invites you, the legislature, to examine whether you meant something other than what the Supreme Court says you meant when enacting the collateral source rule. If so, then the language of the statute has to be tweaked to be just a little bit clearer that the collateral source rule is not meant to create windfalls for anybody, and requiring — requiring defendants to pay for damages that no one has truly suffered. I can give you a real-world example. Just last week, I got medical in a case. There are $135,000 dollars in charges from two hospitals. Medicare paid about $15,000 dollars, the state Medicaid paid about $5000 dollars, and the rest was written off, not paid by anyone. The plaintiff paid zero. Now, the plaintiff’s attorneys are already pressing us saying, hey, Rod, you owe $135,000 dollars in this case. If we go to trial under Marciano, he’s probably right, and if it is not paid up front, there’s no incentive for a plaintiff to settle without getting every penny. I’m not faulting them. They’re given the ball. If I were the plaintiff’s attorney, I’d run with it too, you know, but if they don’t get that, if not, they can force a trial, tie up the courts. You know, and this type of example gets played out literally every day, some larger, some smaller.
So, if the legislature meant the collateral source rule to promote fairness in equity and prevent windfalls for damages that were never truly incurred, SB 969 is needed to fix the issue identified in the Marciano case. Again, this is simply a clarification. It is not a radical change. [Bell]. Thank you for your time.

SENATOR WINFIELD (10TH): Thank you. Questions or comments from members of the committee? Representative Blumenthal.

REP. BLUMENTHAL (147TH): Thank you, Mr. Chairman. And, I thank you very much for your testimony. So, the decision of Marciano was not based on strict reading rule but a plain meeting rule, right?

ROD MANTELL: Yes.

REP. BLUMENTHAL (147TH): So, and we have the plain meeting rule that candidate of statutory construction because the words that are actually in the statute are the best evidence of what the legislature intended when it passed it, right?

ROD MANTELL: That’s of interpretation. Yes, sir.

REP. BLUMENTHAL (147TH): Okay, and thank you for your testimony.

SENATOR WINFIELD (10TH): Are there others? I’m seeing none. Thank you very much for your testimony. We’ll next hear from William Comerford, followed by Mikhail Nolan.

WILLIAM COMERFORD: My name is Bill Comerford. I support the bill 7315, which is AN ACT CONCERNING ADJUDICATION OF COMPLAINTS MADE AGAINST A SEXTON. Currently, there is a state statute 7-66 that defines the role in duties of a sexton of a
cemetery, and within that statute, the sexton is supposed to be supplying town clerks with sexton reports and burial permits, and if that sexton of that cemetery does not do that, then the state statute defines imposable fines up to $100 dollars a day per occurrence. A friend of mine had passed away back in 2012, and asked me to get involved with this. I did. Seven years later, I still don’t have clarity as to where I go to potentially make an allegation or a complaint of any sexton in the state of Connecticut that has violated the statute. What that means is that if you had an ancestor that died over certain say 10, 15, 20 years ago, and you went to a town clerk’s office to look up the sexton report, which would identify based upon the burial permit that’s supposed to be supplied where the location of your loved one is buried. It’s public record. It’s supposed to be given to the town clerk. It’s all spelled out in 7-66. For seven years, I’ve been trying to get through even through one of my Representatives, Mary Mushinsky, will reach out to the Office of Legislative Research, and this is the -- one of the sentences that is in -- this is in the information I supplied to you guys. Researchers told me that this is a tough question because there is not a clear answer in the statutes. The bill that’s in front of you defines the easy and the most realistic solution. Probate courts have oversight of cemetery associations as well as the wills of the loved ones of the deceases. The way this new statute -- well the statute as amended someone such as myself or anybody because I’m fairly familiar with what happened down in Bridgeport recently where something similar happened that the Superior Court had to do an injunction because the sexton there made a mess of the cemetery. They
couldn’t find the records. The town clerk didn’t have them, so the short end of the story is with this legislative change, it gives the probate court full oversight so if someone such as myself has a complaint against a cemetery or sexton, I bring that alleged claim or the facts from the town clerk’s office that clearly they don’t exist to the probate court. The judge notifies the cemetery of the issue. There’s a hearing at the probate court. If it’s in fact proven that it goes to the -- I believe it’s the Chief State’s Attorneys Office. This would have saved myself seven years. To this date, I don’t have an answer. It’s happened more times than I would like, and you’re potentially talking tens of millions of dollars in fine for neglect of people’s statutory duties [Bell], and I thank you.

REP. STAFSTROM (129TH): Thank you. Questions from the committee? I’m seeing none. Thanks for being with us.

WILLIAM COMERFORD: Thank you.


PAT THARP: It’s Tharp.


PAT THARP: Just as an aside, Tharp is Irish, Thorp is English. [Laughter].

REP. STAFSTROM (129TH): Oh. I guess it’s a bad mistake to make the day after St. Patrick’s Day, huh.

PAT THARP: Chairman Stafstrom, members of the Judiciary Committee, my name is Pat Tharp. I’m here
as President of the Central Connecticut Paralegal Association seeking that to present objections -- our concerns with Senate Bill 1059. Primarily, the first section of the proposal would make it be unauthorized practice of law for anyone other than an attorney to represent individuals in front of administrative agencies within the state of Connecticut. The phrasing within the state of Connecticut would seem to apply to both state and federal agencies. Currently, many federal agencies allow nonlawyers to represent individuals in their tribunal hearings such as the IRS, the INS, Social Security. Others with a certain amount of training and certification allow nonlawyers also to represent them. One of the main issues that we have been addressing at the Central Connecticut Paralegal Association and that are national affiliate, the National Federation of Paralegal Associations, is the justice gap that currently exists in this country where so many people are unable to represent themselves because of either through financial or noneducational standards, and they have no access to attorneys because they can’t afford them. A number of people in low-income families can get some through state agencies or certain programs that have been instituted to allow pro bono representation, but there’s also a large number of people who don’t fall within the economic standards, guidelines for those agencies, but who live paycheck-to-paycheck and would not be able to come up with a $10,000-dollar retainer for an attorney to represent them before a state agency. Nowadays, a lot of times there are paralegals who will help them out to a certain degree. They don’t provide advice, they don’t sign up alliance, they don’t do anything that’s not permitted under the current statute, but
they do assist people at these agencies and give them at least some information as to the proceedings that they go through.

A lot of states are starting to address this justice gap through the access to justice programs that are being instituted throughout the country. Washington State, for instance, has come up with a limited licensed legal technician who goes through a certain amount of training and is then permitted within a very strict parameters to represent people in court in family issues such as divorces, child custody. The New York State has what they call the New York Navigators who are people who will accompany individuals to housing and consumer protection courts to assist them through the process as well. There has been talk about by our association and [Bell] other -- the Connecticut Bar Associations’ Legal Section to come up with some kind of a program to bring forward in the state of Connecticut. However, that would be totally foreclosed by not allowing nonlawyers to assist people through administrative hearings. Thank you.

REP. STAFSTROM (129TH): Thank you. Questions from the committee? I’m seeing none. Thanks for being with us. Lincoln Woodard.

LINCOLN WOODARD: Good afternoon, Chairman Stafstrom, Winfield, and members of the committee. My name is Lincoln Woodard. I’m the currently on the Connecticut Trial Lawyers’ Association. The CTLA strongly opposes raised bill 969, which proposes changes by the insurance industry to our collateral source statute. The proposed language is an attempt to legislatively reverse a unanimous decision by the Supreme Court Marciano Vs. Humanis. Marciano did not change anything but instead simply
held that the legislature meant what it said when the law was created. That this collateral source statute only extends to cases where there’s a provider of health benefits that does not have a right of reimbursement. Before 1996 -- 1986, our longstanding principle of tort law was that when a wrongdoer hurts someone that necessitated medical care, the wrongdoer was accountable for those reasonable and necessary medical expenses as determined by a jury or fact finder -- reasonable and necessary expenses. That’s the determination -- whether or not a provider reduced or forgave a portion of the bill, so there’s cases out there where a doctor forgave the patient for a bill, and there’s a whole discussion in the tort law about whether to excuse -- to -- to allow the defendant to gain that benefit or because someone actually went and precured insurance that they should get that additional benefit where they are the ones that caused the harm. This statute was created in derogation of that traditional rule but only for health payments.

For those cases where there is not a right of reimbursement, it does two things. First, it held -- well, actually, for collateral -- for health benefits, it does two things. The first thing it did is say private health insurers cannot seek a right of reimbursement out of liability cases. This was a push by the liability industry. In fact, nationally there were many states passing these bills in the 80s, so that they were not stuck with subrogation in every -- every case. And, second, it created a formula for those cases but only those cases to say that okay we will learn what amounts were paid by the health insurer, but then in the equitable balance, we will also consider what the
premiums are, the cost to the -- to the injured victim to obtain that health benefit, and that was the equitable balance that was struck in this law. The statute didn’t apply to other type of collateral sources like disability insurance for lost wages, and that was in fact removed from the bill during the course of these massive negotiations that took place back in the 80s.

For all other types of benefits, Worker’s Comp., Medicare, Medicaid, it has never applied, and the language is clear. The defendants are free to contest what is a reasonable and necessary medical expense during the course of the trial. They are not allowed to bring in the insurance and what a provider paid, but that is the issue for trial. This only occurs after a verdict. I’m happy to answer any questions, but we would urge you to -- we certainly strongly oppose the bill.

REP. STAFSTROM (129TH): Questions from the committee? I’m seeing none. Thanks for being with us.

LINCOLN WOODARD: Thank you.


SUSAN DEBOIS: Distinguished members, Chairman, thank you for this opportunity. I am talking today about my opposition to raised Bill No. 1059. I oppose this bill for many reasons. I’m a former Department of Social Services Medicaid eligibility specialist, and now I assist families who must apply for Medicaid. I do this as an independent contractor. I do not practice law or falsely assist people. This bill will eliminate my ability to make a living, and it affects other people besides me who
will not have jobs if the changes proposed in this bill went into effect. Social workers -- there are social workers, business office staff at nursing homes, people in -- in the town senior services -- all these people would not be allowed to help people apply for long-term care Medicaid. And, this would really increase costs for a lot of people, and many people who need help with their Medicaid applications do not have the money to hire an attorney. In the free marketplace for Medicaid advice that now exists in Connecticut, when you need help with a difficult process of applying for Medicaid, there are numerous individuals or legal practices you can select to help you. This bill will eliminate any of the less expensive options. There is nothing in the legal education that makes attorneys uniquely capable of assisting with Medicaid applications; yet, this bill will give all attorney’s regardless of their specialty the sole right to assist with long-term care Title 19 processing. I’ve asked some attorneys whether they studied the Medicaid process in law school. They do not. Most people, lawyers included, learn Medicaid on the job. It seems absurd that I should lose my livelihood in a position I am good at because I got an MA in history rather than a JD. I do make a living as a Medicaid specialist. This is after 20-something years of working for the Department of Social Services doing Medicaid applications. I’m very familiar with all the -- with the rules, how to do an application, all the requirements that people have to meet. I have to tell them about the requirements in order to help them, and I care about my clients. I try to do a good process for them, and I know I’m not an attorney, and I tell my
clients to contact an attorney for trust, home transfers, and other clearly legal problems.

The people at DSS who process Medicaid applications, they don’t have law degrees. The people in the department who determine hearings and make decisions on -- on [Bell] higher processes, they don’t have law degrees either.

REP. STAFSTROM (129TH): Ma’am, can I just ask you --

SUSAN DEBOIS: Yes.

REP. STAFSTROM (129TH): Do you carry professional liability insurance?

SUSAN DEBOIS: No, but I should.

REP. STAFSTROM (129TH): Yeah.

SUSAN DEBOIS: Yeah. I don’t -- you know, it’s --

REP. STAFSTROM (129TH): I think that’s --

SUSAN DEBOIS: I’ve just been doing this for a few years, and --

REP. STAFSTROM (129TH): Right. I think that’s one of the concerns of the proponents of this bill.

SUSAN DEBOIS: Well, I think that that would be -- that would be a reasonable requirement. Having a law degree, I don’t think is a reasonable requirement.

REP. STAFSTROM (129TH): Right, but lawyers in the state of Connecticut -- practicing lawyers have to maintain professional liability insurance, and also have to pay into the client security fund so that folks who receive bad advice in a time of need, and you know certainly applying for Medicaid would be
one of the times of need, have a recourse should -- should the advice they receive not be, you know, within the --

SUSAN DEBOIS: Appropriate.

REP. STAFSTROM (129TH): Applicable standard of care.

SUSAN DEBOIS: Well, I -- I don’t disagree with that entirely. I just think that if you could bring more people in that -- there are also a lot of people who do know Medicaid and who do help. I mean look at nursing -- go into a nursing home, business office, the social workers, everybody --

REP. STAFSTROM (129TH): Right.

SUSAN DEBOIS: They’re the ones doing it, and people -- a lot of people cannot afford an attorney.

REP. STAFSTROM (129TH): Sure, and I get it’s one of those you get what you pay for type of -- type of things that if you’re paying for legal advice, you’re paying for legal advice. If you’re not, you’re not, but --

SUSAN DEBOIS: But you can pay for Medicaid advice, and that’s not legal advice necessarily.

REP. STAFSTROM (129TH): Right, but it just -- it just strikes me as concerning that -- that someone could go to someone who holds themselves out as a professional and -- and having experience in help -- in assisting to file Medicaid applications and you know, if the advice they receive is less than the applicable standard of care that their ability to seek redress from that professional, you know, would not be the same as the level they would have if they retained the services of an attorney.
SUSAN DEBOIS: Right, and -- and there are attorneys who I -- when I worked for the state who didn’t do a very good job of advising people, and then, you know --

REP. STAFSTROM (129TH): Right, but if somebody received bad advice from their attorney, they always have the recourse of a -- either a professional grievance complaint with the Statewide Grievance Council or a private civil action against them for malpractice.

SUSAN DEBOIS: Well, they could -- I mean they couldn’t do private civil action against somebody without -- without a law degree?

REP. STAFSTROM (129TH): Perhaps they could, but without an insurance coverage, the chance of being able to collect damages against you is probably fairly limited.

SUSAN DEBOIS: So, you could really -- you could really deal with that by, you know -- by adding some sort of requirement to carry --

REP. STAFSTROM (129TH): Some mandate -- mandate that anyone who is going to provide advice in the Medicaid context maintain a professional liability insurance coverage in a set amount; you wouldn’t have an objection to that requirement?

SUSAN DEBOIS: I don’t think I would. No.

REP. STAFSTROM (129TH): Okay.

SUSAN DEBOIS: I think that that -- you know, that you do want to protect people from wrong advice, absolutely.

REP. STAFSTROM (129TH): Okay.
SUSAN DEBOIS: Thank you.


CHRIS KLIMER: Thank you Chairman. Thank you, committee. It’s been a long day, and I appreciate your patience and your excellent questions. My name is Christopher Klimer. I’m a family historian with almost 20-years-experience including extensive time documenting cemeteries, mapping them, and other things. I’m also here representing the Connecticut Professional Genealogy Council, and I’m here to support House Bill 7315, AN ACT CONCERNING EDUCATION OF COMPLAINTS MADE AGAINST Sextons to PROVIDE A JUDICIAL MECHANISM FOR THE RESOLUTION OF COMPLAINTS MADE AGAINST Sextons. Inadequate reporting and erroneous reporting and record management by cemetery sextons is a concern, and I appreciate Mr. Comerford being in here earlier talking about the Bridgeport situation, but I can say even today I stop by a townhall to check some records on the way to today’s meeting, and found records with missing grave locations. Things like that are problematic, not only for historians looking backward but if you can imagine, people going to the cemetery about to bury a loved one and find out their spouse is not next door or the plot is already occupied. Records to matter, and they have present consequences.

The system today provides no mechanism to address complaints about sexton performance, and I think it’s in a front for a civil society. We thought it was important to set up the system and to require proper record keeping, and without enough effective mechanism of resolving problems, it’s just
offensive. So, without that, I urge you to support House Bill 7315, and I’d be glad to take any questions. Thank you.

REP. STAFSTROM (129TH): Questions for the committee? I’m seeing none. Thanks for spending the day with us.

CHRISTOPHER KLIMER: Thank you.


RUTH BROWN: And, yes, it’s been a long day. Thank you all very, very much for your time and your services. My name is Ruth Brown. I am from Manchester, Connecticut. I am here today also to support this HB 7315, and try to stress on everybody who important this first step is. I’m Executive Director of a nonprofit basically volunteer organization called Connecticut Gravestone Network, which I have been working with and done research for over 30 years. Just to make a note of it, I also work very closely with the state archeologist, and he supports a lot of my projects. What I have seen in my 30 plus years in questioning boundaries, placement of old stones, etc., etc., it’s -- it’s just endless how much is out there that the average person just doesn’t understand and doesn’t even realize. I am here today because I really want to ask for the support because I the last two years and especially working with the case in Bridgeport, which is our worst travesty ever, I have now become a full-fledged advocate that we do need a state level of oversight to be able to go to with some of these cemetery concerns and questions. Most states do have a cemetery commission of some sort that you can go to with these things. I have been with many other people faced with a lot of frustration that
even though I can point out and show you numerous laws that are being broken consistently and violations of health codes that are being broken, there is nothing that anyone can do about it because our laws contradict each other, and they don’t allow us the authority to name someone to step in and -- and deal with it, especially if it is a private piece of property, which was the whole problem with the Bridgeport case.

The state police weren’t allowed to take care of it. The town municipality isn’t allowed to take care of it. So, what does this tell me? I -- I -- one explanation that makes this very clear under what the state police and I discussed, there’s no reason why I can’t go out and buy two acres of property, call myself a private cemetery association, and allow people to be buried there. You know, we don’t do the mobs as much anymore, but you know that kind of burials, and nobody can do anybody about it because it’s my private property; therefore, I don’t have to abide by your state statutes and health codes, and this is the same when you get into the Catholic cemeteries. I get the same responses.

So, I strongly support this bill because this to me is the first step with all the people I deal with and the people, Mr. Comerford and Mr. Klimer, here today -- we all know many, many people who are dealing with these questions and these problems, and the situation nowadays where it is okay to rebury. In other words, we’re selling old space and putting in new burials, and it’s of course not represented that way. It’s very bad business, and I’m seeing it happening in a lot of places over and over again. It’s wrong. It’s just absolutely wrong, so supporting this 7315 bill [Bell] with sextons laws,
which have never been enforced ever. There has never been a case prosecuted that we could find -- is the first step in going forward with these procedures to get somebody to help us reckon what is right and what is wrong and some place for us to have a voice and someone to listen.

REP. STAFSTROM (129TH): Thank you.

RUTH BROWN: Thank you very, very much.

REP. STAFSTROM (129TH): Questions from the committee? I’m seeing none. Thank you. Henry Martocchio. [Background conversing]. That was -- that was a duplicate.

HENRY MARTOCCHIO: Good days members of the committee. My name is Henry J. Martocchio. I’m here today testifying regrettably against 7095, AN ACT CONCERNING GRANDPARENTS’ VISITATION. I am the survivor of an eight-year attack by Judge Shluger on my parental rights over an autistic child that he found deemed to wanted to interfere with my parental rights to medical treatment with an M.D. doctor in the state of Connecticut, but not only that, but he found a significant relationship with an autistic child -- 3-year-old -- 2-year-old child. It’s just amazing to me today we’re gonna even weaken the waters even more of Troxel Vs. Granville or Roth v. Weston, but even worst of all is our Fish v. Fish case where -- Fish v. Fish. In Fish v. Fish, the aunt never even had a verified petition, again, to come into the system and get custody of that -- that particular child. I find it hard as a parent 'cause as I went through it how am I as a parent to prove the dysfunctional of two other parents who raised their children at the time I could not witness their raising, but I only see the outcome of their
raising. So, one of their child was a domestically violent child and the other child seems to love to be beaten and being arrested and everything else. So, again, to me, I have to say to myself how is the state not going to stay on both parents a verified petition if they’re dead, but that means that there’s an adopted child involved now, and my feeling we send children out to adoption under the fact that we want to end that -- that vicious cycle of dysfunctional families, and here if we grant a petition on that, what we’re continuing that vicious cycle because somehow, some way that grandparent’s gonna tell stories of how great their family is or whatever it might be. I caution you with very caution. I mean, again, I’m up here because of one fact -- a judge determined he has a better lifestyle than what he was mandated by common law to give, and as a common law state, we can’t turn our laws into holy matrimony. I would suggest again amend 4656 to be before a judge can reduce a parent’s rights and go to the best interest there has to be a clear and convincing standard of 120-129. That’s harm and abuse. We can’t just start making up these rules as we want to go along because we have pity. I feel bad for that Representative -- Representative that was here earlier testifying that he’s not able to have access to his grandchildren. There’s a reason. I don’t care the reason why, and the state should not question that, but parent’s right and send them into my case $100,000 dollars-worth of litigation. That could be best spent on my autistic child’s therapies. I was mandated as a parent to have early interventions, instead I had obstructions. They said I got into coercions. They said I got into wanting and malice attempts to defraud me of my fit parental rights, so that somebody else can make
money off of grandparents. [Bell]. Unfortunately, I will wrap it up here and now, but Judge Shluger is coming up for re-nomination. I’m begging anyone from this committee to sit down and review the files with me because in three minutes I cannot convince 169 legislators this man is taking the law into his own hands and should not be re-nominated.

REP. STAFSTROM (129TH): Thank you. Questions from the committee? I’m seeing none. Thanks for being with us.

HENRY MARTOCCHIO: Thank you, and enjoy the rest of your evening, guys.

REP. STAFSTROM (129TH): Is James Young or Mikhail Nolan in the room? No. Anyone else from the public who didn’t have a chance to testify who would like to? I’m seeing none. I declare this public hearing closed.