Submitted to the Senate Committee on Economic Development, Housing & General Affairs

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Thank you for giving me the opportunity to speak to this historic bill. My name is Liz Medina, and I am the Executive Director of the Vermont State Labor Council, AFL-CIO, which is our state's federation of labor unions. We are part of a coalition of over 22 union locals and allied organizations supporting this bill, S.102, which we are informally referring to as the Vermont Protect the Right to Organize or PRO Act.

At heart, this bill is about giving respect and dignity to workers. As one of my mentors and former Vermont labor organizer Ellen David Friedman once told me, and I am paraphrasing here, "It is all about respect. The most basic principle of union organizing is respect. Respect for yourself and respect for your coworkers. Respect for the work you and your coworkers do, respect of you and your coworkers' humanity, respect of you and your coworkers' intelligence."

S.102 is about giving workers the dignity and respect they deserve. Almost every time a worker approaches me for help in forming a union with their coworkers, they tell me that their employer is always talking at them; that their employer doesn't want to hear what they have to say; that they are afraid of saying anything let alone doing anything that could be construed as insubordinate, such as walking away when their employer starts talking at them about subjects that have nothing to do with their work. Take a recent example of an employer interrogating a worker on an active drive, asking them, "Were you at a union meeting the other night? Do you know how bad a union would be for the company?" and on and on…Never mind that the employer is effectively implying that workers coming together to dare ask for better wages, benefits, and working conditions is inherently a bad thing. What can a worker, who depends on that job to meet their basic needs, do in that situation right now? Nothing.

S.102 corrects, in the words of NLRB General Counsel Jennifer Abruzzo, "a fundamental misunderstanding of employers' speech rights," balancing employers' current absolute free

speech with an acknowledgment that workers, too, have free speech rights. Importantly, Abruzzo points out the following:

> "the Board must keep in mind the basic "inequality of bargaining power" between individual employees and their employers, as well as employees' economic dependence on their employers. Over 75 years ago, the Board recognized that the [NLRA] protects employees' right to listen as well as their right to refrain from listening to employer speech concerning the exercise of their Section 7 rights. Forcing employees to listen to such employer speech under threat of discipline—directly leveraging the employees' dependence on their jobs—plainly chills employees' protected right to refrain from listening to this speech in violation of Section 8(a)(1)"

However, the Board's *Babcock & Wilcox* case of 1948 threw out prior precedent which held that an employer violated the Act when it held compulsory meetings concerning union representation. Abruzzo's understanding that *Babcock & Wilcox* was decided incorrectly may eventually prevail and correct course; but, until then, states have the right to establish minimum working conditions and regulate activity touching upon deeply rooted local concerns.

What Section One asks is for employers to treat their employees like free, intelligent human beings. It requires that workers not be treated as a "collectivized object of speech," which, as Yale Professor Charles Black eloquently wrote is "powerless to escape and powerless to answer." It merely frees workers from listening to very specific and unwanted political and religious speech. It is important to remember that employers would still be able to say whatever they want about whatever they want. The bill specifically prohibits employers from discriminating, disciplining, or terminating a worker who does not want to stay and hear coerced speech on religious or political matters. Again, as stated by former AFL-CIO General Counsel Craig Becker with respect to Connecticut's Protecting Employee Freedom of Speech and Conscience Act:

> "States are permitted to adopt regulations, even when they affect labor relations when they address matters "deeply rooted in local feeling and responsibility. This is because in these areas there is 'an overriding state interest' in the regulations. The state regulations that have been upheld on this ground typically protect personal dignity and private property."

It should be further noted that political and religious matters are narrowly defined in Section 1 as "matters relating to elections for political office; political parties; legislative proposals; proposals to change rules or regulations; and the decision to join or support any political party or political, civic, community, fraternal, or labor organization." In case anyone was wondering, this would absolutely not apply to Diversity, Equity and Inclusion trainings: it's pretty clear in the language. If there is great concern still, we could add language such as, "nothing in this section shall be construed as a waiver of the employer's obligation to comply with Title VII, Civil Rights Act of 1964." Though, this should be rather obvious.

Furthermore, to prevent these clear definitions from getting “sticky,” we would support removing section 495(a)(1) of the bill, which extends the Section beyond the intent of this bill to include protection of "the employee’s exercise of a right guaranteed by the First Amendment of the U.S. Constitution or Chapter I, Article 3, 13, or 20 of the Vermont Constitution, provided that the employee’s exercise of that right does not substantially or materially interfere with the employee’s job performance or the working relationship between the employee and the employer." It has nothing to do with captive audience meetings; it was not part of the original language we suggested for this bill; and it should be removed.

In a similar vein, Section 3 of S.102 corrects what is currently a frankly patronizing and infantilizing union recognition process. The current process asks workers to prove *twice* that they want a union. Actively signing up to join a union is not viewed as a worker making a clear and conscious choice. Our current process implies workers are not intelligent enough to make their own decision and need to be asked again – just to be sure. Those who purport to respect the freedom of choice should be appalled at our current union recognition process. Trust me, workers know “both sides” already, and workers are able perfectly capable of deciding what they want the first time.

In fact, many workers get the employer’s side from day one. I know that some Vermont employers show anti-union videos as part of their employees’ orientation – videos that explicitly tell them to not join a union. A well-known example of these kinds of videos is Target's anti-union video, which went viral on John Oliver’s *Last Week Tonight* show last year.

In case it needs to be reiterated, Section 3 would only apply to public sector workers. That it could potentially apply to the private sector is wholly hypothetical, and our legislative counsel yesterday suggested that there really are not any private employers to which Section 3 would apply.

Further, when it comes to union election integrity, majority sign-up or card check elections establishes a *higher* threshold than secret ballot elections because it requires 50%+1 of the full unit – whereas secret ballot only requires 50%+1 of votes cast. In theory, you could have a secret ballot election where only 10% of the unit participates and as long as a majority votes in favor of the union, the unit will be certified. The argument that fewer employees would be able to weigh in doesn’t hold water.

Last, secret ballot union elections are not comparable to secret ballot political elections. They usually take place at the worksite under the observation of the employer. The employer has far more access to employees in the lead-up to the election. Comparing a union election to a political election is comparing apples and oranges. Under any standard of free and fair elections for democratic legitimacy, a union election would likely not qualify due to the far greater access an employer has to their employees than individual employees trying to form a union.

All workers, regardless of which industry or sector they work in, deserve basic respect and dignity at the workplace, which includes freedom of conscience and respect of their right and

choice to form a union with their coworkers. I urge you to support S.102, the Vermont PRO Act. Thank you.