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**TESTIMONY IN OPPOSITION TO 20-H 7193,
RELATING TO BUSINESSES AND PROFESSIONS – SHOWS AND EXHIBITIONS
January 30, 2020**

The ACLU of Rhode Island opposes this legislation, which would authorize the Town of Bristol to regulate or prohibit any broadly-defined “live entertainment” in the Town. We recognize that this is merely authorizing legislation, and we also realize that it is based on a statute passed for the City of Providence in 2016. However, for the reasons expressed below, the ACLU also opposed that legislation at the time. We believe the broad scope of the authority given the municipality raises potentially significant constitutional concerns.

We note that the breadth of the definition of “live entertainment” is such that it could allow the Town to, for example, prohibit a busker from performing on a sidewalk. This would be clearly unconstitutional, and in fact, the ACLU successfully sued Providence a few years ago when it sought to require a musician to obtain a permit to perform on city streets. Nothing in the bill limits the authority of the Town to apply an “entertainment ordinance” in such a fashion. Even if its application were to be limited to licensed establishments, a ban on live entertainment would raise constitutional problems on its own.

In that regard, we note that the bill specifically allows licensed establishments to have so-called “incidental entertainment,” which is defined to mean performances limited to no more than three non-amplified acoustic instruments. However, authorizing a ban or open-ended restrictions on live entertainment and establishing a somewhat arbitrary definition of “incidental entertainment” strike us as problematic. Because music and musical performances rightly have protection as a form of expression under the First Amendment, state or municipal regulation of such entertainment is not unbounded. Most relevant, such regulation generally may not be “substantially broader than necessary to achieve the government’s interest,” and the open-ended standards contained in the bill would not appear to meet that constitutional requirement. See, e.g., *Casey v. City of Newport*, 308 F.3d 106 (1st Cir. 2002).

In order to address these issues, we would encourage the Committee to find out exactly how Providence has implemented the authority it was given in 2016 and, based on the Town of Bristol’s goals, review the *Casey* decision and other relevant caselaw to ensure that any regulation of live entertainment being authorized by this bill meets First Amendment standards. If the intent of this legislation is to allow the Town to address noise concerns emanating from performances taking place in licensed venues, appropriately crafted objective noise ordinances can be used to resolve those problems.

We thank the Committee for their attention to these concerns.