



American Association for Affirmative Action

February 22, 1999

Judiciary Committee
State of Maine Legislature
State House
Augusta, ME

Dear Senator Longley & Representative Thompson,

We are writing to offer our perspectives on *L.D. 703, the Maine Civil Rights Act of 1999*, as authored by Representative Adam Mack. We are the American Association for Affirmative Action, Maine Chapter. Our membership in Maine includes public and private employers from Fort Kent to Kittery.

In order to fully evaluate the proposed legislation, it would be useful to consider the historical context within which Affirmative Action arose and the current context in which it continues to operate. When President Lyndon Johnson signed the Executive Order 11246 in 1965 (later amended by Executive Order 11375), it was in recognition of the educational, employment and public accommodations barriers faced by people of color and women in the United States.

Significant progress has been made in removing barriers in the three decades since accessing employment and educational opportunity for both women and people of color. This progress is a direct outcome of the requirement that federal contractors engage in genuine Affirmative Action programs. At the same time, the concept of Affirmative Action has undergone serious controversy, much of it stemming from misinformation and distorted representations.

For example, the opponents of Affirmative Action would have us believe that Affirmative Action is about hiring unqualified minorities and women at the expense of qualified white males. The reality is quite different. Affirmative Action is fundamentally about assuring that economic and educational opportunity is open to all. Affirmative Action is more than eliminating discrimination against a person because of race or gender. Affirmative Action is about providing equal access to economic and educational opportunities by affirmatively recruiting women and minorities into the pool of applicants.

Embedded in the assumptions of those opposing Affirmative Action is that racism and sexism no longer exist. Even a cursory review of recent Maine Judicial and Maine Human Rights Commission decisions provide persuasive evidence that racism and sexism are very much alive.

We strongly oppose the Maine Civil Rights Act of 1999 proposed by Representative Mack. The need to provide equal access to economic and educational opportunities is as critical to Maine now as it was three decades ago. We strongly encourage defeat of the bill.

Sincerely,

Joanna E. Lee, Maine State AAAA's
American Association for Affirmative Action

TESTIMONY
OF
DONALD A. WILLS, DIRECTOR
BUREAU OF HUMAN RESOURCES
DEPARTMENT OF ADMINISTRATIVE & FINANCIAL SERVICES

Before the Joint Standing Committee on Judiciary

In Opposition To
LD 703

AN ACT TO CREATE THE MAINE CIVIL RIGHTS ACT OF 1999

Senator Longley, Representative Thompson, distinguished Members of the of the Committee, I am Donald Wills, Director of the Bureau of Human Resources, Department of Administrative and Financial Services. I am here to testify in opposition to LD 703, An Act to Create the Maine Civil Rights Act of 1999.

I am opposing LD 703 because the Act is redundant and overly restrictive.

LD 703 would prohibit discrimination based on race, sex, color, ethnicity or national origin in employment, education and contracting. Such discrimination in both employment and education are currently prohibited in the Maine Human Rights Act, and for State agencies and State related agencies, in the Code of Fair Practices and Affirmative Action.

LD 703 would also prohibit preferential treatment on the basis of race, sex, color, ethnicity or national origin. The Maine Human Rights Act does not expressly prohibit preferential treatment, but the Maine Supreme Court has restricted the use of preferential treatment. In *Doran v University of Maine at Farmington*, the Supreme Court found that "Ad hoc hiring preferences based on sex", are illegal. This prohibition against unfounded preference would certainly apply to other protected areas as well.

We believe that current law and court decisions provide the appropriate standard. Currently, any consideration of gender or race must be based on a written Affirmative Action Plan with supportive statistical data that documents current underutilization of a protected group. When this occurs, race or gender can be only one factor to be taken into consideration along with abilities and qualifications. Outright preference that would override qualifications is illegal. This very limited flexibility is sometimes necessary and is fully consistent with federal law and court decisions.

We have two additional concerns with the language contained in LD 703. The BFOQ exception is only provided on the basis of sex. Although a race, color or national origin BFOQ would be extremely rare, it is a potential that should not be overlooked. Secondly, although LD 703 does not invalidate any court order or consent decree in force on the effective date of the Act, it does not allow for compliance with any future court order or consent decree. This could place the state in an untenable position.

In summary, current law requires that employment decisions be made without regard to race, color, religious creed, national origin, sex, ancestry, age, physical handicap or mental handicap. The use of any form of preference for affirmative action purposes is extremely limited by current law and court decisions. We believe that appropriate balances are currently in place and should be maintained.



MAINE
WOMEN'S
LOBBY

Americans for a
FAIR CHANCE
TION

Testimony in Opposition to:
L.D. 703: An Act to Create the Maine Civil Rights Act of 1999
Wednesday, February 17, 1999

Good afternoon Senator Longley, Rep. Thompson and Members of the Judiciary Committee. My name is Laura Fortman, I am the Executive Director of the Maine Women's Lobby. The Maine Women's Lobby was founded in 1978 and is a state-wide, non-partisan membership organization. Our mission is to *optimize the lives of Maine women and girls through public policy development and legislative action*. I am here today in strong opposition to L.D. 703: An Act to Create the Maine Civil Rights Act of 1999.

The title of this bill is deceptive. It states that it will create a "civil rights act" when in reality it seeks to abolish affirmative action. It talks about eliminating "preferences" when in reality it will eliminate opportunities. Affirmative action provides qualified individuals equal access and equal opportunity to compete. Affirmative action does not guarantee that one will succeed but it does allow one to get in the door to be considered. After that, an individual needs to have the necessary skills and produce the necessary quality of work to be successful. Affirmative action is not about quotas or preferences. In fact, the Supreme Court has ruled that quotas are illegal.

Unfortunately, in spite of three decades of concentrated struggle, discrimination against women and minorities still exists in the workplace. Women in Maine still earn only about 69 cents for every dollar that a man earns and nationally the numbers are not much better. Information from the U.S. Department of Labor Women's Bureau, "The Twenty Leading Occupations of Employed Women," 1997 states that: *"Even in jobs that are traditionally and predominantly held by women, men still earn more. For example, 93% of nurses are female; 7% are male. Yet the median weekly earnings for female nurses are \$705, while male nurses earn \$778."* Anti-discrimination laws are designed to correct the problem after discrimination has occurred, affirmative action attempts to prevent the problem before it happens.

Affirmative action is fair, its necessary and it works. I urge you to reject L.D. 703 and I would be happy to answer any questions. Thank you.

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MAINE CIVIL LIBERTIES UNION

February 17, 1999

LD 703 - An Act to Create the Maine Civil Rights Act of 1999

Since the 1960's affirmative action has helped break down persistent discriminatory barriers for women and minorities. Affirmative action programs have been used to provide equal opportunities to compete for a job, operate a business, pursue educational opportunities and participate in the political process. Evidence shows not only that affirmative action programs work, but that they are still needed.

There is, unfortunately, abundant proof that the U.S. is not yet a color blind society. Attitudinal studies show that stereotypes are pervasive. In one, 53% of the white survey respondents rated blacks less intelligent than whites, and 62% thought blacks were "less hard working." These sometimes unconscious stereotypes have an impact on black peoples' opportunities in the real world. For example, although white males make up only 43% of the workforce, they occupy 97% of the top executive positions at America's 1,500 largest corporations.

Studies show that negative stereotypes about women persist as well. They are still, for example, believed to have less leadership ability than men. Looking at workforce statistics, overall, American women earn only 72% of what men make for comparable work. And, women hold only 3-5% of senior positions in the private sector.

Affirmative action is not a "quota" system. It is not a "preferential treatment" program to force employers and colleges to accept unqualified workers and students. Affirmative action is a strategy for curing what ails our society's institutions. Affirmative action is an instrument of inclusion, a means of bringing all Americans into society's mainstream as equal competitors.

As you consider this bill you must take into account that employers and universities have always engaged in forms of "preferential treatment." Examples include university preference of veterans over non-veterans, or of children of alumnae over other youth. Employers hiring the sons and daughters of their economic and social equals is another form of "preferential treatment". It was only when race and gender became a factor in the efforts to end discrimination that preferences became a problem.

Affirmative action does not penalize white males. Fairness requires ending biased practices, not perpetuating them. The conscientious effort to hire, admit or contract with women and people of color is a way for the state, employers, and schools to facilitate the transition to nondiscriminatory practices.

The Maine Civil Liberties Union urges a Unanimous Ought Not to Pass report on this bill.

Sally Sutton
Executive Director



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JOHN G. MELROSE
COMMISSIONER

February 17, 1999

The Honorable Adam Mack
Maine House of Representatives
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Dear Representative Mack:

Alan B. Stearns

ABS/sag



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