



February 17, 1999

Members, Joint Committee on the Judiciary
Maine Legislature
Augusta, ME 04333

RE: LD 703 (Mack) - SUPPORT

Dear Senator Longley, Representative Thompson and Members of the Committee:

On behalf of the American Civil Rights Coalition (ACRC), I write to express strong support for LD 703 ("An Act to Create the Maine Civil Rights Act of 1999"). ACRC is a national, nonprofit organization dedicated to working with grassroots activists and leaders on the local, state and federal level to end preferences and discrimination based on race and gender. I regret my schedule did not permit me to accept the invitation of Representative Adam Mack to testify personally before the Committee today.

The language of LD 703 closely tracks the text of the federal 1964 Civil Rights Act and is similar to the California Civil Rights Initiative (1996) and the Washington Civil Rights Initiative (1998), both of which were passed by voters by 8- and 17-point margins, respectively. The language has been examined by legal scholars and, despite formidable legal challenge by the ACLU, NAACP and the U.S. Department of Justice, among others, this language has been validated by the federal Ninth Circuit Court of Appeals and the U.S. Supreme Court.

The constitutionality and legality of LD 703 have therefore been tested and survived intense scrutiny. What you have before you today is a constitutional and moral proposition stated in clear and unambiguous terms: shall the state discriminate or grant preferential treatment on the basis of race or gender?

LD 703 does not dismantle all "affirmative action." It simply prohibits discriminatory affirmative action, which employs preferences, set-asides or quotas. Nondiscriminatory programs such as broad-based outreach and recruitment which insure equal opportunity for all individuals regardless of race or creed would be permitted under this legislation. LD 703 puts the civil rights movement back on track in keeping with the original goals and intentions of the 1964 Civil Rights Act. Civil rights are not just for a few of us who, like me, happen to be black. Civil rights are for all of us no matter what skin color. When the government has different standards for different races, such policies and laws are in violation of the Equal Protection clause of the Fourteenth

Amendment to the U.S. Constitution, which requires every individual to be treated equally under the law. LD 703 is not divisive, as some may claim. The preference programs LD 703 is designed to eliminate are themselves divisive and tearing people apart.

In a decision last year, the First Circuit Court of Appeals, which covers Maine, Massachusetts, New Hampshire, Rhode Island and Puerto Rico, reiterated in *Wessman v. Boston Latin School* the Supreme Court's admonition that race is a constitutionally suspect classification. While the First Circuit's ruling was about a girl being denied entrance to a school while minorities were being admitted with lower grades and test scores, it should be noted that in doing so, the Court rejected the goal of maintaining racial diversity stating that this "suggests that race or ethnic background determines how individuals think or behave." "Diversity" in the name of putting white faces next to black and brown faces does not trump individual rights guaranteed under the Constitution.

While the Constitution is oftentimes used as a check on popular will, this is an example where constitutional principles and public sentiment converge. From *Wessman v. Boston Latin* to *Adarand v. Peña* to *Hopwood v. Texas*, group entitlements and identity politics are being struck down as excuses for violating the right of every individual to be equal in the eyes of the law. Even before the latest court victories against preferences, four out of five Americans (82.5%) – and more than three out of four blacks (78.7%) surveyed in a Zogby International poll in 1997 supported legislation worded almost exactly like LD 703. (In anticipation of the tired refrain that ordinary folks are too stupid to know what they are reading, I would like to point out that after the passage of the Washington Civil Rights Initiative, the Blethen Corporation's *Seattle Times* admitted that its passage was a "call for reform." In the *Times*' own survey, the "numbers indicate[d] that while there was some confusion over the ballot language, it was nowhere near a critical factor" [11/4/98].)

In essence, the courts trailed public opinion in recognizing the constitutional wrongs being perpetuated by those using the moral fig leaf of "diversity" and "inclusion."

Sincerely,

WARD CONNERLY
Chairman

cc: Sen. Susan W. Longley, Chair, Sen. Sharon Anglin Treat, Sen. John W. Benoit, Rep. Richard H. Thompson, Chair, Rep. Thomas Bull, Rep. Charles C. LaVerdiere, Rep. Patricia T. Jacobs, Rep. Charles E. Mitchell, Rep. William S. Norbert, Rep. Debra D. Plowman, Rep. David R. Madore, Rep. G. Paul Waterhouse, Rep. William J. Schneider

Testimony of Jon Reisman
Judiciary Committee
Wednesday February 17, 1999

Senator Longley, Rep. Thompson, members of the Judiciary Committee:

My name is Jon Reisman. I am an associate professor of economics and public policy at the University of Maine at Machias and the first selectman of Cooper, Maine. I testify today as an individual citizen in support of LD 703, An Act to Create the Maine Civil Rights Act of 1999.

This act would require that the State neither discriminate nor grant preferences on the basis of race, gender, color, ethnicity or national origin. I believe that passage of LD703 is critical for Maine: for fairness, for equal protection, for a society that judges by the content of character, not the color of skin.

We will NEVER achieve those goals with policies that grant preferences on the basis of race and gender. Preferences are corrosive, divisive and ultimately counterproductive.

Preferences ARE being practiced in Maine. At the University of Maine, "Distinguished Student" scholarships parcel out financial aid on a poorly defined "diversity" basis. The University maintains a special "opportunity hire" fund for minority hires only. A similar fund at the University of Texas was dropped after the federal appeals court made clear that racial preferences were unconstitutional.

Members of protected classes who bring discrimination complaints have more standing and a lower burden of proof than citizens who are not members of protected classes.

Some will say that a ban on preferences will end affirmative action. Not true. "Wide net" and geographic diversity criteria will pass constitutional muster. And the courts in Houston OVERTURNED an election because opponents rewrote an initiated ban on preferences virtually identical to this bill as a ban on affirmative action.

By banning preferences, this bill will also make clear that no "special rights" are being practiced in Maine. And frankly, its defeat can only send the message that protected class status DOES grant some preferences, or special rights.

Banning discrimination AND preferences is the right thing to do for Maine. Passing this bill will significantly drop the temperature of the entire civil rights policy environment over the next two years. Defeating it will make it worse. I urge you to support it. Thank you.

February 17, 1999

119th Maine Legislature

Joint Standing Committee on the Judiciary

**Testimony in Support of LD 703,
An Act to Create the Maine Civil Rights Act of 1999**

Good afternoon, Senator Longley, Rep. Thompson, distinguished members of the Judiciary Committee. My name is Lawrence Lockman. I am chairman of Concerned Maine Families, and I am here today in support of Rep. Mack's bill to outlaw minority preferences: LD 703, An Act to Create the Maine Civil Rights Act of 1999.

I want to begin by commenting on the poisonous, corrosive influence of identity politics on civil discourse in America. Civil-rights law, originally intended to level the playing field for historically disadvantaged minority groups, has been hijacked by grievance groups whose goal is to seize preferential status based on nothing more than claimed membership in a class of victims. Protected classes in the civil-rights statutes have evolved into preferential categories that divide society into favored and disfavored classes of citizens.

If you want a recent example of the outrageous double standard we have come to accept as the norm in American political discourse, look no further than the racial, religious, and ethnic invective hurled at certain members of Congress since the beginning of this year.

A feminist writer whose column appears in the Boston Herald described the House managers of the impeachment articles as "creepy crawly white men." A columnist for the Central Maine Morning Sentinel referred to these men as "right-wing scum" and "trailer trash": "These all white male Christians, adorned in thrift shop suits and two-for-the-price-of-one steel-rimmed glasses, stink of grits and bacon grease. These avenging angels come from hardscrabble, Bible-thumping beginnings, their pants' bottoms polished to a high sheen from years of pew sittings. They have been weaned from birth on Scripture. Yea, verily, they are a band of angry angels come to wag Jehovah's mighty sword in our faces."

I submit to you, esteemed members of the Maine Legislature, that this sort of malicious, hate-filled rhetoric, if directed at members of the Congressional Black

Caucus, would provoke screams of outrage from the self-anointed leaders of the civil-rights establishment. Yet these same high priests of diversity and multiculturalism have been notably silent when racial and religious hate-speech is bellowed in the faces of individuals who are not members of politically-correct minority groups.

That is the legacy of the past several decades of government-mandated preferential treatment based on race, gender, and ethnicity. Some are more equal than others in this brave new world of identity politics. The accelerated debasement of public discourse we have witnessed in the past few months is a reflection of public-policy mandates that violate the principle of equal justice under the law.

The proposed legislation before you will restore civil-rights law to its original intent to level the playing field and guarantee that individuals are not favored or disfavored depending on their membership in any particular minority classification.

You will likely hear testimony today from special-interest groups who assert that the proposed legislation is unnecessary, that current Maine law does not mandate minority preferences. If they are correct in their analysis, then passage of this legislation will explicitly affirm, without any doubt or ambiguity, that Maine law treats all its citizens as equals.

But I submit to you that mandated minority preferences are already deeply entrenched in Maine. As Professor Reisman's testimony makes clear, the University of Maine's "diversity politboro" oversees a regime of minority preferences with regard to student aid and faculty hiring.

Whatever their protestations, advocates of minority preferences have been lobbying for explicit mandates since the 1995 publication of the final report of the Governor's Commission to Promote the Understanding of Diversity in Maine. Governor Angus King gave his blanket endorsement to the Diversity Commission's call for including "sexual orientation" as a minority classification, and for imposing minority hiring quotas at all branches and levels of government in Maine, including the University system, the technical colleges, local schools, and police and fire departments. The Commission also recommended creation of a Cabinet-level "Diversity Office" to enforce the quotas by means of an annual performance review and report.

One of the Commission's recommendations called for mandating that a percentage of Community Block Development grants be set aside for minority-owned businesses.

The authors of this report cited the Maine Department of Transportation's minority set-aside program as the model for their vision of diversity in Maine. While it is true that MDOT is administering federal mandates, I invite each of you to spend a few hours reviewing MDOT minority set-aside contracts if you want to see what full-blown "diversity" will look like if you fail to enact the proposed legislation before you.

I would argue first of all that set-asides and quotas are an immoral and unjust solution to a problem that doesn't exist, in that there is no shortage of female-owned and also sexual minority-owned enterprises doing business with the state outside the scope of the minority set-aside program. These business entities are successfully competing for state business despite the fact that they are not certified for participation in the preference program administered by MDOT.

For example, political activists Dale McCormick and Betsy Sweet have struck a veritable gold mine of MDOT consulting fees over the past decade. McCormick's **Women Unlimited** has collected over a million dollars in fees from the state, while Sweet's **Moose Ridge Associates** is now well into six figures, in addition to tens of thousands of dollars in no-bid contracts she has been awarded by the Attorney General's office.

We should all be so oppressed.

Minority set-asides and preferences have also given birth to an entire industry of compliance monitoring and enforcement. The dirty little secret of the quota regime is this: it has spawned lucrative "business" opportunities for politically-connected social activists.

For example, MDOT hires a private contractor to monitor compliance with the set-aside and quota mandates. The contractor is an outfit based in New Hampshire called **Compliance USA**, which is certified as a "disadvantaged business enterprise" by the MDOT. The CEO is Ms. Ronnie Sandler. Her company has raked in some \$421,000 in MDOT contracts since 1994, including \$375,000 for monitoring quota compliance on just one bridge project. Sandler's firm is guaranteed a 10 percent profit, and she is paid \$38.50 an hour, plus benefits.

Nice work, if you can get it. Again, we should all be so oppressed and disadvantaged.

Finally, I want to briefly mention the huge and expensive mess minority preferences have created in the federal workplace. According to a recent Associated Press report, discrimination complaints by federal employees rose 70 percent between 1990 and 1997. Federal government workers are seven times more likely to file a civil-rights complaint than private sector employees. The cost to taxpayers was calculated to be at least \$866 million.

Why the explosion in civil-rights complaints? According to the staff director of the congressional committee with jurisdiction over these matters, there's a clear connection between complaints and employment policy: "As long as the [federal] government pursues race- or gender-based hiring policies, you are going to end up offending someone." (*Bangor Daily News*, 1/19/99, p. A6; copy attached).

Such policies are a dream come true for lawyers and diversity activists, but they are a nightmare for employees and taxpayers, and they cannot be reconciled with equal justice under the law. Rep. Mack's bill is the antidote to this poison.

Sen. Longley, Rep. Thompson, members of the Judiciary Committee, minority preferences are immoral and unAmerican. Let's put Maine on record affirming that all its citizens will be treated as equals, regardless of minority status.

Thank you.