Jeffrey Neil Young, Esq.
Johnson, Webbert & Young LLP
160 Capitol St. Suite 3
Augusta, ME 04330
207-623-5110
jyoung@work.law

**TESTIMONY OF MAINE EMPLOYMENT LAWYERS ASSOCIATION IN SUPPORT OF LD 1693, AN ACT TO ENHANCE ENFORCEMENT OF EMPLOYMENT LAWS**

My name is Jeffrey Neil Young. I am a partner in the law firm of Johnson, Webbert & Young, an executive Board member of the National Employment Lawyers Association (NELA), and vice-president of the Maine Employment Lawyers Association (MELA). NELA is the largest organization of civil rights lawyers in the country with about 4,000 national and affiliate attorney members. MELA is the largest organization of civil rights lawyers in Maine with about 75 member attorneys who represent employees in labor and employment matters across the state as at least 50% of their practice. I myself have been practicing labor and employment law for 35 years, the last 30 years here in Maine.

MELA urges this Committee to enact LD 1693, An Act to Enhance Enforcement of Employment Laws. LD 1693 is an innovative approach to provide the Maine Department of Labor with additional funds to enforce Maine's many labor laws at **NO** additional cost to Maine taxpayers. There should be no fiscal note with LD 1693 because between 70-80% of the fines collected for labor law violations will go to the State which can use the money in turn to hire more investigators to insure compliance with the law. Any start-up costs should be mostly, if not entirely, defrayed by the $75 reporting fee.

As recent testimony by Mike Roland, the head of the Maine Bureau of Labor Standards has indicated to this Committee, the Maine Department of Labor is in dire need of additional investigators. Right now there are only 4 investigators, and all they can do is respond to complaints. There are insufficient resources to engage in proactive audits to insure corporate accountability and compliance, for example, with Maine's wage and hour, workers' compensation, and health and safety laws.

Indeed, as a forthcoming study by the Center for Popular Democracy and the Economic Policy Institute shows, we have an enforcement crisis in Maine. Although the workforce in Maine has expanded significantly over the last 40 years by 61%, from 387,800 to 622,700 non-farmworkers,[1] personnel at the MDOL has declined by

[1] Maine State Annual Report 2016-2017, https://www.maine.gov/budget/sites/maine.gov.budget/files/inline-files/2016-

21%, from 702 employees to 552 employees.[2] To exacerbate things even more, the MDOL's budget has decreased by 59% during the same period when adjusted for inflation.[3] Had the MDOL merely kept up with our growing workforce, it would have 1130 full-time employees—or more than double its current workforce! And of course, this doesn't take into account the numerous labor and employment protections which have been enacted during 1977-2017 and the current corporate assault on private enforcement of the law.

And the situation only promises to get worse, not better. As others have testified before me, corporations increasingly are requiring employees to waive their rights to bring their claims in court and requiring that they arbitrate those claims individually. It is estimated that in 3-5 years, this corporate assault on public justice will have reached some 80% of US employers. I can tell you that this assault is unique to the United States. Just last week, I spoke in Buenos Aires at an international labor and employment law conference attended by lawyers from 21 industrialized countries around the world, including most of Europe and Latin America; the concept of forced arbitration of employment disputes was, to make a bad pun, totally foreign to them.

Maine is a state of primarily small businesses. Although there are no statistics available that I am aware of indicating how many employers in Maine are requiring employees to arbitrate their disputes, anecdotally I can say that many of these tend to be large corporations and their franchisees. However, as Bob Curtis's testimony graphically demonstrated, the movement to require employees to forfeit their right to bring suit is not limited to such companies but reaches into smaller employers like the one Bob worked for.

Let me spend a moment talking more specifically about how this bill would work. In essence, the bill encourages employees to act as whistleblowers and private attorney generals to enforce labor and employment laws. There is a long tradition in this country dating back at least to the Civil War of employees blowing the whistle on employers that are cheating the government out of revenue. Those claims included profiteers selling Joshua Chamberlain and the Union army uniforms at exorbitant costs and providing rancid meat. As a result, Congress passed the

---

2017AnnualReportGrayscale.pdf, 172; Maine State Government Annual Report 1976-2017, http://lldc.mainelegislature.org/Open/Rpts/jk2835_b87a_1977.pdf, 516.

[2] Maine State Annual Report 2016-2017, https://www.maine.gov/budget/sites/maine.gov.budget/files/inline-files/2016-2017AnnualReportGrayscale.pdf, 172; Maine State Government Annual Report 1976-2017, pg. 516, http://lldc.mainelegislature.org/Open/Rpts/jk2835_b87a_1977.pdf, 516.

[3] Maine State Annual Report 2016-2017, https://www.maine.gov/budget/sites/maine.gov.budget/files/inline-files/2016-2017AnnualReportGrayscale.pdf, 172; Maine State Government Annual Report 1976-2017, pg. 516, http://lldc.mainelegislature.org/Open/Rpts/jk2835_b87a_1977.pdf, 516.

Lincoln Law, or False Claims Act, in 1863 awarding whistleblowers bringing suit in the name of the government a percentage of the money recovered for overcharging the government. Perhaps the most recent example familiar to everyone was the case of employees blowing the whistle on unscrupulous contractors charging the government exorbitant amounts for toilet seats.

LD 1693 would allow employees and advocacy groups (like their union representatives, MEJP, ILAP, and the like) to notify the Maine Department of Labor in writing of alleged violations of Maine's labor laws. The MDOL and the Attorney General's office would then have an exclusive period of 30 days to investigate the claim and, upon notice to the employee(s) or their representatives, referred to in the statute as "relators," up to an additional 180 days to investigate and bring a public enforcement action. If the State does not do so, then the employee(s) or their representatives, referred to in the statute as "relators," can file suit in behalf of the State.

Once suit is filed, the State can intervene as a matter of right within 30 days and upon good cause at any later date. If the State intervenes, it then assumes primary responsibility for the action with reasonable compensation, including attorneys' fees and costs, to be paid to the Relator. If the State does not intervene, then the relator's counsel manages the litigation. Any settlement must be approved by the court as fair, adequate, reasonable, and in the interest of the public.

If the matter is settled or goes to trial and the Relator (or State) prevails, then the court is to assess penalties as set forth by statute or, if no statutory provision exists, of $250 per person for each 2-week period. 70% of the penalties go to the State if it has not filed suit or intervened; 80% if has done so. The relator is entitled to 20-30% of the recovery.

California has a mechanism, the Private Attorney General's Act (PAGA), similar, albeit not identical to LD 1693. Last year, California recovered over $34 million in penalties to help fund its Labor Department.

You may ask how does LD 1693 relate to forced arbitration. Because the employee/relator is acting in the name of the State, s/he is not bound by any agreement to arbitrate the penalty claims.

MELA recognizes that LD 1693 is a complicated bill that requires careful consideration. However, in these times of fiscal restraint, innovative measures need to be taken to protect both the taxpayer's purse and working people's rights. LD 1693 presents just such a creative mechanism that will cost the taxpayers nothing, bring in needed dollars to help end the enforcement crisis, while at the same time promote corporate responsibility.