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April 24, 2023

Testimony of Leo J. Delicata, Esq., Legal Services for the Elderly, in support of L.D. 1412 RESOLUTION, Proposing an Amendment to the Constitution of Maine Establishing That All Maine Residents Have Equal Rights Under the Law, before the Joint Standing Committee on the Judiciary.

Senator Carney, Representative Moonen and members of the Joint Standing Committee on Judiciary,

Passage of this Resolution and acceptance by a vote of the people of Maine would re-affirm our belief that government should act with fairness towards those it governs and that discrimination by individuals with public or private responsibilities should not be tolerated. This Legislature has consistently declared this to be the policy of this State and its amendments of the Human Rights Act in Title 5 of our laws are evidence of its work. Section 4552 states the following:

## **§4552. Policy**

To protect the public health, safety and welfare, it is declared to be the policy of this State to keep continually in review all practices infringing on the basic human right to a life with dignity, and the causes of these practices, so that corrective measures may, where possible, be promptly recommended and implemented, and to prevent discrimination in employment, housing, education, extension of credit or access to public accommodations on account of an individual's actual or perceived race, color, sex, sexual orientation or gender identity, physical or mental disability, religion, ancestry or national origin and in employment, extension of credit and access to public accommodations on the basis of age; and in employment and housing on the basis of familial status; and in employment because of the previous assertion of a claim or right against a prior employer under

former Title 39 or Title 39-A and because of protected activity under Title 26, chapter 7, subchapter 5-B; and to prevent discrimination or retaliation on the basis of an assertion of rights under this Act or interference with an individual's right to be free from discrimination prohibited under this Act.

<https://legislature.maine.gov/legis/statutes/5/title5sec4552.htm>

Passage of the amendment described in this Resolution brings this statutory policy into our Maine Constitution. It would make the class of people described in the Human Rights Act and in this Resolution members of a “suspect classification.” This makes a difference in a discrimination case alleging a violation of equal protection by a governmental entity or program against a person in that class.

Article I, section 6-A of the Maine Constitution prohibits the State from denying to any person within its jurisdiction the equal protection of the law. This basic principle of our democracy requires that people similarly situated should be treated alike. When the Maine Supreme Court considers cases involving a violation of the constitutional right of equal protection it applies a legal test to the evidence. That test requires “strict scrutiny” of the facts to determine whether the right has been violated. This is a very high threshold. It requires proof that an action affecting a particular class of people, namely a suspect classification, serves a compelling state interest and that treating a member of the class in this way is necessary to serve a legitimate governmental interest.

Discrimination that is not based against people in a suspect classification is considered with another less strict test. This is an easier test for the government defendants to meet. They win unless the court finds that there are “no fairly conceivable set of facts” that make the government’s actions unreasonable. Put another way, that means so long as there is any rational reason for what the government did and any legitimate policy reason for doing it, the person alleging discrimination loses.

This Resolution requires final enactment by a vote by the people of Maine. If it becomes law, it will ensure that any case alleging discrimination against a suspect class member by a governmental actor would be judged by the strictest legal standard possible. Protecting the principle of equal protection under the law demands no less. We hope that you will vote ought to pass and provide the public with an opportunity to vote on final enactment.

Thank you for letting us share our thoughts with you today.