



HOUSE OF REPRESENTATIVES

2 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0002

(207) 287-1400

TTY: MAINE RELAY 711

Craig V. Hickman

192 Annabessacook Road
Winthrop, ME 04364

Residence: (207) 377-3276

Craig.Hickman@legislature.maine.gov

Testimony of Representative Craig V. Hickman of Winthrop presenting LD 1475, An Act To Eliminate Profiling in Maine Before the Joint Standing Committee on Judiciary May 13, 2019

Senator Carpenter, Representative Bailey, and other distinguished members of the Joint Standing Committee on Judiciary. My name is Craig Hickman and I represent House District 81, Winthrop, Readfield and part of North Monmouth at the foot of Mt. Pisgah. I stand before you today to introduce **LD 1475, An Act To Eliminate Profiling in Maine**.

This legislation builds upon the work done by members of this very committee — and other stakeholders — a decade ago. This part of my testimony draws heavily from the NAACP Action Alert, which is in your binder, for the End Racial and Religious Profiling Act introduced in Congress for at least the past four sessions, upon which this legislation is based. LD 1475 comprehensively addresses the insidious and discriminatory practice of biased treatment by law enforcement on our state's streets, highways, walkways, bus stations and in our airports because of who you are, which God you worship, or who you are perceived to be. Specifically, the legislation addresses bias policing on six levels: first, it clearly defines the discriminatory practice of racial and religious profiling by law enforcement at all levels; second, it creates a federal prohibition against profiling; thirdly, it mandates data collection so we can fully assess the extent of the problem; fourth, it codifies the current policy of training and retraining of law enforcement officials on how to discontinue and prevent the use of profiling; fifth, it holds law enforcement agencies that continue to use profiling accountable; and sixth, it provides for declaratory or injunctive relief for anyone who proves that they have been the victim of profiling. It does not, however, as it does in 17 other states, go so far as to criminalize profiling by law enforcement agencies.

We all need to act to eliminate profiling in Maine to stop this insidious practice and to help maintain the confidence of communities throughout Maine in state and local law enforcement and thus maintain the trust and integrity necessary to be effective.

Profiling based on race and other factors is a serious and often painful and humiliating problem in the United States, and can lead to deadly consequences. We saw that in Ferguson, the aftermath of which is discussed in some of the articles in your binder. Our faith in the American criminal justice system is challenged when we cannot walk down the street, drive down an

interstate, or go through an airport without being stopped merely because of the color of our skin, who we are perceived to be, which God (if any) we choose to worship, or what we choose to wear. Training law enforcement officers how to more effectively carry out essential policing without using this counter-productive procedure will not only help our criminal justice system become less discriminatory and more effective at all levels, but it will also trickle down to other unofficial security groups as well, such as neighborhood watch organizations and citizens' community groups, which often model themselves after their local police.

Now, we have always known that law enforcement officers are hard-working women and men whose concern for the safety of those they are charged with protecting and serving is paramount, even when their own lives are on the line. However, if and when even one of their colleagues engages in discriminatory profiling tactics, whether it be conscious or subconscious, based on explicit or implicit bias, the trust of the entire community can be, and will be, lost. Law enforcement agents should not endorse or act upon stereotypes, attitudes, or beliefs that a person's race, ethnicity, appearance, religious affiliation, socioeconomic status, sexual orientation, national origin or immigration status increases that person's general propensity to act unlawfully.

Numerous recent studies have demonstrated that racial and religious profiling is all too prevalent throughout law enforcement today. When we have mayors, and governors and presidents promoting it, then what else can we expect? Furthermore, research shows that racial and religious profiling diverts law enforcement officers' attention from using actual, objective signs of suspicious behavior to effectively assess situations. A 2009 study of traffic stops and searches in West Virginia found a distinct and disturbing pattern of racial profiling. The data revealed that African-American motorists were almost twice as likely to be stopped than White drivers. Hispanics were one and a half times more likely to be stopped. After the traffic stop, non-Whites were more likely to be arrested, yet police in West Virginia obtained a significantly higher contraband hit rate for White drivers than racial or ethnic minorities. The ACLU of Maine has reported on the significant gap in arrests by race in Maine police departments, including the fact that Black people are four times as likely to be arrested as people of other races in Auburn.

Currently, 30 states in the country have one or more anti-racial profiling laws on the books. However, not one adequately meets all the provisions required for an effective law, making them inadequate tools to significantly curb the practice of racial profiling. Most state laws do not include a definition of profiling that is inclusive of all significantly impacted groups. They also tend to lack a ban on pretextual stops of pedestrians and motorists — where officers use minor violations such as not using a seat belt or jay walking as a pretext to search for illegal contraband. In addition, most state laws do not include a provision allowing individuals to seek court orders to stop police departments from engaging in racial profiling or obtain remedies for violations.

State laws tend to vary widely. Laws on the books in Connecticut and Rhode Island are among the most comprehensive — yet Connecticut lacks a specific private right of action and Rhode Island lacks a good enforceable definition. Kentucky's law basically lacks all of the necessary components for an effective statute. Consider some of the following facts about the current status of state anti-profiling laws:

- 20 states do not explicitly prohibit racial profiling. They are, west to east, south to north: Hawaii, Alaska, Oregon, Idaho, Wyoming, South Dakota, North Dakota, Iowa, Mississippi, Indiana, Michigan, Georgia, Ohio, South Carolina, Pennsylvania, New York, Delaware, Vermont, New Hampshire and Maine
- 17 states ban the use of pretextual traffic stops
- 17 states criminalize violations of their anti-profiling laws
- 17 states require mandatory data collection for all stops and searches; 15 require analysis and publication of racial profiling data
- 17 states require the creation of commissions to review and respond to complaints of racial profiling
- 3 states — Kansas, Rhode Island, and Tennessee — allow individuals to seek injunctive relief to stop police departments from racial profiling

There is no red or blue state divide when it comes to anti-profiling measures around the nation. It is also important to note that separate from the state laws, many localities have passed anti-racial profiling measures to end the practice in their jurisdiction. Local efforts are crucial and often help bolster reform efforts at the state level. The states are called to adopt rigorous anti-racial profiling regulations and programs. These would consist of provisions for gathering information and monitoring what police departments are doing, more funding for police officers to get trained on profiling, and more sanctions and remedies for when violations take place. That is what LD 1475 calls for in Maine.

In the binder in front of you, I have included a collection of articles, studies, editorials, histories and personal testimonies regarding profiling in our state and across the nation. Many of the articles and studies include links and references for further examination and study. The words “racist” “racism” and “racial” appear in headlines and in content. I humbly ask that these words don’t shut you down. Race has always been tough to discuss, but as James Baldwin asserts, we are all, no matter our race or ethnicity, inextricably linked by history and experience. No matter the color of our skin, underneath it, our flesh is pink. We all bleed red, and if we love one another enough, we will see a way forward.

Please pay particular attention to the essay toward the beginning of your binder entitled “I Fit the Description” by Steve Locke. An art professor at Massachusetts College of Art and Design, who spent a few summers in Maine teaching at the Skowhegan School of Painting and Sculpture, Locke recounts a provocative interaction with law enforcement on his way to getting a burrito before teaching class. The sense of humiliation he captures in his account is palpable.

I have also included some articles about our former Governor and his inflammatory remarks while in office. As many of you know, I’ve had a good relationship with the former Governor. He visited me in the hospital after my fire accident last summer. I spoke often to him face-to-face about the power of his words and their effects on the safety of people on the ground. Especially when he said that people of color are the enemies of the state and suggested that we be shot for wearing the wrong color uniform. But while I chose never to call him out in public, Garrett Stewart, a Yarmouth resident and member of the Machinists Union Local S6 at Bath Iron Works,

did. Both at a town hall meeting and then in print. His op-ed entitled "If Gov. LePage really meant his apology, he will stop making racially divisive remarks" is in your binder.

I have also included a story you may have heard about in recent weeks that outlines two examples of what could be called profiling by proxy. Orson Horchler, a carpenter in Maine, an immigrant from France himself, hires Black, African-born immigrants who are eligible to work in the States. On two occasions, when his employees were waiting in their cars for him to show up at the job site, neighbors called the police on his Black employees because they were "making kids afraid." Police showed up, asked the carpenters for their ID's and if anyone at the site had ever seen them before.

Sometimes, it seems as though a person doesn't even have the right to *exist*.

I urge the committee to support freedom, liberty and justice for all. We must all do our part and act to eliminate profiling in Maine and across this nation. We can proceed by joining 30 other states and voting unanimously to recommend the passage of LD 1475.

I will close my presentation of this legislation with a poem entitled "Field Trip" that I wrote as part of the Boston poetry slam scene back in 1993. It helped our team win a National Poetry Slam Championship the following year. It helped me win election as a delegate to the 2008 Democratic National Convention. Today, I hope it helps to win your hearts and minds as you deliberate on this vital issue of human rights.

It goes like this...

Field Trip

Serenely sauntering into the Worcester Art Museum to expose a predominantly white, suburban audience to the intricacies of inner-city poetry, toting a big black bag, inconspicuously clad in everyday attire, I, nonetheless, was singled out by the security officer, rapidly approaching from behind the safety of his desk, as if to interrupt some impending disaster on his desperate journey toward me.

"Hey you! What's the bag for?"

The air around me sputtered in search of retort, while my tongue lay hostage against a confused palette.

As the approaching crowd began to smell the progression of fear, to caution, to his Robin-Hood rush to save a museum in distress, a thick, curious tension rushed in on a whirlwind, besieging the small crowd, now marveling at what might become an adventure Worcester hadn't seen in decades.

"I said, what's the bag for and what you got in it?"

Now, empowered by the women around me, I could stay silent no longer. "It's my purse. Just like hers, hers, and hers. And what's in it is none of your business!"

"Well, that's an awfully big purse!"

"And I'm an awfully big girl, now back off!"

Just what could his mind have conjured?

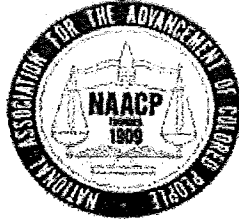
Perchance he thought I was going to swipe some art museum treasure, more priceless than a Van Gogh original, fold it up in, say, sixteen sections, secure it neatly in my bag, from which I'd just retrieved by compact Uzi, threatening to take out any man who dared stop me (subsequently raping his wife and children), and rush out past the front desk into a welcoming black night.

Or perchance he thought my bag was loaded with several pounds of coke, a hundred vials of crack, and all kinda dope I was eager to deal to a museum crowd desperate for a fix.

Or perchance he thought I was just some loose-cannon vandal, up to no good, armed with several cans of metallic mauve spray paint, or more likely, a big old watermelon, which I'd smash on the floor, scooping out large chunks to smear across the designs displayed on the walls of his big white castle on the hill, leaving behind my own art, my mark, a trail of little black seeds following me out the back door.

As I moved past this suspecting man, the strap of the bag biting into my shoulder, its contents pulling me down a bit closer to the earth I walk on, I realized the bag I carry around daily is weighted with memories, wishes, dreams and stories yet untold; is weighted with city streets, country roads, highways and rivers to places yet unseen; is weighted with groans, laughter, cries and screams yet unheard.

And deep down, somewhere near the bottom of that big black bag, my purse, there's a neighborhood, a small town, a city, a country, a world, where no person carries the fear to dare ask what's inside it.

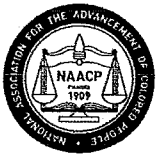


What a Good Racial Profiling Law Would Look Like

For a racial profiling law to be effective, it must include the following components:

- Includes a comprehensive effective ban on racial profiling. Such a ban would prohibit the profiling of individuals and groups by law enforcement agencies even partially on the basis of race, ethnicity, national origin, or religion, except when there is trustworthy information, relevant to the locality and time frame, which links person(s) belonging to one of the aforementioned groups to an identified criminal incident.
- Bans pre-textual stops (those instances in which police use minor/common traffic violations to inquire about drugs, guns, or other breaches of the law) of pedestrians and motorists.
- Criminalizes violations of the racial profiling ban and specify penalties for officers who repeatedly engage in racial profiling.
- Requires mandatory data collection for all stops and all searches (traffic and pedestrian) in all circumstances (citations and warnings given). Such data would include perceived race, perceived gender, perceived age and whether immigration status was inquired about during the stop.
- Requires data analysis and publication of the data collected to complaints of racial profiling and regularly publish results of racial profiling investigations.
- Creates an independent commission to review and respond to complaints of racial profiling and regularly publish results of racial profiling investigations.
- Allows for individuals to seek court orders to stop individual departments from continuing to engage in racial profiling.
- Provide funds for periodically retraining officers and installing in-car video cameras for monitoring traffic stops.

Note: From *Threat and Humiliation: Racial Profiling, Domestic Security, and Human Rights in the United States*. Amnesty International USA, 2004. To download, go to:
<http://www.amnestyusa.org/us-human-rights/other/rp-report---threat-and-humiliation/page.do?id=1106664>



ACTION ALERT

DATE: February 23, 2017

TO: Concerned Parties

FROM: Hilary O. Shelton, Director, Washington Bureau

**“THE END RACIAL AND RELIGIOUS PROFILING ACT”
TO PROTECT AMERICANS FROM BIASED TREATMENT BY LAW
ENFORCEMENT OFFICIALS AND IMPROVE POLICING
IS INTRODUCED IN THE U.S. SENATE**

**LEGISLATION WOULD CREATE A NATIONAL PROHIBITION AGAINST RACIAL AND RELIGIOUS
PROFILING BY LAW ENFORCEMENT AGENTS AND PROVIDE TRAINING**

THE ISSUE:

The *End Racial and Religious Profiling Act* was introduced in the U.S. Senate by Senator Ben Cardin (MD) (S. 411) and 27 of his Senate colleagues on February 16, 2017. Companion legislation, the *End Racial Profiling Act*, will be introduced in the U.S. House in early March, 2017, by Congressman John Conyers, Jr. (MI).

The *End Racial and Religious Profiling Act* in the Senate and the *End Racial Profiling Act* in the House comprehensively address the insidious practice of biased treatment by law enforcement on our nation's streets, highways, walkways, and in our airports because of who you are, which God you worship, or who you are perceived to be. Specifically, the legislation addresses bias policing on five levels: first, it clearly defines the discriminatory practice of racial and religious profiling by law enforcement at all levels; second, it creates a federal prohibition against profiling; thirdly, it mandates data collection so we can fully assess the extent of the problem; fourth, it provides funding for the training and retraining of law enforcement officials on how to discontinue and prevent the use of profiling; and fifth, it holds law enforcement agencies that continue to use profiling accountable.

We need the *End Racial and Religious Profiling Act* to stop this insidious practice and to help begin to restore the confidence of communities throughout the United States in federal, state and local law enforcement and thus restore the trust and integrity necessary to be effective. The NAACP has long advocated for enactment of the *End Racial Profiling Act*, highlighting the need for this legislation during the 2015 *America's Journey for Justice* and calling for it at the grassroots level every time another person is stopped, hurt, or even killed because of his or her race, ethnicity, or other defining feature.

Profiling based on race and other factors is a serious, often painful, problem in the United States, and can lead to deadly consequences. It is difficult for our faith in the American criminal justice system not to be challenged when we cannot walk down the street, drive down an interstate, or go through an airport without being stopped merely because of the color of our skin, who we are perceived to be, which God (if any) we chose to worship, or what we chose to wear. Training law enforcement officers how to more effectively carry out essential policing without using this counter-productive procedure will not only help our nation's criminal justice system become less discriminatory and more effective at all levels, but it will also trickle down to other unofficial security groups as well, such as neighborhood watch organizations and citizens' community groups, which often model themselves after their local police.

We have always known that the majority of law enforcement officers are hard working men and women, whose concern for the safety of those they are charged with protecting and serving is paramount, even when their own safety is on the line. However, if and when even one of their colleagues engages in discriminatory profiling tactics, whether it be conscious or subconscious, the trust of the entire community can be, and will be, lost. Law enforcement agents should not endorse or act upon stereotypes, attitudes, or beliefs that a person's race, ethnicity, appearance, religious affiliation, sexual orientation, or national origin increases that person's general propensity to act unlawfully.

Numerous studies have demonstrated over the past few years that racial and religious profiling is all too prevalent throughout law enforcement today. Furthermore, research shows that racial and religious profiling diverts law enforcement officers' attention from using actual, objective signs of suspicious behavior to effectively assess situations. As far back as February, 2009, a study of traffic stops and searches in West Virginia found a distinct and disturbing pattern of racial profiling. The data revealed that African-American motorists were almost twice as likely to be stopped than White drivers. Hispanics were 1.48 times more likely to be stopped. After the traffic stop, non-Whites were more likely to be arrested, yet police in West Virginia obtained a significantly higher contraband hit rate for White drivers than racial or ethnic minorities.