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SPEAKER OF THE HOUSE

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Testimony of Speaker Rachel Talbot Ross presenting
LD 279, An Act To Protect against Discrimination by Public Entities
Before the Joint Standing Committee on the Judiciary

Good afternoon Senator Carney, Representative Moonen and esteemed members of the Joint Standing Committee on Judiciary, I am Rachel Talbot Ross. I represent House District 118 which is the Portland neighborhoods of Parkside, Bayside, East Bayside, Oakland and the University of Southern Maine Campus and I also have the distinct honor of serving as the Maine Speaker of the House. I am here today to present **LD 279, An Act To Protect against Discrimination by Public Entities.**

The Maine Human Rights Act reads as follows: “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[.]” Maine Revised Statutes Title 5, §4552 outlines the details of protected classes. Protected classes include race, color, sex, sexual orientation or gender identity, physical or mental disability, religion, ancestry or national origin.

This powerful declaration represents our effort, as the State of Maine, to fully realize the rights that are enshrined in our nation’s founding documents and are central to our guiding values. These are human rights that belong to all people, regardless of their background or circumstance.\

As we all know, living up to those ideals is still a work in progress as we strive to create a more perfect union. Both the Maine Human Rights Act and the Commission charged with enforcing it are shining examples of our efforts to protect these rights in law and in practice.

District 118: Portland neighborhoods of Parkside, Bayside, East Bayside, Oakdale and the University of Southern Maine Campus

The MHRA has been amended over time to reflect our progress as a state and a society striving for justice. However, as Maine Human Rights Commission Director Amy Sneirson acknowledged in testimony before the 129th and 130th Legislature regarding proposed legislation similar to that before you today, those amendments have been made in a piecemeal fashion, leading to a number of gaps in coverage and inconsistencies.

LD 279 seeks to build on that work of the Commission and this Legislature. To truly enact a comprehensive Human Rights Act, we must protect the rights of all people and ensure that everyone is equal under the law. We are not there yet. Under current law, *public accommodations* may not discriminate against any person based on race, color, sex, sexual orientation or gender identity, physical or mental disability, religion, ancestry or national origin. As *public accommodations* encompass places or services that are open to the public, it includes most government or publicly owned places and services, but not all. Currently, *public entities* are distinguished in the law as some government owned places or services are not open to the public. While most *public entities* are also *public accommodations*, prisons, jails and even certain legislative spaces are not and are therefore treated differently under the law. Due to this distinction, these *public entities* are not held to the same standards that apply to government facilities and services deemed open to the public. For *public entities* that are not also *public accommodations*, the MHRA only prohibits discrimination based on physical or mental disability. Discrimination based on race, color, sex, sexual orientation or gender identity, religion, ancestry or national origin is permitted under the eyes of our law and considered legal.

What does this mean in a practical sense? It means that Mainers interacting with these *public entities* – such as prisons and jails – do not have meaningful legal protections when they are the victim of discrimination based on any protected class status other than physical or mental disability. That sends a powerful and dangerous message. Under the laws of our state, you are not entitled to your human rights if you are incarcerated. As currently written, the MHRA betrays our most cherished ideals by violating the principle of equal protection for all under the law.

Take a moment to contrast that the current MHRA with a foundational principle enshrined in both the United States and Maine Constitutions. The Equal Protection Clause of the United States Constitution provides, “No state shall ... deny to any person within its jurisdiction the equal protections of the laws.” Similarly, Article 1, section 6-A of the Maine Constitution has the following language, “No person shall be ... denied the equal protection of the laws.” Maine

is not living up to that principle or ideal. We have the opportunity to change that and LD 279 is the vehicle for that change.

LD 279 would make that change by providing that *public entities* may not discriminate on the basis of race, color, sex, sexual orientation or gender identity, age, disability, religion, ancestry or national origin. This would allow persons who suffer from and are injured by discrimination due to the conduct and actions of a *public entity* based on protected class status, to seek redress with the Maine Human Rights Commission.

To be clear, we are not asking for a new protected class based on incarcerated status. Instead, this bill simply extends protections for existing protected classes to all Mainers, regardless of whether they are incarcerated.

This committee has demonstrated its commitment to improving access to justice. I know the members of the committee are deeply involved in reforming our indigent legal defense system. I know you are intimately familiar with the Sixth Amendment Center report that discussed the flaws in our legal defense system and the impact those flaws have on access to justice. I submit to you that this, too, is a critical access to justice issue.

The solution, however, is relatively simple. The solution is to amend the Maine Human Rights Act as proposed in LD 279.

Thank you for your time and consideration today. Director Sneirson from the Commission is here today to answer any technical questions you might have. I would be happy to answer any questions you might have for me.

Complaints Filed Against Public Entities Regarding Custodial Setting Activity

2023 Data Review

Past two years

16 complaints filed against State public entities related to activity not open to the public.

- Administrative Dismissals (some with multiple claims).
 - 8 failure to substantiate
 - 2 failure to cooperate
 - 3 cases/claims were dismissed for lack of jurisdiction (race, sexual orientation, religion).
- Non-ADs:
 - 2 NRG findings
 - 2 open
- In same time period, 1 intake related to custodial situations by State R screened out as non-jurisdictional.

Past ten years

56 complaints filed against State public entities related to activity not open to the public.

- Administrative Dismissals (some with multiple claims).
 - 13 failure to substantiate
 - 9 failure to cooperate
 - 10 cases/claims were dismissed for lack of jurisdiction (race, national origin/ancestry, sexual orientation, religion).
 - 2 Withdrawals without benefits
 - 1 Right-to-sue letter
- Non-ADs:
 - 2 NRG findings
 - 1 RG, unsuccessfully conciliated. Not litigated.
 - 2 open

Comparator state data:

- VT -all government entities covered as PAs. Receive about 20 intakes per year, open 3-10 cases. Most of the cases are inmates with disabilities who have made reasonable accommodations requests that have been denied. On occasion, hostile environment cases (sex, race, LGBTQ).
- MA - prisons/jails not covered as PAs. Receive about 20 complaints per year, all dismissed for lack of jurisdiction.