



AMERICAN CIVIL LIBERTIES UNION

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TESTIMONY OF MEAGAN SWAY, ESQ.

LD 279 – Ought To Pass

An Act to Protect Against Discrimination by Public Entities

Joint Standing Committee on Judiciary

March 28, 2023

Senator Carney, Representative Moonen, and distinguished members of the Joint Standing Committee on Judiciary, greetings. My name is Meagan Sway, and I am the policy director at the ACLU of Maine, a statewide organization committed to advancing and preserving civil rights and civil liberties guaranteed by the Maine and U.S. Constitutions. On behalf of our members, we urge you to support LD 279 because it would help extend the promises of our constitution to all the people of our state.

The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution provides, “No state shall . . . deny to any person within its jurisdiction the equal protection of the laws.” The Maine Constitution states, “No person shall be . . . denied the equal protection of the laws.” Me. Const. Art. 1. sec. 6-A. These words embody the bedrock promise of our nation: equal protection of the laws. Two centuries of rulings from state and federal courts have given meaning to these words in educational and housing systems, citizenship and marital law, reproductive rights and still more areas of conduct. It has repeatedly fallen to legislatures to strengthen, and to give further meaning, to these words.

The Maine Human Rights Act embodies a commitment by the people of this state to nondiscrimination. It is a commitment that is a source of justifiable pride by Maine people. The provisions of the Maine Human Rights Act protect against the most pernicious forms of discrimination. Maine people have gone to the ballot box and voted overwhelmingly to improve and expand these protections. They have sought and obtained the protections of Maine’s courts to enforce these protections. The protections of the Maine Human Rights Act are a cornerstone of our commitment to one another that people will be treated fairly in this state, no matter who they are, when they seek an education or a place to live, when they try to obtain credit or employment, or when they simply transact business in the public square.

This legislation will ensure that the government follows the same nondiscrimination rules that it imposes on the private sector. Nearly a century ago, Justice Brandeis observed that “[d]ecency, security, and liberty alike demand that government officials shall be subjected to the same rules of conduct that are

commands to the citizen.” *Olmstead v. United States*, 277 U.S. 438, 485 (1928) (Brandeis, J. dissenting). The reason for this is plain: the government cannot expect the public to follow one set of laws, when it sets another set of laws for itself. “Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example.” *Id.* Maine can demonstrate its true commitment to the principles of nondiscrimination by ensuring that the requirements of the law apply equally.

This bill gives you a chance to extend the promise of equal protection to still more people. If enacted, this bill would help ensure that public entities¹ do not discriminate against or exclude a person based on that person's race, color, sex, sexual orientation or gender identity, age, physical or mental disability, religion, ancestry or national origin. Support for this change is support for the highest ideals of our state and of our nation. We urge the committee to vote *ought to pass*.