Maine Human Rights Commission

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The Honorable Anne Carney, Senate Chair
The Honorable Amy Kuhn, House Chair
Joint Standing Committee on Judiciary
100 State House Station
Augusta, ME 04333

Re: LD 1408 – An Act to Codify Judicial Deference to Agency Interpretations

Dear Senator Carney, Representative Kuhn, and Members of the Joint Standing Committee on Judiciary:

The Maine Human Rights Commission ("Commission") is Maine's quasi-independent, nonpartisan State agency charged with enforcing our state anti-discrimination law, the Maine Human Rights Act, 5 M.R.S. §§ 4551, *et seq*. ("MHRA" or the "Act"). The Commission is statutorily charged with the duties of investigating, conciliating, and at times litigating discrimination cases under the MHRA and the Maine Whistleblowers' Protection Act ("WPA"); promulgating rules and regulations to effectuate the MHRA & WPA; and making recommendations for further legislation or executive action concerning infringements on human rights in Maine. 5 M.R.S. § 4566(7), (11). With those duties in mind, the Commission is pleased to provide this testimony in favor of LD 1408, An Act to Codify Judicial Deference to Agency Interpretations.

For 40 years, from 1984, when the Supreme Court of the United States ("SCOTUS") issued *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984) until it overturned that decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. ____ (2024), deference to agency interpretations of the statutes and rules they administer was the settled law of the land. This deference was applied by state and federal courts when interpreting ambiguous statutes – unambiguous statutes were simply given their plain meaning. When a statute was ambiguous, however, SCOTUS provided that courts must defer to agency interpretations if those interpretations are "reasonable", explaining that "[i]n such a case, a court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency." *Chevron*, 467 U.S. at 844. *Loper Bright* overturned that decision, stating that courts were responsible for deciding whether the law means what the agency claims it means, without bias in favor of the government.

This bill would codify what was formerly known as "*Chevron* deference", giving weight to reasonable interpretations by Maine agencies of the laws and regulations that they are charged with enforcing. The Commission believes this is sound policy, and is necessary to provide stability and public confidence in the state's various administrative agencies. Refusing deference to agency interpretation discounts the experience of Maine's agency experts who, in many cases, have spent years developing a deep knowledge of their agency's statutes in all of their variations and complexities.

The Commission's Counsel is just one example of such an agency expert. Counsel has been in her position for 11.5 years. During that time, she has had one overarching responsibility: interpreting the MHRA. In furtherance of this duty, she has assisted the Legislature by drafting proposed amendments to the MHRA, drafted the Commission's interpretative regulations, and provided her expert opinion to state and federal courts through *amicus curiae* briefs; she also provides interpretive guidance to the Commission and its staff every day. There is likely no one else with a better understanding of the MHRA in the state today. She is obviously not alone: every agency has similar employees and similar expertise, acquired over the course of long service to the state and its citizens.

Expertise is important for effective and efficient government service. Despite *Loper Bright*, there is no reason for Maine to disregard the hard-won expertise of its public servants. The state employs its various subject-matter experts for exactly this purpose. When agencies reasonably interpret and apply the laws they are charged with enforcing, their interpretation is entitled to respect. To be clear, they are NOT entitled to blind deference, and this bill does not provide that. For example, the Maine Supreme Judicial Court, sitting as the Law Court, has rejected the Commission's interpretation of the MHRA before, when it believed the Commission had exceeded its authority or gone beyond the bounds of statutory language. *See, e.g., Fuhrmann v. Staples the Office Superstore East, Inc.*, 2012 ME 135, paragraphs 29-35. As *Fuhrmann* demonstrates, the courts are intended to act as a check on agency overreach; not as an independent policymaker. That's why we have agencies. Because this bill would ensure that Maine courts continue to defer to reasonable agency interpretations of their own regulations and the statutes they are charged with upholding, the Commission urges this Committee to support it.

Thank you for this opportunity to provide testimony in favor of LD 1408. The Commission would be pleased to discuss these issues with you at your convenience, including at the work session on this matter.

Sincerely,

Barbara Archer Hirsch, Commission Counsel

cc: Commissioners