

Maine Human Rights Commission

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

Re: An Act Clarifying the Acceptance of Public Funding by Community Benefit Organizations – LD 879

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

The Maine Human Rights Commission (“Commission”) is Maine’s quasi-independent, neutral, apolitical State agency¹ 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; promulgating rules and regulations to effectuate the MHRA; 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 provides this testimony against LD 879, *An Act Clarifying the Acceptance of Public Funding by Community Benefit Organizations*.

The MHRA’s Purpose, and Backdrop to LD 879.

The policy of the Commission and the MHRA itself is 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 or access to public accommodations on account of race, color, sex, sexual orientation, physical or mental disability, religion, ancestry or national origin”. 5 M.R.S. § 4552. That breadth of purpose carries into the specified powers and duties of the Commission. The MHRA provides that “[t]he commission has the duty of investigating all conditions and practices within the State which allegedly detract from the enjoyment, by each inhabitant of the State, of full human rights and personal dignity. Without limiting the generality of the foregoing, it has the duty of investigating all forms of invidious discrimination, whether carried out legally or illegally, and whether by public agencies or private persons. Based on its investigations, it has the further duty to recommend measures calculated to promote the full enjoyment of human rights and personal dignity by all the inhabitants of this State.” 5 M.R.S. § 4566.

¹ The Commission itself is made up of five Commissioners, appointed by the Governor for staggered five-year terms. By statute, there can be no more than three Commissioners from any political party. 5 M.R.S. § 4561.

From the MHRA's inception, discrimination was prohibited based on race, color, sex, religion, ancestry or national origin, with the only substantive change to protected classes being the addition of physical and mental disability in 1974/5. The MHRA was amended in 2005 to include a new protected class based on sexual orientation (defined to include actual or perceived homosexuality, bisexuality, or heterosexuality, gender identity, and gender expression)(here "LGBTQ"). This amendment became effective after decades of rancorous public engagement and wrangling on the issue,² and this Legislature had many years' worth of discussion about how to accommodate religiously-affiliated employers, housing providers, places of public accommodation, and schools that might have faith-based objections to including LGBTQ people.

The Legislature carefully and deliberately carved out an exemption to the MHRA non-discrimination mandate for religious organization employers, housing providers, and educational programs as follows:

...a religious corporation, association or organization that does not receive public funds is exempt from this provision with respect to:

- (1) Employment, as is more fully set forth in [section 4553, subsection 4](#) and [section 4573-A](#);
- (2) Housing; and
- (3) Educational opportunity, as is more fully set forth in [section 4602, subsection 4](#).

Any for-profit organization owned, controlled or operated by a religious association or corporation and subject to the provisions of the Internal Revenue Code, 26 United States Code, Section 511(a) is not covered by the exemptions set forth in this paragraph.

5 M.R.S. § 4553(10)(G). This exemption is the subject of LD 879, which would broaden the category of religious groups that can discriminate based on LGBTQ status in employment, housing, and education.

**The MHRA's Balance of Rights:
Publicly-Funded Groups Should Not Be Given Permission to Discriminate.**

This bill arises at the intersection where two rights protected in the MHRA – the right of people to access jobs, housing, education and public accommodations without discrimination based on innate characteristics and the right of persons to exercise their faith – appear to conflict. The MHRA has long protected both of these key rights in its non-discrimination principles, and has provisions to balance these rights and accommodate tension between them that LD 879 would upset.

² In 1981, the Legislature debated adding LGBTQ protection to the MHRA. In 1983, the Maine Senate added LGBTQ protection to the MHRA but the House defeated it; in 1989, the Maine House added LGBTQ protection to the MHRA but the Senate defeated it. In early 1990's, Portland and Lewiston proposed banning LGBTQ discrimination. In 1993, the Legislature added LGBTQ protection to MHRA but the then-governor vetoed it. In November 1995, a citizens'-initiated ballot initiative sought to ban Maine state and local governments from passing anti-discrimination ordinances; this was defeated with 53% of the vote. In 1997, the Maine Legislature passed LGBTQ protection to the MHRA, and the then-governor signed it into law, but it never went into effect, as a February 1998 special election voter-initiated ballot initiative repealed it (52% vote to repeal). In 1999, the Legislature again passed LGBTQ protection to the MHRA, and it was again signed into law, but this, too, did not take effect; in November 2000 voters narrowly (51.3%) utilized a "people's veto" to reject it. In 2005, the Legislature yet again passed LGBTQ protection to the MHRA, and the then-governor signed it into law in March 2005; this amendment took effect in December 2005 after a ballot initiative seeking its repeal in November 2005 was rejected (45% repeal it to 55% keep it).

LD 879 proposes allowing a “religious corporation, association or organization” that is not for-profit under tax codes to discriminate against LGBTQ people even it operates using state or federal funds. This would allow an employer that aligns itself with a religious affiliation or belief (to the extent that a business entity can have a religious belief) to fire or refuse to hire someone LGBTQ even if the employer applied for and receives a federal or state pandemic economic recovery grant, and would allow a community shelter operated by a religious entity to refuse entry to someone based on their LGBTQ status even though the entity applied for and operates using community grant funds from Maine or the federal government, and would allow a school affiliated with a religious organization to fire a teacher or expel a student who is LGBTQ even though the school applied for and receives federal or state funds for instructional support or school lunch.

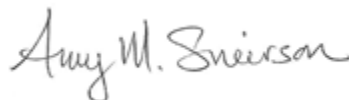
This proposal would upend the delicately-balanced standard in the MHRA, intended to allow for religious expression but also to require nondiscrimination in public. The MHRA provides that religiously-affiliated organizations that are not for-profit can pick and choose who to employ to carry out their ministries, and who to allow into housing they provide, and which children to educate. This is consistent with the free exercise of a genuinely-held religious belief. Within the MHRA, the organization’s right to freely exercise religious beliefs only becomes circumscribed once the organization opens itself to the public or seeks out taxpayer funds. A religiously-affiliated school or shelter or employer may continue to operate within its beliefs, at its own expense, but once the public funds to which all taxpayers contribute are utilized to subsidize the religious organization, the organization must not discriminate against a group of those taxpayers in its public accommodations, housing or employment.

Issues surrounding religiously-affiliated organizations, government funding, and discrimination are being contested from local communities to the United State Supreme Court. All arise out of the same bedrock question, the extent to which church and state must remain separate in this country. We need not answer that larger question today, but we can determine whether the State of Maine should make a policy within its non-discrimination law that organizations that affirmatively seek out or accept state or federal monies paid by all Mainers should be expected to serve all Mainers regardless of protected-class status. Because LD 879 would allow religious organizations to seek out and use taxpayer dollars from LGBTQ taxpayers, while excluding those same taxpayers from their employment, housing, services and places, and education, this proposal would countenance invidious discrimination and should be rejected.

Conclusion

Thank you for this opportunity to provide testimony against LD 879. The Commission would be pleased to discuss these issues with you at your convenience, including at the work session on this matter.

Sincerely,



Amy M. Sneirson, Executive Director



Barbara Archer Hirsch, Commission Counsel

