

**TESTIMONY OF MARIA FOX, ESQ.**  
**In Support of SP 77, LD 141**  
**An Act to Provide Limited Immunity to Maine Human Rights Commission Mediators**

Senator Carney, Representative Kuhn and Distinguished Members of the Judiciary Committee:

My name is Maria Fox. I am a shareholder with the law firm of Murray, Plumb & Murray in Portland, Maine. I also live in Portland. I am testifying in favor of SP 77, LD 141, An Act to Provide Limited Immunity to Maine Human Rights Commission Mediators.

First, I would like to thank the Maine Human Rights Commission for suggesting this legislation and Senator Carney for sponsoring this bill.

I have worked as an employment law lawyer for more than 25 years. For more than 15 of those years, I have also served as a mediator of employment and civil rights law disputes. I have served on the Maine Human Rights Commission's mediation panel since the inception of its mediation program 10 years ago. For more than a decade, I have provided private mediations and have served on various other mediation panels, including the Maine Labor Relations Board and the Maine Court Alternative Dispute Resolution Service.

I do not provide mediation services through the Maine Human Rights Commission for the money. The state's rate of compensation is far lower than what I charge for private mediations. I do this work because it makes mediations more accessible to the public. Mediations play a crucial role in resolving legal disputes. I love being a part of this valuable addition to the Maine Human Rights Commission process that allows early dispute resolution for employers and employees, landlords and tenants, and consumers and places of public accommodations.

I would like to continue serving my community by providing mediations through the Maine Human Rights Commission. However, currently, the state provides no immunity to mediators working in this program. As mediators on this panel, we have to maintain our own malpractice insurance coverage. Because I have a private practice, this worked fine for me until recently when I joined a new firm. Since joining my new firm, I learned that our malpractice insurance will not provide complete coverage for my work as a mediator for this state program. Specifically, it will not cover the state's cost of defending against a claim and, under the terms of the state's vendor agreement that Maine Human Rights Commission mediators are required to sign, the state could come after me and my firm to recoup the state's costs including attorneys' fees and there would be no insurance coverage. As a result, I have had to pause providing mediation services for the Maine Human Rights Commission. If this legislation passes, I will be able to resume this work.

The lack of indemnification for Maine Human Rights Commission mediators means the mediators must shoulder the risk of having to pay the state's defense costs in the event of a claim. While the likelihood of a meritorious claim is very slim, the possibility of someone filing a claim is real, frivolous as the claim may be.

The lack of indemnification for Maine Human Rights Commission mediators is also at odds with the indemnity the state provides for mediators in other programs. Here are a few:

The Maine Department of Education provides immunity to its mediators. 20-A M.R.S. § 7207-C(3) provides: “Mediators; immunity. The State shall train impartial mediators. For the purposes of this section, while carrying out their official duties, mediators are considered state employees and are entitled to the immunity provided state employees under the Maine Tort Claims Act.”

The Maine Labor Relations Board provides immunity to its mediators. Because the Maine Labor Relations Board’s Panel of Mediators are appointed by the governor, 26 M.R.S. § 965(2)(C), they are covered as “employees” under the Maine Torts Claim Act. *See* 14 M.R.S. § 8102(1)(A). As “employees,” the Maine Tort Claims Act provides immunity from civil suits for acts undertaken in the performance of their appointed duties. *See* 14 M.R.S. § 8111.

The Court Alternative Dispute Resolution Service provides immunity for alternative dispute resolution (“ADR”) providers, including mediators, serving Maine’s state courts. Although these mediators are not considered employees of the state, 4 M.R.S. § 18-B(2), by statute, they are immune from civil liability. 4 M.R.S. § 18-B(3) provides as follows: “Immunity from civil liability. A person serving as an ADR provider under contract with the Judicial Department or as the Director of the Court Alternative Dispute Resolution Service is immune from any civil liability, as are employees of governmental entities, under the Maine Tort Claims Act, for acts performed within the scope of the provider's or the director's duties.”

The proposed legislation before you provides the same type of immunity for Maine Human Rights Commission mediators as the state provides for other state mediator programs. It says that “while carrying out their official duties, [Maine Human Rights Commission] mediators are considered state employees and are entitled to the immunity provided to state employees under the Maine Tort Claims Act.” This law would bring consistency in how the state treats its mediators and remove the unfair risk of defense costs these mediators currently bear.

Thank you for considering this legislation. I would be happy to take any questions.