



Testimony of Jim Mitchell on behalf of Irving Woodlands, LLC in opposition to
LD 1724, An Act to Create a Logging Dispute Resolution Board and To Require Proof of
Ownership Documents To Be Available within 14 Days of Request
March 7, 2022

Senator Daughtery, Representative Sylvester, and Honorable Members of the
Committee, I am Jim Mitchell. I reside in Augusta and testify today on behalf of Irving
Woodlands in respectful opposition to LD 1724.

Here in Maine, Irving owns and operates 2 major sawmills as well as owning and
managing more than 1,000,000 acres of forestland. In Maine, the company employs 431
people — with average compensation of approximately \$41,000 annually as well as
healthcare coverage and retirement benefits for all full-time employees. Irving works
with more than 100 Maine-based contractors employing approximately 190 Mainers, and
annually spends +\$100 million on outside products and services in the State.

Irving has a longstanding commitment to forest stewardship and abides, obviously, by
Maine law and rule but also qualifies its products under the Forest Stewardship Council
(FSC) and Sustainable Forestry Initiative (SFI) by adhering to those organizations' strict
environmental management standards. In addition, both of these organizations require a
socio-economic measurement to test the company's commitment to communities in
which they do business. Part of that socio-economic analysis is formal feedback from
stakeholders including contractors. Contractors specifically are asked how they are
treated and the nature and quality of the business relationship.



Of note, Irving has planted over 1 billion trees across a substantial portion of Northeastern North America and since 1985, Irving has planted more than 78,000,000 trees in Maine. The company began its Maine operations in 1946.

Irving also supports higher education at Maine's public universities, maintaining the Irving Chair of Forestry at UMaine. In addition, Irving donated \$1.0 million to UMFK to support a faculty position involved in teaching and research to enhance the forestry program at that campus and, hopefully, to retain more of those interested in the County before they finish their forestry degrees in Orono. The company collaborates on a number of research projects to evaluate how best to actively manage the forests while engendering habitat for threatened plants and Maine's abundant wildlife. For your information, I will shortly deliver to the State House copies of Irving's latest sustainability report which provides a comprehensive summary of their various initiatives to protect the environment.

Irving has several concerns with LD 1724. First, I respectfully draw your attention to lines 10-12 on page 2 of the printed bill. The text appears to prohibit holders of H-2A visas from hauling wood within Maine. This provision is similar to language in legislation enacted last session, LD 188, that is the subject of active litigation in federal court. The challenge to that law is based on claims invoking both the Supremacy Clause and the 14th Amendment (Equal Protection) of the U.S. Constitution which states in part, "...nor shall any State deprive any *person* of life, liberty, or property, without due process of law; nor deny to any *person* within its jurisdiction the equal protection of the laws." (emphasis added). Note the 14th Amendment applies to **persons** and is not a right or privilege reserved for citizens. Temporary workers working in Maine, by virtue of an H-2A visa are, undoubtedly, persons. Yet, this language appears to discriminate



against those individuals by prohibiting them work for which they may be qualified and for which they may be otherwise authorized to perform under U.S. immigration law.

The fundamental thrust of the bill, however, is establishment of a Logging Dispute Resolution Board. Irving recognizes and appreciates that the Legislature has a legitimate role in regulating what contracts may or may not do with respect to the rights and obligations of contracting parties. And, we recognize that misunderstandings and disputes between parties with a contract are not uncommon. The company, therefore, meets every 8 weeks with its logging contractors seeking to ensure both parties are meeting obligations under the terms of the agreement. Differences, if any, are hashed out but either party under these contracts can seek binding arbitration as indicated by the following language in all the contracts Irving has with its contractors: “all disputes arising in connection with this contract will be resolved by confidential and binding arbitration to be conducted in Bangor, Maine before a single arbitrator selected by the parties....” We believe the arbitration provision in our contracts is the appropriate mechanism to handle disputes and facilitate just, reasoned settlements.

I wish to call your attention to the word “confidential” in the above excerpt. We believe an arbitrator is best to handle disputes between 2 independent businesses because, depending on the services contracted, confidential business information may of necessity determine the outcome in the arbitration. These confidential, and sometimes proprietary, matters should not be disclosed in a public forum such as a State board or Commission unless mechanisms are established to adequately protect trade secrets. The bill is not clear on how this information would be shielded from inquiries by parties engaged in the same enterprise. Therefore, customers (e.g. sawmills, paper mills) could be disadvantaged from the public disclosure of this information because disclosure can reduce robust price competition.



Furthermore, while the establishment of the Board and its membership is clear, the actual workings of the Board and its authority is not articulated within the bill sufficiently. A number of questions remain as to scope of the Board's jurisdiction, the process for appealing decisions, the process for participating in the "arbitration" apparently contemplated in the bill and how current law, in particular the Administrative Procedures Act, would apply to the Board. Finally, we are confused as to why the Maine AFL-CIO would be one of the entities represented on the Board as we are unaware of any employees of logging contractors who are members of an AFL-CIO affiliate.

Thanks for your consideration of my testimony.

The 14th Amendment ensures that "...nor shall any State deprive any *person* of life, liberty, or property, without due process of law; nor deny to any *person* within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV (emphasis added). One famous decision is the 1982 U.S. Supreme Court case of *Plyer v. Doe*, in which Texas revised its laws to exclude the children of undocumented immigrants from being eligible to attend K-12 school. The Court held that the children of undocumented immigrants are "people" as stated in the 14th Amendment, and under the Equal Protection clause one's immigration status is not a sufficient rational basis for denying



benefits afforded to other residents. Therefore, non-citizen children must be afforded a K-12 education.

It doesn't matter, by the way, whether the Muslims in question are citizens or noncitizens, green card holders, visa holders or refugees. The Equal Protection Clause explicitly prohibits "deny[ing] to any person within its jurisdiction the equal protection of the laws."

Furthermore, laws passed by the states, whether discriminatory or not, are invalid under the Supremacy Clause if they impose upon Congress's exclusive authority to regulate immigration. If Congress expressly grants certain privileges to noncitizens, state laws that revoke those privileges will be preempted. The Supremacy Clause, therefore, is an unwitting companion to the Equal Protection Clause in striking down discriminatory state laws.

Because Congress has plenary power over immigration, courts should approach discriminatory state laws by first evaluating their constitutionality under the Supremacy Clause. If Congress, for example, grants rights to nonimmigrants, state laws revoking or



infringing on those rights are preempted and invalid. There is no need for an equal protection analysis in these cases.

The Equal Protection Clause of the Fourteenth Amendment prohibits a state from denying equal protection to “any person within its jurisdiction.”¹