

**Testimony of Martha Davis before the Massachusetts Joint Judiciary Committee  
Hearing on the *Human Rights for All* Bill (HB706), June 7, 2005**

Martha F. Davis  
Associate Professor  
Northeastern University School of Law  
400 Huntington Avenue  
Boston, MA 02115  
(617) 373-8921  
[m.davis@neu.edu](mailto:m.davis@neu.edu)

Thank you for the opportunity to testify today in support of HB 706, an important bill that would create a Commission to review the integration of Massachusetts state law with universal human rights norms recognized through a range of international treaties and declarations. I am a professor at Northeastern School of Law, where I teach women's rights. I am also the former Legal Director of the NOW Legal Defense and Education Fund. I will address the importance of HB 706 from a women's rights perspective.

As you know, Massachusetts is in many respects a national leader in advancing women's rights. Our private women's colleges educated women leaders long before institutions in other parts of the country recognized the importance of higher education for women. Indeed, because of the high level of women's education in this state, we are a national leader in women's earnings and workforce achievement. Further, Massachusetts is one of only 17 states with an Equal Rights Amendment in its Constitution. Our ERA provides that discrimination in this state receives the strictest scrutiny – a higher level of review than is available in the federal courts. This state has even recognized the importance of implementing international human rights standards, charging the Massachusetts Commission on the Status of Women with implementing the provisions of the Beijing Platform here at home.

But despite this longstanding record of sensitivity to women's issues, women in this state still lag well behind men in earnings and other measure of well-being, and also lag behind women in many other states. There is no doubt that a more comprehensive review of Massachusetts' law through a human rights lens would point the way for additional advances for women in this state. For example, one of the persistent problems facing Massachusetts is the disparity between our overall high earnings rankings for women, and the reality that many women live in poverty. According to the Institute for Women's Policy Research (IWPR), in 2002, Massachusetts ranked 3<sup>rd</sup> in the nation in

women's median earnings, while only 20<sup>th</sup> nationally in percentage of women living above the poverty line. Further, women's race and ethnicity had a dramatic effect on their well-being. For Asian American women, Massachusetts ranked 38<sup>th</sup> among the states in percentage living above the poverty line, while for Hispanic women, Massachusetts was virtually at the bottom, ranking 46<sup>th</sup> nationally.

Health issues have also posed a particular challenge in Massachusetts. Again, according to IWPR, Massachusetts' mortality rates from breast cancer and lung cancer, and incidence rate of AIDS among women are relatively high. Further, the state ranks near the middle of all states for women's incidence of diabetes and activities limitations due to health. This troubling data is likely affected by the relatively high income gap in Massachusetts between the "haves" and the "have nots."

The issues that challenge women in Massachusetts – poverty, health, workplace success, and other measures of well-being – are certainly not unique to this state, and they have been dealt with globally through a human rights lens. The Commission proposed by HB 706 would have much to learn from these international models about positive approaches to women's rights.

As an initial matter, international human rights paradigms differ from traditional U.S. legal approaches in three key respects. First, international human rights law recognizes the interconnectedness of rights – for example, as a practical matter, an individual cannot exercise her right to vote if her right to housing or to food has not been upheld. In human rights terms, civil and political rights cannot be separated from economic, social and cultural rights.

Second, international human rights law looks at effects of laws and policies as well as their intent. In the United States, legal remedies are often solely provided for intentionally discriminatory policies. But under human rights paradigms, the state must also account for unintentional impacts. In practical terms, rather than inquire whether women's disproportionate poverty in Massachusetts is the result of deliberate discrimination, the focus of international human rights law would be how to craft affirmative policies to address these disparities.

Finally, international human rights law stresses affirmative state obligations to uphold recognized rights. The state is not obliged simply to avoid exacerbating women's plight – it must take affirmative steps to address it. Importantly, the international community has recognized that those steps may be gradual and progressive. But the state cannot conform to international human rights standards if its response to women's inequality is inaction – even if that inequality is a byproduct of private, rather than governmental, interactions.

With these principles in mind, there are many ways in which the Commission's work – and the ultimate integration of Massachusetts law with international human rights standards – would inure to women's benefit in this state. We have already seen the results in San Francisco, which adopted the International Convention to Eliminate All

Forms of Discrimination Against Women (CEDAW) as part of its municipal law in 1998. There, the City undertook a range of low cost, affirmative steps that helped expand women's ability to participate in the economy and life of the city – from moving street lights closer together to facilitate women's travel at night, to shifting the hours of city jobs to take account child care needs, to putting in curb cuts to assist people pushing strollers or wheelchairs.

While modest, each of these steps arose from an affirmative, government-initiated review of city policies. While the policies' impact was **unintentionally** discriminatory, their impact nonetheless kept women off city streets and out of city jobs. It is questionable whether a domestic legal approach would have identified these as rights violations – certainly, mounting any kind of lawsuit would have been extremely difficult. But applying an international human rights lens, San Francisco affirmatively identified these as rights issues and was able to take the modest steps necessary to address them.

Further, as Columbia Professor Susan Sturm has observed, these sorts of affirmative efforts may be the only way to remedy the “second generation” discrimination that continues to frustrate women in the workplace and in the economic life of the state. As a result of high profile lawsuits and greater cultural awareness, “smoking gun” discrimination is now a rarity. But more subtle – even unintentional – discrimination persists, and is clearly one of the contributing factors to women's high poverty rates in the state, as well as the health issues that continue to affect women (particularly women of color) in Massachusetts at higher rates than other states.

What would the HB 706 Commission find if it undertook a similar study in Massachusetts? Earlier this year, we harnessed the legal acumen of more than two dozen law students and law professors at Northeastern Law School to determine what, if anything, the Commission might find if it looked at women's rights in Massachusetts through a human rights lens. While this was admittedly a dry run, conducted in the context of an educational exercise, it yielded a number of revelations and recommendations that indicated that the HB 706 Commission's time would be well-spent.

For example, one of the student groups examined the question of whether women in Massachusetts experience credit discrimination when they seek bank loans, mortgages and other forms of financial credit. As expected, they found that women have many avenues to bring individual discrimination claims, or to seek government assistance in bringing such claims. However, these potential avenues of redress have not eliminated credit discrimination. Indeed, there is a large discrepancy in the percentage of men and women who are undertaking subprime loans, indicating that women are more likely to be targeted by predatory lenders. This situation requires affirmative government intervention rather than the status quo, which simply provides women with legal mechanisms to seek redress after the fact.

Another student group examined the impact of maternity on women's employment in Massachusetts. Through both anecdotal interviews and data collection,

they found ample evidence that working women experience discrimination when they become pregnant or are already mothers. As one interviewee noted, “the stereotype that women become less committed to their job once they have children strongly contributes to this discrimination.” Women’s wages and their workplace status suffer as a result of these stereotypes. Again, the students found a number of mechanisms for individual women to claim pregnancy discrimination if they can prove discrimination by their employer, but few positive, affirmative efforts to address the large-scale discriminatory impact of employers’ work-family policies on women. Moreover, even the legal mechanisms for seeking individual redress before the Massachusetts Commission Against Discrimination were over-burdened and therefore often ineffective.

In these and other instances, international human rights law provides a constructive approach to addressing women’s rights. The Commission created by HB 706 would have the opportunity to tailor this approach to the needs of Massachusetts, while at the same time, taking important steps to bring human rights home to this state. There is no doubt that the women of Massachusetts would benefit. For that reason, I urge the Committee to act promptly to move this bill out of Committee with a favorable recommendation.