



HOUSE OF REPRESENTATIVES

February 12, 2018

Hello Chair Barker, and Vice Chairs Williamson, Olson and colleagues:

I am so pleased to testify in support of my first bill before the House Judiciary Committee, HB 4008. When I read a 2016 *Washington Post* report that daylighted the use of race and gender in determining damages in some personal injury cases, I was appalled. Late last year, I shared it with a few colleagues on this committee to see if they felt similarly, and it, too, struck close to home for Representative Stark. I am incredibly grateful for his work to gain broad support for the bill in both the House and Senate chambers.

What we are seeking to do today is eliminate the use of race-based average income tables from being used to calculate personal injury awards. Currently, future earnings potential is calculated using U.S. Census data that is aggregated and used in a variety of different ways within the forensic economist profession. These economists provide expert analysis in cases of loss and personal injury. A 2009 survey in the *Journal of Forensic Economists* included a hypothetical question calculating the lost future earnings for a two year old African American toddler. 43% of respondents to the survey replied that they would incorporate historical earnings data based on race to determine the boy's damage award.

Under HB 4008, Oregon would be the first state to prohibit the introduction and use of racialized data in personal damages decisions, but is not alone in seeking to curb these approaches. Alaska, California, Minnesota, New Jersey, New York and Washington have indicated a preference for race-neutral tables or statistics in their jury instruction. There has also been movement toward this at the federal level. A bipartisan House bill was introduced in 2016 that would have developed guidance for forensic economists to create inclusive future earnings tables.

Relying on race-based data to determine future earning potential reinforces past wage discrimination. As Congresswoman Mia Love, a Republican representing Utah's Fourth District, stated as part of her efforts on the 2016 federal bill, "The courts should be above using race or gender in any way in determining awards in civil cases. The Declaration of Independence reads: 'We hold these truths to be self-evident, that all Men are created equal.'" Colleagues, until changes are made at the federal level, Oregon can take this step to address and provide fairness to personal injury victims.

I urge an "aye" vote. Thank you.

Representative Karin Power

