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Bill targets bias in jury selection:

Proposal tries banning rejection of certain jurors

By Patricia Manson
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Attorney Jill M. Metz counts herself among the supporters of legislation that would bar discrimination against potential jurors based on their sexual orientation or gender identity.

"I just don't think there's any place in our country for discrimination," Metz said today. "Jury service is necessary for all citizens to assure litigants that we're a country of laws that apply equally."

Metz, who has worked for nearly 30 years to protect the rights of lesbian, gay, bisexual and transgender (LGBT) community, is president of the board of directors for the American Civil Liberties Union of Illinois.

Attorney John L. Litchfield of Foley & Lardner LLP also voiced support for the legislation.

"Any form of discrimination against the LGBT community should be disfavored by the judicial system, particularly with respect to individuals serving on a jury," Litchefield, president of the Lesbian and Gay Bar Association of Chicago said in an e-mail. "If a person is qualified to serve as a juror, regardless of their sexual orientation or gender identity, they should be permitted to do so."

The Jury ACCESS (Acess for Capable Citizens and Equality in Service Selection) Act recently was introduced in the U.S. Senate by Republican Susan Collins of Maine and Democrats Jeanne Shaheen of New Hampshire and Sheldon Whitehouse of Rhode Island.

The National LBGT Bar Association in Washington, D.C., worked with Shaheen in crafting the bill.

"Extending federal jury nondiscrimination policy to include sexual orientation and gender identity is truly a step forward for the LGBT movement and a notable achievement for the entire LGBT community," D'Arcy Kemnitz, the association's executive director, said in a written statement.

The legislation follows a path started when the U.S. Supreme Court ruled in *Batson v. Kentucky*, 476 U.S. 79 (1986), that peremptory challenges in criminal cases based solely on the race of potential jurors violated the equal protection clause of the 14th Amendment.

In *Georgia v. McCollum*, 505 U.S. 42 (1992), the Supreme Court extended its holding to bar defendants in criminal cases from striking jurors solely because of their race.

In *Edmonson v. Leesville Concrete Co. Inc.*, 500 U.S. 614 (1991), the high court held that racial discrimination in jury selection in civil cases also was unconstitutional.

And the court held in *J. E. B. v. Alabama ex rel. T. B.*, 511 U.S. 127 (1994), that striking potential jurors solely because of their gender also violated the equal protection clause.

In 2004, the St. Louis-based 8th U.S. Circuit Court of Appeals did not rule on the question but said it doubted that striking jurors on the basis of their sexual orientation violated the equal protection clause. *United States v. Blaylock*, No. 04-1535.

A California statute bars discrimination in jury selection based on sexual orientation.

Metz said she would like to see similar legislation in Illinois and other states.

“I think that all states should also take a very hard look at the messages we send,” Metz said. “And if we’re allowing people to be excluded from juries, we’re not having juries of our peers, a basic tenant of our country.”