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Testimony of Representative Craig V. Hickman presenting LD 795, RESOLUTION, Proposing an Amendment to the Constitution of Maine To Establish a Right to Food

Before the Joint Standing Committee on Agriculture, Conservation and Forestry

Senator Dill, Representative Kinney and distinguished members of the Joint Standing Committee on Agriculture, Conservation and Forestry. My name is Craig Hickman and I represent District 81, Winthrop, Readfield and a part of North Monmouth at the foot of Mt. Pisgah. I stand before you today to present, enthusiastically, LD 795, RESOLUTION, Proposing an Amendment to the Constitution of Maine to Establish a Right to Food.

When I first became a member of the Legislature, I never thought I would present a resolution to amend the Constitution. I see the document as sacred, one which declares the moral underpinnings of our society and outlines the bylaws that undergird the foundation of our democratic republic. It must be amended but rarely.

History, however, tells another story. Maine's Constitution is sacred precisely because it is a living and breathing document that has been amended 173 times since 1820, the last time in 2017 when the People overwhelmingly ratified a constitutional amendment regarding public pension unfunded liabilities by a landslide margin, 63%- 37%. Raise your hand if you remember voting on it. That amendment affected all of us as taxpayers. This amendment affects all of us as *human beings*.

And so I stand before you today asking that we send a resolution to the People to make our sacred document an even stronger protector of individual rights regarding the most vital of concerns.

As food lawyer Peter Hutt states, "The constitutional authority of the government to determine the food that can lawfully be marketed, and the constitutional right of the individual to personal freedom and control of his own destiny, will at some juncture inevitably conflict."

That day of conflict has arrived and we have an opportunity to make this moment of conflict transformational. So today, I present a resolution that pays the ultimate tribute to eaters, a set of rights that explicitly articulates an expression of our right to enjoy and defend life and liberty and pursue and obtain our safety and happiness, as set forth in Article 1, Section 1 of the Declaration of Rights in the Constitution of Maine. The resolution reads as follows:

Section 25. Rights to Food and Food Sovereignty and Freedom from Hunger. All individuals have a natural, inherent and unalienable right to food, including the right to acquire, produce, process, prepare, preserve and consume the food of their own choosing by hunting, gathering, foraging, farming, fishing, gardening and saving and exchanging seeds or by barter, trade or purchase from sources of their own choosing, for their nourishment, sustenance, bodily health and well-being, as long as an individual does not commit trespassing, theft, poaching or other abuses of private property rights, public lands or natural resources in the acquisition of food; furthermore, all individuals have a fundamental right to be free from hunger, malnutrition, starvation or endangerment of life from the scarcity of or lack of access to nourishing food.

Now this isn't my first up-to-bat and so this language is much the same as the language that received two thirds of a vote in the House Representatives in the 127th Legislature. That measure had been carried over to the Second Regular Session to address concerns raised by some legislators and citizens that this amendment could somehow be misconstrued to grant greater governmental authority over providing food to people, rather than securing and protecting individual rights (it does not); or that it would promote trespassing and theft (it does not). Even though no one interprets the right to keep and bear arms to mean the state must provide all people with firearms or that people have a right to steal them, I considered seriously all concerns. I sought input from Republicans and Democrats, Independents and Libertarians, conservatives and progressives, allies and foes, farmers and fishermen, chefs, cottage food producers, homesteaders and lawyers until the language was right. Like a big community pig roast barbecue, then, as now, the amended version before us reflects the collaborative effort of many, and I thank them all. We won the support of the Maine State Grange, while the Maine Farm Bureau changed its position from opposition to monitor—neither for nor against, if you will.

In a moment, I will tell you why I believe we need to put this in writing, why it rises to the level of a constitutional amendment, but first I want to say that this resolution, if ratified, will not invalidate state food laws or regulations currently on the books, will not invalidate any hunting or fishing laws or regulations currently on the books, and will not keep the requisite departments from enforcing those same regulations. If this resolution requires more—or less—language to make that clearer, then let it be so. For example, we could end up with simply this:

Section 25. Right to Food. All individuals have a natural, inherent and unalienable right to food, including the right to acquire, produce, process, prepare, preserve and consume and to barter, trade or purchase the food of their own choosing from the sources of their own choosing, for their own nourishment, sustenance, bodily health and well-being.

Period. Wherever the language ends up, LD 795 is, ultimately, about freedom of choice, access to nourishing food, food self-sufficiency, food security, freedom from hunger and malnutrition. LD 795 is about food sovereignty, individual responsibility and our basic fundamental right to work out our own nutrition regimen free from unnecessary interference.

So, no matter what else you have heard or will hear, this resolution, if adopted, will not invalidate state food laws or regulations currently on the books, will not invalidate any hunting or fishing

laws or regulations currently on the books, and will not keep the requisite departments from enforcing those same regulations.

This is true, Senator Dill, Representative Kinney, because this resolution, if adopted, does not change one single word of statute. To the contrary, it adds a set of rights to the Constitution, a firm foundation upon which sound public policy can be built.

But, first, we must send it to the ballot box.

Federal policy largely determines what we have available to eat, even here in Maine; or especially here in Maine. We currently import 90% of the food we consume. Hence, the food produced in the industrial food system is ours for the taking, and it is taking us to epidemic addictions to salt, sugar, and fat, taking us to chronic diseases and slow death. Malnutrition, diabetes, obesity, Alzheimer's, endocrine disorders, hypertension, heart disease, and cancer are all linked to the so-called Western Diet. The federal farm bill has contributed directly to these public health disasters. As Marion Nestle, a world-renowned nutritionist, speaking exclaims:

The farm bill matters. It is crucial to practically everything about our food system: what crops get subsidized, how much foods cost, how land is used and whether low-income Americans have enough to eat. Whether you are rich or poor, much about your food choices is shaped by what's in this bill's 357 printed pages.

If you examine how its incentives line up, you quickly see that it strongly favors the industrial agriculture of the Midwest and South over that of the Northeast and West; methods requiring chemical fertilizers, pesticides and herbicides over those that are organic and sustainable; and commodity crops for animal feed and ethanol rather than "specialty" crops (translation: fruits and vegetables) for human consumption. Because its benefits are proportionate to production levels, it promotes crop overproduction. This makes food hugely competitive and forces the manufacturers of processed foods and drinks to do everything possible to encourage sales of their products. The result is a food environment that encourages overeating of highly caloric, highly processed foods, but discourages consumption of healthier, relatively unprocessed foods.

According to Michael Moss, Pulitzer Prize-winning investigative journalist and author of the top New York Times bestseller "Salt Sugar Fat: How the Food Giants Hooked Us," this harmful food system is promoted by the biggest food manufacturers in the world and defended by the very agencies that are supposed to protect the public.

In 2010, the Food and Drug Administration (FDA), which regulates 80% of the country's food, declared in U.S. District Court that people have "no fundamental right to obtain the food they wish" and therefore have "no fundamental right to their own bodily and physical health."

I strongly disagree. I believe a majority of Maine people also disagree. LD 795 is before us precisely so that we may find out. As Maine goes, so goes the nation.

In that same 2010 case, the FDA also claimed that “there is no deeply rooted historical tradition of unfettered access to foods of all kinds.”

Now I would say that’s in insult to all our ancestors, Senator Dill, Representative Kinney. Our ancestors ate wild turtle soup, steamed snails, fried grasshoppers, fire-roasted grubs, and raw fish eggs, and lived to tell about it. Our ancestors figured out how to make hog intestines, pig feet, beef tongue and brains, chicken hearts, thymus glands and pork belly taste good.

And lived to tell about it.

Fast forward several centuries, and the government agencies that are supposed to ensure food safety didn’t seem to care much about the quality of the meats available in the neighborhood grocery stores during my childhood in Milwaukee. For the exchange of our food stamps our hard-earned money, the only chicken available would be so yellow with age and degradation, my mother would soak it overnight in vinegar and lemon water to kill whatever might live on it, then stew it for hours in a pressure cooker to kill anything else. In the last 20 minutes or so, she would drop dumplings in the savory pot liquor and build a part of heaven smack dab in the middle of our kitchen.

We lived to tell about it.

The only beef steaks and pork chops available were so gray we felt safe to eat them only after they were charred past well-done in the oven’s bottom broiler and then smothered in homemade gravy and sautéed wild mushrooms our neighbors foraged on weekend camping trips.

We lived to tell about it.

When yellow chicken and gray beef steaks were among the only animal protein choices available to us at the store, it was no surprise, then, that my father would go hunting with the other fathers in our neighborhood to score opossum, raccoon, squirrel and rabbit, all of which went into the pressure cooker with his garden-grown carrots, potatoes, celery and onions to create a wild game stew so good I could never eat enough. Or, he would fish for perch or trout in Wisconsin’s pristine lakes and slow cure the fish, sometimes whole, sometimes fileted, in his hand-built smoker for longer keeping.

We lived to tell about it.

No deeply rooted historical tradition of unfettered access to foods of all kinds? That’s revisionist history, at best; a misleading fantasy, at worst. If we the People can’t find what we want at the supermarket, corner store or farmers market, or if we can’t produce it ourselves, then we will find it elsewhere.

Food is life.

When one in four children among us goes to bed hungry every night, we must do better. We cannot allow a single one of us to go hungry for a single day. Maine has all the natural resources and the hard-working, independent-spirited, and resourceful people who will make a way out of

no way. We will find and feed ourselves the food we want to eat. This is our right, Senator Dill, Representative Kinney, and I am here to tell about it.

As more people become informed about industrial agriculture through documentaries like “Food, Inc.” and the writings of Wendell Berry, we seek nutrient-dense food from our neighbors and friends, small food producers and homesteaders who produce wholesome food free from chemical preservatives, soy fillers, antibiotics, artificial flavors and colors, clever rearrangements of corn, and who knows what else. Just ask the folks in the 54 towns and cities in every county that have adopted Food Sovereignty Ordinances to date, including right here in Augusta, our state capitol.

The substantive due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution provide that no person shall “be deprived of life, liberty, or property, without due process of law.” Obtaining the food we wish to eat is so basic to our lives, our liberty and our property that it is inconceivable that a right to food choice would not be protected under the Constitution of the United States.

But, the FDA says NO.

Well, in our Constitution, let the People of Maine say YES.

More than three decades ago, the People of this great State, through their representatives, declared that it is policy of the State to be food self-sufficient. And yet we import 90% of the food we consume. Something is wrong with this picture, and we can take a bold step today to paint a better one.

As Virginia farmer Joel Salatin asserts, “More food choice, more food producers, and more community-embedded food options increase food production, food availability, food price competition, and ultimately benefits everyone, including the hungry.

“I can’t imagine a more basic human right, a more bipartisan issue, than protecting my right to choose my body’s food. Who could possibly think that such freedom of choice should be denied? We allow people to smoke, shoot, preach, home educate, spray their yards with chemicals, buy lottery tickets, and read about the Kardashians: wouldn’t you think we could let people choose their food?”

Let the People of Maine say YES.

“It is time to give us back the food freedom our ancestors enjoyed,” Salatin continues. “Freedom is not a focus group exercise. If we can’t taste freedom, we can only talk about it, and that leaves liberty hollow. It’s time for us to embrace the innovation and food security solutions that granting a fundamental right to food engenders.”

Let the People of Maine say YES.

Senator Dill, Representative Kinney, distinguished members of the Joint Standing Committee on Agriculture, Conservation and Forestry, our courts have yet to recognize the right to food choice

as a fundamental liberty right. But way back in 1888, in the case of Powell vs. Pennsylvania, Supreme Court Justice Stephen Field argued as follows:

I have always supposed that the gift of life was accompanied with the right to seek and produce food, by which life can be preserved and enjoyed, in all ways not encroaching upon the equal rights of others... [The] right to procure healthy and nutritious food and to manufacture it, is among those inalienable rights, which, in my judgment, no state can give, and no state can take away.... It is involved in the right to pursue one's happiness.

Sometimes, we have to go back in order to move forward.

Finally, it must be made clear once more that LD 795 will not change, repeal, preempt or nullify any laws or regulations—local, state or federal—currently on the books. If someone decides to challenge any of those laws or regulations, only a court of competent jurisdiction can determine if any current or future food laws or regulations or hunting, fishing or foraging laws and regulations enforced in the State of Maine infringe on the fundamental rights set forth in LD 795.

Food is life. Let us, distinguished committee, let us *all* vote with a clear conscience for this resolution so that the people we represent have an opportunity to vote for it at the ballot box, and decide, once and for all, if we want to agree with a Supreme Court justice and declare and articulate the right to food explicitly in the Constitution of the State of Maine.

Food is life. There is nothing more intimate than eating. Do we have a right to obtain the food we wish, or don't we? It's really that simple. Let's put it in black and white. Let's put it in writing.

Food is life. Let us vote unanimously to support this resolution and let the People of Maine say YES.