



MAINE PRESS ASSOCIATION

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Sen. Carney, Rep. Moonen, members of the Joint Standing Committee on Judiciary, my name is Judith Meyer. I am the editor of the Sun Journal in Lewiston, the Kennebec Journal and the Morning Sentinel in Waterville.

I offer this testimony on behalf of the Maine Press Association in opposition to LD 2269, An Act to Automatically Seal Criminal History Record Information for Class D and Class E Crimes Relating to Marijuana Possession and Cultivation.

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In 2016, the Judicial Branch moved to automatically seal all dismissed court cases, a move that was challenged on constitutional grounds by the Maine Press Association, the Maine Association of Broadcasters, the American Civil Liberties Union of Maine Foundation, the Maine Freedom of Information Coalition, the New England First Amendment Coalition, the National Freedom of Information Coalition and a number of other press and public access advocates.

Based on that challenge, the court quickly reversed itself, acknowledging the clear constitutional argument that automatic seal of records is a First Amendment violation.

Maine has a very clear process now for someone to seek to seal a case file. That process is not used often, but it is being used.

The Maine Press Association does not object to sealing court files with careful balance between privacy and public interests. **Automating** such a seal is the issue.

The federal courts of appeal, including the First Circuit, have uniformly held that the First Amendment guarantees to the public a right of access to records of criminal proceedings, something that the Maine Press Association brought up multiple times during Criminal Records Review Committee discussions on this recommendation in 2021 and again last fall. Despite twice raising the issue, there was never full discussion of it by the committee.

We could provide citations for a half-dozen cases decided in the First Circuit, including rulings favoring full access to documents filed in pretrial proceedings, documents filed in connection with plea and sentencing hearings, documents filed in connection with pretrial suppression hearings, access to docket sheets, and more, along with a ruling in the D.C. Circuit that the "First Amendment guarantees

the press and the public a general right of access to court proceedings and court documents unless there are compelling reasons demonstrating why it cannot be observed."

According to the First Circuit, in *Globe Newspaper Co. v Pokaski*, the basis for this right is that without access to documents the public often would not have a "full understanding of the proceeding and therefore would not always be in a position to serve as an effective check on the system."

In addition, the Judicial Branch has a longstanding common law tradition of affording public access to court records. This common law right of access to both criminal and civil court records is well established in Maine and in all other state and federal courts in this country, and we would be happy to provide citations. Courts have, including here in Maine and under appropriate circumstances, sealed or otherwise impounded records when public access would impede the administration of justice, but those actions are done only through a clear showing of necessity on balance with the public's First Amendment right to access.

Also on this morning's schedule is LD 2218, An Act to Remove the Age-related Statutory Prerequisite for Sealing Criminal History Record Information. That bill does not include an option for automatic seal, but sticks with Maine's current process to seek seal through post-judgment motion.

As does LD 2236, An Act to Expand the List of Crimes Eligible for Post-judgment Motion to Seal Criminal History Information to Include Convictions for Possession and Cultivation of Marijuana. It would maintain Maine's current process to allow people to seek to seal records – the exact same records identified in the bill currently before you – of certain marijuana convictions.

These two bills each allow for a proper balance between privacy and the public's First Amendment right to access court records.

We urge the Judiciary Committee to hold robust discussion on the First Amendment implications of LD 2269, particularly since there are bills before you that would accomplish the same result through the existing process of post-judgment motions, before considering any recommendation for automatic seal of any class of court records. Particularly so because Maine's Judicial Branch, as recently as November 2020 in a letter to the Maine Press Association, affirmed the public has a constitutional right to access and confirmed the court recognizes it should not automatically seal cases.

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The Maine Press Association (MPA), founded in 1864, is one of the oldest professional news organizations in the nation. Our goals, as spelled out in our charter and by-laws are to promote and foster high ethical standards and the best interests of the newspapers, journalists, and media organizations of the state of Maine that constitute its membership; to encourage improved business and editorial practices and better media environment in the state; and to improve the conditions of journalism and journalists by promoting and protecting the principles of freedom of speech and of the press and the public's right to know.