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Senator Anne Carney
Representative Matthew Moonen
Committee on Judiciary
100 State House Station, Room 438
Augusta, ME 04333

RE: LD 765 -- An Act to Permit Recordings of a Protected Person to Be Admissible in Evidence

Dear Senator Carney, Representative Moonen, and Members of the Committee on Judiciary,

I am a practicing criminal defense lawyer, past President of the Maine Association of Criminal Defense Lawyers, and current member of the Maine Rule of Evidence Committee.

I recently became aware of LD 765. I wanted to express my opposition to this bill. As a criminal defense attorney, I am very familiar with child advocacy center recordings and their role in sexual assault cases. These recordings are done early on in a case and provide an alleged victim the opportunity to speak to someone about what happened on one occasion as opposed to the previous practice where they would have to talk about it on multiple occasions before testifying at trial.

The idea that these recordings would be admitted in evidence as an exception to the hearsay rule is concerning. The primary concern I have is that this is a major departure in Maine law and should be addressed through the Advisory Committee on the Rules of Evidence and not the Legislature. I can certainly appreciate why the Legislature might want to express a view

about the potential admissibility of these recordings, but it is the courts that really should be addressing these issues as the court has an established procedure for reviewing potential rule changes, and that procedure provides for input from all parties in a deliberative process with multiple levels of review. At the end of the day, if the court wants to make a change in the rule, then the court will do so.

Additionally, the process as it stands now is not a political process at all, and I have concerns about whether having the Legislature involved in evidentiary rulemaking is an appropriate function, especially when there are changes from time to time which, if the process was to be Legislature driven, could mean that there would be changes in our basic Rules of Evidence depending on the party in power. In my view, that is really not an appropriate way to set court rules, and we should let the courts make the rules for what happens there and leave it at that.

Thank you for the opportunity to address this issue.

Sincerely,

/s/ Hunter J. Tzovarras

Hunter J. Tzovarras