

State of Maine
Joint Committee on the Judiciary

Testimony in Support of LD 1735
Law Professor David S. Cohen

May 12, 2023

Good morning distinguished members of the Committee on the Judiciary.

My name is David S. Cohen, professor of law at Drexel University's Thomas R. Kline School of Law in Philadelphia. Thank you for the opportunity to testify before you today in support of LD 1735, An Act to Safeguard Gender-affirming Health Care or what one may call the Maine Shield Bill.

Along with two other law professors, Rachel Rebouche, the dean at Temple Law, and Greer Donley at Pitt Law, I have spent the last year and a half studying the legal issues arising out of the *Dobbs* case, stripping away a long-standing constitutional right to bodily autonomy and decision making and suggesting the Court was aiming at others, including the right to marry, the right to intimacy, and the right to contraception. Given the long-standing connection between reproductive rights and LGBTQ rights in American law, the *Dobbs* decision in many ways has unleashed a rapid wave of bans in states on reproductive health care and transgender health care.

This bill helps Maine in this new reality. Maine cannot change the unfortunate and cruel fact that many states have banned transgender health care that is within the medical community's standard of care. But, what you can do with this bill is protect Maine healthcare providers, people within your state who receive care, and those who travel to your state to obtain health care from the very real threat that *other* states pose.

What I am referring to is the threat that government officials and private individuals in other states will try to investigate, sue, or prosecute people for providing lawful transgender healthcare in Maine to people who may have connections to ban states.

Based on my expertise and my coauthors', we strongly believe that this risk will intensify in the coming years, as states seek to ban standard of care health care not only in their borders but also when their residents seek care in other places or travel between states as snowbirds, vacationers, or college students.

So far, nine states have enacted laws like the one you are considering today to protect access to transgender health care -- Connecticut was the first last May. Just this week Vermont's governor signed that state's comprehensive shield bill.

The exact provisions in each state's laws vary, but they all have the same broad goals that your bill does or will with amendments -- protecting providers from out of state subpoenas and summons, protecting health care information, preventing extradition when it is not required by the Constitution, allowing providers to countersue if someone enforces an out of state judgment

around lawful care in Maine, protecting providers' home addresses, and protecting providers from threats and violence.

Rest assured, these laws pose no constitutional problems. It is completely constitutional for Maine to control its own courts and law enforcement departments. The Full Faith and Credit Clause of the Constitution requires Maine recognize out of state final judgments, but it does not require Maine to cooperate with out of state investigations or ongoing lawsuits. Also, the Extradition Clause of the federal Constitution requires Maine to extradite people who are in Maine who have physically fled from another state where they are accused of committing a crime. There is no obligation for Maine to extradite someone who is accused of committing a crime without physically being in the other state. LD 1735 is not at all constitutionally problematic.

It is, though, incredibly important. These provisions will help ensure two things: first, they will serve a prophylactic purpose of preventing out of state actions against Mainers and second, if they do occur, they will help Mainers mitigate their effects. In our current legal environment, this bill is essential to prevent other states from interfering with the safe and legal care that Maine provides.

Therefore, I urge you to pass this bill and I look forward to assisting the sponsors, stakeholders, and this Committee on amendments to ensure it is as comprehensive as possible. Thank you.