

# CENTER *for* REPRODUCTIVE RIGHTS

## NEW YORK

199 Water Street, Fl. 22  
New York, NY 10038  
TEL. (917) 637-3600

[reproductiverights.org](https://reproductiverights.org)

March 5, 2024

## VIA ELECTRONIC MAIL

### **Re: LD 227, An Act Regarding Health Care in the State**

Dear Senator Bailey, Representative Perry, and Members of the Committee on Health Coverage, Insurance and Financial Services:

The Center for Reproductive Rights (“Center”) is a legal advocacy organization that uses the power of law to advance reproductive rights as fundamental human rights around the world. As a part of our mission, we aim to ensure that all people have meaningful access to abortion care and other reproductive health care services. Almost two years after the Supreme Court overturned *Roe v. Wade*, it is imperative that Maine continues to respond to the public health and human rights crisis unfolding across the United States.

The Center strongly supports LD 227 and the full range of interstate shield protections it includes. We have advocated for shield protections, both for reproductive and gender affirming care, because we believe that states should use their authority to protect people providing, facilitating, and seeking this essential health care from the reach of states that have criminalized it. We applaud Maine’s support for reproductive and gender affirming care; LD 227 is the much-needed next step in the state’s response to the public health and human rights crisis unfolding across the United States as a result of *Dobbs v. Jackson Women’s Health Organization*.

In the last 20 months, 14 states have criminalized abortion—nearly 25% of the US population live in those states and have almost no access to reproductive autonomy. In 2022, 42 independent abortion clinics closed and, in 2023, 23 more independent abortion clinics closed.<sup>1</sup> Providers are leaving states where abortion has been criminalized<sup>2</sup> and medical

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<sup>1</sup> *Communities Need Clinics: The Abortion Care Ecosystem Depends on Independent Clinics*, Abortion Care Network (2023), <https://abortioncarenetwork.org/wp-content/uploads/2023/12/cnc23-v5-WEB.pdf>.

<sup>2</sup> Angela Palermo, *Idaho has lost 22% of its practicing obstetricians in the last 15 months, report says*, Idaho Statesman (Feb. 20, 2024, 12:18 PM), <https://www.idahostatesman.com/living/health-fitness/article285692341.html>.

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residents are less likely to commit to residencies in those states.<sup>3</sup> States committed to reproductive autonomy can and should fill this devastating gap in care and access. If enacted, LD 227 will ensure that providers in Maine can continue to provide essential healthcare to Mainers and others without fear of civil and criminal liability, licensure or medical malpractice penalties, and with the full support and protection of the state.

The Supreme Court's decision to overturn *Roe v. Wade* empowered state officials hostile to reproductive rights to reach outside of their states to chill the legal provision of care in other states. While Maine protects the right to abortion, this protection alone will not stop states hostile to abortion rights from attempts to prevent abortion providers from delivering essential healthcare services. Now, more than ever, the state must protect providers, helpers, and shield patients' medical records from anti-abortion state officials outside of Maine. Sixteen other states and the District of Columbia have enacted similar shield laws; providers in those states have reported more confidence in their ability to continue providing care to their patients.

LD 227 includes critical protections:

- *Protecting “Legally protected healthcare activity”*: Attacks on gender affirming care or transgender healthcare mirror the attacks on abortion rights and reproductive rights and come from the same legislators, judges, and advocates. Protecting this essential healthcare together will ensure continued access to care for all Mainers.
  - *11 states and D.C. have protected reproductive and gender affirming care.*
- *Prohibiting State Collaboration & Attestation Requirements*: Prohibiting Maine courts, public agencies, law enforcement, and state employees from collaborating with or expending resources on investigations originating in other states unless those requests are accompanied by attestations will provide needed protections for Maine providers and helpers.
  - *16 states and D.C. have enacted similar protections.*

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<sup>3</sup> Kellen Mermin-Bunnell et al., *Abortion restrictions and medical residency applications*, J. Med. Ethics (Dec. 5, 2023), DOI: 10.1136/jme-2023-109190.

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- *Protecting Licensure*: Preventing adverse actions against individuals who provide legally protected health care activity allows these providers to continue providing care. Without these protections, private right of enforcement laws or “bounty hunter laws,” endanger abortion providers’ professional licensure and livelihood, which has chilled the availability of care across the country.
  - *16 states and D.C. have enacted similar protections.*
- *Protecting Medical Malpractice*: Providers have described malpractice policies as a major barrier to continuing care provision; amending current prohibitions against adverse actions by protecting gender affirming care providers will allow those providers to continue practicing.
  - *8 states have enacted similar protections.*
- *Protecting Privacy*: Protecting providers’ contact information will increase their safety.
  - *16 states have enacted similar protections.*
- *Preventing Disclosure of Medical Information*: Prohibiting the disclosure of communication from patients and their representatives as well as information from patient examinations will protect patients from the reach of states that have criminalized legally protected health care activity.
  - *12 states have enacted similar protections.*
- *Prohibiting Extradition*: Prohibiting the extradition of people accused of engaging in, aiding, or assisting with legally protected healthcare activity ensures that providers and helpers and patients who remain in Maine are beyond the reach of states hostile to bodily autonomy.
  - *16 states have enacted similar protections.*
- *Tortious Interference with Legally Protected Healthcare Activity (“Clawback”)*: Allowing people subject to hostile litigation to seek relief in Maine courts would provide relief for those impacted by laws passed in states like Texas, Oklahoma, and Idaho that allow private citizens to sue individuals who provide or assist in the provision of an abortion care.
  - *12 States and D.C. have enacted similar protections.*

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Without these critical shield protections, providers and helpers in Maine could face serious civil and criminal risks if they provide or facilitate essential healthcare to Mainers and nonresidents from states that have criminalized these services.

Finally, shield protections that apply regardless of the patient's location allow the most vulnerable abortion or gender affirming care seekers to access care without the added disruption of interstate travel and days away from family, work, and school responsibilities. For abortion seekers in hostile and ban states – including young people, people of limited means, people without documentation – accessing care from a provider in Maine may be the only option they are comfortable with – and could be the difference between exercising their human right to bodily autonomy and state-sanctioned forced pregnancy. By expanding shield protections regardless of the patient's location, Maine would ensure that providers are protected from licensure penalties, extradition, and forced cooperation with hostile state investigations about lawful care that the provider provided while present in Maine.

Critically, none of the states that have enacted interstate shield laws have experienced any adverse outcomes from the enactment of those protections. Providers and helpers have reported a renewed confidence in their ability to safely provide and facilitate essential medical care. Patients in states that have criminalized care have been able to access essential healthcare from providers in Colorado, Massachusetts, New York, Vermont, and Washington<sup>4</sup> who are providing care to thousands of patients each month.<sup>5</sup> Maine can and should ensure the safety of Mainers providing and helping with reproductive and gender affirming care while providing a lifeline to Americans outside of Maine who are dependent on other states for reproductive autonomy.

For these reasons, the Center for Reproductive Rights strongly supports LD 227. Thank you for the opportunity to provide testimony. Please do not hesitate to contact me if you have questions or would like further information.

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<sup>4</sup> See S.B. 23-188, 74th Gen. Assemb., Reg. Sess. (Colo. 2023); H.B. 5090, 2022 Leg. Reg. Sess. (Ma. 2022); S.B. 9039, 2022 Leg. Reg. Sess. (N.Y. 2022); H.B. 89, 77th Gen. Assemb., Reg. Sess. (Vt. 2023); S.B. 37, 77th Gen. Assemb., Reg. Sess. (Vt. 2023); H.B. 1469, 2023 Leg., Reg. Sess. (Wash. 2023).

<sup>5</sup> Pam Belluck, *Abortion Shield Laws: A New War Between the States*, The New York Times (Feb. 23, 2024), <https://www.nytimes.com/2024/02/22/health/abortion-shield-laws-telemedicine.html>.

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Sincerely,

A handwritten signature in black ink, appearing to read 'Elis', enclosed in a white rectangular box.

Elisabeth Smith  
Director, U.S. State Policy & Advocacy Program  
Center for Reproductive Rights  
199 Water Street, 22nd Floor  
New York, NY 10038  
[esmith@reprorights.org](mailto:esmith@reprorights.org)