TESTIMONY OF GLBTQ LEGAL ADVOCATES & DEFENDERS IN SUPPORT OF LD 492, RESOLUTION, PROPOSING AN AMENDMENT TO THE CONSTITUTION OF MAINE TO PROVIDE FOR PARENTAL RIGHTS

Committee on the Judiciary
March 4, 2025

Dear Senator Carney, Representative Kuhn, and Distinguished Members of the Joint Committee on the Judiciary,

GLBTQ Legal Advocates & Defenders (GLAD Law) is a nonprofit legal organization that works in New England and nationally to create a just society free of discrimination based on gender identity and expression, HIV status, and sexual orientation. We appreciate the opportunity to submit this testimony in opposition to LD 492, Resolution, Proposing an Amendment to the Constitution of Maine to Provide for Parental Rights.

As an organization, GLAD Law defends family integrity as a constitutional baseline. At the same time, parental rights and interests are not the same as parental preferences – all of which must, in any event, coexist with the rights and interests of children, of the public, and of the State where it interacts with children and in its role as *parens patriae,* among others. For more than a century, the U.S. Supreme Court has articulated a strong parental rights doctrine[1] and simultaneously recognized those rights are necessarily limited.[2]

That federal constitutional doctrine underlies the framework for recognizing and respecting the rights of parents, children, and the public that we have today. LD 492's proposal for Maine to adopt new state constitutional language could unnecessarily upend that framework, injecting uncertainty and confusion into areas of law on which families, communities, and government entities rely.

Regardless of its intention, this proposal would become a vehicle for attacking public institutions. And passing this bill would leave the state and localities vulnerable to litigation in a range of contexts, which – regardless of the outcome – would distract from important efforts to ensure the health and wellbeing of all Maine children and families.

Despite the seeming breadth of parental rights under the U.S. Constitution and other sources of law, parents have neither an absolute nor an unqualified right to make decisions concerning their children. *See, e.g.*, *Parham v. J.R.*, 442 U.S. 584, 603-04 (1979) (recognizing precedent "limiting the traditional rights of parents" under certain circumstances and holding that

[1] *See, e.g. Troxel v. Granville*, 530 U.S. 57, 66 (2000); *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923).
[2] *See, e.g.*, *Parham v. J.R.*, 442 U.S. 584, 603-04 (1979).

parents "cannot always have absolute and unreviewable discretion to decide whether to have a child institutionalized"). *See also Hodge v. Jones*, 31 F.3d 157, 163-64 (4th Cir. 1994) ("The maxim of familial privacy is neither absolute nor unqualified, and may be outweighed by a legitimate governmental interest.").

The courts consider a parental rights claim with regard to whether the asserted parental right is one recognized by law, and if so, whether that right has been restricted; if a right has been restricted, courts examine whether there was justification to do so.[3] LD 492 would upset established law at each stage of this analysis.

First, federal and state courts have ruled against parents at the threshold step in a variety of cases. LD 492 proposes an entirely new framework for determining whether a fundamental parental right exists (albeit with reference to historically grounded rights). In other words, this could create a vehicle for attempts to establish new parental rights where existing law sees only parental preferences.

At the second stage, if courts do recognize a parental right at stake in any given case, they then analyze that right along with the rights of other persons, such as children, and along with public interests, such as those related to public education, medical and behavioral and healthcare, and more. That analysis is key to determining whether a constitutional violation occurred. LD 492 would change how courts conduct that analysis, eliminating consideration of children's own rights and the compelling public interests in connection to children. LD 492 seeks to instead make parental rights absolute with only narrow exceptions for neglect or abuse by a parent or criminal acts by a minor – a result that courts have long rejected. na

By way of example, existing state law provides that parents are "jointly entitled to the care, custody, control, services, and earnings of their children" and together can meet the safety needs and best interests of their children. But when parents separate or when they can no longer cooperate under the terms of an existing court order, courts look to a wide-ranging list of factors geared to the welfare of children in allocating parental rights and responsibilities between the parents. Under Tit. 19-A MRS §1653,[4] after a thorough examination of these factors, the court may invest the parents with allocated, shared, or sole rights and responsibilities as warranted by the evidence and as are in the best interest of the child. LD 492 could unsettle these options, depriving the court of the ability to allocate some or all parental rights and responsibilities to one parent when equal sharing is not possible, safe, or consistent with the state's paramount interest in protecting the welfare of children.

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[3] *See, e.g.*, *Pitts v. Moore*, 2014 ME 59, ¶ 12, 90 A.3d 1169, 1174 (explaining "[w]hen the State does interfere with the fundamental right to parent, we must evaluate that interference with strict scrutiny—the highest level of scrutiny—which 'requires that the State's action be narrowly tailored to serve a compelling state interest.'"); *Sch. Admin. Dist. No. 1 v. Comm'r*, Dep't of Educ., 659 A.2d 854, 857 (Me. 1995) ("If a challenged statute infringes a fundamental constitutional right … it is subject to analysis under the strict scrutiny standard").

[4] Available at: https://legislature.maine.gov/statutes/19-A/title19-Asec1653.html.

The educational realm provides another example. Under existing constitutional law, a parent's right to direct their child's education is understood to mean "that the state cannot prevent parents from choosing a specific educational program."[5] State law provides a variety of mechanisms by which parents may exert that control, such as choosing to send their child to public school or private school or by homeschooling their child.[6] Regardless of *how* a parent chooses to direct their child's educational upbringing, state law requires that children attend school or an equivalent alternative instruction between ages six and sixteen.[7] As state law explains, such a requirement "is essential to the preservation of the rights and liberties of the people and the continued prosperity of our society and our nation."[8] And yet LD 492's absolutist approach to parental rights could very well undermine this requirement.

Under existing court precedent, a parent controls the educational decision of where to send their child to school, but has "no protected right to control a school's curricular or administrative decisions." *Foote v. Ludlow Sch. Comm.*, No. 23-1069, slip opn. at 29 (1st Cir. Feb. 18, 2025). *See also Parker v. Hurley*, 514 F.3d 87, 102 (1st Cir. 2008) (internal quotation omitted) ("while parents can choose between public and private schools, they do not have a constitutional right to direct how a public school teaches their child"). Accordingly, a public school "need not offer students an educational experience tailored to the preferences of their parents[.]"[9] By altering the existing constitutional framework, LD 492 would encourage parents to challenge school curricula and cause significant confusion over the government's authority to engage with children in public schools and other public settings.

The role that parents play in their children's lives is a unique and critical one and long recognized in State and federal law. But LD 492 seeks to alter the existing framework under which parents exercise their rights and could do so at the expense of the shared and important public interest in protecting children. Maine legislators have rejected similar efforts in the past that would have upset the existing, workable framework around parental rights, children's rights, and the public interest.[10] Though the language may be different, the impact of LD 492 would be akin to that of those previous efforts. GLAD Law respectfully urges members of this committee to oppose LD 492.

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[5] *Ludlow*, slip opn. at 29-32 (discussing existing case law). *See also, e.g.*, *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 535 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 402-03 (1923).
[6] 20-A MRS §5001-A.
[7] *Id.*
[8] *Id.*
[9] *Ludlow*, slip opn. at 29.
[10] *See, e.g.,* Resolution, Proposing an Amendment to the Constitution of Maine to Establish a Parental Bill of Rights, LD 1953, 131st Me. Leg. (2023); An Act Regarding Parental Rights in Education, LD 1800, 131st Me. Leg. (2023); An Act to Prohibit Health Care Services Without Parental Consent, LD 1809, 131st Me. Leg (2023).

Sincerely,

Mary Bonauto, Sr. Director, GLAD Law
Hannah Hussey, Staff Attorney, GLAD Law
Sarah Austin, Staff Attorney, GLAD Law

Portland, Maine