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TESTIMONY OF MICHAEL KEBEDE, ESQ.
LD 1944– Neither For Nor Against

An Act to Protect Children and Adults from
Technology-facilitated Sexual Abuse

Joint Standing Committee on Judiciary
May 12, 2025

Senator Carney, Representative Kuhn, and distinguished members of the Joint Standing Committee on Judiciary, good afternoon. My name is Michael Kebede and I am policy director at the ACLU of Maine, a statewide organization committed to advancing and preserving civil liberties guaranteed by the Maine and U.S. Constitutions. On behalf of our members, we wish to testify neither for nor against this bill.

LD 1944 applies old concepts to novel phenomena. But, as with other areas in which the law tries to keep up with a changing world, our old concepts might not quite be up to the task. New realities might call for new legal concepts.

LD 1944 purports to "protect children and adults" by, among other things, criminalizing the use of Artificial Intelligence (AI) to create certain sexually explicit materials. At a general level, we are concerned that efforts to criminalize the possession or creation of materials created by generative AI is not strongly connected to the state's interest in protecting actual people – certainly not as strongly connected as in situations involving the actual exploitation of human beings. More specifically, several provisions of this bill include relaxed prosecution standards or very broad definitions; we urge the committee to consider limiting these provisions.

First, this several provisions of the bill would criminalize people who "should have known" that the image depicts prohibited material.[1] However, this objective standard does not pass constitutional muster. In Counterman v. Colorado the Supreme Court found that the First Amendment requires a subjective mental-statement requirement for criminal speech crimes.[2] In other words – it's not enough that someone should know that the image depicts prohibited material – they must actually know, or recklessly disregard that the image contains prohibited material. Thus, we suggest that every single element of the crime should require actual knowledge (i.e. "knows") rather than mere constructive knowledge ("should have known").

Second, the bill proposes too broad a knowledge standard for determining that material does not have serious literary, artistic, political, or scientific value. Specifically, the bill says,

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[1] *See, e.g.*, LD 1944 p. 2, lines 27-28, p. 4, lines 21-22 and 38-39.
[2] *Counterman v. Colorado*, 600 U.S. 66 (2023).

In prosecutions under this chapter, if circumstances of production, presentation, sale, dissemination, distribution or publicity indicate that the image is being exploited by the defendant for the sake of its prurient appeal, this evidence is probative with respect to the nature of the image and may justify the conclusion that the image lacks serious literary, artistic, political or scientific value.[3]

For example, if a vendor is selling a visual adaptation of *Lady Chatterley's Lover*[4] to some customers in a manner that emphasizes its prurient appeal, then that might undermine the artistic value of that work and expose the vendor to criminal prosecution.

Third, this bill proposes this overbroad definition of generative AI or machine learning: "any computer algorithm or model that creates content, including, but not limited to, text, images, audio or video." As written, this definition could include things like photo editing software. We suggest narrowing it.

Finally, the bill only has exceptions for materials lacking serious literary, artistic, political, or scientific merit for some of its proposed crimes. We recommend including this exception for every proposed crime.

Thank you for your time and attention.

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[3] LD 1944, p. 3, lines 36-40.

[4] Catherine Baksi, *Lady Chatterley's legal case: how the book changed the meaning of obscene*, Aug. 1, 2019, The Guardian, *available at* https://www.theguardian.com/law/2019/aug/01/lady-chatterleys-legal-case-how-the-book-changed-the-meaning-of-obscene (explaining the obscenity trial of Penguin Books, the publisher of Lady Chatterley's Lover).