



**LEGAL SERVICES
FOR MAINE ELDERS**

Testimony of John Brautigam, Esq. before the
Joint Standing Committee on Appropriations and Financial Affairs
and the Joint Standing Committee on the Judiciary

February 27, 2026

Testimony in Support of Funding to Incorporate Probate Judges into the Judicial Branch

Chairs Senator Rotundo and Representative Gattine, Chairs Senator Carney and Representative Kuhn, and distinguished members of the Joint Standing Committee on Appropriations and Financial Affairs and the Joint Standing Committee on the Judiciary:

My name is John Brautigam, and I serve as Executive Director of Legal Services for Maine Elders. We provide statewide civil legal assistance to older Mainers with limited income whose housing, safety, health care access, or income are at risk.

I am here to flag a near-term funding need that is not in the supplemental budget but is likely to come before you soon: the initial Judicial Branch implementation costs for LD 1766. Sponsored by Senator Carney and recently voted Ought to Pass by the Judiciary Committee, LD 1766 would (1) move probate judges from county government into the Judicial Branch, (2) establish merit-based appointment of judges, and (3) consolidate judicial territories so that no probate judge must maintain a separate law practice to earn a living. LD 1766 finally fulfills the terms of a constitutional amendment approved by the voters in 1967.

Let me summarize why this bill is so important, beginning with a brief description of the Probate Courts. Probate matters are often out of public view, but they are highly consequential for many of the people who contact Legal Services for Maine Elders. Probate judges decide guardianship and conservatorship proceedings, contested estate matters, and disputes involving trusts and fiduciary obligations. At LSE we see firsthand how profoundly these cases affect Maine residents, including situations where a person's fundamental liberty to make decisions for themselves is at stake.

These complex judicial decisions deserve the strongest institutional structure Maine can provide. But the existing structure was built two centuries ago for a largely administrative probate system. It is poorly suited to today's probate docket and the decisions made every day.

There are three main problems with Maine's antiquated approach to probate judges. First, the system relies on part-time judges who must also maintain private law practices, creating unavoidable conflict

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and appearance concerns. Second, unlike the rest of Maine's judiciary, probate judges are not selected through a merit-based appointment process designed to promote independence and quality. Third, the current structure does not reliably provide the training, resources, and institutional support that match the gravity of probate decisions.

Of these, the built-in conflict of interest created when judges simultaneously serve as practicing attorneys is the most glaring problem. A system that allows judges to also serve as practicing attorneys raises concerns about appearance, public confidence, and consistency with broader judicial norms. This concern is widely recognized.

And even the finest attorneys need training and support when they become judges. But when a probate judge also maintains a private practice, Judicial Branch trainings and resources can raise fair questions about special advantages that do not arise for judges who do not also practice law.

The compelling case for LD 1766 is substantiated by an extensive record built over many years and in different forums. The consistent conclusion is that Maine can, and should, modernize its Probate Courts. This is long overdue. The progress of this bill is a milestone in a long effort in which LSE is not alone, joined by Disability Rights Maine, other leaders in the civil legal aid community, distinguished attorneys in the private bar, and probate judges past and present.

I wanted to introduce this issue to the Appropriations and Financial Affairs Committee in conjunction with testimony on funding for the Judicial Branch. When the fiscal note is complete, we anticipate that it will show that a modest amount of additional funding allowing the Judicial Branch to plan and manage the first phase of LD 1766 will be needed in this biennium. We ask you to support the start-up funding needed for the Judicial Branch to plan and launch implementation.

We were grateful to hear the Judicial Branch underscore the importance of this bill. In testimony to the Judiciary Committee, Director of Governmental Affairs Julie Finn said:

“There's no question that this will be a huge project, and it will be difficult, but I believe the leadership, the Chief Justice and others at the Judicial Branch, at bottom line feels like it's the right thing to do for the people of Maine.” (January 13, 2026)

Whether or not Maine finally fixes this structural problem with our justice system may be decided within the four walls of this room. We hope you will give it thorough consideration when the time arrives. Each year of delay leaves in place a structure that does not serve us well, and which Maine voters have already directed the Legislature to modernize.

Thank you.