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Testimony of Rep. Maggie O'Neil presenting

LD 928, Resolution, Proposing an Amendment to the Constitution of Maine To Establish a Right to a Clean and Healthy Environment

Before the Joint Standing Committee on Environment and Natural Resources

Senator Brenner, Representative Gramlich, and members of the Joint Standing Committee on Environment and Natural Resources, my name is Representative Maggie O'Neil. I represent House District 129, which is in Saco. I come before you today to present **LD 928, "Resolution, Proposing an Amendment to the Constitution of Maine to Establish a Right to a Healthy Environment."**

This bill will amend our state's constitution to protect Mainers' right to a healthy environment. I am going to talk about a couple of things this morning.

1. Why amend the Constitution?

Our Constitution is the foundational document that sets out our values and the most important rights that we want to protect. For example, right now our Bill of Rights

protects the freedom of religion, freedom of assembly, right to due process, and the right to be free from unreasonable searches and seizures. It doesn't recognize the foundational right to a healthy environment, including clean air and clean water. Such a protection is in line with our values and essential to include among our Bill of Rights protections going forward.

Article I (the Bill of Rights section) of Maine's Constitution was drafted to protect us against different ways that government could (a) actively encroach upon our rights or (b) fail to protect us. These rights were considered essential to living in a democratic society.

As an example, our constitution protects free speech, even if that speech is unpopular, hateful, or ugly. That's because we have decided that the free exchange of ideas is foundational to a democratic society. Our constitution also protects us against unreasonable searches and seizures, so that agencies cannot come into our homes or search us without meeting a minimum protective standard. Speech protections and search and seizure protections create a backstop against government encroachments.

By protecting our right to a healthy environment in the Constitution, we will create a parallel backstop that (a) protects us from something government might do that actively infringes upon that right or (b) protects us in situations when government doesn't do enough to protect us. It will be an added check on our system.

2. How will the amendment protect us?

a. Encourage proactive government decision-making. A right to a healthy environment will help ensure that our government's decision-making processes prioritize environmental protection and pollution prevention, rather than simply pollution permitting and management. Government will take this right into account when creating laws and regulations to issuing decisions and permits. It will encourage government to address environmental issues of concern early in the process when problems are less complicated and costly to remedy and before investments have been made.

b. Create a backstop for gaps in law. The amendment will create a backstop when gaps exist in our environmental laws. When a gap in law is identified—as we found with PFAS contamination—the Legislature takes time to learn about and address that gap through legislation. Sometimes we take years to address a problem. If Mainers have this backstop in our Constitution, our people, businesses, and natural resources will still be protected in the meantime. Our constituents will have a backstop to protect their health while the Legislature is catching up with the situation at hand.

c. Protect our health and strengthen environmental justice. The future-focus of the amendment is important. Environmental harm comes with costs, including those related to health, cleanup, decreased property values, and flooding or drought. Disproportionately, the costs are borne by those who lack political power, including low-income communities, indigenous communities, communities of color, and rural or urban communities. The amendment will protect our natural resources equitably for all Mainers.

If a harmful decision is made or if government does not do enough to keep us safe, we will have a backstop to protect us into the future. If a future legislature or governor comes into office seeking to undermine those protections or roll them back, the amendment can serve as a backstop to ensure those protections remain in place and effective. This amendment is as much about protecting our legacy as lawmakers who care about the environment, as it is about strengthening environmental protection when and where needed.

3. Doesn't Maine already have strong laws to protect us?

Maine has a more robust system of environmental protections than many other states. That's good for Maine people. However, Mainers still need a backstop for when gaps in law inevitably emerge.

It is impossible for statute to cover every possible circumstance. Our laws establish standards and guide regulations, but there will always be circumstances that we could not anticipate. Think about emerging contaminants such as PFAS that we could not previously imagine. When these circumstances arise, our constitution can help us address shortcomings in our laws while the Legislature and agencies catch up.

Additionally, the amendment will provide overall guidance to help ensure government agencies and officials are interpreting and applying the laws passed by us, the Legislature, as robustly as needed to protect our state's natural resources and Maine people's environmental rights.

4. What other states have adopted these protections?

A number of other states have adopted environmental rights amendments. In designing this text with other legislators and advocates, we looked to Pennsylvania, New York, and Montana's amendments. In those states, similar amendments have provided protections for serious issues of community and environmental harm to water, air, land, and human health. Frivolous suits have not been asserted. Maya Rossum, an attorney who specializes in this area of law, is available to provide context about how these amendments have operated in other states.

Generally, other states have not expressed that complying with environmental rights amendments results in an overwhelming or unnecessary burden.

Government integrates the constitutional mandate into its decision-making process and operation. That means government is more likely to identify problems upstream, avert costly environmental harm, and protect our financial resources as well as our environmental health and safety. Avoided harms and costs justify the inclusion of that effort.

5. An essential backstop and guiding principle.

In sum, this amendment creates both (a) a backstop against what could go wrong and (b) a guiding principle for government decision-making. It's hard to say exactly how this backstop will protect us in the future, and that's why it's so important. I think that anyone in Maine would recognize that without a healthy environment—without clean air, clean water, and stable ecosystems—we would have trouble enjoying any other rights or freedoms. Before I can engage in dissenting speech or seek to protect my home from unreasonable searches, I need to have clean air to breathe.

We propose this amendment to our Constitution because a healthy environment is essential to all else. Government has a role to help protect health and safety. This amendment will push our government in the right direction and create a final backstop for our most fundamental human needs.

Thank you for your attention. I'm here to answer any questions.