

Testimony of Kim Mack Rosenberg, Esq.
To the Maine Legislative Committee on Educational and Cultural Affairs
In Support of LD 51
April 3, 2023

Senator Rafferty, Representative Brennan, and distinguished members of the committee, I am asking you today to vote ought to pass on LD 51.

Thank you for allowing me to testify today. My name is Kim Mack Rosenberg. I am an attorney consulting with Health Choice Maine and collaborating with many other organizations and attorneys, including Children's Health Defense. I have almost thirty years' litigation experience in products liability, insurance coverage, and vaccine safety. I currently represent clients in litigations relating to injuries from the Gardasil (human papillomavirus) vaccine, including in a multi-district litigation in the Western District of North Carolina. I have co-authored a book on HPV vaccines and am an author/editor of another vaccine safety book and a book about autism.

Just over four years ago, I appeared before this Committee urging a vote against LD 798, which removed Mainers' longstanding philosophical and religious exemptions to vaccinations. Those of us testifying against LD 798 that day warned that the removal of these exemptions would lead to dire consequences for many Mainers. Sadly, those predictions have come true. LD 51 would restore those exemptions and protect fundamental rights to bodily integrity, informed consent, and parental rights and would once again realign Maine law with federal laws such as the Individuals with Disabilities Education Act (IDEA) and the Americans with Disabilities Act (ADA) and would curtail governmental intrusion into private life and medical decision making.

Among other things, the removal of exemptions has been arbitrarily enforced across the State. For example, different districts treat unvaccinated children differently. Moreover, medical exemptions – which the State in 2019 insisted would not be impacted and would be available to individuals eligible for them (regardless of religious or philosophical beliefs) – have been negatively affected and limited.

- Many physicians fear retaliation by the licensing board if they write medical exemptions.
- Many districts summarily deny exemptions baselessly treating them as invalid.
- Only doctors, nurse practitioners, and physician assistants licensed in Maine can write an exemption, so that a person whose treating physician is in another state – even an adjacent state – cannot get an exemption.
- Further, schools have been given instructions from the State to only accept positive titers – a blood test indicating immunity to certain illnesses – from fully vaccinated students whose medical records are lost (which records, by the way, usually are electronic) .

Of particular concern supporting the need to restore religious and philosophical exemptions are two issues I want to highlight today:

First, LD 798 violates Federal disability laws including the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, et seq. (IDEA) and the Americans With Disabilities Act of 1990, 42 U.S.C. § 12132 (“ADA”). In other words, the State is violating the Supremacy Clause of the US Constitution (Art. VI(2)) in passing and enforcing a law in clear conflict with federal law. The

existing law flies in the face of federal laws intended to protect children with disabilities and preserve their rights to a free and appropriate public education (FAPE). Maine now sadly condones the disparate treatment of children with disabilities. While the law purports to allow students with IEPs in place as of September 1, 2021 to attend school with a religious or philosophical exemption, this is not always being honored. Moreover, students who did not have IEPs as of September 1, 2021, are – without any rational reason – treated differently than their peers with an IEP as of the deadline and are not allowed to attend school unless they are able to obtain a valid medical exemption – which is almost impossible to do because of post LD 798 restrictions and fear of retaliation. These children also are often unable to receive much needed related services, such as speech, occupational, and physical therapy. The neediest of Maine’s students have been abandoned by their districts and the State.

Moreover, the current law also treats unvaccinated individuals as inherently infectious and contagious and, by permanently excluding them from school for “fear of contagion,” the State has placed them in a protected category. The ADA, Section 504, and Maine Human Rights Law protect you if someone thinks you have a disability, or treats you as if you are disabled, even if you are not. Thus, the law forbids discrimination against a person for “fear of contagion.” Indeed, as the U.S. Supreme Court has stated, “[f]ew aspects of a handicap give rise to the same level of public fear and misapprehension as contagiousness.” *School Board of Nassau County, Fla. v. Arline*, 480 U.S. 273, 286 (1987). Essentially, the basis of LD 798, was and is fear. Unvaccinated children in the State of Maine now are being treated as if they are diseased and dangerous. However, the children’s perceived contagiousness, albeit baseless, places them into a protected class covered by the ADA, precluding discrimination against them and precluding their exclusion from school.

To protect our fundamental rights, and to protect our children, where there is risk - no matter how small - there must be free choice.

Please feel free to contact me at kim@mackrosenberglaw.com or at (917) 797-8033 if I can be of any help.

Thank you for the opportunity to appear before you today and, again, I ask that you vote ought to pass on LD 51.

Best regards,

Kim Mack Rosenberg, Esq.
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