

TESTIMONY OF MEAGAN SWAY, ESQ

LD 494 – Ought Not To Pass

**An Act To Conform State Funding to the Federal Hyde Amendment,
Limiting Funding for Some Abortion Services**

Joint Standing Committee on Judiciary

May 5, 2021

Senator Carney, Representative Moonen and distinguished members of the Joint Standing Committee on Judiciary, greetings My name is Meagan Sway, and I am policy director of the American Civil Liberties Union 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, I am here to testify against LD 494, which would impose dangerous and unlawful barriers preventing access to health care

Every person who is pregnant faces two constitutionally-protected choices to continue the pregnancy or terminate it The decision not to have an abortion is simultaneously a decision to continue the pregnancy to term and give birth, and the decision to have an abortion is a decision to end the pregnancy These bills would return us to the day when MaineCare would provide coverage for only one of these two constitutional decisions

Providing coverage for pregnancy but not abortion-related care would violate Article 1, Section 1 of the Maine Constitution, which guarantees all people in Maine the right to liberty and safety, because it would coercively interfere with a person's decision regarding whether or not to continue with a pregnancy

As the Law Court has recognized, the right to make intensely personal decisions about one's body, one's health, and one's intimate relationships, free from unwarranted government interference, is a fundamental constitutional right

protected by the Maine Constitution ¹ The decision to continue or terminate a pregnancy lies at the core of that right ²

By providing coverage for all necessary medical expenses for patients who decide to continue a pregnancy but *withholding* coverage for patients who decide to terminate their pregnancy, the state would be imposing coercion on this most personal of decisions Forcing or coercing a person to carry their pregnancy to term against their will, delaying them access to necessary abortion care, and/or compelling them to make dangerous sacrifices in order to afford abortion jeopardizes their right to pursue and obtain her own liberty and safety

In addition, this legislation would allow the State to discriminate against people who decide to obtain an abortion as compared to people who decide to continue a pregnancy, in violation of Article 1, Section 6-A of the Maine Constitution ³

By funding only one of two mutually exclusive options for a patient population that are dependent on that funding, LD 494 would take the decision away from the patient, who is in the best position to decide what is best This bill would impose substantial harm on Mainers in need of medical care and would violate the Maine Constitution To ensure that all people in Maine, regardless of their income and regardless of the source of their health insurance coverage, have access to abortion care, we urge you vote ought not to pass

¹ See *Doe I v Williams*, 2013 ME 24, ¶¶ 64–65, 61 A 3d 718 (both state and federal constitution recognize fundamental rights “to marry, to have children, to direct the education and upbringing of one’s children, to marital privacy, to use contraception, to bodily integrity, and to abortion”), cf *Danforth v State Dept of Health and Welfare*, 303 A 2d 794, 800 (Me 1973) (“It seems clear beyond the possibility of dispute that the Constitution of Maine recognizes this right of the parent to custody of his child and affords it its protection”)

² See *Doe I*, 2013 ME 24, ¶ 65, 61 A 3d 718, see also *Women of State of Minn by Doe v Gomez*, 542 N W 2d 17, 27 (Minn 1995) (“We can think of few decisions more intimate, personal, and profound than a woman’s decision between childbirth and abortion”), *Comm To Defend Reprod Rights v Myers*, 29 Cal 3d 252, 625 P 2d 779, 793 (1981) (characterizing the right of reproductive choice as “clearly among the most intimate and fundamental of all constitutional rights”)

³ In 1963, Maine adopted Article 1, Section 6-A of the Maine Constitution, which provides “Discrimination against persons prohibited No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of that person’s civil rights or be discriminated against in the exercise thereof”