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Testimony of Speaker Rachel Talbot Ross presenting
LD 1619 An Act to Improve Maine's Reproductive Privacy Laws
Before the Joint Select Committee on the Judiciary

Senator Carney, Representative Moonen, and members of the Joint Standing Committee on the Judiciary, it is my pleasure to present to you **LD 1619, An Act to Improve Maine's Reproductive Privacy Laws**. The goal of this legislation is to align Maine's laws regarding safe, legal abortion with the values of Maine people.

Since the US Supreme Court decision *Dobbs v. Jackson Women's Health*, our country has grappled with incredible uncertainty as one in three women have lost their basic rights and ability to make their own decisions about pregnancy. We have seen women forced to near death because physicians and hospitals feared prosecution in providing medically necessary healthcare. We have seen friends and family members sued for helping a loved one access the pills for medication abortion because they lived in a state that has banned abortion. We have seen physicians providing care to sexual assault victims targeted by attorney generals and politicians to the point where around the clock security was needed to ensure the doctor's safety. We have heard the stories of desperation as people find the barriers to abortion too great and are forced by politicians to continue a pregnancy against their will, regardless of the circumstance.

The loss of the right to make decisions about abortion has caused real harm, harm that we have yet to fully appreciate, but we know who is bearing the brunt of these cruel bans, prosecutions and safety threats. They are those least able to navigate a complicated, expensive and stigmatized system of care. They are people of color, people struggling financially, people living in rural areas and other vulnerable populations.

Faced with this stark reality, Maine leaders have an obligation to meet this moment and do all we can to protect the rights, freedoms, health and safety of

District 118: Portland neighborhoods of Parkside, Bayside, East Bayside, Oakdale and the University of Southern Maine Campus

Mainers. This legislation is compassionate. It is bound by science and best medical practices, and it recognizes abortion as health care. Combined with the other pieces of legislation presented today, Maine leaders are making it clear that the devastating loss of Roe does not have to hurt the people of our state.

LD 1619 addresses three aspects of Maine Reproductive Privacy Law: abortion data collection, access to abortion later in pregnancy and the criminalization of abortion.

1. Abortion Data Collection

Maine first began collecting abortion data in the late 1970's and adopted into law the US Standard Report of Induced Termination of Pregnancy published by the National Center for Health Statistics as the form used for data collection. LD 1619 repeals the use of this form and directs the Department of Health and Human Services to develop its own data collection process, similar to the one outlined in statute for miscarriage data.

The reasons for this change are twofold. First, the US National Center for Health Statistics form has not been updated in decades and includes mandated collection of irrelevant patient information including marital status and education level. To meet the legal requirements for data collection, providers must interrupt a counseling session with a patient to ask judgmental and irrelevant questions that are deeply stigmatizing. It is time for us to update the type of information we are collecting to meet best practices and take judgement out of the conversation.

Secondly, as I mentioned above the Dobbs decision has had a profound impact on patient safety. How information about patients traveling to Maine from a state that has banned abortion is collected and released to the public requires careful consideration. We have already seen a state pass a law targeting providers in states with legal abortion. Idaho has made it a crime to provide abortion care to an Idaho minor in a state where they can legally end a pregnancy. This is far reaching and impacts people and providers in Maine. Tragically, seemingly straightforward public health data can now be weaponized by anti-abortion prosecutors, and we must take every precaution available to protect Maine medical providers and patients from this type of threat. Updating this provision is essential.

2. Access to abortions later in pregnancy to allow for medical not political determinations

Thirty years ago, the Maine Legislature adopted the Reproductive Privacy Act and modeled the language after Roe v. Wade. In most cases, this language met the needs of Maine people, ensuring legal access to abortion for when the US Supreme Court would eventually overturn Roe.

Tragically though, there was an unintended consequence for people who need access to abortion later in pregnancy. LD 1619 seeks to address that harm and put the decisions about abortion later in pregnancy in the hands of doctors and their patients, not politicians. No one should be forced to remain pregnant against the advice of their trusted medical provider, and Maine's law as written is doing just that.

You will hear from people today who had to leave the state, leave their loved ones behind to access medically necessary care because our law fell short. Maine families, like Dana's and Zoe's, and others who are too scared to come forward to share their story, had to leave Maine because our laws do not account for the full spectrum of reasons one might have for ending a pregnancy.

There are two reasons why someone needs access to abortion later in pregnancy. First, they learn new information, including the existence of maternal and fetal anomalies. Neither of which are accounted for in Maine law. Routine ultrasounds at 22-weeks' gestation can reveal complications unidentified before and impact someone's decision to continue the pregnancy. Bans on abortion later in pregnancy even impact how clinicians care for and treat miscarriage¹ and pregnancy loss. The sad result of our restriction is that providers in Maine can diagnose a condition, **but they are legally prohibited from treating their patient.**

Every pregnancy is unique, and it is impossible to legislate for all instances in which someone might need access to an abortion later in pregnancy. States that have tried have failed and instead caused greater harm². This is why the language in LD 1619 is clear. It puts medical decisions in the hands of doctors, providers and patients. We, as legislators, should not be making these decisions.

¹ "They Had Miscarriages, and New Abortion Laws Obstructed Treatment", Pam Belluck. New York Times, July 17, 2022. <https://www.nytimes.com/2022/07/17/health/abortion-miscarriage-treatment.html>

² "Focusing on Exceptions Misses the True Harm of Abortion Bans", Elizabeth Nash. Guttmacher Institute, December 12, 2022. <https://www.guttmacher.org/article/2022/12/focusing-exceptions-misses-true-harm-abortion-bans>

Imagine for a moment, your sister, daughter, best friend receives news at this point in a pregnancy and together with their doctor decide that it is safest to seek an abortion. Now feel the shock and grief when you learn that the person you love cannot get that care in Maine. Instead, they must travel hundreds of miles away, pay thousands of dollars, and endure horrific harassment from anti-abortion protestors -- all while grieving. Would you want your loved one to go through that ordeal?

Of course not, because it is cruel. This is not Maine. This is not who we are. We would never want to inflict this type of pain on someone who is already managing something traumatic. LD 1619 will finally address this injustice.

The second reason why people need access to abortions later in pregnancy is that they faced extreme barriers to care. We have seen how barriers are impacting people in a post Dobbs world and the challenges are only getting worse. A simple week delay in an appointment could mean that someone is now forced to continue a pregnancy. The inequities people face in access to healthcare, affordability, and time has created a system of people who can fully exercise their reproductive rights and those who cannot. Again, this is not Maine. We are not a state that invites politicians into the decisions about pregnancy.

It is important to note that the vast majority of abortions occur early in pregnancy. 92% of all abortions in Maine³ take place by the 12th week of pregnancy with nearly 70% occurring before nine weeks. Abortions at or after 21 weeks are uncommon⁴, and represent 1% of all abortions in the U.S. but that 1% cannot be forgotten. It is unacceptable for us to leave the dozen or so people behind because the conversation about the circumstances for their abortion is harder, more emotional and painful.

Finally, let's remember that Maine people support this change. A poll in February found that 67% of Maine voters support the proposed changes to allow for medical decisions to be made instead of an outright ban on abortions later in pregnancy. Maine voters have even weighed in on the issue

³ "Induced Abortions by Gestation and Type of Abortion Procedure: Maine State Totals 2019". Maine Department of Health & Human Services. <https://www.maine.gov/dhhs/mecdc/public-health-systems/data-research/data/documents/pdf/ABO2019.pdf>

⁴ "Abortions Later in Pregnancy". KFF Health News, December 5, 2019. <https://www.kff.org/womens-health-policy/fact-sheet/abortions-later-in-pregnancy/>

of abortion later in pregnancy. In 1999, voters defeated a ballot measure⁵ that sought to ban access to abortion later in pregnancy, which opposition described as so-called “partial-birth abortion.” It was defeated 55.5% to 44%.

3. Repeal the criminalization of abortion

Since Dobbs, we have seen increased efforts to criminalize medical professionals for providing abortion⁶ care and efforts to criminalize patients⁷ for seeking it. LD 1619 would repeal the specific crimes attached to abortion and instead treat it like any other medical procedure. You will hear from other experts on this point, but it is important to note that Maine already has laws that address any physical harm someone could cause another person in ending a pregnancy.

LD 1619 repeals two crimes that apply only to abortion. First, it repeals the crime to provide abortion later in pregnancy outside of the circumstances when the health and life of the pregnant woman is at risk. Unfortunately, the vagueness of the language means that providers are not clear of how sick someone must be to legally provide care. How close to death? This ambiguity has had a chilling effect on care and resulted in abortion later in pregnancy being completely unavailable in Maine regardless of the circumstance. The threat of jail time and civil penalties have had serious consequences as providers are unable to take the risk and instead refer their patients to other states.

You can look to the cases of five women in Texas⁸ to fully appreciate the consequences of making abortions later in pregnancy a crime. One of the women, Amanda Zurawski went through fertility treatments for over a year before she finally became pregnant with her first child. At eighteen weeks, her doctor told her she had cervical insufficiency⁹. Because of Texas’ anti-

⁵ “Maine Question 1, “Partial-Birth Abortion Ban Act” Initiative (1999)”. Ballotpedia.

[https://ballotpedia.org/Maine_Question_1,_%22Partial-Birth_Abortion_Ban_Act%22_Initiative_\(1999\)](https://ballotpedia.org/Maine_Question_1,_%22Partial-Birth_Abortion_Ban_Act%22_Initiative_(1999))

⁶ “Prosecutors in states where abortion is now illegal could begin building criminal cases against providers”, Safia Samee Ali. NBC News, June 24, 2022. <https://www.nbcnews.com/news/us-news/prosecutors-states-abortion-now-illegal-begin-prosecute-abortion-provi-rcna35268>

⁷ “A Texas man sues ex-wife’s friends for allegedly helping her get abortion pills”, Sarah McCammon. National Public Radio, March 13, 2023. <https://www.npr.org/2023/03/13/1163028308/a-texas-man-sues-ex-wifes-friends-for-allegedly-helping-her-get-abortion-pills>

⁸ “The Five Horrifying Near-Death Experiences Behind the New Texas Abortion Lawsuit”, Shirin Ali. Slate, March 7, 2023. <https://slate.com/news-and-politics/2023/03/texas-abortion-ban-lawsuit-plaintiffs-near-death-experiences.html>

⁹ “Incompetent cervix”. Mayo Clinic. <https://www.mayoclinic.org/diseases-conditions/incompetent-cervix/symptoms-causes/syc->

abortion law, Zurawksi's doctors could not intervene until her fetus no longer had a detectable heartbeat or she herself became deathly ill—so she had to wait. Zurawksi developed sepsis, a life-threatening blood infection, and her family flew to her bedside, fearing her death. Doctors were finally able to induce delivery without violating Texas' abortion law. An abortion would have prevented the unnecessary harm and suffering that she endured.

The second crime to be repealed applies to people who help someone acquire the pills for medication abortion outside of the medical system. Right now, if a loved one in Maine helps someone get medication abortion pills, someone who may live in a state with an abortion ban, they could be prosecuted here in Maine. With more than a dozen states with abortion bans¹⁰, we know that some people are forced to find ways to access the medication outside of the medical system. In Texas, we have already seen lawsuits aimed at individuals¹¹ who helped someone get medication abortion pills for a loved one. While we prefer people access medication abortion through a provider, we know that for some the risk is too great. Prosecution is not the answer. Decriminalizing abortion and treating it like any other medical procedure is an important step for Maine in our post-Dobbs world.

I am proud to submit this legislation before the committee. I am proud of what these policies say about Maine, the legislature, and the people of our state. We may approach the issue of abortion differently, but I know in my heart that we agree that these are personal, private decisions that should be left in the hands of medical professionals and their patients. We want people to be treated with compassion, dignity and supported by people who love them. This bill does that. I ask for your support and thank you for your careful consideration of LD 1619.

¹⁰ "Interactive Map: US Abortion Policies and Access After Roe". Guttmacher Institute. https://states.guttmacher.org/policies/?gad=1&gclid=CjwKCAjw9J2iBhBPEiwAErwpeXPhect1KmqXTwp0cEvqDZTmvdSz97HDYhJdkWDi5Iz3_XenIViReRoCeMwQAvD_BwE

¹¹ "A Texas man sues ex-wife's friends for allegedly helping her get abortion pills", Sarah McCammon. National Public Radio, March 13, 2023. <https://www.npr.org/2023/03/13/1163028308/a-texas-man-sues-ex-wifes-friends-for-allegedly-helping-her-get-abortion-pills>