



AMERICAN CIVIL LIBERTIES UNION

Maine



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TESTIMONY OF MEAGAN SWAY, ESQ.

Ought to Pass - LD 1343

**An Act to Protect the Reproductive Freedom of Maine People by  
Preempting the Field of Abortion Regulation**

Submitted to the

JOINT STANDING COMMITTEE ON JUDICIARY

May 1, 2023

Senator Carney, Representative Moonen, and distinguished members of the Joint Standing Committee on Judiciary, greetings. My name is Meagan Sway, and I am the Policy Director at the ACLU of Maine, a statewide organization committed to advancing and preserving civil rights and civil liberties guaranteed by the Maine and U.S. Constitutions. I am here today to testify in support of LD 1343, which would clarify in state law that state laws around abortion preempt any municipalities from restricting abortion access.

The ACLU of Maine appreciates the work that the sponsors have done to bring this legislation forward, though we wish that it were not necessary. Prior to the Supreme Court's decision in *Dobbs v. Jackson Women's Health Org.*, the U.S. Constitution protected the right to abortion for everyone in the country, and prohibited states from restricting abortion pre-viability except in certain situations. But, *Dobbs* drastically changed the landscape, handing the power to legalize or outlaw abortion to individual states.

Generally speaking, under Maine law, municipalities may exercise any power of the state, so long as the Legislature has not expressly, or by clear implication, denied that authority. *See* 30-A M.R.S. §3001; *see also Cent. Maine Power Co. v. Town of Lebanon*, 571 A.2d 1189, 1192 (Me. 1990). The legal term for the State declaring that the State, and only the State, will have the authority to legislate or regulate on a particular topic is called "preemption;" this is also the term used to describe the Federal government claiming for itself the exclusive authority over a particular legislative or regulatory topic.

The Maine Supreme Judicial Court has recognized “a presumption in favor of home rule,” which means that the court will generally require an explicit statement of preemption before it will prohibit municipalities exercising local control over a particular topic. *See E. Perry Iron & Metal Co., Inc. v. City of Portland*, 2008 ME 10, ¶ 14, 941 A.2d 457, 462. If it weren’t for this strong presumption against interpreting state legislation as preempting municipal home rule, it would be clear to all concerned that Maine has already announced that the regulation of abortion was exclusively the purview of the State. Maine law clearly states that the regulation of abortion is a matter of “the public policy of the State,” and that Maine’s explicit state policy is against restriction. *See* 22 M.R.S. §1598(1).

However, we have all witnessed the threat to reproductive rights across the country, from all levels of government. For example, in 2020, Lubbock, Texas, a city with an abortion provider inside its city limits, outlawed abortions.<sup>1</sup> We would be naïve to think that opponents of abortion will not try the same tactics here in Maine, and we know that they will exploit every possible ambiguity in the law to accomplish their goal of outlawing abortion and criminalizing caregivers who provide abortion.

Therefore, it is necessary for Maine to be extra-explicit in preempting municipalities from regulating or restricting abortion. The alternative is a patchwork of municipal regulations that will be both difficult to understand and difficult for providers and patients to follow. People ought to be able to rely on the stability of the law as they go about their lives—something the majority in *Dobbs* failed to properly appreciate. Preempting local regulation of abortion will provide some of that stability for people in Maine, and will hopefully provide a positive example for states across the country.

We urge you to vote Ought to Pass on LD 1343.

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<sup>1</sup> Jayme Lozano-Carver, A West Texas coffee shop owner is giving away Plan B for free as fight over contraception access takes hold, *Texas Tribune*, Aug. 18, 2022, available at <https://www.texastribune.org/2022/08/18/lubbock-abortion-emergency-contraception/>.