



Maine Women's Lobby



LEGAL ADVOCATES
& DEFENDERS

May 1, 2023

Senator Carney, Representative Moonen, and Honorable Members of the Joint Standing Committee on Judiciary,

We join you today on behalf of the Maine Women's Lobby and GLAD, GLBTQ+ Legal Advocates & Defenders, in support of all proposals you will take up today which strengthen and protect the right to access safe abortion care. I will keep my comments primarily focused on LD 1343, An Act to Protect the Reproductive Freedom of Maine People by Preempting the Field of Abortion Regulation, and thank Representative Supica for sponsoring this important bill.

Preemption is the legal doctrine that allows the higher body of government to limit or overrule the power of the lower government on certain topics. Especially in the abortion access context, where *Roe* and *Casey* were decided on federal constitutional principles, the U.S. Constitution's Supremacy Clause ensured that federal law would preempt state efforts to undermine federal guarantees. For most of us in this room, the majority of our lives have been spent with the Supreme Court's preemption of the states' ability to limit abortion access. Last spring, in *Dobbs v. Jackson Women's Health Organization*, that federal guarantee was ripped away.

Since then, near-total bans have been passed in 14 states, with 5 more states seeking limits or bans that have been blocked by courts, and the expectation that at least half of all states are at risk for bans.¹ Just a week ago a woman was told she had to wait until she was nearing a heart attack before a cancerous molar pregnancy could be removed because of new bans in Oklahoma.² The harmful outcomes of these limits are most profound on historically excluded or marginalized people – BIPOC, rural communities, and low-wage workers or those in poverty, and queer and trans communities.^[redacted]

Until June 24, 2022, federal preemption assured at least a minimum access to care in the states. Without a federal constitutional rule, states have more authority to regulate abortion, and have been free to enact restrictions as long as there is some imaginable "rational basis" for

¹ New York Times. (Updated April 28, 2023). Tracking the States Where Abortion Is Now Banned. Retrieved from <https://www.nytimes.com/interactive/2022/us/abortion-laws-roe-v-wade.html>. See also Center for Reproductive Rights, interactive map, at: <https://reproductiverights.org/maps/abortion-laws-by-state/>

² National Public Radio. (April 25, 2023). In Oklahoma, a woman was told to wait until she's 'crashing' for abortion care. Retrieved from <https://www.npr.org/sections/health-shots/2023/04/25/1171851775/oklahoma-woman-abortion-ban-study-shows-confusion-at-hospitals>.

them, even if they do nothing to protect pregnant women, trans and nonbinary people or their families and existing children.

LD 1343 is squarely within the power of the Legislature to establish state-wide law with respect to abortion. Under our State Constitution, the legislature is empowered to “establish all reasonable laws and regulations” for Maine people as long as those laws are for a public purpose and violate neither the State or U.S. Constitutions. Maine Const., Art. IV, Pt. 3, Sec. 1.

Municipal home rule provides localities powers to pass laws and administer their affairs. But that power is limited when State law expressly states or implies that local action is prohibited, as LD 1343 does, and as both Democratic and Republican administrations have overseen in the recent past. For example, because of preemption provisions, municipalities are prohibited from regulating: firearms, components, ammunition and supplies (2011); transportation networks including the personal vehicles of drivers (2015); and paid sick leave requirements different from the state standards (2019).

In addition, **LD 1343 serves multiple public purposes in the health and welfare of women and pregnant persons, their existing children, and their families, as others are discussing today.** We wish to touch on the rigorous scientific findings from multiple authorities showing that denying a desired abortion worsens women’s physical and mental health. For example, without access to abortion, some pregnant people will self-manage their abortions instead because they lack the opportunity or resources to travel. In addition, childbirth has demonstrably higher risks of life-threatening complications or death compared to abortion. As the “Turnabout Study” found, women who wanted but could not obtain a desired abortion had worse physical health in the five years post-partum and were more likely to continue experiencing intimate partner violence than those who had been able to obtain an abortion.³

A statewide law also provides reassurance and protection to the many willingly pregnant women who could be mistreated in localities with an anti-abortion ordinance. In some places, women have faced prosecution when local law enforcement have misconstrued a woman’s unfortunate circumstances as an attempt to end a pregnancy. For example, in Iowa, a pregnant woman who fell down a flight of stairs was reported to the police after seeking help at a hospital. She was arrested for “attempted fetal homicide.”⁴ While the underlying particulars of criminal law may differ between Maine and other states, the local prohibition of abortion may have unintended consequences. Prosecutors elsewhere have charged women who

³ Lauren J. Ralph et al., Self-reported Physical Health of Women Who Did and Did Not Terminate Pregnancy After Seeking Abortion Services: A Cohort Study, 171 *Annals of Internal Med.* 238, 245 (2019), https://www.redaas.org.ar/archivosrecursos/470-Ralph%202019_Self-reported%20physical%20health%20of%20women%20who%20did%20and%20did%20%20not%20terminate%20pregnancy.pdf.

⁴ Michelle Goodwin, POLICING THE WOMB: INVISIBLE WOMEN AND THE CRIMINALIZATION OF MOTHERHOOD 86-87 (2020).

experienced stillbirths with depraved-heart homicide and culpable-negligence manslaughter.⁵
Id. at 34-45.

Stated another way, preemption provides a more coherent legal system, and ensures a more equitable level of access and expectations statewide. **LD 1343 is right as a matter of fairness and equity, as it seeks to prevent the piecemeal efforts in some other states this past year to limit access in local zip codes.** That inconsistency would harm Maine residents by creating stark regional differences in access to care in some places, or increased harm to health and safety for some Mainers based on where they live.

The reality is that we know that people's access is still based on many factors: their health insurance status, their income, their access to transportation, the services available in their areas. From a gender equity perspective, this matters because we know that women are more likely to live in poverty⁶ and rural women have more challenges in access reliable transportation. For these reasons, we have developed policy and service structures to fill these gaps, using telehealth and other forms of technology to create access where there wasn't access before.

LD 1343, and the doctrine of preemption, will protect that access. We have worked too hard to increase access and decrease gaps to allow a patchwork of protections to roll back safety for just some members of our community. **We hope you will vote 'Ought to Pass' on LD 1343.**

Finally, we also would like to note that we are in strong support of the other bills you will hear today, LD 1619 – AA to Improve Maine's Reproductive Privacy Laws, and LD 776, RESOLUTION, Proposing an Amendment to the Constitution of Maine to Establish the Right to Bodily Autonomy.

Abortion access and reproductive health care serves public health and the well being of many individuals, children and families. It is the cornerstone of gender equity, a fundamentally important aspect of bodily autonomy, and core to human dignity. Without the ability to safely and security control our reproductive lives, all other freedoms are vulnerable. We hope that you will listen to the public at large- the vast majority of whom want to protect this healthcare – as well as the voters who resoundingly showed up to vote in favor of abortion access last November, and *continue to support and grow Maine's landscape of bodily freedom.*

Sincerely,

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⁵ *Id.* at 34-45.

⁶ US Census Bureau. (2022). Quick Facts: Maine. Retrieved from <https://www.census.gov/quickfacts/fact/table/ME/HSD410221?>