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Testimony in Support of L.D. 780, a Resolution Proposing an Amendment to the Constitution of Maine to Protect Personal Reproductive Autonomy

Senator Carney, Representative Moonen, and honorable members of the Joint Standing Committee on Judiciary, my name is Aaron Frey, and I have the honor of serving as Maine's Attorney General. I am testifying in strong support of L.D. 780, *A Resolution Proposing an Amendment to the Constitution of Maine to Protect Personal Reproductive Autonomy* so that citizens of Maine may vote to make this a clearly enumerated right in Maine's Constitution.

There should be no doubt that a child-bearing person has a right to reproductive autonomy. Fifty years ago to this day, the United States Supreme Court decided in *Roe v. Wade* that the United States Constitution protected the right to seek an abortion. Not long after, in 1979, Maine became a leader on this front and began a decades-long commitment to ensuring this right was codified in statute. This has been improved upon over time to more fully protect access to abortion care and other reproductive health services. Indeed, just last session, the Legislature strengthened these protections when it enacted Chapter 416, *An Act to Improve Maine's Reproductive Privacy Laws* and Chapter 352, *An Act to Protect the Reproductive Freedom of Maine People by Preempting the Field of Abortion Regulation*.

While Maine has stayed the course, the United States Supreme Court has not. Just two years ago, the Supreme Court upended a half-century of precedent when it overruled *Roe v. Wade* and other cases and held that the federal Constitution no longer protects the right to abortion care. This decision left child-bearing people and their medical providers uncertain about what, if any, right to an abortion remained because it was left to states to protect, or in many cases eliminate, this right.

By adding a clearly enumerated right to reproductive autonomy in the Maine Constitution, our state would advance the commitment it has already made through statute. This would more permanently protect the right than what can be done by statute, alone. Importantly, the Maine Constitution already contains important rights that may be interpreted by the Maine courts to protect access to abortion care. The Maine Constitution's Declaration of Rights contains a provision declaring that all people have certain natural, inherent, and unalienable rights, including enjoying and defending life and liberty and pursuing and obtaining safety and happiness. By comparison, the federal Constitution contains no such provision. Our Constitution also prohibits depriving persons of life, liberty, or property without due process, denying persons the equal protection of the laws, and prohibiting persons from enjoying their civil rights. I expect that if a Maine court were called upon to decide whether Maine's Constitution protects the right to access abortion care, it would hold that one or more of these provisions provides that protection.

However, in the absence of an express right in Maine's Constitution, it is impossible to predict with certainty how a court might rule and, even then, the overturning of *Roe v. Wade* shows us that in the absence of a clearly defined right, legal interpretations of implied rights are vulnerable to a change in the makeup of a court. Maine citizens should not be left to wonder about whether their right to access abortion care is constitutionally protected.

To avoid any uncertainty and ensure that the right is protected as strongly as possible, the right to personal reproductive autonomy should be expressly spelled out in our state Constitution. I thus urge the Committee to vote ought to pass on L.D. 780 and allow Maine voters to decide to include an express right in our Constitution.