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Judicial Branch testimony in opposition to LD 665, An Act Regarding the Use of Military Protective Orders in PFA and PFH Proceedings:

Senator Hickman, Representative Supica, members of the Joint Standing Committee on Veterans and Legal Affairs, my name is Julie Finn and I represent the Judicial Branch. I am here to testify in opposition to LD 665 as this bill would negatively interfere with a defendant's due process rights.

Under current Maine law, a plaintiff who seeks an order of protection under the Protection from Abuse (PFA) or Protection from Harassment (PFH) statute, may request that the court issue a temporary protection order, which if granted, remains in effect until the final hearing on the complaint. Temporary protection orders are issued *ex parte*, without a hearing, and can significantly affect a defendant's constitutional rights. For this reason, Maine's PFA and PFH statutes require the plaintiff to allege sufficient facts, in writing under oath, for the court to determine that the strict standards necessary for the issuance of a temporary protection order have been met and for the defendant to be placed on notice of the allegations being made. *See* 19-A M.R.S. § 4108(1); *see also* 5 M.R.S. § 4654(2).

The proposed amendments to the PFA and PFH statutes remove these requirements and would allow the court to issue a temporary protection order based solely on the existence of a military protective order.

This amendment is of concern for several reasons as military protective orders do not afford the respondent the same important due process protections as Maine statutes. Specifically, a military protective order (1) does not require a written sworn request; (2) does not need to be made by the alleged victim (it can be requested by a victim advocate, installation law enforcement, or a Family Advocacy Program (FAP) clinician); and (3) does not involve a hearing or any opportunity for appeal. A commanding officer can issue a military protective order upon the belief that there is "sufficient reason to conclude the issuance of a protective order is warranted in the best interest of good order and discipline." *See* Military Protective Order, form DD 2873. This determination can be based on conduct that would not necessarily qualify someone for a temporary PFA or PFH order under Maine law. *See id.* (including a catch all "other" as a possible basis for a military protective order).

Furthermore, military protective orders do not require detailed findings. Thus, exclusive reliance on a military protective order to support a request for a temporary protection order under Maine law would not necessarily place the defendant on notice of the allegations made against them.

Relying solely on a military protective order as the sole basis for a temporary protection order under Maine law raises serious constitutional concerns and undermines due process protections. For these reasons, the Judicial Branch opposes LD 665.

Thank you for your time.