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Testimony of Representative David Sinclair presenting

LD 1146, An Act Regarding the Required State of Mind Relating to Robbery

Before the Joint Standing Committee on Criminal Justice and Public Safety

Senator Beebe-Center, Representative Hasenfus and distinguished members of the Joint Standing Committee on Criminal Justice and Public Safety, good morning. My name is David Sinclair, and I am proud to represent House District 50, which is the City of Bath. I appreciate this opportunity to present **LD 1146, An Act Regarding the Required State of Mind Relating to Robbery**.

Last year, the 131st Legislature passed a small number of bills correcting Maine's criminal terrorizing, stalking, and protection from abuse statutes to comply with the Supreme Court's holding in *Counterman v. Colorado* (600 U.S. 66(2023)). In essence, the *Counterman* decision held that in order for a state to impose criminal liability for threatening expression, the state must allege and prove both that the expression was a true threat "conveying that [the] speaker means to commit an unlawful act of violence," **and** that the Defendant acted "consciously disregard[ing] a substantial risk that [the] communication would be viewed as threatening violence."

After *Counterman*, any Maine statute that seeks to criminalize threats without also alleging and proving appropriate mens rea, is unenforceable on First Amendment grounds. The corrective bills from last session addressed some, but not all, of the Maine statutes needing correction; this bill presents a *Counterman* fix for Maine's robbery statute (17-A M.R.S. 8651(1)(B)(2)).

I am also providing the committee with copy of two different court orders granting dismissal of robbery charges on *Counterman* grounds to help illustrate the need for this legislative change, and hope the committee will act swiftly to address this issue.

Respectfully,

David A. Sinclair

Representative, House District 50