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Testimony of the Maine Municipal Association

In Opposition to

*LD 1660 - An Act Creating a Private Right of Action Against a Government Employer*

April 15, 2025

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Sen. Carney, Rep. Kuhn, and distinguished members of the Judiciary Committee, my name is Rebecca Graham, and I am submitting testimony in strong opposition to LD 1660 at the direction of MMA's Legislative Policy Committee (LPC). Our LPC is made up of individuals from across Maine with municipal officials elected by their peers across Maine's 35 Senate districts representing communities with very different access to available enforcement resources and local capacity.

As drafted, the bill expands potential liability for municipalities without a clear reason as the need for this change. Currently there is a private right of action for violation of civil rights under state law in 5 MRS s. 4682, which may only be brought against individuals. When it comes to municipal liability, at least one court has held, "The Maine law was patterned after section 1983 and, therefore, the same municipal liability analysis applies." (*Fowles v. Stearns*, 886 F. Supp. 894, 899 n.6 (D. Me. 1995)). As indicated in the case the courts will apply the same qualified-immunity analysis to claims under the Maine Civil Rights Act as they apply to federal civil rights claims. Additionally, 5 MRS s. 4681 also allows the Attorney General to file suit for violation of civil rights.

The bill also purports allow a person to sue a municipality directly – not the employee involved. It's unclear how a municipality writ large could intentionally interfere with constitutional rights, by physical force or violence, or threats of physical force or violence, as limited in statute as these actions require individual action. It removes any defenses the municipality may have under the Federal Civil Rights Act if a suit were also brought under this new law. At the same time the bill removes all potential liability for the employee involved. There is no clear indication that an employee's action subject to a claim under this bill must be within the scope of that employee's official duties, so it is unclear whether there is potential liability for a municipality if their employee is acting without their authorization or unlawfully. Maine Tort Claims Act waives government immunity only in certain instances of negligence, so as proposed the bill complicates rather than improves current practice.

As the Supreme Court recognized in the *Harlow v. Fitzgerald* case in 1982, there is a cost to our social fabric for opening public officials up to unchecked litigation that include: "expenses

associated, the diversion of official energy from pressing public issues and the deterrence of able citizens from accepting public office. Finally, there is the danger that fear of being sued will dampen the ardor of all but the most resolute, or most irresponsible, in the unflinching discharge of their duties.”

Recruitment is an enormous challenge for municipal law enforcement agencies currently and we need to make sure the conditions for employment attract and protect the best candidates. Removal of the protection afforded under the current system to our best and brightest employees means we will likely lose them, leaving municipalities with exactly the individuals we do not want in these roles to fill the gaps. Municipal officials want tools to help identify and remove those individuals not lose our diligent public servants. Qualified immunity was constructed to “strike a balance between the competing values of vindicating constitutional rights and protecting public officials from meritless suits.” Municipal police find themselves in these situations daily and because of this, subjected far more likely to attract such suits. A right of private action as provided by this bill does nothing more than remove public officials from the mix and shift the case to be against the community will guarantee an increase in meritless suits.

For these reasons officials find the proposed approach under LD 1660 unworkable.