

TESTIMONY OF MICHAEL KEBEDE, ESQ.

**LD 369 – Ought Not To Pass**

**An Act To Criminalize Recording an Incident in Progress but  
Failing To Report the Incident Immediately to the Appropriate Authority**

Joint Standing Committee on  
Criminal Justice and Public Safety

February 24, 2021

Senator Deschambault, Representative Warren and distinguished members of the Joint Standing Committee on Criminal Justice and Public Safety, greetings. My name is Michael Kebede and I am Policy Counsel for the American Civil Liberties Union of Maine, a statewide organization committed to advancing and preserving civil liberties guaranteed by the Maine and U.S. Constitutions. On behalf of our members, I urge you to reject LD 369 because it would violate the constitution, shield police from public scrutiny, chill free speech, and unduly expand our criminal code.

If enacted, this bill would make it a crime for a person in Maine to fail to report a crime if the person also records the crime. Such a requirement would endanger our First Amendment right record police doing their jobs. Ten years ago, the First Circuit, the highest federal court in New England, recognized this right in *Glik v. Cunniffe*, 655 F. 3d 78 (1st Cir. 2011). The facts underlying that case are instructive here. In 2010, Mr. Glik sued three police officers and the City of Boston for violating his civil rights, after police arrested him and charged him with illegal wiretapping, aiding the escape of a prisoner, and disturbing the peace—all for merely holding up his cell phone and openly recording Boston police officers as they punched another man on Boston Common in October 2007. As a defense, the individual officers argued there was no First Amendment right to record the police or, if there were, the law was not clear and they should be immune from being sued. The Court decisively rejected both of these claims.

If the principles in LD 369 were in force in Boston in 2010, then Mr. Glick would have been charged with yet another crime: failing to report a crime to the very institution that violated his civil rights, the Boston Police Department. The obligation would have put Mr. Gluck in in an absurd position. It would have eroded Mr. Glick's right to record by requiring him to call the very office that employs the people he was recording. It might very well have caused Mr. Glick *not* to record law enforcement, and the violent police conduct he captured on his recording device would have forever been hidden from public scrutiny.

It is inherently bad policy to prevent Mainers or anybody in the United States from recording police doing their jobs. Indeed, as members of this committee will vividly recall, the event that sparked outrage and protest around the country last year was a cellphone recording of Minneapolis Police officer Derek Chauvin killing George Floyd. Imagine if the person recording the event also had to immediately report it to the police, and faced a criminal charge if they failed to do that? As we saw in the video, three police stood and watched as life left George Floyd's body. The rule in this bill would have put the bystanders who recorded George Floyd's killing in an impossible position.

The First Amendment protects citizen's rights to film police. Videotaping also protects the public's right to know when police, who are funded by tax dollars, break the law. This bill would violate both those rights. It would do so by expanding our already-vast criminal code. We urge you to vote *ought not to pass*.

Thank you for your attention.