

TESTIMONY OF MICHAEL KEBEDE, ESQ.

Ought to Pass - LD 477

An Act To Allow for Fair Restitution by Providing That Restitution Does Not Include the Cost of Analysis of Suspected Illegal Drugs

Submitted to the

JOINT STANDING COMMITTEE ON
CRIMINAL JUSTICE & PUBLIC SAFETY

March 24, 2021

Senator Deschambault, Representative Warren, and distinguished members of the Joint Standing Committee on Criminal Justice & Public Safety, greetings. My name is Michael Kebede, and I am the Policy Counsel at the ACLU of Maine, a statewide organization committed to advancing and preserving civil rights and civil liberties guaranteed by the Maine and U.S. Constitutions. On behalf of our members, we urge you to support LD 477.

Asking the defendant to pay for the cost of their own punishment is fundamentally inconsistent with the basic structure of a just legal system.¹ In some cases, it adds insult to injury.² Before our constitution, Inquisitors in the English Star Chamber forced defendants to prove the government's case with their own resources and testimony. Thankfully, "[t]he statute abolishing the Star Chamber in 1641 specifically prohibited any court thereafter from levying excessive fines."³ Under the American system, the government bears the burden of proving their case, and

¹ *Cf. Matter of Negusie*, 27 I&N Dec. 347 (BIA 2018) (acknowledging that forcing an individual to punish themselves or others is a hallmark of cruel, inhumane, and degrading treatment.).

² *Cf. Davis v. White*, 794 F.3d 1008, 1011 (8th Cir. 2015) (motorist pulled over by police, beaten mercilessly, and then charged with property damage for bleeding on officers' uniforms).

³ *Timbs v. Indiana*, 139 S. Ct. 682, 694, 203 L. Ed. 2d 11 (2019) (Thomas, J., concurring) (ellipses and internal quotations omitted).

may expend investigative resources on the people's behalf if the pursuit of justice so requires. The alternative, where defendants pay for their own punishment, is cruel and inherently unfair. If the crime is proven, the defendant may be made to make victims or survivors whole by through some form of payment. This is wholly different from being forced to pay for one's own drug tests. In *Lagos v. United States*, the United States Supreme Court unanimously held that defendants cannot be forced to pay for investigative resources under the Mandatory Victims Restitution Act, which requires defendants to repay every penny they are adjudged to have stolen.⁴ The same Supreme Court, if given a chance, might very well hold that Maine's restitution law is similarly invalid.

Additionally, supporting this bill would help overcome the opioid epidemic in a small but meaningful way. With so much attention directed to overcoming the COVID-19 pandemic, it is sometimes forgotten that Maine also faces another deadly public health emergency: the opioid overdose epidemic. More than 500 Mainers died from overdose deaths last year, with many of those deaths occurring as a result of substance use disorders (SUD).⁵ Because many of the symptoms associated with substance use disorders—including the possession of drugs—are criminalized, many people find themselves trapped in the criminal legal system while at the same time trying to navigate treatment for a disability. Imposing criminal fines for the costs of drug testing adds yet more stigma to SUD and contradicts the state's goal to encourage treatment and rehabilitation.

Because this bill would partially repeal an unjust and unfair law, we urge you to vote *ought to pass*.

⁴ *Lagos v. United States*, 138 S. Ct. 1684, 1688 (2018).

⁵ The Editorial Board, *More than 500 Mainers died from overdoses last year. That should concern us all*, Bangor Daily News (Feb. 24, 2021), available at <https://bangordailynews.com/2021/02/24/opinion/more-than-500-mainers-died-from-overdoses-last-year-that-should-concern-us-all/>.