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STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



MELANIE LOYZIM
COMMISSIONER

TESTIMONY OF
MELANIE LOYZIM, COMMISSIONER
DEPARTMENT OF ENVIRONMENTAL PROTECTION
SPEAKING IN OPPOSITION TO
L.D. 489 “RESOLUTION, PROPOSING AN AMENDMENT TO THE CONSTITUTION
OF MAINE TO ESTABLISH A RIGHT TO A HEALTHY ENVIRONMENT”
SPONSORED BY SEN. MAXMIN
BEFORE THE JOINT STANDING COMMITTEE ON
ENVIRONMENT AND NATURAL RESOURCES

HEARING DATE:
MARCH 8, 2021

Senator Brenner, Representative Tucker, and members of the Joint Standing Committee on Environment and Natural Resources, I am Melanie Loyzim, Commissioner of the Department of Environmental Protection (DEP), providing this testimony in opposition to L.D. 489.

Maine’s natural resources and environmental qualities underpin much of our economy and culture. A statement in Maine’s Constitution that every citizen has the right to a clean and healthy environment would reflect Maine’s values. L.D. 489 is more than a mere value statement, however. L.D. 489 is open-ended in both its effects and requirements, and the potential consequences could go far beyond its intent.

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The bill utilizes undefined and extreme language, such as “pure” water. Even distilled water might not qualify as “pure,” and it is unclear if “pure” is to be distinguished from “clean.” It is also unclear if terms such as “clean air” are intended to refer to air containing pollutants at concentrations no higher than established standards. It does not appear, however, that the amendment is intended to limit the rights of citizens only to conditions that meet governmental standards.

The apparent scope of the rights created for each Maine citizen is entirely unlimited. The proposed constitutional provision states, in part, “*The people of the State have the right to ... the preservation of the natural, cultural, recreational, scenic and healthful qualities of the environment.*” This right is then enforced by the statement “*The rights stated in this section are inherent, inalienable and infeasible and are among those rights reserved to all the people and are on par with other protected inalienable rights.*” A hypothetical example is illustrative of the broad reaching effects such language could have. Imagine two neighboring private property owners. One wants to use the other’s property for recreation, and that access is denied. The person who was denied access could bring a claim to court that their constitutional right to the recreational qualities of the environment on their neighbor’s property is being infringed upon. If that seems far-fetched, imagine one neighbor had allowed the other neighbor to use their back woods for hiking and cross-country skiing. Then the one neighbor decides they no longer want to allow such access. A constitutional claim in that case could be bolstered by the history of prior use.

The potential ramifications for state regulatory authorities and regulated entities are also enormous. The proposed language declares, “*the State may not infringe upon these rights by*

action or inaction.” If the DEP does not require homeowners to treat their wastewater at a level of 99% control effectiveness for hormones before allowing it to be discharged into groundwater (ie. home septic system), a Maine citizen who utilizes that same aquifer or bedrock fracture could claim DEP has violated their constitutional right to clean groundwater through inaction. If DEP does require treatment, but only to 95% control effectiveness, an affected citizen who believes it should be 99% could still bring a claim for not protecting their right to “pure water.”

It is unclear how courts would view such claims. They would certainly be tested immediately upon creation of these rights. This amendment is unbounded in its scope and offers unending opportunities for litigation. These hypotheticals merely speculate as to the potential effects of this proposed constitutional amendment. The Legislature should also consider input from individuals with experience applying and interpreting Maine’s Constitution to better understand its consequences.

Thank you for the opportunity to share these concerns with you.