

State of Maine
Join Standing Committee on Health Coverage,
Insurance and Financial Services

Testimony in Support of LD 227
Law Professor David S. Cohen

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Good afternoon distinguished members of the Committee on Health Coverage, Insurance and Financial Services.

My name is David S. Cohen, pronouns he/him, professor of law at Drexel University's Thomas R. Kline School of Law in Philadelphia. Thank you for the opportunity to testify before you today in support of LD 227, An Act Regarding Health Care in the State, or what one may call the Maine Shield Bill.

Along with two other law professors, Rachel Rebouche, the dean at Temple Law, and Greer Donley at Pittsburgh Law, I have spent the last two and a half years studying the legal issues arising out of the *Dobbs* case, stripping away a long-standing constitutional right to bodily autonomy and decision making and suggesting the Court was aiming at others, including the right to marry, the right to intimacy, and the right to contraception. Given the long-standing connection between reproductive rights and LGBTQ rights in American law, the *Dobbs* decision in many ways has unleashed a rapid wave of bans in states on both reproductive health care and transgender health care.

This bill helps Maine in this new reality. Maine cannot change the unfortunate and cruel fact that many states have banned abortion and transgender health care that is within the medical community's standard of care. But, what you can do with this bill is protect Maine healthcare providers, people within your state who receive care, and those who travel to your state to obtain health care from the very real threat that *other* states pose.

What I am referring to is the threat that government officials and private individuals in other states will try to investigate, sue, or prosecute people for providing lawful transgender healthcare in Maine to people who may have connections to ban states.

Based on my expertise and my coauthors', we strongly believe that this risk will intensify in the coming years, as states seek to ban standard of care health care not only in their borders but also when their residents seek care in other places or travel between states as snowbirds, vacationers, or college students. We have already seen this out of Texas, Missouri, Idaho, and Alabama. We know more is coming, and eventually, they'll set their targets on Maine.

So far, seventeen states and the District of Columbia have enacted laws like the one you are considering today to protect access to reproductive health care, transgender health care, or both -- Connecticut led the way almost two years ago. Massachusetts and Vermont followed suit later in 2022 and in 2023. These states, along with New York, New Jersey, and over a dozen others,

have sent the message to their health care providers and those who seek out their services that their state governments will not participate in the cruelty and abuse of power that antiabortion and anti-LGBTQ states have been pursuing.

The exact provisions in each state's laws vary, but they all have the same broad goals that your bill does or will with amendments -- protecting providers from out of state subpoenas and summons, protecting health care information, preventing extradition when it is not required by the Constitution, allowing providers to countersue if someone enforces an out of state judgment around lawful care in Maine, protecting providers' home addresses, and protecting providers from threats and violence. Put simply, this bill says "the state of Maine will not use its resources to harm protected health care."

Rest assured, these laws pose no constitutional problems. It is completely constitutional for Maine to control its own courts and law enforcement departments. The Full Faith and Credit Clause of the Constitution requires Maine to recognize out of state final judgments, but it does not require Maine to cooperate with out of state investigations or ongoing lawsuits. Also, the Extradition Clause of the federal Constitution requires Maine to extradite people who are in Maine who have physically fled from another state where they are accused of committing a crime. There is no obligation for Maine to extradite someone who is accused of committing a crime without physically being in the other state. LD 227 is not at all constitutionally problematic. I am even more confident in this pronouncement now, almost two years after Connecticut passed its first shield law, as there have been zero constitutional challenges to these bills anywhere in the country.

It is, though, incredibly important. These provisions will help ensure two things: first, they will serve a prophylactic purpose of preventing out of state actions against Mainers and second, if they do occur, they will help Mainers mitigate their effects. In our current legal environment, this bill is essential to prevent other states from interfering with the safe and legal care that Maine provides.

Therefore, I urge you to pass this bill for everyone in Maine and those from elsewhere who rely on your great health care providers. Thank you.