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Good morning/afternoon Senator Claxton, Representative Meyer, and members of the Committee on Health and Human Services. My name is Deborah Ibonwa and I am Policy and Legal Advocate at Maine Equal Justice (MEJ). MEJ is a nonprofit legal aid organization working to increase economic security, opportunity, and equity for people in Maine. I am testifying on behalf of Maine Equal Justice in opposition to LD 287.

WHAT THE BILL DOES

Electronic Benefit Transfer cards, also known as EBT cards, hold a household's Supplemental Nutrition Assistance Program (SNAP) benefits, and function like a debit card. LD 287 requires that EBT cards include a photograph of a recipient of benefits and removes the requirement that a recipient of benefits consent in writing to the inclusion of a photograph on their EBT card.

WHY WE OPPOSE IT

1. Maine implemented this policy before and the policy was suspended" in 2019 because it caused problems for impacted parties and at times raised issues with USDA.

Maine implemented a pilot program placing photos on EBT cards in the Bangor area on April 28, 2014. This initiative was implemented statewide on July 1, 2014. In 2019, Maine largely abandoned its photo EBT card policy as it 1). undermined the program's purpose of reducing hunger and 2). exposed retailers to legal risk. All of the research and evidence shows this would likely be the result again if this legislation is enacted. At that time, EBT recipients:

- (1) reported they were anxious and fearful that their benefits would be terminated if they didn't want a photo on their card despite Maine's position that this was plan was "voluntary". The voluntary nature of this program was not clearly communicated, and in certain cases that lack of clarity appeared to be intentional;
- (2) were required to come in for a face-to-face interview to have their photo taken without regard for hardship circumstances; some lost assistance due to their inability to appear;
- (3) found the process confusing and the purpose and requirements unclear;

(4) did not understand that the law required that other household members or authorized representatives could continue to purchase food for them even if their photo was not on the card. In some cases, other household members were improperly questioned at the check-out line leading to embarrassment and humiliation. We were made aware of a case involving one mixed race couple in which the wife who was white was pictured on the card and when her Black husband attempted to use the card he was treated with suspicion and illegally questioned in front of other customers. This was illegal and could have exposed the retailer to legal action;

(5) experienced increased delays in recertification and difficulty receiving timely and accurate service when they attempted to interact with the Department after implementation of this policy. The additional administrative burden of the photo ID initiative caused demonstrable delays in benefit processing;

(6) families and individuals were embarrassed and insulted by the implication that fraud is widespread in the program. They felt that it created a climate of suspicion about all people, including themselves, simply because they needed help with food assistance.

The policy imposed an administrative burden on the state, as the policy necessitated face-to-face interviews, the taking of photographs, and added time and resources to explain the policy and answer questions. Maine quickly fell behind in its processing of applications and recertifications and FNS cited Maine for failure to meet federal performance standards related to timely processing, noting that Maine's performance on this measure was the very worst in the nation. DHHS called photo EBT cards an "ineffective policy" and state officials said that terminating the policy would save money and improve access to benefits.¹ Today, Massachusetts and Missouri are the only other states that have such a law on the books and EBT recipients face similar issues as those listed above. There is no reason to expect that such a program would work differently today in the State of Maine.

2. Photo EBT cards are discriminatory and risk denying SNAP recipients their right to use their Food Supplement benefit.

As already mentioned, Federal regulations require that SNAP recipients be treated the same as all other shoppers. EBT card users cannot be put in a position where they may be subject to additional scrutiny not applied to other shoppers using debit or credit cards.

SNAP benefits are unique in that they are provided to a household consisting of individuals who live and prepare meals together. Federal law also provides that SNAP recipients may also designate authorized representatives to use their EBT card. In fact, Congress has made clear that if a State does require a photograph on an EBT card, that State "shall establish procedures to

¹ <https://bangordailynews.com/2019/04/26/news/mills-reverses-another-signature-lepage-move-by-pulling-photos-from-ebt-cards/>

ensure that any other appropriate member of the household or any authorized representative of the household may utilize the card.”²

Given that the individual using the EBT card may not be the one pictured, it is confusing for clerks who do see the EBT card photo. As noted above other than Maine, only Missouri and Massachusetts have implemented EBT photo policies. In those other states, individuals have been unlawfully subjected to additional scrutiny and ultimately denied use of their benefits because another household member’s photo is on the card, rather than their own.³

About one third of SNAP recipients are elderly or disabled and may rely on others to perform their grocery shopping for them as an authorized representative. When Maine started to put photos on EBT cards in 2014, our clients in 2016 expressed that they were afraid that people who helped them by going to the grocery store and purchasing food would no longer be able to assist them, simply because their photo would not be on the EBT card.⁴ If folks mistakenly believe that SNAP benefits can only be used by the photographed individual, this can severely reduce SNAP participation.⁵

3. Photo EBT cards accomplish little but cost a lot of taxpayer dollars.

Photo EBT card legislation has generally been presented to combat fraud, including the trafficking of benefits. The idea is that only the person or persons entitled to the benefit will have access and the ability to use that benefit. Yet, evaluations of photo EBT policies have concluded that a photograph does little to combat card trafficking.⁶

One reason for this is that trafficking typically involves retailer owners and employees who are sold the balance of an EBT card by the recipient.⁷ A photograph will not discourage retailers who seek to engage in these unlawful transactions.

Federal regulations require that retail food stores treat all customers equally.⁸ In other words, those who use an EBT card to buy groceries cannot be treated any differently than any other shopper at the checkout line. This regulation implies that if retailers use photo identification to confirm the identity of EBT card users, they must do the same for everyone else in the store. It is doubtful that all Mainers would tolerate needing to prove their identity every time they buy their

² 7 U.S.C. Sec 2016(h)(9)(A)

³ <https://www.urban.org/sites/default/files/publication/44641/2000159-Assessing-the-Merits-of-Photo-EBT-Cards-in-the-Supplemental-Nutritional-Assistance-Program.pdf> at 17

⁴ (pulled from MEJ client testimonials in response to federal rulemaking related to EBT photo)

⁵ <https://www.urban.org/sites/default/files/publication/44641/2000159-Assessing-the-Merits-of-Photo-EBT-Cards-in-the-Supplemental-Nutritional-Assistance-Program.pdf>, at 20.

⁶ <https://www.urban.org/sites/default/files/publication/44641/2000159-Assessing-the-Merits-of-Photo-EBT-Cards-in-the-Supplemental-Nutritional-Assistance-Program.pdf>; <https://fas.org/sgp/crs/misc/R45147.pdf>, at 34.

⁷ <https://www.urban.org/sites/default/files/publication/44641/2000159-Assessing-the-Merits-of-Photo-EBT-Cards-in-the-Supplemental-Nutritional-Assistance-Program.pdf>, at 3, 7. See also <https://www.governing.com/archive/gov-why-photo-identifications-wont-stop-food-stamp-fraud.html>.

⁸ 7 CFR § 278.2(b) (“No retail food store may single out coupon users for special treatment in any way.”)

groceries. This also places clerks and other staff in a confusing position where they are uncertain of their role, and may inadvertently make a mistake that exposes their employer to legal risk

Because EBT cards function like a debit card, they may never enter the hands of the cashier for the photo to be examined. There is evidence from Massachusetts that retailers do not check the photos on EBT cards, meaning that there is no opportunity to catch fraudulent use of benefits even if this was the intended goal of this policy.⁹

Even if Maine were to require retail clerks to inspect photo identification, the U.S. Department of Agriculture's Food and Nutrition Service (FNS), the federal agency that administers the SNAP program, has said that States do not have the authority to do so.¹⁰ In 2013, Tennessee consulted FNS regarding a potential state photo EBT card requirement that included mandating that SNAP retailers check IDs. FNS's response emphasized that "SNAP retailer operations are under the authority of FNS and the federal government" and that Tennessee would not have "jurisdiction or authority to enforce such a mandate even if the legislation passed."¹¹

Furthermore, photos are wholly unnecessary for achieving their intended purpose, as EBT cards are already designed to effectively prevent fraud or trafficking. EBT cards require using a secure PIN number. A 2015 study by the Urban Institute found that the use of PINs helped to reduce trafficking from 3.8 percent in 1993 to 1.3 percent in 2009.¹² The Pennsylvania Legislative Budget and Finance Committee conducted a study that investigated and evaluated the value of photo EBT cards in preventing fraud, as compared to the basic magnetic strip access card. The study found that the magnetic strips already significantly reduce fraud and that photo EBT cards would do little to prevent fraud between retailers and recipients.¹³

It is clear that photo EBT cards serve little purpose. The costs of photo EBT cards, on the other hand, are significant. In 2018, the Congressional Research Service reported that in a review of 14 states that considered photo EBT cards, upfront costs ranged from \$1.6 million in New Hampshire to \$25.1 million in North Carolina. Additionally, there are ongoing annual costs associated with maintaining such a policy. Across various states, these ongoing costs range from \$65,000 to \$8.4 million.¹⁴ Pennsylvania found that implementing a photo EBT card program would cost approximately \$8 per card, compared to \$.23 per card without the photograph.¹⁵

⁹ <https://www.urban.org/sites/default/files/publication/44641/2000159-Assessing-the-Merits-of-Photo-EBT-Cards-in-the-Supplemental-Nutritional-Assistance-Program.pdf>, at 2.

¹⁰ <https://www.tn.gov/content/dam/tn/human-services/documents/EBT%20Photo%20ID%20Study%20Jan-15-2014.pdf>.

¹¹ <https://www.tn.gov/content/dam/tn/human-services/documents/EBT%20Photo%20ID%20Study%20Jan-15-2014.pdf>, at 9.

¹² <https://www.urban.org/sites/default/files/publication/44641/2000159-Assessing-the-Merits-of-Photo-EBT-Cards-in-the-Supplemental-Nutritional-Assistance-Program.pdf>, at 3.

¹³ <http://lbfc.legis.state.pa.us/Resources/Documents/Reports/450.pdf>

¹⁴ <https://fas.org/sgp/crs/misc/R45147.pdf>, at 35.

¹⁵ <http://lbfc.legis.state.pa.us/Resources/Documents/Reports/450.pdf>.

Overall, the money it would cost to require photo EBT cards is not worth it, especially given that evidence makes clear there can be no reasonable expectation that a reduction in trafficking would result.

4. The consensus across the country is that photo EBT cards are simply not worth it.

A handful of states have introduced photo EBT bills, but few have actually passed.¹⁶ New York did away with its photo EBT card requirement in 2013.¹⁷ In 2013, Rhode Island's Department of Human Services published a report evaluating the value of photo EBT cards, based in part on data from other states. The report recommended against a photo EBT card, stating that they would "reduce fraud in minute amounts and therefore, be a waste of state funds and taxpayer dollars."¹⁸ In 2019, Ohio considered a photo EBT bill, but proof from other states of its futility in preventing fraud kept the bill from moving forward.¹⁹

Today, Massachusetts and Missouri are the only states that implement this policy.²⁰ This is despite the fact that in both states, findings have concluded that a photo EBT has little to no impact on trafficking and its costs outweighed any benefit.²¹ Furthermore, in Massachusetts, the policy has proven useless given that 75% of EBT holders were exempt from the photo requirement as of 2016.²²

Conclusion

Simply put, Maine cannot afford to fund a policy that yields no positive impact, discriminates against SNAP benefit recipients; exposes retailers to unnecessary legal risk, and exacerbates our already high food insecurity rates. Mainers deserve to keep food on the table without additional and unnecessary scrutiny.

¹⁶ <https://lisaopdycke.files.wordpress.com/2014/03/ebt-feasibility-in-ri1.pdf>

¹⁷ <https://www.nytimes.com/2015/03/28/upshot/theres-just-one-problem-with-photos-on-food-stamp-cards.html>.

¹⁸ <https://lisaopdycke.files.wordpress.com/2014/03/ebt-feasibility-in-ri1.pdf>, at 1.

¹⁹ <https://www.dispatch.com/news/20191217/ohio-senate-delays-requiring-photos-on-food-stamp-cards-returns-bill-to-committee>

²⁰ Mass. Gen. Laws Ann. ch. 18, § 5I; Mo. Ann. Stat. § 208.022

²¹ <https://www.urban.org/sites/default/files/publication/44641/2000159-Assessing-the-Merits-of-Photo-EBT-Cards-in-the-Supplemental-Nutritional-Assistance-Program.pdf>, at 19.

²² <https://www.masslegalservices.org/content/snap-and-photo-ebt-cards-information-and-resources>

