



Molly Owens, Esq.
Chief | Parents' Counsel Division
9 Free St.
Machias, ME 04654
(207) 446-3186
Molly.owens@maine.gov

RE: L.D. 492 – RESOLUTION, Proposing an Amendment to the Constitution of Maine to Provide for Parental Rights

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Senator Carney, Representative Kuhn, members of the Judiciary Committee. My name is Molly Owens, and I am offering testimony as the Chief of the Parents' Counsel Division of the Maine Commission on Public Defense Services. My testimony is neither for nor against this proposed amendment as written, but rather I wanted to flag language in the proposed amendment that might, in its vagueness, open the door to broadening State power over parents and families in a way that is perhaps unintended.

As an attorney who has represented parents in child protection cases for nearly a decade, and as the head of a new division whose mission is to strengthen parents' rights and support family integrity, I am fully supportive of an amendment that would solidly enshrine into our Constitution a parent's right to parent their child without state interference. If that's the intention, I simply suggest that some more specific language in the last phrase of the proposed amendment might help clarify when the State or its actors may infringe on the protected rights of parents.

As written, while the intent seems to be to track the protections in the U.S. Constitution, federal case law and state case law, the phrase "absent abuse or neglect by the parent or guardian or criminal acts by the minor" leaves open to interpretation what is needed for that infringement to be permissible. Currently, the Department of Health and Human Services, through the Office of Children and Family Services, can "find" that a parent abused or neglected their child through an agency investigation. That parent can be substantiated or indicated for abuse or neglect without a judicial determination of abuse or neglect. The Department can also allege abuse or neglect in a child protection filing. In the absence of clarifying language about when the infringement on a parents' rights may attach, I think the amendment might inadvertently invite an argument that the State or its actors can infringe on a parent's right at after an investigation stage or at the filing of a child protection petition but absent a judicial determination. Similarly, the language that the State or its actors can infringe on a parents' rights if there are "criminal acts by the minor" leaves open to interpretation whether those criminal acts can be mere allegations, a criminal complaint, or if that infringement can only be after a judicial determination.

A parent's right to parent their child is already enshrined in federal and state law, so if the intention of the proposed amendment is to strengthen or reinforce that right in our constitution, as a parent's attorney, I support that intention and simply offer that the language should safeguard those rights with further clarification so as not to inadvertently open the door to other interpretations that might weaken or draw into question those protections.
