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**Testimony of Elizabeth Tang
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**In Support of LD 385
Before the Committee on Judiciary
April 14, 2025**

I write on behalf of the National Women's Law Center (NWLC) in support of LD 385. Since 1972, NWLC has fought for gender justice in the courts, in public policy, and in our society. Relevant to this bill, NWLC has participated as counsel or amicus curiae in a range of federal and state cases, including defamation cases filed by abusers against sexual assault survivors.

LD 385 is urgently needed because sexual assault is widely prevalent yet vastly underreported—often due to fear of retaliation. Increasingly, rapists and abusers are weaponizing retaliatory defamation lawsuits against their victims, and unfortunately, even the prospect of an expensive and traumatizing defamation lawsuit can extort survivors into silence. LD 385 is critical to closing this gap. At the same time, LD 385 would ensure that Maine's existing anti-SLAPP law is fairly applied to everyone: discrimination victims would be protected from retaliatory lawsuits, and those who bring meritorious defamation claims would still be able to proceed in court.

Sexual assault is widely prevalent, but fear of retaliation causes severe under-reporting. In Maine, 283,000 women and 113,000 men will become victims of sexual violence in their lifetime.¹ More than 20% of girls ages 14-18 are kissed or touched without their consent.² In college, one in four women, one in five transgender and nonbinary students, and one in fifteen men have been sexually assaulted since enrolling.³ Anywhere from 25% to 85% of women have experienced sex harassment in the workplace.⁴ However, most survivors never come forward—often due to fear of retaliation. Reporting rates for sexual assault are only 2% in high school,⁵ 10-12% in college,⁶ and about 6-13% in the workplace.⁷ One of the biggest reasons survivors stay silent is fear of retaliation.⁸

Rapists and abusers are weaponizing retaliatory defamation lawsuits against their victims. As more survivors have been empowered to speak out, more abusers have been punishing them for daring to speak out. In 2020, an NWLC report found that being sued for defamation is the third most common form of workplace retaliation reported by survivors.⁹ A 2021 study found that 23% of student survivors were threatened with a defamation suit by their assailant, and 19% were warned by their school of the possibility of a defamation suit.¹⁰ In fact, because NWLC has heard from so many survivors being sued for defamation, we created a toolkit advising survivors on how to defend against defamation lawsuits and other retaliation.¹¹ We have also submitted

¹ CDC, *Nat'l Intimate Partner & Sexual Violence Survey: 2016/2017 State Report* 24, 36 (Dec. 2023), <https://bit.ly/3CDYv7a>.

² NWLC, *Let Her Learn: Stopping School Pushout for Girls Who Have Suffered Harassment and Sexual Violence* 1 (2017), <https://bit.ly/3wD6Vs4> (hereinafter *Stopping School Pushout*).

³ David Cantor *et al.*, *Report on the AAU Campus Climate Survey on Sexual Assault and Misconduct*, Westat, ix, A7-5, A7-7, A7-9 (revised Jan. 17, 2020), <https://bit.ly/3TBtQwE> (hereinafter *AAU Survey*).

⁴ NWLC, *Out of the Shadows: Analysis of Sexual Harassment Charges Filed by Working Women* 5, 12 (Aug. 2018), <https://bit.ly/4g9mgT2>.

⁵ *Stopping School Pushout*, *supra* note 2, at 2.

⁶ *AAU Survey*, *supra* note 3, at A7-27, A7-30.

⁷ *Select Task Force on the Study of Harassment in the Workplace*, EEOC, II.C (June 2016), <https://bit.ly/4cgDc8l>.

⁸ *Female Victims of Sexual Violence, 1994–2010*, Dep't of Justice - Bureau of J. Stats., 7 (revised May 31, 2016), <https://bit.ly/3IRTyXV>.

⁹ NWLC, *Coming Forward: Key Trends and Data from the TIME'S UP Legal Defense Fund* 13 (2020), <https://bit.ly/4abJog7>.

¹⁰ Know Your IX, *The Cost of Reporting: Perpetrator Retaliation, Institutional Betrayal, & Student Survivor Pushout* 21 (2021), <https://bit.ly/4ga86AS>.

¹¹ NWLC, *Survivors Speaking Out: A Toolkit About Defamation Lawsuits and Other Retaliation By and For People Speaking Out About Sex-Based Harassment* (Aug. 9, 2023), <https://bit.ly/49AypO9>.

numerous amicus briefs in states like Connecticut, the District of Columbia, Illinois, Massachusetts, and New York in support of survivors who were sued for defamation after reporting sexual assault.¹²

Even the prospect of a defamation lawsuit can extort survivors into silence. While rapists and abusers do not typically expect to win, their baseless lawsuits operate to ensure their victims remain silent or coerce their victims into withdrawing their reports of sexual assault. After all, even if an abuser's lawsuit will eventually fail, a typical meritless defamation lawsuit still costs **\$21,000 to \$55,000** to defeat and can easily soar into six or seven figures.¹³ Moreover, these lawsuits force survivors to disclose intensely private details and to repeatedly relive their trauma through invasive discovery and other litigation demands. These tremendously expensive and traumatizing lawsuits often coerce victims into silence.

LD 385 ensures Maine's anti-SLAPP law is properly applied. Maine's existing anti-SLAPP law currently protects from civil liability: any speech on "a matter of public concern," as well as complaints of (i) discrimination under the Maine Human Rights Act, (ii) sexual misconduct under the state's higher education code, and (iii) sex discrimination under Title IX.¹⁴ However, many courts have wrongly held that the law does not protect allegations of discrimination when they are made outside of a complaint. LD 385 would simply clarify that the anti-SLAPP law does apply to all allegations of sexual assault, harassment, or other discrimination, **even where a complaint is not filed.**¹⁵

LD 385 ensures fairness to everyone under anti-SLAPP law. Under LD 385, discrimination victims who make **good-faith** statements—*i.e.*, **with "reasonable basis" and "without malice"**—would be protected from retaliatory lawsuits and would receive attorney fees and court costs.¹⁶ This ensures that discrimination victims can freely speak out in the first place—just like any other defendant under Maine's anti-SLAPP law. But if a plaintiff can sufficiently allege they were in fact falsely accused of discrimination, their lawsuit can proceed—just like any other plaintiff can under Maine's anti-SLAPP law. In other words, LD 385 treats all parties fairly.

Maine should pass LD 385! LD 385 is nothing new. Across the country, states like Connecticut, Illinois, Maryland, Massachusetts, Oregon, and many others are considering bills like LD 385.¹⁷ Moreover, **California, New York, Rhode Island, Tennessee, Vermont, and Washington State have all successfully passed similar laws** in recent years to explicitly protect survivors from being targeted by defamation and other abusive lawsuits.¹⁸ It's high time for Maine to join them.

For all of these reasons, I ask the Committee to issue a favorable report on LD 385. I am happy to answer any questions at etang@nwlc.org or (202) 956-3061.

Thank you,



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¹² NWLC, *Ventura v. Todaro* (Mar. 31, 2025), <https://bit.ly/4lctGaY>; NWLC, *Banks v. Hoffman* (Apr. 18, 2024), <https://bit.ly/3R0KGTz>; NWLC, *Sabatini v. Knouse* (Mar. 22, 2024) <https://bit.ly/3FbwVz5>; Legal Momentum, *Khan v. Yale Univ.* (Aug. 5, 2022), <https://bit.ly/3Fg3l65>; NWLC, *Gottwald v. Sebert* (Apr. 22, 2022), <https://bit.ly/3Dslnpi>; NWLC, *Constellation v. Dent* (May 26, 2021), <https://bit.ly/4icDOOZ>; NWLC, *Sagaille v. Carrega* (Aug. 11, 2020), <https://bit.ly/3Ffun2Q>.

¹³ Inst. For Free Speech, *Estimating the Cost of Fighting a SLAPP in a State with No Anti-SLAPP* (June 16, 2022), <https://bit.ly/3IDCPqU>.

¹⁴ 14 MRSA § 733(2)(c)-(d).

¹⁵ LD 385 § 4, 132nd Leg., 1st Spec. Sess., (Me. 2025).

¹⁶ *Id.*; 14 Maine Rev. Stats. § 740(1).

¹⁷ See, e.g., H.B. 7134, 2025 Gen. Assemb., Reg. Sess. (Conn. 2025) (amending anti-SLAPP law to protect statements made without malice about sexual assault, sexual harassment, or discrimination from civil liability); H.B. 3311, 104th Gen. Assemb. (Ill. 2025) (protecting such statements from civil liability); S.B. 549 & H.B. 629, 447th Gen. Assemb. (Md. 2025) (protecting such statements from civil liability); H.D. 3973, 194th Gen. Ct. (Mass. 2025) (creating privilege for such statements); S.B. 180, 83rd Leg. Assemb. (Or. 2025) (protecting such statements from defamation liability).

¹⁸ See, e.g., N.Y. Civ. Rights Law §§ 70-a, 76-a (extending anti-SLAPP protections to include survivors); Cal. Civ. Code § 47.1 (2023) (creating a privilege for statements about sexual assault, harassment, or discrimination); R.I. Gen. Laws Ann. § 8-8.4-1 et seq. (2023) (allowing survivors of gender-based violence to request a court order restricting abusive litigation); Vt. Stat. Ann. § 1181 et seq. (2023) (same); Wash. Rev. Code Ann. § 26.51.010 et seq. (2020) (same); Tenn. Code Ann. § 29-41-101 et seq. (2018) (same).