



January 29, 2026

Sen. Anne Carney, Chair
Rep. Amy Kuhn, Chair
Joint Standing Committee on the Judiciary
Maine State Legislature
100 State House Station
Augusta, ME 04333

Re: *LD 2106, An Act to Prohibit the Disclosure of Nonpublic Records Without Proper Judicial Review (Emergency)*

Dear Sen. Carney, Rep. Kuhn, and Members of the Judiciary Committee:

On behalf of the Board of Governors of the Maine State Bar Association, we write to provide comments *neither for nor against* LD 2106. The Association takes no position for or against this bill. Instead, we offer these comments to highlight broader principles of due process, privacy, and lawful information-sharing that are implicated by the issues raised in this legislation.

About MSBA. The Maine State Bar Association is a statewide trade association chartered in 1891 by the Maine Legislature. The Association currently represents approximately 2,500 attorneys in the State in both public service and private practice. The Association maintains 28 separate sections covering nearly every field of law practiced in Maine, from Administrative Law to Workers' Compensation Law.

What does LD 2106 do? LD 2106 would prohibit individuals acting on behalf of certain public and quasi-public institutions—including public schools, state postsecondary educational institutions, health care facilities, child care facilities, family child care providers, and public libraries—from providing voluntary consent to allow a law enforcement officer engaged in immigration enforcement, or supporting immigration enforcement, to enter nonpublic areas of those facilities or to access, review, or obtain nonpublic student, patient, or library records. The bill would also require the Attorney General, by January 1, 2027, to publish model policies and guidance for covered institutions regarding the limitation of voluntary assistance with immigration enforcement activity to the fullest extent permitted under federal and state law. Covered institutions would be required to adopt the model policies or establish equivalent policies and guidance within six months of their publication.

Rule of Law, Due Process, and Recent Enforcement Activity. The MSBA recognizes that LD 2106 arises in the context of heightened public concern regarding recent immigration enforcement activity in Maine. Earlier this month, the MSBA issued a statement reaffirming the Association's commitment to the rule of law, constitutional limits on government power, judicial oversight, and due process. The full statement is included at the end of this testimony. That statement acknowledged the complexity of immigration law and the diversity of views among MSBA members on immigration policy, while emphasizing that constitutional protections, particularly those related to warrants, judicial authorization, and individualized review, are foundational and non-negotiable.

Consistent with that position, the MSBA approaches LD 2106 not as a policy judgment about immigration enforcement, but rather as part of a broader discussion about when and how personal, nonpublic information may be disclosed by government actors. Across contexts, the Association believes

that the disclosure of information about an individual by third parties should generally be grounded in lawful process, such as a valid warrant, subpoena, court order, or the informed consent of the individual whose information is at issue. We also note that there are other important laws governing the confidentiality of information in the context of schools and health care institutions, who are the subject of LD 2016.

There are Already Important Laws Limiting the Voluntary Disclosure of Personal Information.

Maine law and federal law already reflect a longstanding recognition that institutions should not voluntarily disclose certain sensitive, nonpublic information about individuals absent appropriate legal authorization. For example:

- **Health care providers** are subject to the Health Insurance Portability and Accountability Act (HIPAA), which strictly limits the disclosure of protected health information absent patient authorization or legally sufficient process.
- **Educational institutions** operate under the Family Educational Rights and Privacy Act (FERPA), which restricts disclosure of student education records without consent or lawful compulsion.
- **Financial institutions** and other regulated entities similarly operate within frameworks like the Gramm-Leach-Bliley Act that limit voluntary disclosure of financial information and require judicial or statutory authorization.

These regimes reflect a common principle: sensitive information about individuals that is entrusted to institutions should be subject to heightened protection.

Best Practices Guidance Would be Beneficial. From the MSBA's perspective, LD 2106 highlights the importance of clear, consistent best practices for public institutions and officials when responding to requests for personal information. Regardless of the ultimate policy choices reflected in statute, institutions benefit from guidance that helps employees understand when disclosure is permitted, when it is prohibited, and when legal process is required.

In that regard, the Association believes that guidance from the Attorney General or other appropriate authorities can play an important role in ensuring that requests for information are handled lawfully, consistently, and in a manner that respects individual privacy rights while allowing government entities to comply with valid legal obligations.

Conclusion. The Maine State Bar Association takes no position for or against LD 2106. Instead, we offer these comments to emphasize the broader principles of due process, privacy, and lawful information-sharing that underlie this legislation. The Association appreciates the Committee's careful consideration of these issues and the opportunity to provide input on a matter that touches fundamental rights and institutional responsibilities.

Sincerely,



Rachel D. Okun

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President, Board of Governors

cc: Angela Armstrong, Executive Director
Kristine Hanly, Chair, MSBA Legislative Committee
James I. Cohen, Verrill Dana, LLP, Legislative counsel for MSBA

MSBA Governors Issue Statement Regarding Rule of Law Amid ICE Activities in Maine (1/23/26)

The Maine State Bar Association promotes the honor, dignity and professionalism of lawyers, advances the knowledge, skills and interests of its members, and supports the public interest in a fair and effective system of justice.

The Maine State Bar Association (MSBA) is a non-partisan organization dedicated to upholding the United States Constitution, the rule of law, judicial independence, and the fair and equal administration of justice. Acting consistently with its mission, the MSBA issues this statement to condemn recent Immigration and Customs Enforcement (ICE) activity in Maine that appears to violate fundamental constitutional principles.

Our concerns about ICE's conduct include:

- Warrantless entry into private homes, in violation of the Fourth Amendment;
- Warrantless arrests and detentions without individualized probable cause or meaningful judicial oversight;
- Profound deficiencies in training, supervision, and accountability of ICE agents, resulting in inappropriate escalation, misuse of force, and failure to correctly assess legal authority or constitutional limits;
- Racial and ethnic profiling, including the targeting of immigrant communities and individuals who are lawfully present in the United States, including U.S. citizens;
- The routine use of masks or other measures to obscure the identities of federal agents, undermining transparency and accountability; and
- The use of enforcement "surges" directed at regions perceived to be politically opposed to the current administration, raising concerns about selective, retaliatory, or politically motivated enforcement.

Of particular concern is ICE's apparent lack of consistent, rigorous training of ICE agents on constitutional requirements, limits on federal immigration authority, and the lawful use of force. Law enforcement officers exercising extraordinary power, particularly the power to enter homes, detain individuals, and use force, must be thoroughly trained to understand and respect constitutional boundaries. Failure to do so predictably results in unlawful conduct, violence, and the erosion of public trust. These outcomes are not aberrations; they are the foreseeable consequences of inadequate preparation and oversight.

Proper training is not enough; agents must still adhere to constitutional limits and the rule of law.

The MSBA acknowledges that immigration law is complex and that some individuals are present in the United States without lawful documentation. Some individuals, regardless of immigration status, commit violent crimes and must be held accountable. Lawful and constitutional immigration enforcement with valid warrants, judicial oversight, and trained, accountable agents align with the rule of law.

What the MSBA unequivocally condemns is illegal and unconstitutional conduct carried out in the name of enforcement. No policy objective, immigration-related or otherwise, justifies warrantless home entries, racial profiling, the absence of judicial oversight, the use of excessive force, or the deliberate obscuring of

law enforcement identity. These practices are fundamentally incompatible with constitutional principles.

The MSBA recognizes and respects the diversity of views among its members on immigration policy. Reasonable disagreement about policy choices is both expected and healthy in a democratic society. But fidelity to the Constitution, due process, and equal protection under the law is not a matter of politics. It is the foundation of our legal system and the obligation of all who wield government power.

This issue affects our clients, families, and communities. The Maine State Bar Association calls upon all law enforcement agencies operating in Maine to uphold their obligation to defend the constitutional rights of all Mainers. As lawyers, judges, and officers of the court, we have a duty to speak plainly when the rule of law is threatened and to affirm that constitutional limits on government power are not optional, they are essential to liberty, safety, and justice for all.