

Testimony of Michelle A. Small in OPPOSITION to LD 2150, “An Act to Establish Procedures for Restricting Access to State Property, Access to State Services and Communication with or Through State Entities”

I am sure that the intentions of the sponsor and the co-sponsors of this bill, LD 2150, were good. However, instead of eliminating a civil rights violation, the proposed new statute - 5 M.R.S. Section 60 - sanctions that violation for a period of three months or longer. These sponsors should have compelled state government to afford citizens the due process they deserve before restricting their access to state property, state services, and state communications.

Title 17-A M.R.S. Section 402(1)(E) defines the crime of criminal trespass as the situation where an individual “[e]nters any place in defiance of a lawful order not to enter that was personally communicated to that person by the owner or another authorized person.” Such a lawful order is appropriate when private property is involved. A supermarket has every right to issue such an order to a shoplifter. A private college has every right to issue such an order to an individual who is stalking one of its students. A homeowner has every right to issue such an order to a neighbor who is borrowing a lawnmower or snowblower without permission.

State government does not have the right to bar citizens from state property, state services, and state communications without first affording them due process of law. Citizens must utilize such property, services, and communications in numerous aspects of their daily lives: acquiring their drivers’ licenses and professional licenses, filing their tax returns and paying their taxes, applying for and receiving government benefits; seeking law enforcement protection; and participating in the legislative process, which implicates their First Amendment rights.

It is obvious that LD 2150 is modeled on 5 M.R.S. Section 4651 et seq., Maine’s Protection from Harassment law. However, that law does not permit a court to issue a final order without notice to the defendant and a hearing before a District Court judge.

Before being barred from state property, citizens should also be afforded due process, which is universally defined as notice and an opportunity to be heard.

Instead of accepting the validity of no trespass orders related to state property for a period of three months or longer, these sponsors should amend LD 2150 to afford citizens due process from the outset. This bill should require notice and a hearing before state government can issue a no trespass order to a citizen.

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