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Testimony in Opposition to LD 1711 *An Act to Enhance Enforcement of Employment Laws*

Senator Hickman, Representative Sylvester, and members of the Labor and Housing Committee, I am Aaron M. Frey, I reside in Bangor, and I am honored to serve as Maine's Attorney General. I am joining you today to testify in opposition to LD 1711, *An Act To Enhance Enforcement of Employment Laws*.

First, I want to be clear that I strongly support the vigorous enforcement of Maine's labor laws. When an employer violates wage and hour laws, or any other law designed to protect employees from unfair or abusive practices, it is important that the employer be held accountable. My opposition to LD 1711 stems from my concerns about the way it would impact the current legal authority of the Attorney General, and that passage would not yield meaningful benefits for workers.

The Attorney General is a constitutional officer endowed with both statutory and common law powers. *Lund ex rel. Wilbur v. Pratt*, 308 A.2d 554 (Me. 1973). The Attorney General has wide discretion to determine how to best advance the public interest. *Superintendent of Ins. v. Att'y Gen.*, 558 A.2d 1197 (Me. 1989). All civil actions in Maine courts in which the State or one of its agencies is a party must be brought by the Attorney General or under the Attorney General's direction. 5 M.R.S. § 191(3). In deciding whether to bring a case, the Attorney General considers not only the narrow interests that would be vindicated in the case itself, but also how broader public interests could be impacted. Requiring that all litigation be under the Attorney General's control ensures that public interests are properly considered and that positions taken in litigation are consistent. By essentially privatizing the initiation and prosecution of litigation involving the State, LD 1711 would interfere with the Attorney General's ability to ensure that litigation is in the public interest, that positions taken are not inconsistent with positions taken in other cases, and that litigation will not result in adverse precedent that could prejudice the Attorney General's arguments in future cases.

Additionally, this bill is not an ideal mechanism to ensure greater compliance with Maine's labor laws. Currently, the Office of the Attorney General (OAG) and Maine Department of Labor (MDOL) can go to court and obtain the full panoply of available remedies for workers, including backpay and liquidated damages in some instances, depending on the particular section of law. OAG and MDOL are able to distribute backpay to affected workers.

Under current law, MDOL is able to assess a penalty, and that “citation” is subject to an administrative appeal. OAG defends those administrative appeals. That penalty is often used by MDOL to leverage back pay for workers. An action under LD 1711 in court does nothing more than what an administrative citation by MDOL does, except that it would allow private attorneys to recover attorneys’ fees. LD 1711 would not allow a private attorney to bring a backpay claim for workers. Thus, a claim, even if successful, would likely not result in workers actually getting the pay they are owed.

A more effective way to enhance enforcement of Maine’s labor laws is to better fund the State’s enforcement ability. It is commonly said that budgets are illustrative of a government’s values. A current budget proposal includes an additional attorney position in the OAG to bring court actions and otherwise prosecute wage and hour laws, as well as additional MDOL staff positions to enforce them. This investment in enforcement is appropriate and necessary. By making clear to employers that they will face consequences from the State if they violate labor laws (including paying workers what they are owed), we will be better able to create a culture of compliance.

Creating a culture of compliance where labor laws are not only followed, but where workers are treated with the respect and dignity they deserve, is a goal I share with the proponents of this bill. I am willing to work with the bill’s proponents on other measures to protect and enhance the rights of Maine workers. But LD 1711 will likely not accomplish meaningful results for workers, and it would create bad precedent. As such, I encourage the committee to vote Ought Not To Pass.