

TESTIMONY OF MICHAEL KEBEDE, ESQ.

LD 2204 - Ought Not to Pass

**An Act to Combat Racketeering in Scheduled
Drugs by Certain Organizations**

Joint Standing Committee on Criminal Justice and Public Safety

February 21, 2024

Senator Beebe-Center, Representative Salisbury and members of the Joint Standing Committee on Criminal Justice and Public Safety, good afternoon. My name is Michael Kebede, and I am policy counsel for the American Civil Liberties Union of Maine, a statewide organization committed to advancing and preserving civil liberties guaranteed by the Maine and U.S. Constitutions through advocacy, education, and litigation. On behalf of our members, we oppose LD 2204 in its entirety. This needlessly expansive bill proposes dangerous solutions to problems that can already be addressed under existing law. LD 2204 would meddle in the criminal code, municipal law, and property law, going so far as to dictate who can purchase property in Maine based on their national origin. This unnecessary legislation furthers the failed policies of the War on Drugs, expands government powers, threatens individuals' privacy rights, and blatantly violates basic constitutional rights.

Section 1 Creates Unnecessary and Harmful Criminal Laws

Section 1 of LD 2204 would create new crimes for so-called "racketeering" and would reinstitute problematic asset forfeiture in alleged crimes relating to drugs. These unnecessary measures seek to address illegal activities that can already be addressed under existing law, and they would violate Maine people's civil liberties.

We understand that this bill might have emerged from concern over illegal cannabis grow operations in Maine. News reports of several recent arrests across Maine show that law enforcement has sufficient tools to address cannabis production outside the bounds of Maine laws and regulations.

First, it is already a Class B crime, punishable by up to 10 years imprisonment and a \$20,000 fine, to grow more than 500 cannabis plants.¹ It is a Class C crime, punishable by up to 5 years in prison and a \$5,000 fine, to grow more than 100 plants.² Additionally, the law already provides that "[q]uantities of scheduled drugs in violations of section 1103 [trafficking of

¹ 17-A MRS §§1103(D).

² *Id.* (C).

cannabis]... committed pursuant to one scheme or course of conduct and confiscated within a 6-month period may be aggregated to charge a single violation of appropriate class.”³ Recent news stories demonstrate that police are utilizing these laws to arrest people across the state for illegal grows.⁴

The ACLU has long opposed the failed policies of the so-called “War on Drugs.” Since President Nixon declared a war on drugs in the 1970s, the United States has become the world’s largest jailer—both in absolute numbers and by the percentage of the population that we imprison.⁵ Moreover, these policies have been used to target communities of color, leading to far higher incarceration rates for people of color, particularly Black people.

Maine is no outlier to this national trend. While overall arrests in the State have decreased by 30 percent over the past decade, drug arrests during that time have increased and racial disparities persist.⁶ For example, according to a 2020 ACLU report, Black people in Maine were four times more likely than white people to be arrested for cannabis possession in 2018, despite both groups having similar usage rates. Worsening the issue, Maine’s drug laws are exceptionally harsh. Possession of very small quantities of drugs is defined in the criminal code as drug trafficking, even if the person is possessing drugs only for personal use. The amounts considered trafficking are often less than one person with substance use disorder is likely to use in a single day. These are some of the same crimes included in LD 2204 as the basis for racketeering charges.

In part, the United States became the largest jailer because we expanded criminal codes, including racketeering statutes. To kick off his War on Drugs, President Nixon introduced, and

³ 17-A MRS §1106-A(1).

⁴ See Jim Keithley, *Illegal Chinese-owned marijuana farms under investigation in Maine*, WMTV (Feb. 5, 2024 at 5:42 PM), <https://www.wmtv.com/article/chinese-owned-marijuana-farms-maine/46652242> (“It turns out the discovery of an illegal marijuana grow operation at a farmhouse in Turner could be one of 270 in Maine... [O]fficials have been dealing with illegal grow houses in recent times with a half dozen people charged just in the last few weeks.”); Dylan Tusinksi, *Sheriff: Three arrested, hundreds of plants seized in latest marijuana growing bust at a central Maine residence*, Portland Press Herald (Jan. 17, 2024), <https://www.pressherald.com/2024/01/17/sheriff-three-arrested-hundreds-of-plants-seized-in-latest-illegal-pot-operation-bust-at-central-maine-residence/>; and Christopher Burns, *More than 3,700 marijuana plants seized from illegal operation in Corinna*, WGME (Feb. 12, 2024 at 10:57AM), <https://wgme.com/news/local/more-than-3700-marijuana-plants-seized-from-illegal-operation-in-corinna-maine-penobscot-county-sheriffs-office-leaked-federal-government-memo-crime-pot-weed-cannabis>.

⁵ Although Maine itself has lower rates of incarceration than other states, we still have higher incarceration rates than the United Kingdom, Portugal, Canada, France, Italy, and many other western nations. See Prison Policy Initiative, *Maine, and NATO incarceration comparison*, available at <https://www.prisonpolicy.org/graphs/NATO2018/ME.html>.

⁶ Ben Shelor, et al., *Justice Reinvestment in Maine Second Presentation to the Maine Commission to Improve the Sentencing, Supervision, INCARCERATION AND MANAGEMENT OF PRISONERS*, Nov. 12, 2019, pp. 15, 20, available at <https://csgjusticecenter.org/wp-content/uploads/2020/10/JR-in-Maine-secondpresentation1.pdf>.

Congress passed, a crime bill in 1970.⁷ A centerpiece of the legislation was the growth of federal criminal procedure tied to the Racketeer Influenced and Corrupt Organizations Act (RICO).⁸

Since their inception, RICO laws have raised a number of civil rights concerns. “To achieve its objective [of] preventing the infiltration of legitimate businesses by organized crime, RICO gave the government sweeping new powers....”⁹ This included the ability for the government to seize assets for preservation before any proof of guilt, subverting the foundation of our criminal system that individuals are presumed innocent until found guilty.¹⁰

The Legislature recognized the problems with asset forfeiture laws just last session when it passed LD 1521, sponsored by Representative Faulkingham. The bill before you would turn back the clock on this important work. LD 2204 would authorize courts to issue a restraining order against defendants without notice or opportunity to be heard, before a person is even indicted.¹¹

Expanding government powers and increasing incarceration rates will only harm Maine and its people, with already marginalized communities bearing the brunt of the harm. As they have already demonstrated, Maine’s law enforcement agencies can address illegal grow operations under existing laws and regulations; they do not need this legislation.

Section 3 is Discriminatory and Unconstitutional

Section 3 of LD 2204 recalls repeated efforts over the past century to weaponize false claims of “national security” against Asian and other immigrants. These racist policies violate the Equal Protection Clause of the U.S. Constitution and are preempted by federal law. Similar laws have been overturned in many states over the past century, most recently in Florida.

Specifically, Section 3 would prohibit people who are not permanent residents and are citizens of China, Cuba, Iran, North Korea, and Russia from purchasing or acquiring property in Maine. This provision targets people based on something they cannot control – where they were born – and is not directed at specific conduct. The Equal Protection Clause, which protects all persons in the United States, regardless of their national origin, prohibits Maine from denying any person equal protection of the laws based on the person’s race, ethnicity, color, alienage, or national origin. Accordingly, Section 3 of LD 2204 is unconstitutional and will expose Maine to costly litigation.

⁷ William L. Anderson and Candice E. Jackson, *Law as a Weapon: How RICO Subverts Liberty and the True Purpose of Law*, 9 THE INDEPENDENT REVIEW (2004); *Nixon Signs Bill to Combat Crime*, New York Times (Oct. 16, 1970), <https://www.nytimes.com/1970/10/16/archives/nixon-signs-bill-to-combat-crime-gives-tools-for-total-war-to.html>.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ LD 2204 at Page 5, Lines 8-25.

For example, in May of 2023, the ACLU sued Florida over a similar law that restricted most Chinese citizens, along with citizens of a few other nationalities, from purchasing homes in the state.¹² Just this month, the Eleventh Circuit for the United State Court of Appeals blocked enforcement of the law. The court unanimously held that “the plaintiffs showed a substantial likelihood of prevailing in their arguments that [this law] is preempted by federal law because Congress has already established a system of national security review of real estate purchases by foreign nationals.”¹³ Section 3 violates the constitution in a similar manner: individuals from the listed regions would be prohibited from purchasing real estate for any purpose, including a home. This provision would not only hurt those targeted, but would also be counterproductive for Maine by making it more difficult to recruit students, workers, investors, and more.

Section 5 Incentivizes Businesses to Violate Privacy Rights

Section 5 of the bill requires utility companies to create lists of people in Maine who have had 400 or more total ampere installations in residential properties and submit that list to the Maine State Police. Giving lists of individuals to the Maine State Police to investigate, without reasonable suspicion, violates the principles of the Fourth and Fourteenth Amendments to the United States Constitution. Surveilling or searching Maine’s people must be rooted in a reasonable suspicion of specific illegal activity, not a blanket assumption that certain legal activities are advancing illegal ones.

Conclusion

LD 2204 is unwise, unconstitutional, and unnecessary to enforce existing laws. It would expand penalties for behaviors that are already crimes, double down on the failed drug policies of the past 50 years, discriminate against people based on their country of origin, and allow the state to invade people’s privacy simply based on the amount of electricity someone uses in their own residence. For all these reasons, we urge you to vote *ought not to pass*.

¹² *Chinese Immigrants Sue Florida Over Unconstitutional and Discriminatory Law Banning Them From Buying Land*, AMERICAN CIVIL LIBERTIES UNION, (May 22, 2023 at 3:00PM), <https://www.aclu.org/press-releases/chinese-immigrants-sue-florida-over-unconstitutional-and-discriminatory-law-banning-them-from-buying-land> (hereinafter “*Chinese Immigrants Sue Florida*”).

¹³ *ACLU Applauds Appeals Court Decision Halting Enforcement of Florida Law That Bans Many Immigrants from China and Other Countries From Buying Homes*, AMERICAN CIVIL LIBERTIES UNION, (Feb. 1, 2024 at 7:00PM), <https://www.aclu.org/press-releases/aclu-applauds-appeals-court-decision-halting-enforcement-of-florida-law-that-bans-many-immigrants-from-china-and-other-countries-from-buying-homes#:~:text=In%20the%20early%2020th%20century,alien%20land%20law%E2%80%9D%20in%202018.>