



PO Box 7860
Portland, ME 04112
(207) 774-5444
www.aclumaine.org

Maine

Testimony of Zachary L. Heiden

LD 780—Ought to Pass

RESOLUTION, Proposing an Amendment to the Constitution of Maine to Protect Personal Reproductive Autonomy

January 22, 2024

Senator Carney, Representative Moonen and distinguished members of the Joint Standing Committee on Judiciary, good morning. My name is Zachary Heiden, and I am Chief Counsel for the American Civil Liberties Union of Maine, an organization dedicated 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 urge you to support LD 780, which would give Maine voters an opportunity to explicitly protect abortion and contraception in Maine's Constitution.

The right to decide if, when, and how to have children is critical to an individual's autonomy, equality, and ability to participate in the social, economic, and political life of the state and the nation. Reproductive autonomy is essential to fulfill the promise of equality and self-determination rooted in our nation's and our state's founding documents and principles. Reproductive autonomy means opportunity: the opportunity to obtain an education, to work, to love, to build a family, to make a good life, and ultimately, the opportunity to live that life as one desires.

The United States Supreme Court has recognized the centrality of this right in numerous decisions. In *Griswold v. Connecticut*¹ in 1965 and *Eisenstadt v. Baird*² in 1972, the Court struck down bans on contraception for married and single people, respectively. In *Eisenstadt*, the Court recognized the importance of "the right of the individual, married or single, to be free from unwarranted governmental intrusion so fundamentally affecting a person as the decision whether to bear or beget a child." *Roe v. Wade*,³ decided in 1973, built upon these cases, recognizing abortion as a fundamental right alongside decisions relating to marriage, contraception, education, and family relationships.

For fifty years, the federal Constitution protected the right to abortion. But in 2022, the Supreme Court abandoned this precedent, in the case of *Dobbs v. Jackson Women's Health Organization*.⁴ As Senator Susan Collins noted, overturning that precedent was "a sudden and radical jolt to the

¹ 381 U.S. 479 (1965).

² 405 U.S. 438 (1972).

³ 410 U.S. 113 (1973).

⁴ 597 U.S. 215 (2022).

country that will lead to political chaos, anger and a further loss of confidence in our government.”⁵

LD 780 is intended to restore some of that lost confidence. If successful, it will clarify and specify, in Maine’s Constitution, that some decisions are so deeply personal, and so critical to individual autonomy, as to require insulation from political interference.

The bill before you is a straightforward affirmation of longstanding Maine values. For decades, it has been “the policy of the State” not to restrict a person’s decision about abortion, and this policy position was reaffirmed just last year by this legislature.⁶ If adopted by the voters, the personal reproductive autonomy amendment would ensure that any denial or infringement on personal reproductive autonomy by the state is subjected to the highest level of judicial review — sometimes termed “strict scrutiny” — and is only justified if it is the least restrictive means of achieving a compelling state interest.

To be sure, Maine’s Constitution already implicitly protects reproductive autonomy. As the Maine Supreme Judicial Court observed in 2013, the Maine Constitution’s due process clause protects the fundamental rights “to marry, to have children, to marital privacy, to use contraception, to bodily integrity, and to abortion.” *See Doe I v. Williams* 2013 ME 24, ¶ 65, 61 A.3d 718. Maine’s due process clause has not changed since 2013, and the Maine Law Court has repeatedly emphasized its commitment to interpreting the Maine Constitution based on Maine law and values rather than looking to the decisions of federal courts or courts from other jurisdictions. Nonetheless, the *Dobbs* decision marked such a momentous transformation of our legal protections of basic liberty that it raised the spectre of future courts, emboldened by anti-abortion politicians, similarly abandoning established Maine precedent.

For these reasons, we support LD 780, to give Maine voters the opportunity to make the right to access abortion and contraception even more explicit in the Maine Constitution. Passing LD 780 will allow voters to create the strongest possible protections for abortion and contraception in our state’s laws. We ask you to vote ought to pass.

⁵ Carl Hulse, “For Collins, Decision Is a Betrayal by Kavanaugh,” *New York Times* (June 25, 2022), at A1.

⁶ *See* 22 M.R.S. 1598(1).