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Testimony of Jack Comart, Maine Equal Justice Partners

In Opposition to LDs 885, 1097 and 1144

LD 885- "An Act to Promote Enhanced Eligibility Verification in Maine's Welfare System"

LD 1097- "An Act to Improve the Integrity of Temporary Assistance to Needy Families Program"

LD 1144- "An Act to Ensure the Integrity of the Temporary Assistance for Needy Families Program"

Senator Brakey, Representative Gattine and members of the Joint Standing Committee on Health and Human Services, my name is Jack Comart and I work for Maine Equal Justice Partners.

I am here today to speak in opposition to:

LD 885- "An Act to Promote Enhanced Eligibility Verification in Maine's Welfare System"

LD 1097- "An Act to Improve the Integrity of Temporary Assistance to Needy Families Program"

LD 1144- "An Act to Ensure the Integrity of the Temporary Assistance for Needy Families Program"

I am here today to address four parts of the bills before you: 1) use of EBT cards out-of-state; 2) use of TANF benefits to purchase certain items; 3) restrictions on obtaining cash from EBT accounts; and 4) the requirement to annually re-determine eligibility benefits.

1. **Ban on the Use of EBT Cards Out-of-State:**

Poor People Travel Out-Of-State For The Same Good Reasons That You and I Travel Out-of-State

Poor people have many of the same reasons for traveling out-of-state as you and I do, for example, to visit family on important occasions, including the birth and death of family members, to obtain needed medical treatment (many of our clients travel to Massachusetts for prior authorized medical treatment), to shop, to look for work, to attend a religious meeting, to escape from domestic violence, etc. Is it really responsible public policy to prevent people from participating in any of these important activities based simply on an unsubstantiated perception of what a small handful of people *may* be doing? If there are concerns that some people are using a Maine EBT card that are no longer living here, other states have proven that there are far more responsible and effective ways to address this issue if it exists.

Geographic Restrictions on Out-of-State Use of Benefits Are Constitutionally Suspect

Article I, Section 8, Clause 3 of the U.S. Constitution grants Congress the power “[t]o regulate Commerce . . . among the several States.” Accessing or spending cash assistance benefits while outside the state is a form of commerce which states may not prohibit, absent some compelling state interest¹ There are no compelling health or safety reasons for Maine to impose geographical restrictions on the use of EBT cards. Restrictions on the out-of state use of EBT cards also burdens the constitutional right to travel which Supreme Court has recognized as protecting the right of a citizen of one state to enter and to leave another State. As the Supreme Court stated:

“If a law has ‘no other purpose . . . than to chill the assertion of constitutional rights by penalizing those who choose to exercise them, then it (is) patently unconstitutional.’ ”²

Again, the state cannot hide behind the reason that the out-of-state use restriction deters the unwise use of benefits. How people spend their money does not depend on whether they are in or out of the state.

In summary, this restriction is vulnerable to constitutional attack since it impermissibly regulates commerce and it unconstitutionally restricts a citizen’s exercise of their right to interstate travel.

¹ See *Clearinghouse Review, Journal of Poverty Law and Policy*, “Restrictions on Interstate Use of Cash Assistance Benefits”, May-June, 2013, Vol. 47, Numbers 1-2,

² *Shapiro v. Thompson*, 394 U.S. 618, 631 (1969)

2. Restrictions on the Use of EBT Benefits To Purchase Certain Items

Reinforces Negative Stereotypes

This restriction does nothing more than reinforce negative stereotypes of people with low income; it is divisive and does nothing to come up with solutions to the most serious problem these families face, which is poverty and a lack of opportunity to rise out of poverty. I ask you to look beyond the anecdotes and evaluate the facts when you are considering both of these bills.

LDs 1097 and 1144 would prohibit the purchase of certain items with the electronic benefits transfer (EBT) card does not make sense from a perspective of sound public policy or smart government. It turns neighbor on neighbor, with people reporting perceived improper expenditures.

The Law Already Limits the Use of EBT Cards

First, these bills are unnecessary. New federal and state laws already ban the use of EBT cards in such places as liquor stores, casinos and adult entertainment facilities. TANF recipients have been notified that they are prohibited from using their EBT card at these types of venues and will be disqualified from the program for at least one year and get referred to the fraud investigation unit if they violate this new law.

If the State does not take the proper actions to prohibit such EBT card use, we will be subject to federal penalties. It is important that Maine stay focused on implementing these new restrictions and that we do this right in order to comply with the law and avoid federal fines.

Costly To Implement and Impossible to Administer

Second, prohibiting certain purchases, unlike blocking certain venues, would be costly and impossible to effectively administer and enforce. Experts agree that restricting purchases with an EBT card is nearly impossible to administer and has little impact on the “misuse” of benefits.

The United States Government Accountability Office (GAO) has concluded that such proposals are fraught with difficulties. The GAO studied implementation of EBT restrictions by examining the experience of six states that have attempted to prevent certain types of TANF EBT transactions. The GAO concluded that these states encountered numerous challenges with implementation and

enforcement, including difficulties with identifying certain locations that could be prohibited and limitations in available data to effectively administer such prohibitions.³

It is important to remember that many people on TANF work. They therefore have cash from that work. How is it even possible to determine that the purchase, of, for example, a pack of cigarettes, came from a person's TANF money as opposed to their wages?

This Strategy Has Been Tried and It Failed

Third, it is in our State's interest to address fraud and misuse where it exists, but we must also use our resources wisely and allocate them proportionately based on the extent and breadth of the problem.

Massachusetts spent a lot of time and resources to impose EBT card restrictions more aggressively with minimal results. After expending a great amount of time and money, Massachusetts narrowed potential offenders down to a list of six. Four of these cases have been dismissed; one remains pending and in only one case has an offense been established resulting in a claim by the state for a recovery of \$7.17 for a pack of cigarettes purchased by that individual⁴ Maine should not head down the same rabbit hole.

Evidence simply does not support claims of widespread fraud or misuse of EBT cards. Maine Department of Health and Human Services own data show that only 3/10ths of 1% of all EBT transactions were "improper". Put another way, 99.7% of people are using their benefits as intended.

3. Restrictions on Obtaining Cash From EBT Accounts:

The Pine Tree EBT card contains, at least the following types of payments: TANF, Food Supplement, reimbursement for Child Care, Transportation, other ASPIRE services and SSI State Supplement Payments. (SSI State Supplement payments are for the elderly and the disabled.)

We assume that this bill is premised on the notion that all or most poor people mis-spend their cash assistance. However, there is no hard evidence that there is significant mis-use of these benefits. Whatever, the thought behind this bill, this bill ends up punishing the overwhelming number of

³ <http://www.gao.gov/assets/600/592787.pdf>

⁴ Commonwealth of Massachusetts, Department of Transitional Assistance; " M.G.L.Chapter 18 §51(d) Enforcement and Violations Report, 2013.

families who use these very limited resources for their intended purposes. So, passing this bill would cause significant problems.

The Pine Tree EBT card cannot generally be used to make many types of payments, including for such services as:

- Rent Payments
- Child Care Payments
- Utility Payments (e.g. CMP, many water districts and other utilities do not accept payment by EBT, debit or credit cards.)
- Laundromat Services
- Tolls
- Buses
- Any retailer that is not part of the Quest system

So, this bill would make it difficult or impossible do these very simple everyday responsibilities.

Do we really want children and their parents to face eviction because their landlord does not process EBT cards or to have their utility services shut-off? We are not a cashless society. Each of us, each member of this committee, I suspect, carries cash. For the exact same reasons that you carry cash, poor people also need to carry cash.

4. Annual Determinations for Benefits

Annual eligibility determinations are already required. See, e.g. TANF (10-CMR-144, Ch. 331, At Chapter I, Pages 17-18; MaineCare (42 C.F.R. 435. 916); Food Supplement (7 C.F.R. § 273.14 (b)) (Requires certification at least every 6 months in most cases.) So, this bill is unnecessary.

Conclusion

These bills do nothing to address the problems in our welfare system. They simply are policies based upon stereotypes and mis-information. They substantially burden the 99% of beneficiaries who truly need these programs with dubious and potentially illegal, as well as costly programs. They are a big government solution to a tiny problem.