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In Opposition to LDs 33, 1017

JOINT STANDING COMMITTEE ON HEALTH AND HUMAN SERVICES

April 24, 2017

Senator Brakey, Representative Hymanson, and members of the Committee on Health and Human Services, greetings. My name is Oamshri Amarasingham, and I am the advocacy director 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. On behalf of our more than 8,000 members, we oppose LD 33, which calls into question federal laws which protect discrimination against those with disabilities.

LD 33 would shorten the lifetime limit on a person's receipt of TANF benefits from 60 months to 36 months. LD 1017 removes all good cause exceptions to the ASPIRE-TANF program except domestic violence. Should the legislature enact LD 33 and/or 1017, the State could be exposed to financial liability under The Americans With Disabilities Act (the "ADA").

TANF's enacting legislation specifically states that the ADA and Section 504 of the Rehabilitation Act "apply to any program or activity which receives funds provided" by the TANF Program.¹ The ADA protects people who have a "physical or mental impairment that substantially limits one or more of the major life activities of such individual"² and it also protects people who do not have a disability themselves but who have a known relationship or association with someone who does have a disability, when the nature of the discrimination is based on a known relationship,³ so long as the person is otherwise qualified for TANF.⁴ Section 504 of the Rehabilitation Act protects people with disabilities from discrimination on the basis of their disability in programs administered with federal dollars.⁵ Unlike other discrimination cases, litigants under the ADA and Section 504 of the Rehabilitation Act do not need to show that the government had animus against them when enacting a specific provision in order to prove discrimination; instead they may show that they are being discriminated against if the governmental act disproportionately affects people with disabilities.⁶

A study has shown that almost 90 percent of families who have been on TANF for 60 months or longer reported work-limiting disabilities for themselves or a family member.⁷ LD 33, which would limit the

¹ 42 U.S.C. § 608(d).

² 42 U.S.C. § 12102(2).

³ 28 C.F.R. § 35.130(g).

⁴ 42 U.S.C. § 12102(2).

⁵ 29 U.S.C. § 794.

⁶ See, e.g., *Alexander v. Choate*, 469 U.S. 287, 294-297 (1985). The ability to use disparate impact evidence sets disability law apart from Equal Protection, which requires malicious intent to engender a violation.

⁷ Sandra S. Butler, PhD, *TANF Time Limits, One Year Later: How Families are Faring* at p. 7, Mar. 2014, found at

lifetime receipt of TANF benefits to 36 months, in conjunction with LD 1017, which would eliminate good cause exceptions, opens the state up to the risk that DHHS could become embroiled in costly litigation by an individual alleging violations of the ADA and Section 504 of the Rehabilitation Act, based upon the disparate impact of this proposed law change.⁸

The philosophy of LD 33 appears to be to discourage over-dependence on government aid. However, when almost 90% of the people who would be affected by the legislation involve folks contending with work-limiting disability, it is very unclear that this bill would have its intended effect of discouraging dependence. Removing the good cause exceptions to the ASPIRE-TANF programs make it more likely that people with disabilities will be denied benefits because of their disabilities, notwithstanding the provision that attempts to address the ADA. These bills together are likely to lead to increased homelessness, shifting the financial costs from the federal government's block grant to municipalities already struggling with limited funding for social services. We urge this committee to carefully consider whether the benefits of appearing tough on welfare recipients outweigh the risks of increased homelessness and of expensive litigation.

Please vote "ought not to pass" on LDs 33 and 1017.

<http://www.mejp.org/sites/default/files/TANF-Time-Limits-Study-March2014.pdf>.

⁸ This is true even though the Governor proposes vague language in Section FFFF-19 to "offer reasonable alternative participation requirements to the extent required by federal law." The study referenced in footnote 31 above found that even as it stands with the current law, DHHS has significantly under-utilized the extensions and exemptions available for people with disabilities. *TANF Time Limits* at 4-5.