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TESTIMONY OF MEAGAN SWAY, ESQ.

In Opposition to LDs 220 and 36

Submitted to the

JOINT STANDING COMMITTEE ON HEALTH AND HUMAN SERVICES

April 10, 2017

Senator Brakey, Representative Hymanson, and members of the Committee on Health and Human Services, greetings. My name is Meagan Sway, and I am a Justice Fellow with 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 members, we ask you to vote ought not to pass on LDs 220 and 36.

LD 220 would make a person who has exhausted the 60-month lifetime limit on Temporary Assistance for Needy Families (TANF) benefits ineligible for General Assistance, save in a few instances. While the ACLU believes this policy is unwise, not in keeping with the purpose of General Assistance, and likely result in an increase in homelessness in Maine, we are also concerned that LD 220 could open the state up to lawsuits under the Americans With Disabilities Act (the "ADA") and Section 504 of the Rehabilitation Act ("Section 504").

LD 36 would limit General Assistance to 275 days in any five-year period to any childless person who is "capable of working." Again, the ACLU believes this policy is unwise and likely to increase homelessness, and could open the state up to ADA and Section 504 litigation because it is likely to disproportionately affect Mainers with disabilities.

The ADA protects people with disabilities and those who have a known relationship or association with someone with a disability[1] from discrimination in government programs for which the person would otherwise qualify but for their disability.[2] Section 504 protects people with disabilities from discrimination on the basis of their disability in programs administered with federal dollars.[3] Unlike in other discrimination cases, litigants with disabilities who are suing under the ADA and Section 504 do not need to prove that the government is purposely

[1] 28 C.F.R. § 35.130(g).
[2] 42 U.S.C. § 12102(2). The ADA defines someone with a disability as someone with a "physical or mental impairment that substantially limits one or more of the major life activities of such individual," 42 U.S.C. § 12102(2).
[3] 29 U.S.C. § 794. Section 504's definition of a person with disability is the same as the ADA.

discriminating against them, but instead may be able to show discrimination by establishing that people with disabilities are disproportionately affected by the challenged governmental policy.[4]

We are concerned that, if passed, LD 220 could provide the basis for an ADA or Section 504 claim, even though it allows a person who has applied for a hardship extension to the 60-month lifetime limit on TANF benefits,[5] and is waiting to hear the results of that application, to receive General Assistance. As others today will testify, and as studies have shown, almost all families who have been on TANF for 60 months or longer report work-limiting disabilities for themselves or a family member.[6] At least one study has shown that although almost 90 percent of families who are on TANF for a full 60 months report work-limiting disabilities, DHHS only grants extensions past 60 months to seventeen (17) percent of those families.[7] Cutting people off from General Assistance if they've hit the 60-month TANF limit is thus almost certain to disproportionately affect Mainers with disabilities,[8] and could make the state vulnerable to litigation.[9]

We are also concerned that enactment of LD 36 could subject the state to ADA and Section 504 litigation for similar reasons as those discussed above. General Assistance Administrators are not doctors, and it is unlikely that many – if any – are properly trained to determine whether a person is "capable of working," as this legislation would require.[10] The likelihood of LD 36 disproportionately affecting Mainers with disabilities is high, and again subjects the state and municipalities to litigation risks that involve time and money that could be better spent elsewhere.

For these reasons, we urge you to vote ought not to pass on LDs 220 and 36.

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[4] *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 litigation, which requires malicious intent to engender a violation.

[5] Under Maine law, if a person meets the requirements for a "hardship" extension to the TANF time limits, she may be able to receive TANF benefits beyond the 60-month cut off. *See* 22 M.R.S. § 3762(18). Having a disability is a hardship under rules established by the Department of Health and Human Services. *See* Department of Health and Human Services Maine Public Assistance Manual at p. 23.

[6] *See, e.g.*, Sandra S. Butler, PhD, *TANF Time Limits, One Year Later: How Families are Faring* at 7, Mar. 2014, found at http://www.mejp.org/sites/default/files/TANF-Time-Limits-Study-March2014.pdf (stating nearly 90% of families on TANF for more than 60 months report work-limiting disability within the family).

[7] *Id.* at 4.

[8] This is true even with the carve out for those waiting to hear on their extension applications, because LD 220 would apply to the 83 percent of Mainers with disabilities who are being denied extensions by DHHS even though they have work-limiting disabilities.

[9] For example, in 2013, the State of Massachusetts settled a lawsuit brought against it for violations of the ADA in administering welfare benefits. *See Harper v. Mass. Dep't Transitional Assistance*, No. 07-12351-MLW (D. Mass. Jan. 16, 2013) (Settlement Agreement). As part of that agreement, Massachusetts had to pay plaintiffs and their attorneys $975,000. *Id.* p. 35.

[10] And, in conjunction with proposed and existing MaineCare eligibility restrictions, it is unlikely that a childless person needing more than nine months of General Assistance would have easy access to a doctor or psychologist who is trained to make such determinations.