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Testimony of Kate Brogan, Maine Family Planning
On behalf of the Maine Alliance for Reproductive Freedom
Neither For Nor Against
LD 943, An Act to Provide Access to Infertility Treatment

April 14, 2015

Senator Whittemore, Representative Beck, and honorable members of the Joint Standing Committee on Insurance and Financial Services, my name is Kate Brogan and I am here on behalf of the Maine Alliance for Reproductive Freedom to speak neither for nor against LD 943, An Act to Provide Access to Infertility Services. Formerly known as the Maine Choice Coalition, the Maine Alliance for Reproductive Freedom is a coalition of organizations and individuals working for all people's right to have children, to not have children, and to parent the children we have in conditions of safety and dignity. The Maine Alliance for Reproductive Freedom strongly supports LD 943's mandate to include infertility treatment in health insurance coverage. However, the bill's proposal to deny coverage to individuals who are not married or those whose infertility is the result of a sexually transmitted disease not only bears no rational relation to any legitimate state interest, it simply does not make medical sense.

It is clear that the intent of these two restrictions is to impose a standard of acceptable or favorable sexual behavior, beyond which individuals may not be equally protected, i.e. those who have sex outside of marriage will not be entitled to the same medical care as other. In a series of decisions over 50 years, the U.S. Supreme Court has repeatedly held that the state is not entitled to a role in determining the morality of Americans' sex lives. Whether married people, unmarried people, or gay people, the Supreme Court has held, over and over, that the Constitution affords us a right to privacy that protects us from regulations that unreasonably intrude on the "personal and private life of the individual." (see *Griswold v. Connecticut*, 381 U.S. 479 (1965), striking down state prohibitions against married couples using birth control; *Eisenstadt v. Baird*, 405 U.S. 438 (1972), striking down state prohibitions against unmarried couples using birth control; *Lawrence v Texas*, 539 U.S. 558 (2003), striking down state sodomy statute).

The limitation on insurance coverage to married individuals may be intended to encourage parenting by married couples over other family configurations. However, the language of the bill would allow an individual who is legally married but separated from his or her spouse to use insurance coverage to receive infertility treatment regardless of that person's intent to parent in partnership with that spouse, while denying coverage to long-term unmarried partners who intend to raise a child together in a family that

resembles a marriage in all regards. This in no way furthers any legitimate state interest. It makes no sense to determine health insurance coverage based on factors that have nothing to do with health.

The restriction that “the covered individual’s infertility may not be the result of a sexually transmitted disease” appears to be intended to encourage sexual choices that the sponsors deem more responsible or appropriate. This reasoning demonstrates a less than complete understanding of the way sexually transmitted infections cause infertility.

When sexually transmitted diseases go undetected and untreated, they can lead to conditions that cause infertility. Chlamydia and gonorrhea are very common bacterial infections that very often cause no symptoms and are undetected without routine screening, particularly in women. According to the U.S. Centers for Disease Control, chlamydia and gonorrhea are the two most common reportable infectious diseases in the U.S., with an estimated 2.9 million new chlamydia infections and an estimated 800,000 new gonorrhea infections each year.¹ Left untreated, these infections can cause pelvic inflammatory disease which can lead to infertility in both men and women. The U.S. CDC estimates that untreated and undiagnosed STDs cause at least 24,000 American women to become infertile each year. This is one reason why access to reproductive health care is so important; commonly, the only way to detect these infections is through routine screening as part of a reproductive health care exam. If detected early, these infections can be easily treated, often with a single dose of antibiotics. It is important to remember that in order for these infections to cause infertility, they must go undetected and untreated for a long period of time; this means that the initial infection may occur years before the individual discovers that his or her fertility has been affected by an unknown and undetected infection.

Therefore, in order for this legislation to have the desired effect of encouraging “better” choices by an individual, one would have to expect young people to make the following decision: “I’m not going to engage in sexual activity now because I might get a sexually transmitted disease that may someday affect my fertility, and I’d like to be able to get insurance coverage to treat that infertility.” Otherwise, the purpose of this restriction is merely punitive; to punish individuals for sexual activity they engaged in years ago. And we know, given the nature of infections, that even a person who is abstinent until marriage can contract a sexually transmitted disease from a partner who has not been abstinent.

This bill will not encourage more virtuous behavior, it will not decrease the rate of STD infections in Maine, nor will it decrease the rate of infertility. It will merely add to the guilt and anxiety already felt by those dealing with a diagnosis of infertility, putting a government seal of approval on the perceived message that “it’s your fault you’re infertile.”

In the end, this committee will decide whether to require insurance coverage for infertility treatment. But please don’t turn the determination of who gets coverage into a morality play about choices people made 5, 10, even 15 years ago. People facing infertility are dealing with enough, and no one deserves to be judged that way, especially by their government.

¹ Incidence, Prevalence and Cost of Sexually Transmitted Infections in the United States, U.S. CDC, February 2013.