



**Planned Parenthood of Northern New England Opposes L.D. 327 "An Act to Allow a Wrongful Death Cause of Action for the Death of a Viable Fetus"**

Senator Keim, Representative Moonen, members of the Joint Standing Committee on Judiciary, I am Nicole Clegg, Vice President of Public Policy for Planned Parenthood of Northern New England, and I am here to present testimony in opposition to LD 327.

At PPNNE, we believe that all women should be able to make informed decisions about a pregnancy, whether to choose adoption, end a pregnancy or raise a child, and we know that these decisions are best left to a woman, her family, her faith, with the counsel of her doctor or health care provider. This view is consistent with decades of Maine law, which upholds the rights of women to consider abortion, a safe, legal medical procedure, if and when she needs it.

At PPNNE, we are committed to making sure that women are safe and supported during their pregnancies. We advocate for measures that will expand access to health care, prevent domestic violence and improve workplace safety both at the state and federal level - policies that appropriately keep the focus on the pregnant woman and do not undermine her rights by separating her from her pregnancy in the eyes of the law.

We know that the loss of a pregnancy can be tragic, especially if it could have been prevented and we support policies and laws that provide women with the opportunity to seek recourse in Maine courts.

Maine law works best when it is consistent and clear, especially when addressing sensitive matters like loss of a pregnancy and abortion. Unfortunately, LD 327 doesn't meet that legal test. Instead, it seeks to alter the existing legal framework with the intention of undermining the foundations of reproductive rights for women.

Interference with a woman's right to bear a child should be prevented and punished, and Maine law already imposes enhanced

penalties for violent acts that intentionally compromise a pregnancy *without* recognizing the fetus as a legal entity separate and distinct from the woman who has been harmed.<sup>i</sup> It bears noting that the Maine Legislature wrestled with this same question before you when evaluating criminal statutes and the treatment of pregnancy loss and very purposefully determined that the law should focus on the pregnant woman.

Maine law also allows for compensation to women when they experience pregnancy loss due to criminal or civil negligence of a third party and the state prohibits post-viability abortions.<sup>ii</sup> Moreover, women who lose a pregnancy due to a health care provider's negligence may already sue under medical malpractice.

There is also a federal law, the Emergency Medical Treatment & Active Labor Act that protects patients who are negligently denied treatment from a hospital, and pregnant women in Maine have successfully sued under the law when such negligence has led to a miscarriage.<sup>iii</sup>

This bill is a solution in search of a problem.

You will likely hear from proponents of LD 327 that Maine is an outlier and while courts in other states have allowed wrongful death lawsuits on behalf of a viable fetus, only a few legislatures—like those in Illinois, Tennessee, and South Dakota—have gone so far as to actually codify this into the states' statutes. If this bill were to pass, Maine would be the lone state in New England and the East Coast to allow, by statute, a wrongful death lawsuit for the death of a viable fetus.

Further, the bill seeks to create conflict in Maine law by establishing an inconsistent definition of viability. Maine law currently states that viability "means the state of fetal development when the life of the fetus may be continued indefinitely outside the womb by natural or artificial life-supportive systems," a definition consistent with the Supreme Court decision *Roe v. Wade*.<sup>iv</sup> The proposed language in LD 327 states that a viable fetus is any fetus that has reached 24 weeks of gestation. While 24 weeks gestation may mark the time of viability for some women, each pregnancy is different, and not every fetus reaches viability at the same time. Because of the nuances of viability, existing Maine law does not date viability, and appropriately defers to doctors in defining it.

If Maine law addresses both criminal and civil claims for women who have experienced pregnancy loss at the hands of others then what is the intent of this bill? Given that the language is modeled after language in Americans United for Life's

legislative handbook, the proposal appears to be more in line with the pro-life movement's goal of attaching independent rights to a fetus that may be use in the future to undermine women's reproductive rights.<sup>v</sup>

Thank you for your time and consideration.

Nicole Clegg  
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<sup>i</sup> The law states that a person is guilty of elevated aggravated assault on a pregnant person if that person intentionally or knowingly causes serious bodily injury to a person the person knows or has reason to know is pregnant. Me. Rev. Stat. tit. 17-A, § 208-C.

<sup>ii</sup> Maine abortion law also already criminalizes abortion after viability. Me. Rev. Stat. tit. 22, § 1598

<sup>iii</sup> See Nok-Noi Ricker, *Woman Awarded \$200,000 in Miscarriage Case Against EMMC*, BDN Maine (Oct. 20, 2010), <http://bangordailynews.com/2010/10/20/news/bangor/woman-awarded-200000-in-miscarriage-case-against-emmc/>.

<sup>iv</sup> Me. Rev. Stat. tit. 22, § 1598

<sup>v</sup> LD 327 is based upon template language provided in the Americans United for Life legislative guide: [http://www.aul.org/downloads/2016-Legislative-Guides/Legal-Recognition-of-the-Unborn/Unborn Wrongful Death Act - 2016 LG.pdf](http://www.aul.org/downloads/2016-Legislative-Guides/Legal-Recognition-of-the-Unborn/Unborn%20Wrongful%20Death%20Act%20-%202016%20LG.pdf)