

STATE OF TENNESSEE

Office of the Attorney General



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March 11, 2024

The Honorable Janet T. Mills
Governor of Maine
1 State House Station
Augusta, ME 04333

The Honorable Aaron Frey
Maine Attorney General
6 State House Station
Augusta, ME 04333

The Honorable Troy Jackson
President of the Senate
Maine State Legislature
3 State House Station
Augusta, ME 04333

The Honorable Rachel Talbot Ross
Speaker of the House
Maine State Legislature
2 State House Station
Augusta, ME 04333

Dear Governor Mills, General Frey, President Jackson, and Speaker Talbot Ross:

We, the undersigned Attorneys General, write to express serious concern regarding LD 227, a bill pending in the Maine Legislature. While it is extremely unusual for States to interject themselves into another State's lawmaking, LD 227's unique constitutional transgressions merit our comment.

LD 227 seeks to contravene the lawful policy choices of our States' citizens by imposing on the rest of the country Maine's views on hotly debated issues such as gender transition surgeries for children. The law's far-reaching provisions are unprecedented. LD 227 not only purports to shield from liability those offering or aiding the provision of unlawful services to citizens located in our States—a provision Planned Parenthood asserts would "safeguard" Maine providers and patients from

“out-of-state laws that ban or restrict care that is legal in Maine.”¹ The law also creates a private right of action for damages against law enforcement, prosecutors, and other officials in our States who are enforcing our own valid state laws, even laws whose constitutionality has been confirmed by federal appellate courts. On top of that, LD227 purports to block valid orders and judgments from our state courts enforcing laws upheld by federal appellate courts.

As currently drafted, LD 227 violates the United States Constitution and flouts the federalist structure that allows each of our States to engage in self-government responsive to the will of our citizens. The Constitution’s Full Faith and Credit Clause, and federal statutes implementing it, mean no state cause of action should ever accrue from a different State lawfully enforcing its own permissible laws or executing valid judgments. *E.g., Baker by Thomas*, 522 U.S. at 240 (1998). LD 227’s private right of action likewise runs headlong into well-settled legal principles like comity, jurisdiction, and the rule against States’ discriminatory and extraterritorial regulation of commerce. The federal Constitution, in short, precludes Maine’s novel effort at state-sanctioned culture war litigation tourism.

From a practical perspective, LD 227’s ill-considered attempt to influence and intimidate officials in other States could also trigger a rapid tit-for-tat escalation that tears apart our Republic. One could easily envision a First Amendment Protection Act that creates state law liability for people, even people out of state, who seek to suppress purported hate speech, or a Second Amendment Protection Act that creates liability for those who seek to regulate firearms, or laws that impose harsh penalties on people who express support for one side or another in the war between Israel and Hamas. If one State does not like another State’s regulatory regime with respect to cars, or food, or alcohol distribution, or whatever else, it could create a tenuous jurisdictional hook to allow the same sort of extraterritorial bullying attempted by LD 227. State officials would be dragged into legal battles in far-flung jurisdictions, thwarting their ability to focus on protecting their own citizens consistent with their own duly-enacted laws.

In America, we have the right to disagree. Maine has every right to decide what Maine’s laws are and how those laws should be enforced. But that same right applies to every State. One State cannot control another. The totalitarian impulse to stifle dissent and oppress dissenters has no place in our shared America. We will not allow laws like LD 227 to deter us from protecting the integrity of our States’

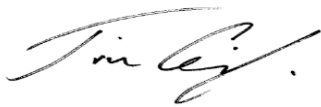
¹ *Maine lawmakers to hold public hearing on bill to protect providers of reproductive care and essential health care for transgender people*, Planned Parenthood Maine Action Fund (Mar. 5, 2024).

democratic processes. If Maine pursues LD 227's constitutionally defective approach, we will vigorously avail ourselves of every recourse our Constitution provides.

Sincerely,



Jonathan Skrmetti
Tennessee Attorney General & Reporter



Tim Griffin
Arkansas Attorney General




Ashley Moody
Florida Attorney General



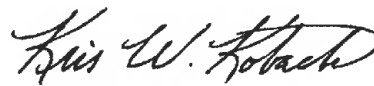
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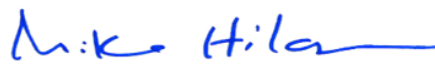
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Marty Jackley
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