



MITCHELL TARDY JACKSON

Testimony of Jim Mitchell on behalf of Irving Woodlands
In opposition to L.D. 928

RESOLUTION, Proposing an Amendment to the Constitution of Maine to
Establish a Right to a Clean and Healthy Environment
March 22, 2023

Senator Brenner, Representative Gramlich and Honorable Members of the Committee: I am Jim Mitchell; I reside in Freeport and I am testifying on behalf of Irving Woodlands in opposition to LD 928.

Irving owns approximately 1.25 million acres of forestland in Maine and has been here since 1946. The company owns and operates sawmills in Dixfield and Ashland and operates the Eastern Maine Railway and Maine Northern Railway. The company invests heavily in silviculture in the State; we grow more wood than we harvest every year and since 1985 have planted over 79 million trees in Maine — about 60% of the total trees planted in Maine for forestry purposes.

We appreciate the sponsor's intent in putting forward LD 928 but we respectfully oppose the measure being approved by the Legislature for consideration by the voters to amend Maine's constitution.

Lawmaking almost inevitably comes with the risk of unintended consequences. But, through careful deliberation, legislators seek to minimize that risk by weighing arguments pro and con and by robustly evaluating competing interests in search of the public interest. A constitutional amendment demands an even higher level of scrutiny and deliberation, not to usurp the will of the citizenry, but because of the promise implicit in the high threshold to put a constitutional amendment on the ballot: two-thirds of each body must approve the measure for the question to be considered by the voters.

So, what exactly are the possible unintended consequences of this proposed amendment to Maine's constitution? The proposed amendment prohibits the State from infringing on "the preservation of the natural, cultural, and healthful qualities of the environment." Yet, how will courts determine what constitutes "preservation" of those qualities? Can the "higher law" of the constitution rely on standards adopted in statute? Does this prohibition block the State and its instrumentalities and subdivisions (e.g. municipalities) from permitting any development that could be perceived to impact the natural,

cultural and healthful qualities of the environment? These risks cast doubt on the constitutionality of existing natural resource protection and land use laws and regulations established over many years in Maine. And, consequently, government decisions to permit development could be subject to constitutional challenge should the proposed amendment be approved by the voters.

Applied to the natural resources owned by the people of Maine, the mandate that the State shall conserve, protect and maintain the State's natural resources, including its air, water, land and ecosystems, undermines, if not usurps, the natural right of all Maine people in Article I, Section 1, of the Maine Constitution, to acquire, possess and protect property and the protection in Article I, Section 23 of the Maine Constitution, that private property shall not be taken for public uses without just compensation.

At its root, LD 928 seeks to protect what we all value: our Maine quality of life. The drafters of Maine's Constitution followed a venerable American tradition of declaring natural rights; thus, these are not grants of privilege but inherent in us as humans: "All people are born equally free and independent, and have certain natural, inherent and unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness." Limitations on the use of property goes to the heart of the perennial question of where the state's power ends and a person's liberty begins. And, over many years Maine's legislators and those who execute the laws seek to strike the proper balance to ensure both the protection of our natural resources and the possibility of regulated commerce. And, our quality of life depends on both a protected environment and reasonable commerce.

The possibility of constitutional confusion that leads to litigation seeking to halt longstanding, legal silvicultural and manufacturing practices is a real risk. That risk must be taken into account by prudent businesspeople and could thereby chill future investment in forestry practices that are of major importance to Maine's economic and ecological health. As society seeks to mitigate the impacts of carbon on the environment, Maine is in an enviable position: we are the most heavily forested state in the nation. Trees are an efficient, cost-effective means of carbon capture. Encouraging more tree planting and more investment in silviculture will advance Maine's climate goals and, simultaneously, make one of our leading industries, forest products, even stronger.

Therefore, we respectfully urge the Committee to vote ought not to pass on the Resolution before you. Thank you for considering these comments.