

TESTIMONY IN OPPOSITION TO

L.D. 233—AN ACT TO PROHIBIT BIOLOGICAL MALES FROM PARTICIPATING IN SCHOOL ATHLETIC PROGRAMS AND ACTIVITIES DESIGNATED FOR FEMALES WHEN STATE FUNDING IS PROVIDED TO THE SCHOOL

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RSU 22

L.D. 1134—AN ACT TO PROHIBIT MALES FROM PARTICIPATING IN FEMALE SPORTS OR USING FEMALE FACILITIES

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L.D. 1704—AN ACT TO PROHIBIT A SCHOOL ADMINISTRATIVE UNIT FROM ADOPTING A POLICY THAT ALLOWS A STUDENT TO USE A RESTROOM DESIGNATED FOR USE BY THE OPPOSITE SEX

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May 8, 2025

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Deer Isle-Stonington CSD

Senator Carney, Representative Kuhn, and members of the Judiciary Committee, I am Steven Bailey, the Executive Director for the Maine School Boards Association, testify on behalf of the MSBA legislative committee in opposition to L.D. 233, 1134, and 1704.

EXECUTIVE DIRECTOR

Steven W. Bailey

L.D. 233, An Act to Prohibit Biological Males from Participating in School Athletic Programs and Activities Designated for Females When State Funding is Provided to the School is, plain and simple, against the law. This proposal would be in direct conflict with the Maine Human Rights Act, as seen in Title 5, Chapter 337, Subchapter 5-B, Education Opportunity, §4601 right to freedom from discrimination in education, which states: “The opportunity for an individual at an educational institution to participate in all educational, counseling and vocational guidance programs, all apprenticeship and on-the-job training programs and all extracurricular activities without discrimination because of sex, sexual orientation or gender identity, a physical or mental disability, ancestry, national origin, race, color or religion is recognized and declared to be a civil right.”

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Isabel Ekman, Esq., Chair

The language and intent of the MHRRA is consistent with a resolution established by the Maine School Boards Association, *Equity in Education*, speaking to the organization’s opposition to any form of discrimination. The MSBA resolution reads:

“All students, regardless of their race, color, sex, sexual orientation, gender identity or expression, religion, ancestry, national origin, disability, age or economic status, deserve equitable opportunities and support to learn in Maine’s public schools. Maine School Boards Association believes all district leaders should, on an ongoing basis, facilitate a self-examination and discussion around recognizing bias and stereotyping, and adopt policies and practices that eliminate them, and that the Maine Department of Education should provide support for this purpose. School boards need to stand strongly against discrimination of any kind.”

The mission of school board members is to enhance the education of all students in Maine's public schools. To deny a student the opportunity to participate in an extracurricular activity based on their gender identity is inconsistent with current statute, which is why MSBA is urging you to vote Ought Not to Pass on L.D. 233.

Expanded to L.D. 1134, An Act to Prohibit Males from Participating in Female Sports or Using Female Facilities, the MSBA Legislative Committee supports not only the Maine Human Right Act and §4601 right to freedom from discrimination in education, but which is also supported by longstanding case law in Maine – specifically the 2013 Doe v. Clenchy (RSU 26), Superior Court, Docket No. CV-09-201 decision that granted plaintiffs a permanent injunction enjoining defendants to allow transgender students to use bathrooms that are consistent with their gender identifies.

Again, MSBA takes the position of supporting the law and holding that Maine's public schools have the responsibility of supporting all students. As part of its mission, MSBA encourages local school administrative units to be doing the same.

Policies developed and adopted by school administrative units are guided by and restate state statute. L.D. 1704 attempts to prohibit a school administrative unit from adopting a policy that allows a student to use a restroom designated for use by the opposite sex. Again, this proposal is counter to the Maine Human Rights Act, and by statute would be incongruous with what is allowed under the law. A board willing to adopt such a policy would be risking a complaint and judgement against them by the Maine Human Rights Commission.

Each of the three L.D.s referenced in this testimony attempt to create a law that is inconsistent with the Maine Human Rights Act. MSBA doesn't see how any of them should move forward. They urge you to vote no on each of L.D. 233, L.D. 1134 and L.D. 1704.