GLBTQ Legal Advocates & Defenders

TESTIMONY OF GLBTQ LEGAL ADVOCATES & DEFENDERS
IN OPPOSITION TO
LD 1881, An Act to Ensure the Rights of Parents of Minor Children in Education
Committee on Education and Cultural Affairs
May 9, 2025

Dear Senator Rafferty, Representative Murphy, and Distinguished Members of the Committee on Education and Cultural Affairs,

GLBTQ Legal Advocates & Defenders (GLAD Law) is a nonprofit legal organization that works in New England and nationally to create a just society free of discrimination based on gender identity and expression, HIV status, and sexual orientation. We appreciate the opportunity to submit this testimony in opposition to LD 1881, An Act to Ensure the Rights of Parents of Minor Children in Education.

GLAD Law recognizes the importance of parental rights and defends family integrity as a constitutional baseline. Of course, under our constitutional framework, parental rights are not the same as parental preferences. And even parental rights must coexist with the rights and interests of children, the public, and the State where it interacts with children and in its role as *parens patriae*. For more than a century, the U.S. Supreme Court has articulated a strong parental rights doctrine[1] and simultaneously recognized that those rights are necessarily limited.[2]

The longstanding constitutional doctrine around parental rights is foundational to the framework for public education and the operation of public schools in Maine. Specifically, parents have a fundamental constitutional right to direct their child's education.[3] This right is understood to mean "that the state cannot prevent parents from choosing a specific educational program."[4] On the other hand, a parent has "no protected right to control a school's

[1] *See, e.g. Troxel v. Granville*, 530 U.S. 57, 66 (2000); *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923).
[2] *See, e.g.*, *Parham v. J.R.*, 442 U.S. 584, 603-04 (1979).
[3] *See, e.g.*, *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 535 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 402-03 (1923).
[4] *See Foote v. Ludlow Sch. Comm.*, No. 23-1069, slip opn. at 29–32 (1st Cir. Feb. 18, 2025). Existing law provides a variety of mechanisms by which parents may exert that control, such as choosing to send their child to public school or private school or by homeschooling their child. 20-A MRS §5001-A.

curricular or administrative decisions."[5] Accordingly, a public school "need not offer students an educational experience tailored to the preferences of their parents[.]"[6]

LD 1881 would upset this balance and disrupt public education in Maine. For example, it creates an affirmative right for *any* parent to "request an alternative assignment, activity or service or material" whenever they object to *any* school assignment, activity, service, or material is objectionable to the parent for *any* reason. That would fundamentally transform the relationship between schools and parents.

It would create extraordinary burdens on teachers, who under LD 1881 would have to identify alternative assignments and materials on a moment's notice when a parent objects to the standard curriculum—perhaps many times over if a parent continues to object to the proposed alternatives, or if multiple parents object to the same materials for different reasons.

School districts wishing to avoid parental objections might feel pressured to adopt curriculum virtually devoid of content that could possibly be seen as controversial in the local community. This would deprive students of opportunities to learn about different perspectives and develop their critical thinking skills, which are essential for civic engagement and success in adulthood.

By requiring public schools to cater to the parental preferences of every individual student, LD 1881 would distract from the core mission of public education—teaching students the lessons they need to learn to participate in our democracy and succeed in adulthood.

LD 1881 is also sure to generate frequent disputes between schools and parents. The bill language is vague and confusing in important respects, and it provides no meaningful enforcement standards.

For example, in subparagraph 1, what qualifies as "information regarding the school activities" of a student? Is it every paper with the student's name on it? Is it the student's official record of enrollment, grades, and disciplinary history? Something in between? Once we know what information is covered, what must a school do to ensure that information is "reasonably

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[5] *Foote*, slip opn. at 29; *see also Parker v. Hurley*, 514 F.3d 87, 102 (1st Cir. 2008) (internal quotation omitted) ("while parents can choose between public and private schools, they do not have a constitutional right to direct how a public school teaches their child"); *Hodge v. Jones*, 31 F.3d 157, 163-64 (4th Cir. 1994) (explaining that parents "do not have a due process right to interfere with the curriculum, discipline, hours of instruction, or the nature of any other curricular or extracurricular activities"); *Parents for Privacy v. Barr*, 949 F.3d 1210, 1230 n.l6 (9th Cir. 2020) (stating that parents who disagree with school policies "have the right to remove their children" from public schools, but that right does not extend to requiring particular policies); *Thomas v. Evansville- Vanderburgh Sch. Corp*., 258 F. App'x 50, 54 (7th Cir. 2007) (private conversation between school counselor and student regarding school performance did not violate parent s right to direct chi1d's upbringing); *Leebaert v. Harrington*, 332 F.3d 134, 141 (2d Cir. 2003) (upholding schoo1's mandatory health classes against father's claim of violation of fundamental rights); *Parents United for Better Sch., Inc. v. Sch. Dist. of Phila. Bd. of Educ.*, 148 F.3d 260, 277 (3d Cir. 1998) (upholding school's consensual condom distribution program); *Brown v. Hot, Sexy & Safer Prods, Inc.*, 68 F.3d 525, 533–34 (lst Cir. 1995) (upholding compulsory high school sex education assembly program), *abrogated on other grounds by Martinez v. Cui*, 608 F.3d 54 (lst Cir. 2010); *Fleischfresser v. Dirs. of Sch. Dist. 200*, 15 F.3d 680, 690 (7th Cir. 1994) (parents lacked constitutional right to exempt child from reading program).

[6] *Foote*, slip opn. at 29.

accessible" to parents? Does LD 1881 require the school to retain the relevant papers and store them in a particular way? How long should the papers be retained? Must they be available to a parent at will, or only upon request? If that latter, how quickly must the papers be produced? If a parent makes a specific request, are schools responsible for searching through the files to find all potentially responsive documents? Will schools have to retain additional staff to meet these obligations?

To name just a few more examples: What counts as a "service" in subparagraph 2? Could a parent prohibit a school social worker or counselor from speaking to a child who seeks them out for support? In subparagraphs 3 and 4, how does one determine whether a school policy "encourage[s]" or has "the effect of encouraging" students to withhold information from their parents, or whether a school employee has "discouraged" disclosure of the same information? If a student has withheld information from their parents, how can we tell if it is information "about [t]he student's mental, emotional or physical health or well-being"? Does an argument between a student and her friend count? Does a student's decision to eat vegetarian count?

LD 1881 provides no answer to these questions. And it specifies no enforcement mechanism by which the answers might be determined. Without a judge or other decider to determine when rights have (or have not) been violated, LD 1881 does little more than put schools on a collision course with some parents.

LD 1881 is not necessary because the existing framework is sensitive to parents' rights and attentive to their concerns. Parents already have significant influence over schools' policies (through school boards) and over the application of those policies to their children (through direct contract with administrators and school personnel).

Further, contrary to what LD 1881 might suggest, there is no epidemic of school districts concealing important information about students from their parents. It is widely accepted, and for good reason, that a strong parent-child relationship helps young people throughout their lives. In many situations, school staff and teachers may be the first ones to encourage a student to share new developments and concerns with a parent. And it goes without saying that students who seek support from school personnel care about their parents, too. They are often looking for help as they try to figure out how to tell a parent something important. Allowing teachers to support students in this way—listening without fear of reprisal and using their best judgment about when to involve a parent—is essential to helping young people continue to strengthen their relationships with their parents.

LD 1881 is a blunt instrument that would make it harder for students to build trusting relationships with their teachers, and easier for parents to exert control over virtually everything their children do at school. While that arrangement may be preferable to some parents, it ignores the benefits of the existing framework; it does not account for the common interests shared by parents and teachers alike; it fails to adequately protect students' interest in participating in school alongside their classmates; and it undermines schools' interest in providing a well-rounded and high-quality education.

In sum, the role that parents play in their children's lives is a unique and critical one, as has long been recognized in state and federal law. But LD 1881 would elevate the role of parents to unprecedented heights in the school context, likely at the expense of public education itself. The Legislature has rejected other bills that would have similarly upset the existing balance around parent's rights, children's rights, and the public interest.[7] GLAD Law respectfully urges members of this committee to vote "ought not to pass" on LD 1881.

Sincerely,

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[7] *See, e.g.,* An Act Regarding Parental Rights in Education, LD 1800, 131st Me. Leg. (2023); Resolution, Proposing an Amendment to the Constitution of Maine to Establish a Parental Bill of Rights, LD 1953, 131st Me. Leg. (2023); An Act to Prohibit Health Care Services Without Parental Consent, LD 1809, 131st Me. Leg (2023).