



**TESTIMONY OF GLBTQ LEGAL ADVOCATES & DEFENDERS  
IN OPPOSITION TO  
LD 1974, An Act to Affirm Parental Rights  
Committee on Judiciary  
May 16, 2025**

Dear Senator Carney, Representative Kuhn, and Distinguished Members of the Committee on Judiciary,

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 1974, An Act to Affirm Parental Rights.

GLAD Law recognizes the importance of parental rights and defends family integrity as a constitutional baseline. At the same time, 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 that recognizes the “fundamental right of parents to make decisions concerning the care, custody, and control of their children”<sup>1</sup> and has simultaneously recognized that those rights are necessarily limited.<sup>2</sup>

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.<sup>3</sup> This right is understood to mean “that the state cannot prevent parents from choosing a specific educational program.”<sup>4</sup> It does not mean that a parent has a “protected right to control a school’s curricular

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<sup>1</sup> *Troxel v. Granville*, 530 U.S. 57, 66 (2000); see also, e.g., *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923).

<sup>2</sup> See, e.g., *Parham v. J.R.*, 442 U.S. 584, 603-04 (1979).

<sup>3</sup> 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).

<sup>4</sup> See *Foot 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.

or administrative decisions.”<sup>5</sup> Accordingly, a public school “need not offer students an educational experience tailored to the preferences of their parents[.]”<sup>6</sup>

Similarly, the U.S. Supreme Court has recognized the fundamental interests of parents in their children in the child welfare context.<sup>7</sup> At the same time, it has also recognized the state’s “*parens patriae* interest in preserving and promoting the welfare of the child[.]”<sup>8</sup> Accordingly, statutory child welfare frameworks, such as Title 22, Chapter 1071 (which LD 1974 would amend), must account for these two important principles.

Given the strong constitutional underpinnings for parental rights, LD 1974 is unnecessary. Its proposal to label parental rights as fundamental in statute, isolated from the constitutional context that helps us understand the parental rights framework, would also inject confusion into the law that could harm children and burden families. As just one example – although parents have a fundamental right to direct their child’s education, there are circumstances under which schools must act even without consent of one or both parents to ensure children get the education they need to learn, grow, and transition successfully to adulthood. For instance, under the McKinney-Vento Act, states must ensure that unaccompanied homeless students can immediately enroll in school, even if there are no guardianship documents provided.<sup>9</sup> Similarly, when students live with someone who is not a parent or guardian under specific circumstances (such as where it is impractical or unsafe for the student to live with a parent or where there are other extenuating circumstances), a school superintendent must consider a request from that person for the student to be considered a resident of and enroll in that school administrative unit.<sup>10</sup> Such a situation could arise where, for example, a student is

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<sup>5</sup> 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.16 (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 child’s upbringing); *Leebaert v. Harrington*, 332 F.3d 134, 141 (2d Cir. 2003) (upholding school’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 (1st Cir. 1995) (upholding compulsory high school sex education assembly program), *abrogated on other grounds by Martinez v. Cui*, 608 F.3d 54 (1st 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).

<sup>6</sup> Foote, slip opn. at 29.

<sup>7</sup> See *Santosky v. Kramer*, 455 U.S. 745, 753 (1982) (“The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State.”)

<sup>8</sup> *Id.* at 766.

<sup>9</sup> See 42 U.S.C. §§11432(g)(3)(C), (g)(1)(H)(iv); see also SchoolHouseConnection, *Q&A from the Field: Unaccompanied Youth*, <https://schoolhouseconnection.org/tools-resources/qa-from-the-field/unaccompanied-youth#:~:text=Under%20the%20McKinney%2DVento%20Act%2C%20lack%20of%20a%20legal%20guardian,enrollment%20of%20an%20unaccompanied%20youth.>

<sup>10</sup> 20-A M.R.S. §5205(2).

living with her grandmother due to her mother recently having entered a jail and her father's location being unknown.<sup>11</sup>

LD 1974 raises serious questions about how the obligations of schools, child welfare entities, and other public agencies would shift based on the language of the bill. As a result, regardless of its intention, this proposal would become a vehicle for attacking public institutions. And passing this bill would leave the state and localities vulnerable to litigation, which – regardless of the outcome – would distract from important efforts to ensure the health and wellbeing of all Maine children and families.

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 1974 would enshrine the existing constitutionally recognized interests of parents in statute *without* the important context provided by the constitutionally recognized limits of those interests and without acknowledging the interests of others, including children and the state. The Legislature has rejected other bills that would have similarly upset the existing balance around parents' rights, children's rights, and the public interest.<sup>12</sup> GLAD Law respectfully urges members of this committee to vote "ought not to pass" on LD 1974.

Sincerely,

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<sup>11</sup> See, e.g., KIDS Legal, *Maine Public School Enrollment*, <https://kidslegal.org/maine-public-school-enrollment>.

<sup>12</sup> See, e.g., An Act Regarding Parental Rights in Education, LD 1800, 131<sup>st</sup> Me. Leg. (2023); Resolution, Proposing an Amendment to the Constitution of Maine to Establish a Parental Bill of Rights, LD 1953, 131<sup>st</sup> Me. Leg. (2023); An Act to Prohibit Health Care Services Without Parental Consent, LD 1809, 131<sup>st</sup> Me. Leg (2023).