

TESTIMONY OF MEAGAN SWAY

LD 678 – Ought Not to Pass

An Act to Require Parental Approval for Public School Employees to Use a Name or Pronoun Other than a Child’s Given Name or Pronoun Corresponding to the Gender on the Child’s Birth Certificate

Joint Standing Committee on Judiciary

May 15, 2023

Senator Carney, Representative Moonen and distinguished members of the Joint Standing Committee on Judiciary, greetings My name is Meagan Sway, and I am Policy Director of the American Civil Liberties Union of Maine, a statewide organization committed to advancing and preserving civil liberties guaranteed by the Maine and U S Constitutions On behalf of our members, I urge you to reject LD 678

If enacted, LD 678 would prohibit public school employees from referring to students by a name that does not “match the name listed on the student’s birth certificate” or “[u]se a pronoun to address or refer to a student unless that pronoun corresponds to the gender listed on the student’s birth certificate” without written permission from the student’s parent or legal guardian

This could put Maine school employees on a collision course with state and federal law, in cases where transgender students’ gender identities do not match their sex at birth and parents refuse to give written consent for the school to use the child’s preferred name and/or gender identity Courts could find that school employees who do not recognize a child’s gender identity violate the Maine Human Rights Act, Article 1, section 6-A of the Maine Constitution, Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and the Fourteenth Amendment to the United States Constitution, among other laws

In addition to potentially violating numerous existing laws, LD 678 would jeopardize the health and wellbeing of Maine’s LGBTQ children According to the National Education Association, using correct pronouns at schools creates safe learning environments and improves learning outcomes and attendance Without this additional barrier to living authentically, 75% of Maine students already report regularly hearing negative remarks about gender expression Among LGBTQ

students in Maine, 57% reported experiencing verbal harassment and 28% reported either physical harassment or assault ¹

As the Supreme Court stated in its landmark opinion in *Tinker v Des Moines*, students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate”² Transgender and non-binary kids are just that – kids – and they deserve the same opportunities, inclusion, and community as all others No child should face discrimination or be marginalized simply for living true to how they were born We urge you to vote ought not to pass

¹ GLSEN, School Climate for LGBTQ students in Maine 2019 Snapshot, available at <https://www.glsen.org/sites/default/files/2021-01/Maine-Snapshot-2019.pdf>

² 393 U S 503, 506 (1969)