Testimony of Mary L Bonauto, GLAD Attorney

In Support of LD 535, *An Act to Increase Access to Necessary Medical Care for Certain Minors*

Joint Standing Committee on the Judiciary

May 12, 2023

Senator Carney, Representative Moonen, and honorable members of the Judiciary Committee,

Good afternoon My name is Mary Bonauto, and I am an attorney at GLBTQ Legal Advocates & Defenders working in Maine, New England and nationally on LGBTQ+ and HIV/AIDS civil rights issues GLAD supports LD 535 and we are are grateful to Rep Sheehan and the cosponsors for raising this important bill

We are here today to talk about a health condition – gender dysphoria – and whether young people can get the care that is medically necessary, prevents harm, furthers their health, well-being, and their ability to thrive in the world If we were talking about diabetes, there would be no doubt that treatment is essential and that lack of treatment will profoundly hurt people Unlike diabetes, gender dysphoria is a *stigmatized* health condition, more so every day with the harsh laws and rhetoric that abound right now And as a health condition, without all of the rhetoric, it will profoundly hurt people to deny care

At the outset, I want to acknowledge that many people haven't met or known a transgender person and for them, this can be unfamiliar territory It makes sense that this is unfamiliar because it is rare

We believe, under the tight conditions in this bill, that 16- and 17-year-old minors only should be able to consent to this care, meaning medications to pause puberty until age 18, or medications to facilitate continued puberty that are feminizing or masculinizing to point the body in the right direction for this young person

As to these "tight conditions," the bill requires that an individual seeking care *already be diagnosed with gender dysphoria*, the diagnosis used in the American Psychiatric Association's Diagnostic and Statistical Manual – 5, as well as in the guidelines of the World Professional Association of Transgender Health This means they are experiencing clinically significant distress that is affecting their ability to work, go to school, or function because of the misalignment between their bodies and who they know themselves to be as male, female, or some combination of both It requires that they be in conflict with their parents about consent to care

The bill also requires that the care be necessary to prevent harm The proven benefits of transitioning medications include improvements in anxiety and depression, social functioning, body image, and reductions in suicidal ideation Several studies have found that hormone therapy is associated with reductions in the rate of suicide attempts and significant improvements in the quality of life These are among the harms the bill seeks to reduce and the benefits it seeks to advance, at least for this narrow slice of an already small subset of young people who medically need gender affirming care

The core of the bill with respect to the the information and counseling provided to the young person by a qualified health care professional, which is a defined term and not any health care professional

As section 3 of the bill provides, as to gender affirming hormone therapy, the health care professional must

- Communicate in an understandable manner, and explain that the information is not intended to coerce, persuade or induce the minor into consenting to care
- Explain that the minor may withdraw consent before treatment starts or afterwards while the individual is still a minor
- Clearly and fully explore alternative choices for managing gender dysphoria
- Explain the physiological effects of, benefits of, and possible consequences of proceeding with this care and as to ceasing this care,
- Explain that the minor may request information about services and information available from public and private agencies,
- Discuss the possibility of involving the minor's parent, parents or guardian in the minor's decision making, and the minor's concerns, including whether the minor believes it is in their best interests to involve the parents, and
- Provide adequate time for the young person's questions and answers about gender-affirming hormone therapy

At that point, the minor and provider must sign and date a form stating that each of these subjects has been addressed and the young person has received information and has been able to ask questions, and this is retained in the medical record of that provider At this point, the young person is presumed to have provided informed consent to care This can be rebutted only be proof that the informed consent was obtained through fraud, deception or misrepresentation

As to the care that would be authorized under this bill, it is important to know that it has been the standard medical care for gender dysphoria in minors for decades [1] In addition, clinical practice guidelines for use of medications have been issued by the World Professional Association for Transgender Health (WPATH) since 1979, and have been updated as research and practice develop These guidelines are widely followed in clinical practice based on the best available science and medical consensus The Endocrine Society, the American Academy of Pediatrics, the American Psychological Association, and the American Academy of Child and Adolescent Psychiatry have all issued clinical practice Guidelines which support the use of transition medications consistent with the WPATH Guidelines after each independently considered the scientific evidence supporting the use of transitioning medications [2] This is how science and medicine work best

I understand we will hear about parents' fundamental rights today, and to be clear, we agree a parent should be able to provide medically necessary care for a child consistent with standards of care in the medical professions

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1 For a fuller explanation of gender identity and gender dysphoria, the process for developing guidelines for treating gender dysphoria and their scientific bases, and the evidence indicating the safety and efficacy of treatment in accord with guidelines, see *Eknes-Tucker v Governor of Alabama*, US Court of Appeals for the 11th Circuit, No 22-11707 Brief Amici Curiae of American Academy of Pediatrics and Additional National and State Medical Organizations and Mental Health Organizations (August17, 2022), available at https //www glad org/wp-content/uploads/2022/04/eknes-tucker-v-marshall-medical-orgs-amicus pdf

The bill here speaks to a denial of care that is medically necessary and the denial of which will cause harm We know and respect that parents are crucial in loving, supporting and guiding their children in life, and that a strong relationship is a protective factor for young people And still young people who need care should not suffer needlessly because other people, even the parents they love, do not understand their condition or support the care

Parental rights are not absolute and the State, in its parens patriae power, can take steps to protect the welfare of children when there are strong, important reasons for doing so This bill would add to the public health statutes that for decades have allowed young people the ability to consent, sometimes with limitations, to various types of health care The health care for which minors have been provided permission to consent to their own care include stigmatized conditions, including for –

- substance use and alcohol abuse, 22 MRS §1823,
- mental health treatment for emotional or psychological problems, 22 MRS §1502,
- family planning services, 22 MRS §1908,
- abortion services, 22 MRS §1597-A,
- prevention and treatment of sexually transmitted infections, 22 MRS §1823,
- collection of sexual assault evidence through a sexual assault forensic examination, 22 MRS §1823, and consent to donate blood if age 17, 22 MRS §1502-A

The point here is that Maine has been responsive to the needs of young people by enacting laws to allow them to get needed care particularly for stigmatized conditions The same applies to this bill

In conclusion, we offer one last thought in support of this bill Young people could seek emancipation at 16, if qualified, and consent to their own care Obviously, this is disruption of the parent-child relationship This bill addresses a conflict point, but allows for care in a way that does not sever the relationship We urge you to vote ought to pass on LD 535

GLBTQ Legal Advocates & Defenders
By Mary L Bonauto, GLAD Attorney
257 Deering Ave
Portland, ME 04102

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2 *See* Endocrine Society (2017), Jason Rafferty et al , Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents, 142 (4) Am Acad Pediatrics ("AAP") e20182162 (2018), shorturl at/jpQ57 [hereinafter "AAP (2018)"], Am Psych Ass'n (APA), *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People*, 70 Am Psychologist 832 (2015) [hereinafter APA (2015)], Stewart L Adelson, Practice Parameter on Gay, Lesbian, or Bisexual Sexual Orientation, Gender Nonconformity, and Gender Discordance in Children and Adolescents, 51(9) J Am Acad Child & Adolescent Psychiatry ("AACAP"), 957-974 (2012) [hereinafter "AACAP (2012)"]