GLAD LAW

GLBTQ Legal Advocates & Defenders

TESTIMONY OF GLBTQ LEGAL ADVOCATES & DEFENDERS
IN OPPOSITION TO
LD 1337 and LD 1432
Committee On Judiciary
May 8, 2025

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

Good afternoon. I am Mary Bonauto, a Maine-based attorney at GLBTQ Legal Advocates & Defenders (GLAD Law), 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 1337 and LD 1432.

The Maine Human Rights Act (MHRA) exists to protect Maine residents from discrimination and to ensure that all people are treated with fairness, dignity and respect. It is rooted in policy to "protect the public health, safety and welfare," and to that end, to "continually… review all practices infringing on the basic human right to a life with dignity," and "to prevent discrimination in employment, housing, education, extension of credit or access to public accommodations on account of an individual's actual or perceived race, color, sex, sexual orientation or gender identity, physical or mental disability, religion, ancestry or national origin."[1] Across all regulated areas, the Human Rights Act declares the right to be free from discrimination on the basis of personal characteristic "a civil right."[2] Yet, LD 1337 and LD 1432 would amend the MHRA to roll back these fundamental guarantees and authorize unequal treatment of women seeking shelter and transgender Mainers more broadly.

LD 1337 seeks to greenlight discrimination against women in need.

The MHRA guarantees "equal access to places of public accommodation without discrimination because of race, color, sex, sexual orientation or gender identity, age, physical or mental disability, religion, ancestry or national origin."[3] It defines "place[s] of public accommodation" to include "homeless shelters" and other social service centers.[4]

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[1] 5 M.R.S. § 4552 (part of quote omitted).
[2] 5 M.R.S. § 4571 (employment), 5 M.R.S. § 4581 (housing), 5 M.R.S. § 4591 (public accommodations), 5 M.R.S. § 4595 (credit transactions) and 5 M.R.S. § 4601 (education).
[3] 5 M.R.S. § 4591.
[4] 5 M.R.S. § 4553(8)(K).

LD 1337 seeks to carve out private women's shelters from the definition of "place of public accommodation." This would give women's shelters the right, under Maine law, to turn away women at the door because of their race, or to require racial segregation in their facilities. It would send a message to women's shelters that they are free to exclude women who use wheelchairs for no reason other than the inconvenience of building a ramp. It would tell women's shelters that they may freely deny housing to transgender women, and even to cisgender women if shelter staff decide they do not look feminine enough.

In these ways and more, LD 1337 would start to roll back more than a half-century of civil rights progress in Maine. And it would encourage women's shelters to engage in unfair stereotyping and other kinds of discriminatory behavior that violates federal laws, including the Fair Housing Act, the Americans with Disabilities Act, and in some cases, Title VI of the 1964 Civil Rights Act and Section 504 of the Rehabilitation Act.

Even more importantly, the discrimination purportedly allowed by LD 1337 would likely leave Maine's most vulnerable women without shelter. That includes transgender women. According to national data, transgender adults are almost eight times as likely as non-LGBTQ+ adults to have recent experiences with homelessness.[5] And transgender people already have difficulty accessing shelter, in part because they are transgender.[6] Being turned away from a shelter is extraordinarily harmful: "Being unsheltered is associated with much higher rates of illness and poor health among all homeless populations, and this is exacerbated among transgender people" due to the elevated risks of hate-crime victimization and other forms of violence they face on the street.[7]

State-sanctioned discrimination in women's shelters would also predictably force women fleeing domestic violence to return to dangerous housing situations. These impacts would hit the LGBTQ+ community hard. Both lesbian and bisexual women are impacted by intimate partner violence at even higher rates than heterosexual women.[8] These rates are especially high for bisexual women of color, with almost 80% of bisexual Hispanic women and almost 70% of bisexual black women experiencing intimate partner violence during their lifetimes.[9]

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[5] Bianca D.M. Wilson et al., *Homelessness Among LGBT Adults in the U.S.*, UCLA School of Law Williams Institute (May 2020) at 4–5, https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Homelessness-May-2020.pdf.
[6] Nat'l Alliance to End Homelessness, *Transgender Homeless Adults & Unsheltered Homelessness: What the Data Tell Us* (July 24, 2020), https://endhomelessness.org/resources/research-and-analysis/transgender-homeless-adults-unsheltered-homelessness-what-the-data-tell-us/.
[7] *Id.*
[8] Centers for Disease Control and Prevention, National Intimate Partner and Sexual Violence Survey: 2016/2017 Report on Victimization by Sexual Identity (2023), at 17–18, https://www.cdc.gov/nisvs/documentation/nisvsReportonSexualIdentity.pdf.
[9] *Id.* at 21.

Transgender women are also highly likely to experience emotional abuse, physical violence, sexual violence, stalking, and intimate partner violence.[10] These threats often "start[] early in life" and "last[] throughout their lives."[11]

There is no legitimate reason to expose women to these severe harms by authorizing discrimination in shelters. Women's shelters exist to provide a crucial safety net for all women, including women of color, women of faith, women with disabilities, and LGBTQ+ women. The Legislature affirmed that fundamental principle in 2021, when it rejected a similar bill intended to exclude transgender women from women's shelters.[12] This Committee should follow the same course and vote against unlawful discrimination.

LD 1337 is also intended to bar transgender girls from school sports.

In addition, LD 1337 would amend the MHRA to say that its prohibition on educational discrimination may not "be construed to affect the rights of a female athlete" under Title IX.

This proposal appears to be driven by the false premise that girls' rights under Title IX are violated when transgender girls are included in school sports. But Title IX says no such thing. In fact, numerous courts around the country, including a federal district court in New Hampshire, have held the opposite, finding that Title IX and the Equal Protection Clause of the United States Constitution are violated when transgender girls are *excluded* from school sports simply because they are transgender.[13]

In addition to being unconstitutional and unlawful under Title IX, banning all transgender girls from school sports is unfair and harmful for all women and girls. For more information, see GLAD Law's testimony in opposition to LDs 233, 868, and 1134.[14]

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[10] *Id.* at 1.
[11] *Id.*
[12] *See* 130th Maine Legislature, First Special Session, LD 1238, https://www.mainelegislature.org/legis/bills/display_ps.asp?PID=1456&snum=130&paper=&paperId=l&ld=1238#.
[13] *B.P.J. by Jackson v. W. Va. State Bd. of Educ.*, 98 F.4th 542 (4th Cir. 2024), *petition for cert. filed* (July 16, 2024) (No. 24-44); *Hecox v. Little*, Nos. 104 F.4th 1061, 1091 (9th Cir. June 7, 2024), *petition for cert. filed* (July 11, 2024) (No. 24-38); *Doe v. Horne*, Nos. 23-16026, 23-16030, 2024 U.S. App. LEXIS 22847, at *62 (9th Cir. Sep. 9, 2024); *Tirrell v. Edelblut*, 2024 U.S. Dist. LEXIS 162185 (D.N.H. Sept. 10, 2024); *Roe v. Utah High School Activities Ass'n*, 2022 WL 3907182, at *1 (Utah Dist. Ct. Aug. 19, 2022). If any binding federal precedents adopt a different interpretation, the doctrine of federal preemption will require Maine schools covered by Title IX to follow that interpretation, making LD 1337 unnecessary at best.
[14] *See* 132nd Maine Legislature, First Special Session, LD 233, https://legislature.maine.gov/legis/bills/display_ps.asp?LD=233&snum=132; LD 868, https://legislature.maine.gov/legis/bills/display_ps.asp?LD=868&snum=132; LD 1134, https://legislature.maine.gov/legis/bills/display_ps.asp?LD=1134&snum=132.

LD 1432 unlawfully attempts to strip transgender people of their rights under the Maine Human Rights Act.

The MHRA has protected transgender people from discrimination in employment, housing, public accommodations, lending, and education since at least 2005, when "gender identity or expression" was added as a protected characteristic.[15] LD 1432 would strip away those decades-old protections, rendering transgender people inherently unequal under Maine law.

On its face, LD 1432 is arbitrary, unfair, irrational, and cruel to transgender people. It is also likely unconstitutional. In a 1996 case called *Romer v. Evans*, the U.S. Supreme Court considered a similar law in Colorado that repealed antidiscrimination protections based on sexual orientation and prohibited their reenactment.[16] The Court reasoned that the Colorado law violated the Equal Protection Clause because it withdrew "from homosexuals, but no others, specific legal protection from the injuries caused by discrimination," effectively sanctioning their exclusion from the "transactions and endeavors that ordinary civic life in a free society."[17] This "raise[d] the inevitable inference" that the Colorado law was "born of animosity toward the class of persons affected."[18] Of course, it is unconstitutional to enact a law motivated by a "bare desire to harm a politically unpopular group."[19]

Like the Colorado law at issue in *Romer*, LD 1432 singles out transgender people for differential treatment, "not to further a proper legislative end but to make them unequal to everyone else."[20] Under the U.S. Constitution and the Maine Constitution, this is something states simply "cannot do."[21]

LD 1337 and LD 1432 are part of a broader attempt to unlawfully exclude transgender people from public life.

Throughout the country, we are seeing increased attacks on transgender people's rights to get accurate identification documents, to get medically necessary healthcare, to serve in the military, to play sports, to be acknowledged in schools, to access homeless shelters, to use

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[15] P.L. 2005, ch. 10 (prohibiting discrimination based on sexual orientation, which at the time was defined to include "a person's actual or perceived heterosexuality, bisexuality, homosexuality or *gender identity or expression*" (emphasis added)), https://lldc.mainelegislature.org/Open/Laws/2005/2005_PL_c010.pdf.
[16] *Romer v. Evans*, 517 U.S. 620 (1996).
[17] *Id.* at 627, 631.
[18] *Id.* at 634.
[19] *Id.* (quoting *Department of Agriculture v. Moreno*, 413 U.S. 528 (1973)) (cleaned up).
[20] *Id.* at 635.
[21] *Id.* (interpreting the Equal Protection Clause of the U.S. Constitution). At a minimum, Maine's "equal protection guarantee is co-extensive with the guarantee in the United States Constitution." *Sch. Admin. Dist. No. 1 v. Comm'r, Dep't of Educ.*, 659 A.2d 854, 857 (Me. 1995).

Testimony of Mary L. Bonauto, GLAD Law Attorney
In Opposition to LD 380,
"An Act to Amend Certain Laws Regarding Gender-affirming Health Care Services"

Joint Standing Committee on the Judiciary
May 8, 2025

Senator Carney, Representative Kuhn, 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 Law opposes LD 380 as amended, which would repeal 22 M.R.S. § 1508, which was enacted last year in the 131st Legislature.

We are here today to talk about a health condition – gender dysphoria – and whether some 16 and 17-year-olds may obtain the medically necessary care they need to reduce harms and to live in the world as a transgender person through an informed consent model.

Gender dysphoria is a serious medical condition marked by the significant distress or impairment that occurs when a transgender individual is made to live in their birth sex. The condition is highly treatable. When left untreated, however, it causes serious physical and emotional harms.

The only current, medically accepted treatment for gender dysphoria is to enable a transgender person to live in the sex different than their birth sex. This care is often referred to as "gender transition," and it is a highly effective treatment for gender dysphoria.

If we were talking about diabetes, there would be no doubt that treatment is essential, and failure to treat would be profoundly harmful. Unlike diabetes, gender dysphoria is a *stigmatized* health condition, which complicates understanding of the condition and access to necessary care.

The medical and scientific community recognize rigorous and well-established protocols for supporting a person to address this condition. These protocols are endorsed by the major medical and mental health associations in the United States, including but not limited to the American Medical Association, the American Academy of Pediatrics, the American Psychiatric Association, the American Psychological Association, the American Association of Child and Adolescent Psychiatrists, the Endocrine Society, the Pediatric Endocrine Society, and the World Professional Association on Transgender Health.

For older adolescents, these protocols recommend hormone therapy, sometimes in combination with puberty-blocking medications, when medically necessary to alleviate gender dysphoria and facilitate gender transition, based on an individualized assessment of the patient's health and needs.

These treatments are highly effective for transgender adolescents. For example, longitudinal studies have shown that transgender adolescents with gender dysphoria who receive essential medical care, including puberty blockers and hormones, show levels of mental health and stability consistent with those of non-transgender children. By contrast, transgender adolescents with gender dysphoria who do not receive appropriate medical care are at risk of serious harm, including dramatically

increased rates of suicidality and serious depression.

The 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 powerful benefits for the small subset of young people who require this care.

Existing Law – Predicates. Consistent with the tight conditions imposed by existing law at 22 M.R.S. § 1508, 16- and 17-year-olds should be able to consent to this care.

As to these "tight conditions," the law requires that an individual seeking care already be diagnosed with gender dysphoria according to the criteria set forth in the American Psychiatric Association's Diagnostic and Statistical Manual – 5 (DSM-V). Second, it requires that the individual has discussed their gender dysphoria diagnosis with their parents and that they have refused to support treatment. Third, the law also requires that the care be necessary to prevent harm to the individual, according to the professional judgment of a health care professional. Further, the individual must be physically and mentally competent to consent; the health care professional must advise the individual of the risks and benefits of treatment before consent is given; and the consent may only be given in writing. These safeguards ensure that this law is used only when absolutely necessary to protect the health and wellbeing of a 16- or 17-year-old in need of treatment for gender dysphoria.

Existing Law – Informed Consent. Another important safeguard against overuse of this law is the requirement of informed consent, which requires qualified health care professionals to provide information and counseling about the care, its physiologic effects, benefits and possible detriments and to answer questions. In addition, the provider and individual must 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, to be documented in the record.

Upon completing the information and counseling session(s), the minor may sign the consent form stating that each of these subjects has been addressed, that the adolescent has received information, and that the adolescent has been able to ask questions. If the provider agrees the minor is capable of informed consent, the provider may also sign the consent form. This form must be retained in the provider's medical records with a copy to the young person. 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. A health care practitioner may rely on the informed consent to provide care, although these are matters of discretion for the provider, not a mandate.

Parents' Rights. GLAD Law understands why we are hearing about parents' rights today. We agree that a family should be able to make a decision for and with their child and medical professionals about the care they need, consistent with standards of care in the medical professions. We know and respect that parents love, support, and guide their children in life, and that a strong parent-child relationship is a protective factor for young people.

But the law that LD 380 would repeal is a legitimate route to medically necessary care, the denial of which will cause harm, such as severe depression, anxiety, dysfunction, and suicidality.

This is what someone needs to live as they are. The law allows enormous discretion to parents, but draws the line at serious harm. A young person in need of medical care should not suffer because others, even the parents they love, do not understand their condition or support their care for any number of reasons.

Parental rights are not absolute, and the State can take steps to protect the welfare of children when there are strong, important reasons for doing so. In effect, the law enacted in 2024 that LD 380 seeks to repeal is such a protective law. It is like other public health statutes that have allowed young people the ability to consent, sometimes with limitations, to various types of health care. The health care for which minors may legally 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; and
- collection of sexual assault evidence through a sexual assault forensic examination, 22 MRS §1823.

In short, Maine has been responsive to the needs of mature(?) young people by enacting laws allowing access to needed care, and particularly for stigmatized conditions, without parental consent. The same applies to the existing law challenged here.

. Further, the current law takes parents' interests into account in another way -- it aims to secure access to medically necessary healthcare for 16- and 17-year-olds in a way that does not jeopardize family ties. There are other methods to address this issue, such as emancipation or child protection, both of which could sever that relationship. This model aims to maintain family ties. Based on anecdotal information about a limited number of young people, some of those who have received care report improved relationships with their families when this source of conflict was removed.

The current law, passed by the Legislature just two years ago, fairly balances the need to protect 16- and 17-year-olds from harm and the importance of preserving parental autonomy and family integrity when possible. Because LD 380 seeks to undo the progress made by this law, we urge you to vote "ought not to pass."

By Mary L. Bonauto, Sr. Director & Attorney
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Hannah Hussey, Staff Attorney

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bathrooms in public, and more. These attacks make it increasingly difficult for transgender people to participate on equal terms in public life, and even to exist without fear.

LD 1337 and LD 1432 are part of that broad and sweeping attack on transgender people. The obvious purpose and inevitable effect of LD 1337 is to send a message that cisgender women and girls must be protected from transgender women and girls. And LD 1432 effectively declares that transgender people are undeserving of protections against discrimination because they are unequal. These messages are inherently disparaging and demeaning to transgender people as a class and, for that reason, these bills are likely unconstitutional.[22]

GLAD Law respectfully urges this committee to vote "ought not to pass" on LD 1337 and LD 1432.

Sincerely,

Mary Bonauto, Senior Director of Civil Rights & Legal Strategies
Sarah Austin, Staff Attorney
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GLBTQ Legal Advocates & Defenders, Portland, Maine

[22] *See, e.g., United States v. Windsor*, 570 U.S. 744, 774–75 (2013); *Romer*, 517 U.S. at 623 (stating that "the Constitution 'neither knows nor tolerates classes among citizens'" (quoting *Plessy* v. *Ferguson*, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting)).