

Chairwomen Carney and Kuhn and members of the Joint Committee on the Judiciary

Greetings,

I am Mark Rains, a PhD licensed psychologist in Vienna who worked for six years at Aroostook Mental Health Center, seven years at MaineGeneral Edmund Ervin Pediatric Center, and going on twenty years in private practice serving Franklin and Kennebec Counties. In the 60s and 70s my brother and I lettered in three varsity sports before girls were able to compete in high school sports. Later, my sisters participated in championship volleyball and track. This occurred before gender identity became an issue.

I am testifying about several points regarding LDs 233, 868, 1134, 1704, 1337, 1432 which generally delete “gender identity” from anti-discrimination language, deny that it exists, prohibit its inclusion in human rights and school athletic activity, and/or misunderstand its role in human experience and athletic activity, safety, and competition. As the role of gender identity in school sports is a current state and national flash point, I’ll focus on that.

First, the concepts of designated sex at birth, physical chromosomal gender, psychosocial gender identity, hormonal activity and development and physical performance are not the same and should not be used interchangeably.

Second, there is variability in each of those concepts, rather than being all or none. For some newborns, it is not clear what their sex is and they may have both male and female anatomy. In addition to the two most common XX and XY chromosome combinations, there are eight more, some of which may affect physical and psychosocial development. As psychosocial gender identity develops, it may not fit with physical development, which can present a significant challenge, rather than be a casual choice. *Estrogen and testosterone levels exist more or less in different individuals at different times and they overlap between males and females.* Likewise, there are many women who are stronger than many men. *Testosterone is indeed associated with development of body size, strength, endurance—if it is not blocked during puberty.* That is why such substances are tested to prevent women from using them to outperform other women.

Third, and perhaps most importantly, these physical performance factors are key to addressing danger and competition in sports, not gender identity or sex at birth. Earlier editions of the Maine Principal’s Association Handbook had guided schools to evaluate safety and competition in determining eligibility for transgender sports participation. However, criteria were not clear and the current 24-25 edition defers to the Maine Human Rights Act in its recognition of gender identity. This may be a missed opportunity to be revisited in terms of physical performance factors.

Fourth, assuring physical equivalence in sports already addressed in the role of weight classes in wrestling, ABCD class ratings in high school sports, etc. Risk of danger is addressed by fouls in basketball and penalties in football, soccer, hockey, lacrosse-- which could be extended to volleyball, e.g. spiking, such as led to a concussion and could have been caused by a powerful player of either gender. Actually, reported instances of cross gender physical harm in sports are very rare.

Accordingly, regulation and legislation should address danger and competition directly, rather than subvert human rights for transgender individuals. Transgender girls who successfully transitioned from male at birth to female gender identity through the use of puberty blockers may be left unable to compete with males who continued to develop and would be prohibited from participating with the girls whose bodies are more similar and with whom they identify. It appears that trans-girls are the ones who would be discriminated against.

If there were regulations about physical development rather than identity it is likely that some trans-women may become ineligible to compete fairly with women, if their physical development was not blocked and had progressed to the performance level of men. However, **their ineligibility would be due to physical performance characteristics, not gender identity or sex at birth.**

In the interest of "equal opportunity", if trans-girls are not able to compete in girls' sports, should girls be allowed to play in boys' sports? Between 2013 and 2021 there were over ten times as many girls who sought approval to play on boys teams, as there were boys (only four) who sought to play on girls teams. As of 4/07/25, the Bangor Daily News reported that there were only two high school transgender athletes.

As religions view gender identities differently, in the US one religion should not be violating the First Amendment by imposing its beliefs on others. A god that created 10 different XY chromosome combinations could also create more than two gender identities. Furthermore, references to a Judeo-Christian god should be respected, but not be the basis for law or regulation. The Constitution and Bill of Rights are designed to be a source of protection for minorities from rule by majorities.

Separately, use of restrooms and bathing are architectural issues, not transgender issues. Use of stalls by both genders means no one has to be disrobed outside of the stall. Group showers is a different issue and I can imagine that girls don't want to have to look at penises or be seen naked by those with penises, however, those are anatomical, not gender identity, issues. Trans-women who have had gender-affirming surgery may not present that challenge. Trans-women retaining male anatomy may need to shower

individually or with those with similar anatomy, but not because of their gender identity. Transwomen who received puberty blockers may have different sexual experience and desires than those who didn't, that is, they may not be more of a sexual threat to girls than other girls. I would note that I am not an expert on trans experience and, certainly, individuals should be invited to speak for themselves about this.

Regarding threat due to transgender use of bathrooms, showers, etc. we are entering new territory for social policy about a rarely occurring problem, in the midst of much more prevalent dating violence and sexual assault which are being neglected and/or defunded.

When I played varsity sports sixty years ago the boys traveling teams regularly showered in the girls locker room, without girls present of course (when they could only play in the Girls Athletic Association). Would the legal language in the LDs allow schools to designate that?

In summary, a presidential order does not change the reality that concepts of chromosomal, gender, identity, hormone levels, physical development, and performance are not interchangeable. Physical performance after puberty is what is key to safety and competition. Laws and regulations should be developed in this reality, to support the best fit of life, liberty, and pursuit of happiness for all youth. Until then, I recommend voting against the LD.

There is research to support the above, more is recommended.

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