



**TESTIMONY OF ALICIA REA, ESQ.
LDs 233, 868, 1002, 1134, 1704 – Ought Not to Pass**

Joint Standing Committee on Judiciary
May 8, 2025

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Senator Carney, Representative Kuhn, and distinguished members of the Joint Standing Committee on Judiciary, greetings. My name is Alicia Rea and I am a policy fellow at the ACLU 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, we urge you to oppose LDs 233, 868, 1002, 1134, 1704.

Introduction

Transgender student athletes want to participate in school sports for the same reasons as any student: to find a sense of belonging and social engagement, to be a part of a team, to get some exercise, to challenge themselves, and to have fun. These bills would exclude trans students from experiencing the benefits of organized sports with their cisgender friends and teammates. Kids who are transgender are just that: kids. All of Maine's kids should be given the same opportunities. Discriminating against certain children will harm their health and safety, and raise a host of privacy concerns.

The legislature, unfortunately, has experience with these sorts of misguided proposals. In 2005, 2007, and 2011, you debated and deliberated extensively on proposals to restrict the legal protections for transgender people.¹ All of those bills were—wisely—rejected, and our hope is that this legislature will reach a similar conclusion. Like those proposals, these bills target a very small number of Maine people in the name of “protection.” But, like those proposals, the real intended result of these proposals is the exclusion of transgender people from public life and the denial of their existence.

In fact, these proposals have a lineage that long predates 2005. They are rooted in the same kind of stereotyping that was used to justify the exclusion of women from the workplace, access to education, and public life generally.²

LD 233: An Act to Prohibit Biological Males from Participating in School Athletic Programs and Activities Designated for Females When State Funding Is Provided to the School

¹ L.D. 1196 (122nd Legis. 2005); L.D. 1589 (123rd Legis. 2007); L.D. 1046 (125th Legis. 2011).

² See *The 100-year History of Sex Testing Female Athletes in Elite Sports*, NPR, Aug. 2, 2024, available at <https://www.npr.org/2024/08/02/nx-s1-5056212/the-100-year-history-of-sex-testing-female-athletes-in-elite-sports>.

Under LD 233, school administrative units could only receive state funding if they exclude trans children from girls' athletic programs and school activities.

Federal courts have consistently overturned state laws banning trans students from equal participation consistent with their gender identity,³ and courts have likewise rejected claims that allowing transgender student-athletes unjustly denies opportunities to cisgender women and girls.⁴

The Maine Human Rights Act was adopted in 1971.⁵ It was then expanded in 2005 to include gender identity and gender expression under the definition of sexual orientation.⁶ This ensures that all students can participate fully in school life—including school sports—without fear of discrimination.

Trans student athlete bans not only violate these longstanding legal protections, but they also open the door to invasive scrutiny of children's bodies based on how they look or how they are perceived, creating harmful and exclusionary school environments.

From reproductive freedom to marriage equality, Mainers have consistently championed laws that protect and expand our individual rights and freedoms, privacy, and bodily autonomy. Any law that allows the government to dictate who can participate or how we should manage our bodies is a blatant and dangerous rollback of those values that could open the door to government intrusion into any aspect of our lives.

Every child should be able to show up as their full self on the field, in the classroom, and in life. This bill would make this goal impossible, subjecting all girls to harmful and invasive scrutiny of their bodies to ensure they are “feminine” enough.

LD 868: An Act to Ensure Equity and Safety in Athletics, Restrooms, Changing Rooms and Housing at Elementary, Secondary and Postsecondary Schools

Similar to LD 233, this bill would ban transgender girls from school sports. But it goes further by also banning trans and non-binary students from using the bathrooms and locker rooms that align with their gender identity.

Restroom Ban

³ See *Hecox v. Little*, 104 F.4th 1061, 1068 (9th Cir. 2024), as amended (June 14, 2024); *B.P.J. by Jackson v. W. Virginia State Bd. of Educ.*, 98 F.4th 542, 550 (4th Cir. 2024).

⁴ *Soule v. Connecticut Ass'n of Sch., Inc.*, 90 F.4th 34, 42 (2d Cir. 2023).

⁵ 5 M.R.S. §4551 et seq.

⁶ 5 M.R.S. §4553(5-C) (2005), amended by P.L. 2019, ch. 464, § 1 (effective Oct. 15, 2020).



LD 868 directly violates a 2014 ruling from Maine's highest court prohibiting this type of discrimination, *Doe v. Regional School Unit 26*.⁷ The court ruled the school district violated the Maine Human Rights Act and discriminated against a transgender student based on that student's sexual orientation (under the 2005 definition of "sexual orientation" contained within the Maine Human Rights Act) when it prohibited the student from using the girls' communal bathroom and required her to use the unisex staff bathroom.⁸ The court noted that when "it has been clearly established that a student's psychological well-being and educational success depend upon being permitted to use the communal bathroom consistent with her gender identity, denying access to the appropriate bathroom constitutes . . . discrimination."⁹

All people, including transgender people, need to use the bathroom, and everyone cares about safety and privacy in restrooms and locker rooms. Proposals like this, which target transgender and gender expansive students only harm Maine children's wellbeing. Unlike claims from proponents of bills like LD 868, they do nothing to prevent assault, which is why more than 250 leading sexual assault and domestic violence advocates oppose laws like this bill.¹⁰

Athletics

The sections of this bill banning transgender girls from school sports will subject girls to intrusive and demeaning scrutiny of their bodies by government officials to determine if they are "feminine" enough.

This bill's private right of action allows any peer, coach, or parent to challenge the gender of a student athlete, whether the athlete attends their own school or a competing school.

LD 1002: An Act to Protect Children's Identification by Requiring Public Schools to Use the Name and Gender Specified on a Child's Birth Certificate

This bill would require schools to refer to a student by the name and gender on their birth certificate, unless a parent gives written permission to use a

⁷ *Doe v. Reg'l Sch. Unit 26*, 2014 ME 11, ¶ 24.

⁸ *Id.*

⁹ *Id.*

¹⁰ See National Task Force to End Sexual and Domestic Violence Against Women, *National Consensus Statement of Anti-Sexual Assault and Domestic Violence Organizations in Support of Full and Equal Access for the Transgender Community*, Apr. 21, 2016, available at <https://endsexualviolence.org/wp-content/uploads/2017/09/STATEMENT-OF-ANTI-SEXUAL-ASSAULT-AND-DOMESTIC-VIOLENCE-ORGANIZATIONS-IN-SUPPORT-OF-EQUAL-ACCESS-FOR-THE-TRANSGENDER-COMMUNITY.pdf>.



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different name and/or gender, or documents detailing a legal change are provided to a school.

This legislation assumes that youth seeking to use a different name or gender than what is printed on their birth certificate have supportive and protective parents who are looking after their best interests. That is true for many transgender people, but unfortunately not all. While parents have a right and responsibility to care for and guide their children, this right is not absolute.¹¹ This bill would jeopardize the safety and well-being of children who do not feel safe sharing details of their lives with their parents. As this legislature knows all too well, some children are not safe in their own homes or may simply feel uncomfortable sharing certain information at home while exploring their identity.

The implementation of this proposal could harm those children.

LD 1134: An Act to Prohibit Males from Participating in Female Sports or Using Female Facilities

This bill would ban any schools receiving state funding from allowing transgender girls to participate in school sports. Additionally, it would ban trans girls from using school facilities "designated for use solely by females." The bill is vague, and the meaning of "facilities" is unclear. This could potentially include a bathroom ban, taking us back more than a decade to debate an issue that has long been settled.

At a minimum, this bill will subject girls to intrusive and demeaning scrutiny of their bodies by government officials to determine if they are appropriately "feminine."

LD 1704: An Act to Prohibit a School Administrative Unit from Adopting a Policy That Allows a Student to Use a Restroom Designated for Use by the Opposite Sex

This bill is a "bathroom ban" that would prohibit schools allowing students to use a bathroom if that bathroom does not correspond to the student's sex assigned at birth.

Under a 2014 Maine Supreme Judicial Court opinion, bathroom bans and restrictions at schools violate the Maine Human Rights Act.¹² Transgender students are part of our community, our families, and our schools. And, just like everyone else, these students need to be able to safely access restrooms.

Conclusion

¹¹ See, e.g., *In re Child of Ryan F.*, 2020 ME 21, ¶ 20, 224 A.3d 1051, 1058.

¹² *Doe v. Reg'l Sch. Unit 26*, 2014 ME 11, ¶ 24.



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Schools, parents, and educators should do everything they can to make sure all youth, including transgender youth, feel accepted for who they are. Schools should create a supportive environment where every single student can receive an education and participate in school activities.

Every Mainer deserves the freedom to be themselves at school, at work, at home, and in life.

We urge you to vote ought not to pass on these bills.