



GLBTQ Legal Advocates & Defenders

**Testimony of GLBTQ Legal Advocates and Defenders  
In Opposition to  
LDs 233, 868, 1002, 1134, and 1704  
Committee on Judiciary  
May 8, 2025**

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

My name is Hannah Hussey, and I am a Maine-based staff attorney with GLBTQ Legal Advocates & Defenders (GLAD Law). GLAD Law is 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. As a graduate of K-12 public schools in Maine, I appreciate the opportunity to submit this testimony on behalf of GLAD Law in opposition to LD 233, LD 868, LD 1002, LD 1134, and LD 1704.

GLAD Law strongly opposes the proposals in these bills to exclude transgender girls from participation in school athletics, discriminate against transgender students in the use of restrooms and other facilities, and place new burdens on schools and parents who simply want kids to focus on learning.

**I. Bills Excluding Transgender Girls from Sports Participation**

*A. The proposed bills would violate the legal rights of transgender student athletes*

Nothing in Title IX or any other state or federal law requires excluding transgender girls from participating on girls' sports teams, as LDs 233, 868, and 1134 would do. In fact, numerous courts have concluded that banning transgender girls from sports violates Title IX and the U.S. Constitution. For example, a federal district court in the First Circuit recently held in favor of two transgender girls challenging a New Hampshire state law that prohibited them from playing on girls' sports team like their classmates. In that case, the court ordered that the girls be permitted to play – determining that both girls were likely to succeed in their arguments that the ban violated both Title IX and the Fourteenth Amendment of the U.S. Constitution (specifically, the Equal Protection Clause).<sup>1</sup>

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<sup>1</sup>*Tirrell v. Edelblut*, 2024 U.S. Dist. LEXIS 162185 (D.N.H. Sept. 10, 2024).

Courts across the country, including two circuit courts, have reached similar conclusions about laws that categorically exclude transgender girls from playing on girls' sports teams, holding that such laws violate or likely violate Title IX or the Equal Protection Clause.<sup>2</sup>

The President's Executive Orders cannot justify an illegal ban, let alone require Maine to impose one. No presidential executive order can rewrite Title IX, let alone the U.S. Constitution, nor can executive orders overturn how courts interpret the law.

In banning transgender girls from sports, the bills would deny them the benefits available to their classmates, including building skills in leadership, communication, teamwork, and perseverance. They would also prohibit transgender students from finding acceptance, belonging, and camaraderie as part of a team. In reaching its decision on New Hampshire's ban on transgender girls in sports, the federal court there highlighted exactly these kinds of severe, irreparable harms – observing that the girls looked to the sports teams as sources of social and emotional support and acceptance. It also noted that banning their participation would subject them to public stigmatization.<sup>3</sup>

*B. The proposed bills would exacerbate sex stereotyping and scrutiny of all girls' bodies*

GLAD Law strongly believes much work is needed to build true equity for girls and women, on and off the field. These bills do not advance that work.

For decades, the law has recognized that sex stereotyping is a form of discrimination. See *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989) (in which a firm put a promotion on hold for a woman described as “macho”, suggesting she walk, talk, dress, and style herself more femininely to improve her chances at advancing within the company). That extends to the education context. Indeed, Title IX regulations issued under the first Trump Administration in 2020 acknowledged that sex stereotyping may constitute unlawful sexual harassment.<sup>4</sup>

Banning transgender girls from participating in school sports would lead to increased scrutiny and sex stereotyping of girls and young women. Any girl perceived as too tall, too fast, or too muscular could come under scrutiny. Any girl with a short haircut or insufficiently feminine attire could risk harassment or bullying. Importantly, none of the proposed sports ban bills explain how enforcement would work in the event of a dispute over a student's sex. LD 233 and

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<sup>2</sup> See, e.g., *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); *L.E. v. Lee*, 2024 U.S. Dist. LEXIS 57803, at \*73–74 (M.D. Tenn. Mar. 29, 2024); *Roe v. Utah High School Activities Ass'n*, 2022 WL 3907182, at \*1 (Utah Dist. Ct. Aug. 19, 2022).

<sup>3</sup> *Tirrell v. Edelblut*, 2024 U.S. Dist. LEXIS 162185 (D.N.H. Sept. 10, 2024).

<sup>4</sup> 85 Fed. Reg. 30478 (May 19, 2020).

LD 1134 refer to “biological sex assigned at birth” to exclude trans girls from girls’ sports teams. LD 868 would rely on a definition of “female” that means an “individual who has, had or will have, or would have but for a developmental or genetic anomaly or historical accident, the reproductive system that at some point produces, transports and uses eggs for fertilization.” This information cannot be found in student records. Schools seeking to prove compliance could subject girls to genital inspections or other invasive “gender checks.”

Risks of scrutiny, stereotyping, and harassment are not speculative. GLAD Law has seen that the impulse to target girls exists, even here in Maine. I recently spoke to a parent in southern Maine who described how her daughter, a high school soccer player, was mistaken as a boy because of her short hair. When she made an outstanding play, spectators on the sidelines commented that boys shouldn’t be allowed on the team – turning what should have been a proud moment for this family into a hurtful one. Policies that embolden parents and competitors to ferret out whether a student is transgender will escalate such targeting. For example, a high school basketball player in Utah was put under police protection due to threats against her, after a state school board member posted photos of her and questioned her gender;<sup>5</sup> her parents described her as a tomboy and suggested that cyberbullying targeted at their daughter could have “led her to take her own life.”<sup>6</sup>

No girl should be subjected to genital inspections, invasive gender checks, public scrutiny, harassment, or ridicule just to join her classmates on the field. The bills are a recipe for chaos. They will distract athletes, coaches, and spectators from the game. And they may well deter girls from playing sports in the first place.

## **II. Bills Requiring Discrimination in Restrooms and Other Facilities**

The harms of these bills go beyond athletics. LD 868, LD 1134, and LD 1704 would force schools to prohibit transgender girls (LD 1134) or all transgender students (LD 868 and LD 1704) from accessing restrooms, changing rooms, and other facilities consistent with their gender identities.

In 2014, the Maine Law Court held that denying a transgender girl access to the girls’ bathroom at school constituted discrimination in violation of the Maine Human Rights Act. *Doe v. Reg’l Sch. Unit 26*, 2014 ME 11, ¶ 24, 86 A.3d 600, 607 (finding the school violated the Maine Human Rights Act where the student was treated differently by being denied access to the girls’

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<sup>5</sup> Erin Alberty, *Utah teen athlete faces threats after state official posted photos questioning her gender*, Axios Salt Lake City (Feb. 4, 2024), <https://www.axios.com/local/salt-lake-city/2024/02/08/utah-school-board-natalie-cline-gender-basketball-threats>.

<sup>6</sup> Emma Tucker, *Utah school district takes steps to protect teen after school board member appears to question girl’s gender on social media*, CNN (Feb. 8, 2024), <https://www.cnn.com/2024/02/08/us/natalie-cline-controversy-student-gender-social-media-posts>.

bathroom). In the years since then, Maine schools have regularly provided nondiscriminatory access to restrooms, locker rooms, and other facilities in a manner that has worked for transgender students and for the school community.

There is no reason to change course now. All bathrooms include locking stalls; anyone can request individual accommodations if they need additional privacy, regardless of the reason. And it goes without saying that schools have the authority to address any inappropriate conduct, of any type, by any student in a bathroom.

Further, adopting these bills would likely violate federal law. Numerous cases across the country have held that Title IX and the Equal Protection Clause require access to facilities in accord with a student's gender identity.<sup>7</sup>

### **III. Bill Regarding Names and Gender Markers at School**

The proposal in LD 1002 to require school personnel to refer to a student by the name and gender marker on that student's birth certificate absent written parental permission or documentation of a legal name or gender change is without basis. Schools and educators need to be able to manage students and getting through the school day – which sometimes includes making informal accommodations that students require, such as using a chosen name except where legally required.

Part of the job of schools is ensuring that students are able to focus on learning. Schools do so, in part, by respecting students as they are. As a practical matter, many students request to go by a name other than their legal name while at school – often using a different version of their name (such as “Bob” for “Robert”) or a middle name, initials, or nickname. If some students can do so now, it raises a question as to why all students cannot continue to do so.

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<sup>7</sup> See, e.g., *Grimm v. Gloucester Cty. Sch. Bd.*, 972 F.3d 586, 616, 619 (4th Cir. 2020), *cert. denied*, 141 S. Ct. 2878 (2021) (holding a school board violated Title IX and the Equal Protection Clause when it applied its bathroom policy – limiting use of restrooms based on “biological gender[]” – to prevent a transgender boy from accessing the boys’ bathroom); *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1050, 1054 (7th Cir. 2017) (holding that a transgender boy prohibited from using the boys’ bathroom had sufficiently established a probability of success on the merits of his Title IX and Equal Protection claims in the context of a preliminary injunction); *A.C. v. Metro. Sch. Dist. of Martinsville*, 75 F.4th 760, 764 (7th Cir. 2023), *cert. denied*, 144 S. Ct. 683 (2024) (declining to overrule *Whitaker*). See also *Doe v. Elkhorn Area Sch. Dist.*, No. 24-CV-354-JPS, 2024 U.S. Dist. LEXIS 136198, at \*47 (E.D. Wis. Aug. 1, 2024); *Dodds v. United States Dep’t of Educ.*, 845 F.3d 217, 221 (6th Cir. 2016) (declining to stay a preliminary injunction that ordered a school district to permit a transgender girl to use the girls’ restroom, citing caselaw stating that “[s]ex stereotyping based on a person’s gender non-conforming behavior is impermissible discrimination” (citation omitted)); *A.H. v. Minersville Area Sch. Dist.*, 290 F. Supp. 3d 321, 324 (M.D. Pa. 2017) (denying a school board’s motion to dismiss Title IX and Equal Protection claims brought by a transgender girl who the school did not allow to use the girls’ bathroom); *M.A.B. v. Bd. of Educ.*, 286 F. Supp. 3d 704, 727 (D. Md. 2018) (denying a board of education’s motion to dismiss Title IX and Equal Protection claims brought by a transgender boy who the school did not allow to use the boys’ locker room).

This bill would create an administrative burden for both schools and parents. For example, it would require parents to provide a student’s birth certificate more often – e.g. when changing schools – and for teachers to know what the birth certificate says before using a nickname in class. Requiring busy parents to give – and schools to track – written consent would likewise create a hassle for parents, confusion and additional work for educators, and barriers for students who want to simply focus on their classwork.

#### **IV. These Bills Will Negatively Impact School Climates**

Together and individually, these bills target a vulnerable minority of students, would be detrimental to school climate, and ought not to pass. They would aggravate problems of bullying and harassment of transgender students and of any student who appears different. It is well documented that transgender students already experience heightened challenges in accessing safe, nondiscriminatory educational environments. The 2023 Maine Integrated Youth Health Survey (MIYHS) report indicated that of transgender high school student respondents, approximately 65 percent reported having been attacked at school or been the subject of offensive comments based on how they expressed their gender, nearly 47 percent had heard offensive sexual comments directed at them, and more than 43 percent reported having been bullied on school property in the previous twelve months.<sup>8</sup>

Such statistics underscore the importance of state law that welcomes students as they are. Maine law aims to welcome students as they are. These bills would be disrespectful to students and disruptive for schools. Schools face many challenges, but their role is to focus on each and every student to make sure they can learn. An ethos that prioritizes student belonging and equal opportunity is important for Maine. For all the above reasons, GLAD Law urges this committee to stand up for transgender students, girls in sports, and all Maine young people by voting ought not to pass on these bills.

Sincerely,

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<sup>8</sup> Maine Integrated Youth Health Survey, *Detailed Reports – Comparisons by Gender, Age, Grade, Hispanic Ethnicity, Race, Sexual Orientation, Public Health District, and County* (Oct. 13, 2023) at 150, 155, 160, [https://www.maine.gov/miyhs/sites/default/files/2023\\_Reports/Detailed\\_Reports/HS/MIYHS2023\\_Detailed\\_Report\\_s\\_HS\\_State/Maine%20High%20School%20Detailed%20Tables.pdf](https://www.maine.gov/miyhs/sites/default/files/2023_Reports/Detailed_Reports/HS/MIYHS2023_Detailed_Report_s_HS_State/Maine%20High%20School%20Detailed%20Tables.pdf)

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