



AMERICAN CIVIL LIBERTIES UNION

Maine

**TESTIMONY OF ALICIA REA, ESQ.
LD 2239 – Ought Not to Pass**

Joint Standing Committee on Judiciary
April 14, 2026

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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 the initiated bill, LD 2239.

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. This citizen-proposed initiative would exclude trans students from experiencing the benefits of organized sports with their friends and teammates. Additionally, this proposal would change long-standing law by banning students from using the bathroom that aligns with their gender identity, something that Maine students have been able to do without any issue for well over a decade.

Kids who are transgender are just that: kids. All of Maine's kids should be given the same opportunities so they can grow into healthy young adults and be full members of their communities. Discriminating against children would not only harm their health and safety, but also raise a host of privacy concerns.

This proposal targets a very small number of Maine people in the name of "protection." But the real, intended result is the exclusion of transgender people from public life and the denial of their existence, similar to past policies prohibiting gay, lesbian, and bisexual people from parts of public life, such as being hired as teachers or serving in the military.¹

In fact, this initiative is rooted in the same kind of stereotyping that was used to justify even broader discrimination that excluded women from the workplace, access to education, and public life generally.²

¹ See *The Legacy of Discriminatory State Laws, Policies, and Practices, 1945-Present*, The Williams Institute, available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/ENDA-5-History-Sep-2009.pdf>.

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>.

The Maine Constitution

The Maine Constitution, like the federal Constitution, includes an Equal Protection Clause: “No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of that person's civil rights or be discriminated against in the exercise thereof.”³ The federal Constitution establishes the floor, not the ceiling, for our constitutional protections. Maine courts recognize the Maine Constitution as our primary source of rights and interpret those rights independently of—and often more broadly than—corollary rights under the U.S. Constitution.⁴

When analyzing gender-based classifications in the context of an equal protection challenge, courts apply heightened scrutiny: “a party seeking to uphold government action based on sex must establish an ‘exceedingly persuasive justification’ for the classification.”⁵ Importantly, “present provisions of the Constitution bind not only the Legislature but the people.”⁶ Put simply, the people of Maine cannot pass an unconstitutional law through the referendum process. This proposal would raise serious legal questions under the Equal Protection Clause of the Maine Constitution.

Designation of Athletic Teams

The Maine Human Rights Act was adopted in 1971.⁷ It was then expanded in 2005 to include gender identity and gender expression under the definition of sexual orientation.⁸ This expansion was upheld by the voters in November 2005 when a People’s Veto campaign was defeated.⁹ This law has ensured that all students can participate fully in school life—including school sports—without fear of discrimination.

Trans student athlete bans not only violate 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

³ Me. Const. art. I, § 6-A.

⁴ “[F]ederal decisions do not serve to establish the complete statement of controlling law but rather to delineate a constitutional minimum or universal mandate for the federal control of every State.” *State v. McLain*, 2025 ME 87, ¶29 (citing *State v. Caouette*, 446 A.2d 1120, 1122 (Me. 1982)).

⁵ *United States v. Virginia*, 518 U.S. 515, 524, (1996).

⁶ *Common Cause v. State*, 455 A.2d 1, 16 (Me. 1983) (citing *Opinion of the Justices*, 132 Me. 519, 522, 174 A. 845, 846 (1933)).

⁷ 5 M.R.S. §4551 et seq.

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

⁹ See Votes on People’s Vetoes: 2005, An Act To Extend Civil Rights Protections to All People Regardless of Sexual Orientation, Maine State Legislature, available at <https://legislature.maine.gov/lawlibrary/votes-on-peoples-vetoes/9205/>.



exclusionary school environments. 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 long-held Maine values about bodily autonomy that could open the door to government intrusion into many aspects 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 initiative would make that goal impossible, subjecting all girls to harmful and invasive scrutiny of their bodies to ensure they are “feminine” enough.

Designation of Private Facilities

The initiative also includes a “bathroom ban” that extends to other private spaces in public schools. Students have been able to use the bathroom that aligns with their gender for over a decade without issue.

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.

Proposals like this, which target transgender and gender expansive students, only harm Maine children’s wellbeing. Contrary to claims from proponents of this initiative, 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

Conclusion

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 – just as this legislature affirmed in 2005 and voters reaffirmed, that same year.

We urge you to vote ought not to pass on this legislation.

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>.