



### **Testimony in Support of LDs 233, 868, & 1134:**

**“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,” “An Act to Ensure Equity and Safety in Athletics, Restrooms, Changing Rooms and Housing at Elementary, Secondary and Postsecondary Schools,” & “An Act to Prohibit Males from Participating in Female Sports or Using Female Facilities”**

Senator Carney, Representative Kuhn, and the distinguished members of the Committee on Judiciary, my name is Harris Van Pate and I serve as policy analyst for Maine Policy Institute. Maine Policy is a free-market think tank, a nonpartisan, non-profit organization that advocates for individual liberty and economic freedom in Maine. Thank you for the opportunity to offer our support for LDs 233, 868, and 1134.

Maine Policy Institute supports the goal of these bills because they intend to reform and clarify our state’s sports programs. Specifically, they propose that biological sex, not self-declared gender identity, serve as the defining criterion for participation in female-designated sports and use of corresponding facilities in public schools and publicly-funded educational institutions.

### **Objective Standards Promote Fairness and Safety**

The cornerstone of good governance is the establishment of clear, objective rules that are evenly applied. Using biological sex as a standard is straightforward and verifiable. It eliminates ambiguity for schools, coaches, and administrators and provides a level playing field for students. In contrast, policies that rely on gender identity, which may be fluid,<sup>1</sup> self-defined,<sup>2</sup> and unverifiable,<sup>3</sup> introduce unnecessary subjectivity and inconsistency into school policy enforcement. This is particularly problematic when fairness, safety, and the integrity of competition are at stake.

Biological differences between males and females, especially in strength, speed, and endurance, are well-documented scientifically and relevant in most competitive sports.<sup>4</sup> When policies allow biological males to participate in female-designated sports, they raise serious fairness and safety concerns. This can discourage female participation, undermine equal opportunity protections established under Title IX, and increase the risk of physical injury in contact sports.

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<sup>1</sup> <https://www.health.harvard.edu/blog/gender-fluidity-what-it-means-and-why-support-matters-2020120321544>

<sup>2</sup> <https://www.npr.org/2021/06/02/996319297/gender-identity-pronouns-expression-guide-lgbtq>

<sup>3</sup> <https://pmc.ncbi.nlm.nih.gov/articles/PMC8596152/>

<sup>4</sup>

<https://acsm.org/biological-basis-sex-differences-athletic-performance/#:~:text=Adult%20males%20are%20stronger%2C%20more,30%25%20depending%20on%20the%20event.>



By aligning team participation and facility access with biological sex, these bills create a bright-line rule that minimizes confusion and litigation while promoting consistency across schools and districts.

### **Administrative Simplicity and Legal Clarity**

From a regulatory standpoint, a biological sex-based policy is far easier to administer than one based on self-identification. It reduces the potential for disputes, protects the rights of all students to safe and equitable treatment, and shields schools from potential liability that may arise when students feel forced to compete or share private spaces with members of the opposite sex.

Moreover, the bills provide a proactive defense for institutions implementing such policies, protecting them from punitive actions by accrediting bodies or athletic associations. This is a prudent and necessary safeguard to ensure that Maine schools can prioritize safety and fairness without fear of reprisal.

### **On the issue of bathrooms/facilities access**

While membership on athletic teams of one's preference is not a settled legal issue nationwide, there appears to be a larger judicial consensus on bathroom access. Several federal circuits have ruled on this issue, and the Maine Supreme Judicial Court ruled that access to bathrooms of one's gender identity is protected by the Maine Human Rights Act in the 2014 case *Doe v. Regional School Unit 26*.<sup>5</sup>

In our eyes, the issues of sports team membership and bathroom access have very different safety and competition interests. Thus, while we support the sections of these bills that clarify sport teams membership, the complex issue of bathroom access should be addressed in a separate bill. This is because there are significant differences in the interests of students involved, and there are additional intricacies to the bathroom issue added by the *RSU 26* state court case, as well as federal precedence.

### **Conclusion**

Maine Policy Institute urges lawmakers to support LD 233, LD 868, and LD 1134, not out of ideology, but out of a commitment to clear, practical, and enforceable public policy. These proposals uphold a fundamental principle: rules in our schools should be based on objective reality, not subjective perception. This clarity is essential to ensuring fairness, safety, and equal opportunity for all Maine students.

Thank you for your thoughtful consideration.

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<sup>5</sup> <https://law.justia.com/cases/maine/supreme-court/2014/2014-me-11.html>