



**Statement by Janson Wu, Esq.,
Executive Director, GLBTQ Legal Advocates & Defenders (GLAD),
before the Senate Judiciary Committee,
in support of House Bill 1319,
An Act Prohibiting Discrimination on the Basis of Gender Identity**

Dear Honorable Chairperson Carson and Members of the Committee:

I am grateful for the opportunity to testify in **strong support of House Bill 1319, An Act Prohibiting Discrimination on the Basis of Gender Identity, which passed the House with strong bipartisan support and without amendment.** This legislation would update Chapter 354-A to add “gender identity” protections to New Hampshire’s non-discrimination protections, which already prohibit discrimination in employment, housing and public accommodations, on the basis of age, sex, religion, physical or mental disability, marital status or sexual orientation. **Already, 18 states, including Iowa, Colorado, and every other New England state, have passed similar protections, beginning with Minnesota in 1993.**

As the Executive Director of GLBTQ Legal Advocates & Defenders (GLAD), New England’s leading legal rights organization dedicated to ensuring legal equality for LGBTQ people and people living with HIV, I have seen up close the pervasive discrimination faced by transgender people in housing, employment, and public places.

And it is shocking. For example, a 2015 survey of transgender people in NH (<http://www.ustranssurvey.org>) revealed that:

- More than one in five (21%) respondents who had a job in the past year reported being fired, being denied a promotion, or experiencing some other form of mistreatment related to their gender identity or expression in the past year.
- Nearly one-quarter (23%) of respondents experienced some form of housing discrimination in the past year, such as being evicted from their home or denied a home or apartment because of being transgender.
- More than one in five (22%) experienced at least one type of mistreatment in the past year in a public place, such as a hospital, restaurant, or business.

Without HB 1319, it is substantially harder, if not impossible, for transgender people to seek legal protection, when they face discrimination. That is why there is such a need for this law.

HB 1319 will ensure that transgender individuals and their families can go to the store, eat at a restaurant, and receive the health care they need from a hospital without being turned away simply because of who they are. It will protect transgender employees so they can focus on doing their best work, instead of worrying about being harassed by their coworkers. And HB 1319 will ensure that people don’t lose their homes because someone discovers that they are transgender.

Unfortunately, those who oppose fairness and freedom for everyone have presented **inaccurate and misleading arguments against HB 1319**. The remainder of my testimony rebuts those myths and fear tactics.

1. Opponents employ the scare tactic that HB 1319 will endanger women's safety. Instead, HB 1319 will enhance public safety for everyone. Safety and privacy, including in restrooms, is important for all of us. That's why we already have laws in place that make it illegal to harm or harass people, or invade their privacy. Nothing in HB 1319 will change or remove those existing protections against harassment or violence.

In the more than 200 cities and 18 states across the U.S.—including every other New England state—that have passed and successfully implemented these laws to protect transgender people from discrimination, there's been no increase in public safety concerns in restrooms in any of those cities or states. That's why women's and domestic violence organizations like the New Hampshire Coalition against Domestic and Sexual violence (NHCADSV) supports HB 1319, as do chiefs of police across New Hampshire. And that's why businesses such as Planet Fitness have had a transgender nondiscrimination policy for years.

2. Opponents falsely argue that HB 1319 will force businesses and employers to have to construct new restrooms. The truth is that nothing in this legislation will prohibit the continuation of separate bathrooms for men and women, or require the construction of new, gender-neutral restrooms. Opponents cannot point to any examples to support their argument.

Men will continue to use the men's restrooms, and women will continue to use the women's restrooms. All HB 1319 will do is affirm the existing practice of allowing men who are transgender to use the men's bathroom, and women who are transgender to use the women's bathroom.

3. Opponents wrongly claim that HB 1319 will trample on religious freedom. In fact, HB 1319 respects the religious liberty of all New Hampshire residents. Freedom of religion is an important and foundational right in our country. That's why it's protected by the First Amendment to the Constitution, and by the NH State Constitution. HB 1319 cannot supercede these constitutional protections for religious liberty.

In addition, Chapter 354-A already contains broad protections for religious organizations, which would also apply to transgender nondiscrimination should HB 1319 be enacted. For example, 354-A:18 protects the ability of religious organizations to limit admission or give preference "to persons of the same religion or denomination or from making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained." Likewise, 354-A:13 allows religious organizations to limit the "sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons" under certain circumstances.

At the same time, the rule of law is critical to the proper functioning of our legal system. When private individuals enter the marketplace as employers, businesses, and landlords, they agree to follow the same rules as everyone else. Otherwise, as the New

Hampshire Supreme Court has stated: “If all men were to take the position that individual opinions are equivalent to rights, law would be replaced by anarchy.” *State v. Drew*, 192 A. 629, 632 (1937). Or as the late Justice Scalia, a well-known man of faith, explained in a seminal U.S. Supreme Court case about the free exercise of religion: “To make an individual's obligation to obey such a law contingent upon the law's coincidence with his religious beliefs . . . permitting him, by virtue of his beliefs, “to become a law unto himself” . . . contradicts both constitutional tradition and common sense.” *Smith v. Dept. of Hum. Resources*, 494 U.S. 872, 879 (1990).

At the end of the day, religious freedom is one of our country's fundamental values, and that freedom doesn't give any person the right to impose their beliefs on others. HB 1319 preserves our country's important protections for religious liberty, while also ensuring that our laws are able to protect all individuals, including transgender people, from discrimination.

4. Opponents argue that HB 1319 will prevent colleges and universities from providing women-specific scholarships, or maintain women-only sports teams. Yet they are unable to point to one example where transgender nondiscrimination protections led to such a result. HB 1319 simply requires that transgender women be treated as women, and transgender men be treated as men, when it comes to employment, housing, and public spaces.

5. Opponents urge that New Hampshire should enshrine protections for transgender people through the state's constitution and not through its statutes. However, constitutional protections are not sufficient to protect transgender people from discrimination in all spheres of public life. constitutional protections of equal treatment and due process apply only to state action – e.g. the actions of the state government, agencies, and municipalities. It does not regulate the conduct of private actors, such as private employers, landlords, and businesses. HB 1319 would ensure that transgender people are protected against being fired from their jobs, evicted from their homes, and refused service at a restaurant and business, regardless of whether the discriminatory actor is a governmental or private entity.

6. Opponents mislead when they claim that HB 1319 will force the state to pay for transition-related health care. Instead, HB 1319 has nothing to do with the inclusion of transition-related health care within the state's Medicaid program. Federal law already prohibits state Medicaid programs from categorically excluding transition-related health care from coverage. New Hampshire has already changed its regulations to include coverage of transition-related surgery, in order to comply with federal law.

7. Finally, opponents argue that HB 1319's definition of gender identity is too vague and will encourage a flood of litigation. In fact, HB 1319's definition of gender identity will prevent fraudulent claims. The definition builds upon similar definitions that have been used in the 18 states and over 200 municipalities that have passed transgender non-discrimination laws throughout the country. Most importantly, HB 1319's definition of gender identity states that such identity must be a consistent and sincerely held part of a person's core identity, and that it may not be asserted for any

improper purpose. Those specifications in the definition help prevent against fraudulent claims.

A General Accounting Office (GAO) study showed in 2013 that discrimination claims by transgender people in the states with nondiscrimination laws make up a very small percentage of overall discrimination claims. The GAO reported that for every year between 2006 and 2012, the percentage of overall claims that alleged discrimination based on gender identity varied from state to state, ranging from 0.1% - 1.9% of all claims.

Finally, courts are also well able to interpret the scope of these definitions, and national corporations and employers rely upon consistency in these definitions in order to implement employment practices that are consistent across state lines.

Conclusion

Over 30 years ago, Minneapolis became the first municipality to adopt transgender-specific non-discrimination language. Since then, 18 states and over 200 municipalities have adopted similar measures. In addition, there are hundreds of employers and dozens of universities with non-discrimination policies protecting transgender people.

New Hampshire is a place of opportunity and freedom—where people who work hard, take responsibility for their lives, and meet their obligations have the chance to get ahead. We believe hardworking Americans deserve to be treated fairly and equally under the law, and that when every American is given the opportunity to work hard and earn a living, our state and nation will succeed.

It is time for New Hampshire to join this national movement towards equality and freedom from discrimination, regardless of who they are. Thank you for your consideration, and I hope you will support HB 1319 without amendment.

Submitted by:

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