

**Statement by Chris Erchull, Attorney, GLBTQ Legal Advocates and Defenders,
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Harvard Law School LGBTQ+ Advocacy Clinic, representing Seacoast Outright,
before the House Health, Human Services and Elderly Affairs Committee,
in OPPOSITION to House Bill 619,
An Act Prohibiting Gender Transition Procedures for Minors, Relative to Sex and Gender in Public
Schools, and Relative to the Definition of Conversion Therapy**

Honorable Chair MacDonald and Members of the Committee:

Thank you for taking the time to consider our statement in opposition to House Bill 619, An Act Prohibiting Gender Transition Procedures for Minors, Relative to Sex and Gender in Public Schools, and Relative to the Definition of Conversion Therapy. This devastating legislation would eviscerate the rights of some of New Hampshire’s most vulnerable youth while failing to further the interests of anyone in the state.

As representatives of GLBTQ Legal Advocates and Defenders (GLAD), New England’s leading legal rights organization dedicated to ensuring equality for LGBTQ people and people living with HIV, and Seacoast Outright, a community organization providing youth with a safe space to discuss gender and sexuality, we are deeply opposed to legislation stripping rights from LGBTQ youth. GLAD and Seacoast Outright submit this written testimony to highlight three important points to underscore our opposition.

1. HB 619 would ban safe, effective, and medically-necessary healthcare while repealing New Hampshire’s prohibition on dangerous, discredited conversion “therapy”
2. HB 619 would make public schools hostile to transgender youth and deny them equal access to education
3. HB 619 is unconstitutional and is in conflict with state and federal anti-discrimination law

1. HB 619 Would Ban Safe, Effective, and Medically-Necessary Care

Transgender people, including transgender youth, often experience gender dysphoria – alienation, distress or discomfort with their birth sex.¹ Gender dysphoria is a severe medical condition and, if left untreated, it can result in anxiety, depression, self-harm, and suicidality.² Thankfully, we have safe, effective, and evidence-based treatments for gender dysphoria. These treatments – known collectively as gender affirming care – are endorsed by all major medical associations, including the American

¹ Jason Rafferty, *Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents*, 142(4) *American Academy of Pediatrics* (Oct. 2018), <https://publications.aap.org/pediatrics/article/142/4/e20182162/37381/Ensuring-Comprehensive-Care-and-Support-for> (Committee on Psychosocial Aspects of Child and Family Health, Committee on Adolescence and Section on Gay, Lesbian, Bisexual and Transgender Health and Wellness).

² *Id.*

Medical Association, the American Academy of Pediatrics, and the Endocrine Society.³ Experts agree gender transition healthcare is effective at alleviating dysphoria and allowing transgender people to live as their authentic selves.⁴ Transgender youth whose gender dysphoria is treated can succeed and thrive just like their non-transgender peers.⁵ Like any other type of medical treatment for young people, doctors and parents are best suited to determine the appropriate treatment, within accepted standards of care, without interference from the state.

The well-established treatments to address gender dysphoria in youth are also widely accepted to treat a range of other youth medical conditions. For example, puberty blockers and hormone therapy have been routinely proscribed off label for decades to treat a variety of endocrinal conditions in non-transgender youth.⁶ These treatments are effective, widely-practiced, and non-controversial.

Just as HB 619 rejects scientific expertise on gender affirming care, it ignores the scientific consensus on conversion “therapy.” Conversion “therapy” is a dangerous, discredited practice based on an “unfounded misconception of gender identity and sexual orientation,” according to the American Medical Association.⁷ The AMA recognizes the strong evidence that conversion “therapy” causes “significant, long-term harm” including depression, anxiety, and lowered self-esteem in victims.⁸ The Legislature confronted this reality when they banned the destructive practice of conversion “therapy” for youth in 2018.⁹ HB 619 functionally repeals the ban on conversion “therapy” and by passing it, this Legislature would be rescinding that promise to protect LGBTQ youth. By only prohibiting youth conversion “therapy” that is against a child’s “clearly expressed will,” HB 619 puts an impossible burden of proof on young victims.

2. HB 619 Would Deny Transgender Youth the Full Benefit of a Public School Education

All students in New Hampshire’s public schools are entitled to an education that respects their rights to be themselves, and reflects and prepares them for the world around them. Unfortunately, HB 619

³ See Trans Health Project, *Medical Organization Statements on Transgender Health Care*, <https://transhealthproject.org/resources/medical-organization-statements/> (collecting statements from organizations).

⁴ Rafferty.

⁵ Kristina Olson, et al., *Mental Health of Transgender Children Who Are Supported in Their Identities*, 137(3), *Pediatrics* (Mar. 2016).

⁶ Pediatric Endocrine Society, *Precocious Puberty: A Guide for Families* (June 17, 2020), <https://pedsendo.org/wp-content/uploads/2020/06/E-Precocious-Puberty.pdf>; Richard Sadovsky, *Testosterone Therapy in Boys with Delayed Puberty*, 59(7) *American Family Physician* (Apr. 1999).

⁷ American Medical Association, *Issue Brief: Sexual Orientation and Gender Identity Change Efforts*, <https://www.ama-assn.org/system/files/conversion-therapy-issue-brief.pdf>.

⁸ *Id.*

⁹ NH RSA § 332-L:1.

makes New Hampshire's public schools less safe, less effective, and less free. It strips rights from transgender students while forcing teachers to give all students a limited, incomplete education.

HB 619 would force teachers to ignore the identities of their transgender students and refer to them with the wrong name and pronouns. Transgender youth cannot focus on learning when they are not afforded the dignity and respect due to all students. Further, HB 619 would ban almost all classroom discussion of transgender people. This prohibition does a disservice to all of New Hampshire's students by censoring their teachers and leaving them unprepared to participate in a diverse world.

HB 619 would also exclude transgender students from school bathrooms. This creates a dangerous dilemma for transgender youth: they can risk harassment and abuse by using the wrong bathroom, while potentially exacerbating gender dysphoria, or they can try to avoid using school bathrooms altogether and risk health complications like urinary tract infections.¹⁰ Affirming the identity of transgender youth is also crucial to their health and well-being – youth who have access to affirming spaces have more opportunities for healthy socialization and report lower rates of attempting suicide.¹¹ This provision harms transgender students while not serving anyone's interests.¹²

School sports are not spared from HB 619's overreach. School sports are an important part of education because they teach youth important values like teamwork, sportsmanship, and self-discipline. Students who participate in school sports also tend to get better grades, which can affect their future opportunities.¹³ HB 619 would isolate transgender students from these opportunities for development and expose them to ridicule by excluding them from their school sports teams. Like marriage and the military, sports are a cardinal institution in America, and being excluded from institutions like these marginalizes people from the fabric of American society. In addition, enforcement of this sort of ban would require invasive government sex policing that infringes on the privacy of all students, like similar bans in other states.¹⁴ Aggressive surveillance of children's bodies is incompatible with New Hampshire's values.

¹⁰ *Grimm v. Gloucester Cty. Sch. Bd.*, 972 F.3d 586 (4th Cir. 2020), *Reh'g denied* 976 F.3d 399 (4th Cir. 2020) (en banc), *Cert. denied* 141 S. Ct. 2878 (2021).

¹¹ Trevor Project, *2022 National Survey on LGBTQ Youth Mental Health*, https://www.thetrevorproject.org/survey-2022/assets/static/trevor01_2022survey_final.pdf.

¹² Transgender-inclusive bathroom policies do not lead to any increases in privacy or safety violations in bathrooms. Amira Hasenbush, et al., *Gender Identity Non-Discrimination Laws in Public Accommodations*, 16(1) *Sexuality Research & Social Policy* (July 2018).

¹³ Christopher Wretman, *School Sports Participation and Academic Achievement in Middle and High School*, 8(3) *Society for Social Work and Research* (Fall 2017).

¹⁴ Paul Blest, *Parents Demanded School Check the Gender of Girl Who Beat Their Kids in Sports*, *Vice News* (August 18, 2022). Proposals in Ohio and Florida would have required examinations of girls' "reproductive anatomy" and mandatory questions about girls' menstrual period frequency, respectively. Anna Staver, *Fact Check: Ohio Bill Banning Transgender Girls from Female Sports Could Require Genital Checks*, *Columbus Dispatch* (June 7, 2022) <https://www.dispatch.com/story/news/2022/06/07/bill-transgender-athletes-could-require-genital-checks->

3. HB 619 Conflicts with State and Federal Law

In addition to these disastrous human consequences, HB 619 would be a legal nightmare for New Hampshire. It conflicts with a host of state and federal laws, including both the United States and New Hampshire Constitutions, and opens schools and hospitals up to massive financial risks. As the bill itself admits, its violation of federal civil rights law risks “disallowance of federal matching funds under Medicaid.” Granite Staters deserve better than to throw away taxpayer dollars on legal fights to score political points against a vulnerable minority.

Bans on healthcare for transgender youth violate the constitutionally protected rights of transgender youth and their parents. When Arkansas passed a similar ban, the Eighth Circuit Court of Appeals blocked it because gender transition-related healthcare is “the recognized standard of care for adolescent gender dysphoria” which “is supported by medical evidence that has been subject to rigorous study.”¹⁵ Further, federal law prohibits sex discrimination in healthcare receiving federal funding,¹⁶ including Medicare and Medicaid, and Justice Department guidance makes clear that banning gender affirming care is prohibited sex discrimination.¹⁷ This sex discrimination also violates Article 2 of the New Hampshire Constitution, which guarantees “equality of rights” regardless of sex.

The experiences of transgender students in other states are instructive in understanding the harm inherent in HB 619. When Nicole Maines was in fifth grade, her Maine public school revoked her access to the girls’ bathroom after she was harassed by another student because she is a transgender girl.¹⁸ Nicole’s family was forced to move to another district that would accommodate her, but they sued the

[girls/7529718001/](https://www.time.com/2023/02/01/florida-student-athletes-menstrual-history/); Anisha Kohli, *Florida May Force High School Athletes to Disclose Their Menstrual History*, Time (February 1, 2023), <https://time.com/6252147/florida-student-athletes-menstrual-history/>.

¹⁵ *Brandt v. Rutledge*, 47 F.4th 661 (8th Cir. 2022) (internal quotations omitted). See also *Eknes-Tucker v. Marshall*, 2022 U.S. Dist. LEXIS 87169 (M.D. Ala. 2022) (blocking Alabama’s ban on gender affirming care for violating parents’ “fundamental right to direct the medical care of their children”).

¹⁶ 42 U.S.C. § 18116.

¹⁷ U.S. Department of Justice, *Letter to State Attorneys General Reinforcing Federal Nondiscrimination Obligations* (March 31, 2022), <https://www.justice.gov/opa/press-release/file/1489066/download>; see also *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020) (holding “it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.”)

¹⁸ *Doe v. Reg’l Sch. Unit 26*, 2014 ME 11 (Me. 2014).

schools that denied her equal access to school facilities.¹⁹ After nearly six years of costly litigation, the Supreme Judicial Court of Maine ruled in Nicole’s favor.²⁰ Nicole is now an award-winning actress.²¹

Gavin Grimm had a similar fight when his Virginia school district stopped letting him – a transgender boy – use the boys’ bathroom.²² This decision by the district when Gavin was in tenth grade was destructive to his physical and mental health.²³ Gavin’s family sued and went through an arduous six-year litigation process. Ultimately, after the Fourth Circuit Court of Appeals ruled in Gavin’s favor and the Supreme Court declined to hear the school district’s appeal, the district agreed to pay \$1.3 million in legal fees to Gavin’s attorneys.²⁴

Nicole and Gavin’s cases are not unique. The vast majority of courts to consider school bathroom policies have supported transgender students’ rights to use the bathroom that reflects how they live and express themselves throughout all other areas of their lives, in and out of school.²⁵ These courts have found the bans violate the Equal Protection Clause of the U.S. Constitution and Title IX of the Educational Amendments of 1972, which bans sex discrimination in education. In New Hampshire, this form of discrimination is also prohibited by Article 2 of the Constitution and New Hampshire’s 2018 and 2019 bans on discrimination based on sex or gender identity in public schools.²⁶

Just like its bathroom ban, HB 619’s requirement for teachers to use the wrong name and pronouns for transgender students conflicts with federal and state laws against sex discrimination. The Fourth Circuit Court of Appeals ruled in Gavin’s case that a Virginia school’s refusal to update his name in his school

¹⁹ *Id.*

²⁰ *Id.*

²¹ Lisa Respers France, *Nicole Maines: Get to Know TV’s First Transgender Superhero*, CNN (July 23, 2018), <https://www.cnn.com/2018/07/23/entertainment/nicole-maines-supergirl/index.html>; IMDB, *Nicole Maines*, https://www.imdb.com/name/nm7414233/?ref=nm_pub.

²² *Grimm*.

²³ *Id.*

²⁴ Dennis Romero, *Virginia Board to Pay \$1.3 Million in Transgender Student’s Suit*, NBC News (Aug. 28, 2021), <https://www.nbcnews.com/news/us-news/virginia-school-board-pay-1-3-million-transgender-student-s-n1277861>.

²⁵ See, e.g. *Grimm*; *Dodds v. United States Department of Education*, 845 F.3d 217 (6th Cir. 2016); *Whitaker v. Kenosha Unified Sch. Dist.*, 858 F.3d 1034 (7th Cir. 2017); *Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518 (3d Cir. 2018); *Parents for Privacy v. Barr*, 949 F.3d 1210 (9th Cir. 2020); *Carcaño v. McCrory*, 203 F. Supp. 3d 615 (M.D.N.C. August 26, 2016); *Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267 (W.D. Pa. Feb. 27, 2017); *J.A.W. v. Evansville Vanderburgh Sch. Corp.*, 323 F. Supp. 3d 1030 (S.D. Ind. August 3, 2018); *A.C. v. Metro. Sch. Dist. of Martinsville*, 601 F. Supp. 3d 345 (S.D. Ind. Apr. 29, 2022); *B.E. v. Vigo Cnty. Sch. Corp.*, 2022 WL 2291763 (S.D. Ind. June 24, 2022); *N.H. v. Anoka-Hennepin School District No. 11*, 950 N.W.2d 553, 573 (Minn. Ct. App. 2020). *But see Adams v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791 (11th Cir. 2022) (*en banc*).

²⁶ In 2018, the Legislature added "gender identity" to the list of protected classifications in the New Hampshire law prohibiting discrimination in places of public accommodation. RSA 354-A:17. In 2019, the Legislature expressly added protections for students in public schools. RSA 193:38-39.

records violated Title IX and the Equal Protection Clause of the U.S. Constitution.²⁷ The Supreme Court denied the state’s invitation to overturn this ruling. Further, this refusal by schools to recognize their students as themselves violates the First Amendment rights of transgender students to freely express themselves. Schools may only infringe on students’ First Amendment rights when it is necessary to prevent “substantial disruption” to school activities.²⁸ Allowing students to be themselves is best practice for optimal student learning, not disruptive, and courts have long held that schools cannot justify restrictions on students’ free expression of their gender identity.²⁹

We urge the committee to reject this assault on transgender youth. Please vote inexpedient to legislate and preserve New Hampshire’s protections for vulnerable children. The evidence is clear that affirming transgender youth is the best way to allow them to grow into healthy, thriving adults. This legislature accepted that evidence when it banned discrimination in schools and conversion therapy for youth, and there is no reason to reverse course now and harm this vulnerable group.

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²⁷ *Grimm*.

²⁸ *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969).

²⁹ See, e.g., *Doe v. Yunits*, No. 00-1060-J638, 2000 Mass. Super. LEXIS 491 (Mass. Super. Oct. 11, 2000), *aff’d sub nom.*, *Doe v. Brockton School Commission*, No. 2000-J-638, 2000 Mass. App. LEXIS 1128 (Mass. App. Ct. Nov. 30, 2000); cf. *Fricke v. Lynch*, 491 F. Supp. 381 (D.R.I. 1980) (holding that a gay student’s choice of guest at school prom was a form of free expression protected by the First Amendment).