



Oppose SB 562 – Protect Transgender Rights in New Hampshire

Senate Bill 562, an Act Relative to State Recognition of Biological Sex, **has a clear intent to undermine the equal protections granted to all Granite Staters and discriminate based upon one's gender identity.** SB 562 promotes the exclusion of transgender people from sports, bathrooms, and safer carceral settings, each of which are key aspects of navigating life as a transgender person. The bill authorizes discrimination against transgender people.

SB 562 would undermine and conflict with existing state & federal protections for Granite Staters. In 2020, the landmark U.S. Supreme Court decision in *Bostock v. Clayton County* recognized that it is employers cannot discriminate against a person based on their sexual orientation or gender identity without discriminating against that person based on sex.ⁱ In 2021, influenced in part by this decision, the U.S. Department of Education's Office for Civil Rights issued a Notice of Interpretation explaining that it would enforce Title IX's prohibition on sex discrimination in schools to include: (1) discrimination based on sexual orientation; and (2) discrimination based on gender identity. The statute applies to all aspects of education.ⁱⁱ Moreover, since 2018, the Granite state has banned discrimination in employment, public accommodations, housing based, and schools on gender identity (see RSA 354-A.)ⁱⁱⁱ

There have been numerous court decisions determining that laws excluding transgender people from aspects of public life violate federal laws and constitutional protections. See, e.g., *Grimm v. Gloucester Cty. Sch. Bd.*, 972 F.3d 586, 608-09 (4th Cir. 2020), as amended (Aug. 28, 2020), cert. denied, No. 20-1163, 141 S. Ct. 2878 (2021). Further, there is no right for anyone to be free from a place that includes transgender people. In fact, courts have consistently rejected claims to the contrary. See, e.g., *Doe v. Boyertown Area School District*, 897 F.3d 518 (3d Cir. 2018); *Parents for Privacy v. Barr*, 949 F.3d 1210 (9th Cir. 2020).

Because this legislation prompts separation based on birth sex, it would authorize prisons, jails, and other facilities in New Hampshire to disregard the safety of transgender and gender-nonconforming inmates. This may manifest in housing placements, or the ability to shower safely & separately from other inmates. Under the Prison Rape Elimination Act (PREA), an individual's increased risk of facing sexual predation should be a consideration in housing decisions, and incarcerated transgender people are especially vulnerable to sexual violence. The federal law mandates that transgender inmates' housing placement needs be reviewed thoroughly, and "consideration should be given to the transgender or intersex inmate's own views about his or her safety."^{iv} Moreover, the Federal Bureau of Prisons has a robust policy that considers many factors, including the safety of all inmates, when making housing determinations for transgender and gender nonconforming inmates.^v

SB 562 sends a harmful message to those whose gender identity is not aligned with their birth sex. Invalidating one's gender identity more broadly is not only discriminatory, but harmful to one's wellbeing because it exacerbates the symptoms of gender dysphoria and deprives that person of equal access to various aspects of public life. The American Psychological Association has released a statement whereby it encourages *both* "legal and social recognition of transgender individuals consistent with their gender identity and expression."^{vi}

Policies that exclude transgender individuals are bad for public health. The inclusive policies currently in place in New Hampshire do not legalize or undermine existing laws on harassment, stalking,



violence, or sexual assault. Research finds that there is no link between trans non-discrimination laws that allow inclusive access to public facilities and risks to safety.^{vii} Conversely, school policies that deny access to gender-congruent school restrooms and locker rooms are associated with greater sexual assault among transgender and non-binary teens.^{viii} The same argument can be made regarding sports. According to Dr. Deanna Adkins, a pediatric endocrinologist at Duke University Hospital, when transgender students are told they cannot participate equally in sports because of their gender identity that “condones, reinforces, and affirms the transgender students’ social status as outsiders or misfits who deserve the hostility they experience from peers.”^{ix} Experiences of discrimination like this are associated with a higher prevalence of suicide thoughts and attempts.^x Athletic associations like the NCAA have their own standards for ensuring competitive fairness.^{xi} It is unnecessary for legislators to impose additional and unnecessary barriers to entry for transgender athletes seeking to be a part of a team.

This bill is hostile and serves to alienate transgender individuals. Excluding trans and gender nonconforming individuals any area of life sends them the message that they are not worthy of the same kinds of opportunities as their classmates, colleagues, neighbors, and friends. People who are trans need support and affirmation, not to be a political target.

The ACLU of New Hampshire stands in solidarity with individuals who face discrimination based on their gender and urges the Committee to vote decisively that this bill is inexpedient to legislate.

Oppose SB 562 – Don’t Roll Back New Hampshire’s Non-Discrimination Protections

ⁱ Cornell Law School, “*Bostock v. Clayton County*” 2020, found at <https://www.law.cornell.edu/supremecourt/text/17-1618>

ⁱⁱ U.S. Department of Education, June 2021, “*U.S. Department of Education Confirms Title IX Protects Students from Discrimination Based on Sexual Orientation and Gender Identity*” found at: <https://www.ed.gov/news/press-releases/us-department-education-confirms-title-ix-protects-students-discrimination-based-sexual-orientation-and-gender-identity>

ⁱⁱⁱ GLAD, “*Discrimination: Transgender Rights in New Hampshire*.” found at: <https://www.glad.org/issues/discrimination-transgender-rights-new-hampshire/>

^{iv} Lexipol, July 29, 2022, “*Transgender Inmates: Treating Them Fairly, Keeping Them Safe*,” found at: <https://www.lexipol.com/resources/blog/addressing-housing-and-safety-for-transgender-inmates/>

^v Federal Bureau of Prisons, *Transgender Offender Manual*, Jan 2022, found at: <https://www.bop.gov/policy/progstat/5200-08-cn-1.pdf>

^{vi} The American Psychological Association, “Resolution: Transgender, Gender Identity, and Gender Expression Non-Discrimination,” found at <https://www.apa.org/about/policy/transgender.pdf>

^{vii} Hasenbush, A., Flores, A.R. & Herman, J.L. Gender Identity Nondiscrimination Laws in Public Accommodations: a Review of Evidence Regarding Safety and Privacy in Public Restrooms, Locker Rooms, and Changing Rooms. *Sex Res Soc Policy* 16, 70–83 (2019). <https://doi.org/10.1007/s13178-018-0335-z>

^{viii} Murchison, Gabriel R., Madina Agénor, Sari L. Reisner, and Ryan J. Watson. "School restroom and locker room restrictions and sexual assault risk among transgender youth." *Pediatrics* 143, no. 6 (2019). <https://publications.aap.org/pediatrics/article-abstract/143/6/e20182902/76816>

^{ix} Chase Strangio, Gabriel Arkles, *Four Myths About Trans Athletes, Debunked*, April 2020, ACLU, found at: <https://www.aclu.org/news/lgbtq-rights/four-myths-about-trans-athletes-debunked>

^x UCLA School of Law Williams Institute, *Discrimination experiences increase the prevalence of suicide attempts among transgender adults*, September 2019, found at: <https://williamsinstitute.law.ucla.edu/press/trans-suicide-discrim-press-release/>

^{xi} Sport Science Institute, *Transgender Student-Athlete Participation Policy*, April 2023, found at <https://www.ncaa.org/sports/2022/1/27/transgender-participation-policy.aspx#:~:text=Beginning%20Aug.%201%2C%202024%2C%20participation%20in%20NCAA%20sports,body%20policies%29%20as%20reviewed%20and%20approved%20by%20CSMAS>.