



**TESTIMONY OF MARY L. BONAUTO for GLBTQ LEGAL ADVOCATES
& DEFENDERS & EQUALITY MAINE**

**LD 1444 – OUGHT NOT TO PASS
COMMITTEE ON EDUCATION AND CULTURAL AFFAIRS
May 4, 2021**

Senator Rafferty, Representative Brennan, and Honorable Members of the Committee on Education and Cultural Affairs: Good Morning. My name is Mary Bonauto, and I am an attorney at GLBTQ Legal Advocates & Defenders (GLAD). GLAD is a legal rights organization that works throughout New England and nationally to create a just society free of discrimination based on gender identity and expression, HIV status, and sexual orientation. Joining us in this testimony is EqualityMaine.

GLAD and EqualityMaine oppose LD 1444, *An Act To Prohibit Cyberbullying of School Employees by Students* because it creates a crime that will have disastrous collateral effects for young people over their lifetimes and will not accomplish its goals in any event. The anti-bullying law enacted in 2011 recommends that schools consider “alternative discipline” rather than school exclusion or criminal penalties for addressing the consistent bullying of socially marginalized students. 20-A MRS sec. §6554 (2).¹ Other bills before the Legislature rightly seek to explore the uses of restorative processes to promote responsibility and accountability without exclusion from school or channeling young people into the criminal system.

At the same time, GLAD and EQME support policies to prevent both student *and* teacher maltreatment, by computer or otherwise, that create a hostile or unequal educational or work environment. We understand the importance of the issues of a safe and respectful learning and work environments. The existing anti-bullying law begins with findings, including that “All students have the right to attend public schools that are safe, secure, and peaceful environments,” *id.* at §1, and there is a great deal of work to do to make this a reality.

Although criminal laws may apply to some of the behaviors identified in the bill, creating more crimes will not solve this problem. We would like to see dedicated, enhanced, and creative efforts to build schools as zones of mutual respect that help prepare students for success in a diverse and ever-changing world and in which teachers and staff can support student learning and development. State policy is inevitably part of the equation – including clarity about the necessity of building positive school environments, building social and emotional learning, and helping students learn about the consequences of their actions and, as much as possible, take responsibility

¹ The anti-bullying law would benefit from an updated and more robust articulation of “alternative discipline” to use restorative models, among others, and to eliminate in-school suspension and other exclusionary discipline.



and be accountable without exclusionary punishments. 20-A MRS §6554 (2)(defining alternative discipline).

On a legal note, the bill is unlikely to provide the protections it seeks because it will face difficult legal challenges should it become law. Among many other things, the bill creates a crime from both speech and conduct, and that guarantees a serious challenge. The bill is not tethered to the school's obligation to provide a non-discriminatory work environment, which also heightens the question of First Amendment infirmities. There is also the question of a school's ability to regulate and discipline for a student's off-site comments on social media that spilled over into the school. *See* B.L. v. Mahanoy Area Sch. Dist., 964 F.3d 170 (3d Cir. 2020). Moreover, many of the terms used are subject to questions about vagueness.

In sum, GLAD and EQME are very supportive of both our teachers and school staff and all they can share with and inspire in students, but want to see this matter handled through clear policy, prevention and creative efforts to build respectful cultures at school.

Sincerely yours,

Mary L. Bonauto, Esq.
Civil Rights Project Director
GLBTQ Legal Advocates & Defenders
mbonauto@glad.org
257 Deering Ave., #203
Portland ME 04103