



**Testimony of GLBTQ Legal Advocates & Defenders (GLAD Law)
Before the House Transportation Committee
in opposition to HB 1165
An Act Relative to Gender Designation on State-Issued Identification**

Dear Chair Walsh, Vice Chair Gorksi, and members of the Committee:

GLBTQ Legal Advocates and Defenders (GLAD Law) is New England's leading legal rights organization dedicated to ensuring legal equality for LGBTQ people and people living with HIV. As attorneys with GLAD Law, we ask this Committee to oppose HB 1165 for the following reasons:

1. This bill needlessly undoes bipartisan legislation that has been in place without issue for over six years. In 2019, the State of New Hampshire passed HB 669, which provided for "X" sex markers on state identification documents. HB 669 received the support of a 15-3 majority in this committee, and a 3-1 majority in the Senate Transportation Committee. The full House and Senate each approved the bill by voice vote, and it became law under former Governor Sununu. Since its January 1, 2020, effective date, this uncontroversial law has made it possible for Granite Staters who are neither exclusively male nor exclusively female to obtain accurate identification documents. There have been no significant problems associated with the addition of the "X" sex marker. There is no reason for the state to revisit a bipartisan law that has been in place without issue for over six years.

2. Accurate identification is important for the dignity and safety of people who are neither exclusively male nor exclusively female. Although most people are either male or female, a small but meaningful number of people do not fit neatly into either category. "Nonbinary" is a term for a person who lives neither as exclusively male nor exclusively female. Nonbinary individuals who suffer from gender dysphoria experience a deep, persistent, insistent, and consistent incongruence with their birth sex. Gender transition, the most common treatment for gender dysphoria, usually involves social transition,

including updating legal identification documents to reflect the nonbinary person's sex. Social transition can alleviate the significant distress associated with gender dysphoria. The availability of "X" sex markers on state identification cards recognizes the reality of non-binary people and affords them the dignity that flows from state recognition. One Grante Stater reported that they "cried a little bit out of happiness" when they were finally able to obtain an accurate state identification card.¹ Denying nonbinary individuals access to accurate identification documents will cruelly exacerbate their distress and force them to carry state identification cards that do not correctly identify them.

In addition, the broad category of people who are neither exclusively male nor exclusively female includes individuals who are intersex. The United Nations Office of the High Commissioner for Human Rights describes intersex individuals as those who are "born with physical or biological sex characteristics (such as sexual anatomy, reproductive organs, hormonal patterns and/or chromosomal patterns) that do not fit typical binary notions of male or female bodies."² Experts estimate that up to 1.7% of the population are born with intersex traits.³ Some intersex individuals consider themselves to be male or female, while others do not consider themselves to be exclusively male or exclusively female.

If HB 1165 becomes law, it will deny nonbinary and intersex individuals access to state identification cards that accurately reflect who they are. It will also create issues because many nonbinary and intersex individuals with "X" gender markers on their state identification cards also have "X" gender markers on other forms of identification, such as birth records and passports. Such mismatches can result in time-consuming and costly confusion.

¹ Annmarie Timmins, *State Eliminates Documentation Requirement for Gender X Marker on Licenses, Identification Cards*, N.H. BULLETIN, Aug. 18, 2021 (available at <https://newhampshirebulletin.com/briefs/state-eliminates-documentation-requirement-for-gender-x-marker-on-licenses-identification-cards/>).

² Intersex People: OHCHR and the Human Rights of LGBTI People, (last accessed Feb. 16, 2026) (available at <https://www.ohchr.org/en/sexual-orientation-and-gender-identity/intersex-people>).

³ *Id.*

3. Policies that restrict the ability of nonbinary people to accurate identification are inconsistent with the U.S. and New Hampshire Constitutions. Expressive conduct is protected by the First Amendment of the U.S. Constitution.⁴ Courts have held that this includes transgender individuals' right to express their sex.⁵ Part I, Article 22 of the New Hampshire Constitution similarly protects freedom of expression, and the New Hampshire Supreme Court has read that protection to include an individual's right to self-expression on state-issued vanity license plates.⁶ Taken together, these rulings demonstrate that a transgender person's constitutional right to free expression includes the right to designate their sex on state-issued documents, such as state identification cards and driver's licenses. Laws that compel transgender individuals to use inaccurate identification documents deny them their right to free expression and violate the U.S. and New Hampshire constitutions.

For these reasons, this Committee should reject HB 1165 and vote ITL.

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⁴ See, e.g., *Texas v. Johnson*, 491 U.S. 397 (1989); *Spence v. Washington*, 418 U.S. 405 (1974).

⁵ See, e.g., *Zalewska v. County of Sullivan*, 316 F. 3d 314 (2d Cir. 2003); *Doe v. Yunits*, 2001 Mass. Super. LEXIS 327 (Mass. Super. Ct. Oct. 11, 2000), *aff'd sub nom Doe v. Brockton Sch. Comm.*, 2000-J-638, 2000 Mass. App. LEXIS 1128 (2000).

⁶ *Montenegro v. N.H. Div. of Motor Vehicles*, 116 N.H. 215 (2013).