

TESTIMONY

Hearing 04/16/2025 @ 10:30

Re: **SB268**
To: **House Judiciary Committee**
From: **TD Smith, RA**
Ashland, NH 00000

I **oppose** this bill. Please vote ITL or NO.

Transgender and intersex people have always existed among us. In all that time, they have been using sex segregated spaces to match their gender identity, regardless of their birth 'biology'. While traditionally, the state has recognized that certain spaces or occupancies are intended for one of two general categories, this has always failed to recognize that not only are there other categories that are not considered, but that sometimes in about .5% of the population the sex assumed at birth (what this bill terms 'biological') is not the correct sex for that individual, whether intersex or transgender. This bill is attempting to remove the personhood and fundamental human rights of anyone who is intersex or transgender in three critical settings – bathrooms, locker rooms and secure psychiatric / correctional settings. This endangers the lives of, and strips constitutional rights from intersex and transgender citizens.

Bills like this are being successfully challenged in courts nationwide:

- 1) This bill discriminates on the basis of transgender status, intersex status and sex. If it was signed into law. Gender identity and Sex are suspect classifications (RSA354-A) and because equal treatment on the basis of sex and gender identity is a fundamental right, the bill if signed into law would be subject to strict scrutiny.
- 2) **This bill, if signed into law, would fail Strict Scrutiny** because it is motivated by animus and supported by no evidence that its restrictions advance its purported purpose to protect women's safety and privacy.
 - a. This bill makes women's spaces LESS safe by requiring transmasculine men (which this bill would call 'biological women') to use the women's restroom. Transmasculine people, are men. You are, through this legislation, forcing men to use the women's restroom.
 - b. Further, this bill is making it easier for a 'biological man' to walk right into the women's restroom since they will no longer look out of place.
 - c. The truth is, that women (including transgender women) FEAR BIOLOGICAL MEN, and rules and doors in public restrooms do not stop a perpetrator from acting in appropriately.
 - d. This legislation encourages the public to start judging one another by appearance. Women who are not deemed 'feminine' enough by whatever arbitrary standard is used will be potentially physically endangered.
 - e. Enforcement of this bill, if signed into law, is impossible. People will police this based on appearances, rather than any scientific method. The logical conclusion is that the only way to police this is with genital inspections, which are already being mandated in schools in some states that have passed similar bills into law.

Question: Who will be allowed to examine your daughter's private areas? A school principal? A school nurse? A coach? THAT is putting women and girls in danger, not protecting them.

- 3) Further, this bill, if signed into law, would violate the constitutional rights of transgender and intersex people to privacy, because decisions about gender expression are personal and private, as is information about a person's transgender or intersex status, anatomy, genetics, and medical history. The bill infringes on these personal and private decisions and information.
- 4) Further, this bills, if signed into law, would seriously burden transgender and intersex persons rights to pursue life's basic necessities. Legal access to restrooms and other sex-separated facilities consistent with a person's gender identity is a basic necessity. Under this bills language however, transgender people cannot use sex-separated facilities that correspond with their gender identity and intersex people cannot use se-separated facilities at all.
- 5) Further, this bill, if signed into law, would violate due process by giving intersex people no notice of how they can comply with the law. Intersex people do not fit in the bill's definition of 'male' or 'female' – because 'biological sex', 'male', and 'female' are left to be defined by whomever chooses to discriminate.
- 6) Further, this bill if signed into law, will cause transgender and intersex people irreparable harm. The loss of constitutional rights constitutes an irreparable injury. Transgender and intersex people are concretely harmed because this bills text:
 - a. Denies them access to restrooms, changing rooms and other spaces that align with their gender identity.
 - b. Puts them in harm's way by requiring housing based on 'biological sex' rather than gender identity in correctional and secure psychiatric housing. This increases the risk of assault on their persons.
- 7) Further, this bill has been put forth as a solution to a problem that doesn't exist. There is no credible evidence of any case where actual harm has been shown to cisgender people because transgender or intersex people are able to:
 - a. Access and utilize sex-segregated spaces that align with their gender identity,
 - b. Be housed in secure psychiatric or correctional environments that align with their gender identity.

If signed into law, this bill will be successfully challenged in court, and the State may be liable for civil damages and irreparable harms caused.

PLEASE VOTE ITL or NO.