



STATE OF MAINE
DEPARTMENT
OF THE
SECRETARY OF STATE

SHENNA BELLOWS
SECRETARY OF STATE

May 28, 2026

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Re: Final Ballot Question for “An Act to Designate School Sports Participation and Facilities by Sex”

Dear Mr. Streiff:

I am writing to notify you of my provisional determination of the final wording of the ballot question for your initiated legislation, “An Act to Designate School Sports Participation and Facilities by Sex” (the “Act”), should it be reinstated to the ballot. Although the Act is not currently eligible to appear on the November 2026 ballot due to the Revised Determination of Validity I issued on May 26, 2026, I recognize that my determination is likely to be the subject of ongoing litigation. Since it is unclear when that litigation will be finally resolved, I am providing you with the ballot question now, on a provisional basis, to ensure there is adequate time to resolve any challenge to the wording of the question before the deadline for finalizing ballots for printing.

On April 7, 2026, I released a proposed ballot question for the initiative: “Do you want to change civil rights and education laws to require public schools to restrict access to bathrooms and sports based on the gender on the child’s original birth certificate and allow students to sue the schools?” Members of the public had 30 days to submit comments on the proposed wording. During that period, this Office received approximately 3,300 comments. The comment period closed on May 7, 2026.

I have reviewed and considered all public comments submitted during the comment period. Based on my consideration of those comments, I have determined that the final wording of the ballot question will be as follows:

“Do you want to change civil rights and education laws to require public schools to restrict access to bathrooms, other private spaces, and sports, based on the sex on every child’s original birth certificate, and allow students to sue the schools?”

My reasoning follows.

The Maine Constitution requires ballot questions to be presented “concisely and intelligibly.” Me. Const. art. IV, pt. 3, § 20. Similarly, state law requires that a ballot question be written “in a clear, concise and direct manner that describes the subject matter of the people’s veto . . . as simply as is possible.” 21-A M.R.S. § 906(6). The Maine Supreme Judicial Court has explained that the question should allow voters reading the question for the first time in the voting booth to “understand the subject matter and the choice presented.” *Titcomb v. Sec’y of State*, 2025 ME 63, ¶ 22, 340 A.3d 88. The wording of the question may presume that voters have “discharged their civic duty to educate themselves about the initiative before reading the question.” *Id.* at ¶ 11. Moreover, the question “need not provide complete, comprehensive information about the legislation or its effect.” *Id.* ¶ 13.

The Act seeks to impose new requirements on public schools¹ and entities that govern interscholastic or competitive sports by public schools (“sports entities”). It contains several notable provisions:

- The Act would require public schools and sports entities to restrict students’ eligibility for athletic teams based on their sex. Specifically, the Act would require schools and sports entities to designate teams as male, female, or coeducational, and to restrict eligibility for those teams designated male or female based on the sex of the child. The Act defines *sex* as “a person’s biological status as male or female recorded at birth on the person’s original birth certificate.” The Act includes an exception that allows female students to participate on male athletic teams if there is no available team designated for females.
- The Act requires schools to maintain separate restrooms, locker rooms, shower rooms, and other private spaces for each sex.
- The Act provides—in part by amending the Maine Human Rights Act—that compliance with the Act may not be considered unlawful discrimination under the Maine Human Rights Act.
- The Act provides that a student who is deprived of an athletic opportunity or suffers direct injury due to a violation of the Act may sue the school or sports entity for injunctive relief, monetary damages, and attorney’s fees.

¹ A “public school” as used in Title 20-A of the Maine Revised Statutes, where Act’s requirements would be codified, is defined as “a school that is governed by a school board of a school administrative unit and funded primarily with public funds.” 20-A M.R.S.A. § 1(24).

The most frequent or notable public comments on the draft question included the following:

- Commenters objected to the draft question's use of the term "gender," arguing that "sex" should be used instead;
- Commenters objected to the question's use of the phrase "change civil rights . . . laws";
- Commenters objected to the question's inclusion of a description of Act's private right of action;
- Commenters proposed adding various language to supplement "bathrooms and sports," to make clear that the Act would also apply to locker rooms, showers, and other private spaces;
- Commenters proposed adding language to make clear that the Act's eligibility requirements apply to every student, not just those who identify as transgender;
- Commenters objected to the phrase "restricting access";
- Commenters objected to "original birth certificate" as an incomplete description of how sex is to be determined, suggesting that the phrase "provided at birth" should be added.

I also received public comments specifically praising the same aspects of the question that were the subject of some of the criticisms above. For example, I received multiple comments praising the draft question's reference to changing civil rights law, its use of the phrase "restrict access," and its description of the Act's private right of action.

I address each of these categories below:

Use of "Gender"

The most common criticism of the draft question was its description of the Act's restrictions as based on "gender" rather than "sex." Various comments argued that "gender" and "sex" have distinct meanings and should not be used interchangeably. In addition, the Act itself exclusively uses the term "sex" and contains a definition of that term. I am persuaded that these terms should not be used interchangeably in this context and that the question should use the Act's exact terminology in describing this key aspect of the Act. I have therefore edited the final question to substitute "sex" for "gender."

Reference to changing “civil rights” law

Many comments were critical of the draft question’s description of the Act as “chang[ing] civil rights . . . laws.” Some suggested that portion of the question be omitted altogether as an inaccurate description of the Act. Others suggested I use “policies” instead of laws. Some suggested I use language like “remove” or “repeal” “existing protections” from the civil rights and education laws. Some suggested I use the word “discrimination.” One commenter suggested adding the qualifier “Maine.”

I have concluded that this aspect of the draft question is accurate and appropriate as written. The first provision of the Act is an amendment to 5 M.R.S.A. § 4602, which is a provision in the Maine Human Rights Act. The Law Court has described the Maine Human Rights Act as “our state’s counterpart to the federal discrimination law, Title VII of the Civil Rights Act of 1964.” *Maine Hum. Rts. Comm’n v. Maine Dep’t of Def. & Veterans’ Servs.*, 627 A.2d 1005, 1007 (Me. 1993). The Maine Human Rights Act provides that it is unlawful educational discrimination to exclude a person from participation in academic, extracurricular, and other programs or activities or to deny a person equal opportunity in athletic programs based on “gender identity,” among other protected characteristics. 5 M.R.S.A. § 4602(1)(A)–(B). The Act would add an exception to this antidiscrimination rule, providing that it may not be “construed to conflict with the provisions of [the Act].” Moreover, apparently to avoid any doubt, the Act would simultaneously enact a new provision in Title 20-A stating that “[s]eparation of athletic teams and private spaces by sex under this section does not constitute unlawful discrimination under [the Maine Human Rights Act].”

These amendments plainly change Maine’s civil rights laws. Indeed, section 1 of the Act expressly changes Maine’s civil rights laws by adding a new paragraph to the Maine Human Rights Act. And the provision to be added to Title 20-A, while not a direct amendment of the Maine Human Rights Act, operates in a manner indistinguishable from such an amendment by specifying that the Act is exempt from its antidiscrimination rule. In short, the question’s observation that the Act would change civil rights law is fully accurate.

Moreover, it is appropriate for the question to mention this aspect of the Act. Under current Maine law, discrimination in educational opportunities based on gender identity is prohibited. By exempting the Act from this rule, the Act would make a substantive change to the policy embedded in Maine’s current civil rights laws. In other words, the Act is not just creating a new policy, it is reversing the existing policy set forth in Maine’s civil rights laws. It is proper for the ballot question to make reference to such a significant change in law.

I am unpersuaded by the various other comments suggesting specific changes to this aspect of the question. Some of these changes would add unnecessary words, making the question less concise. Others would risk editorializing rather than stating the

question in a neutral manner. And some, such as changing “laws” to “policies,” would make the question less precise. I decline to make any of these changes.

Inclusion of the private right of action.

Some commenters objected to the final clause of the question, describing the private right of action created by the Act. Commenters suggested that the description was false, inflammatory, and wrongly implied that a private right of action was an unusual remedy for a civil rights violation.

There is no question that the Act contains a private right of action that would allow a new class of civil lawsuits to be brought against public schools for violation of the Act. The Act contains express language creating that new right of action in subsection 8 of the proposed 20-A M.R.S.A. § 4602.

I also conclude that the private right of action provision is an important part of the legislation, such that it warrants inclusion in the ballot question. It is the sole specified means of enforcing the Act’s requirements. Moreover, contrary to the suggestion of some commenters, voters will not necessarily assume that the Act is enforceable via private civil action. Given its placement in Maine’s education laws, voters could just as easily assume that the Act would be enforced administratively by the Department of Education. For the ballot question to omit any mention of the private right of action would seem obfuscatory.

I was also unpersuaded by the other comments concerning this provision. Changing the question to use words like “permit lawsuits for violations” or “private right of action for violations of these requirements” or “legal cause of action for violations” would do little to improve clarity. Adding more detail to the question, such as adding “for unlimited money damages and attorney’s fees” or “at potential cost to school districts and taxpayers” or “for lost athletic opportunity or direct injury caused by a violation of these provisions” or “for unlimited damages,” would significantly lengthen this portion of the question with unnecessary detail, potentially running afoul of my obligation to make the question concise.

A few comments suggested that this portion of the question should be amended to state that the Act would allow students and “parents” to sue the school. While it may be true as a practical matter that parents will often be in control of litigation under the Act since the named plaintiffs will often be minors, the text of the Act limits suits to “students.” Adding “parents” would thus be more likely to mislead voters than illuminate the Act.

Finally, commenters requested that I specify which students would be allowed to sue the school. Although the Act specifies two broad categories of students who could sue under the Act, adding this information to the question would make it unnecessarily

verbose. Voters must be assumed to have educated themselves on the details of the legislation, and, in any event, are unlikely to be surprised that the students who can sue are those who have been “deprived of an athletic opportunity” or “suffer[] direct injury because of a violation of [the Act].”

“Bathrooms and Sports”

Some commenters criticized the draft question for referring to the matters that would be regulated under the Act as “bathrooms and sports.” Commenters argued that this description was underinclusive since the Act also mentions “locker rooms, shower room and other private spaces.” Commenters suggested expanding the description to include “other private spaces” or “private facilities.”

Although the ballot question need not describe every aspect of the proposed legislation, I am persuaded that it would improve the clarity of the question to make clear that the Act covers more than just bathrooms and sports. I have therefore added “other private spaces” to the final question. This language is taken directly from the Act and encompasses the “locker rooms” and “shower rooms” also mentioned in the Act.

“[T]he child’s” versus “every child’s.”

Multiple comments pointed out that the Act would apply to every child. A commenter pointed out, for example, that the Act would apply to “cisgender girls” who may need to establish their eligibility to participate on a team designated for females. I am persuaded by these comments that the question should be clarified to make clear to voters that the eligibility requirements of the Act apply to all students, regardless of their gender identity, in that it may require any student to establish that they meet the new eligibility requirements imposed by the act. I therefore have edited the draft question to replace “the child’s” with “every child’s.”

“Restrict Access”

Some commenters objected to the phrase “restrict access,” for various reasons, including that it allegedly mischaracterizes the Act, which, according to the commenters, is aimed at “keeping girls safe” and “giving them a fair chance.”

I disagree that “restrict access” somehow mischaracterizes the Act. Whatever the intentions of the Act’s drafters, the Act effectuates those intentions by restricting access to sports teams and certain private spaces. Indeed, the sports provisions of the Act specifically provide that teams “must be *restricted* to” students with the required sex. And while the “privacy in facilities” subsection does not use the word “restrict,” it uses synonymous language, stating that a member of one sex “may not be permitted” to use a facility designed for the opposite sex. In any event, a ballot question should describe the

contents of the proposed legislation, not the subjective intentions of its authors. I therefore decline to make any changes to the draft question based on these comments.

“Provided at birth”

A few commenters suggested that the question should specify that the birth certificate on which the child’s sex is recorded must be the certificate “provided at birth.” These commenters contended that adding this language would clarify that the birth certificate must be the first birth certificate issued, and could not be, for example, a birth certificate issued after an adoption, even if that certificate did not alter the child’s sex.

While I appreciate the concern of these commenters that the birth certificate requirement may be onerous for some children, I must also be cognizant of my duty to keep the question concise and simple. In my view, “original birth certificate” sufficiently indicates to voters that a specific version of the birth certificate is required. While more detail could be helpful to some subset of voters, it would also make the question more verbose and complex. Limiting the description to “original birth certificate” also has the virtue of quoting the Act directly. In contrast, the phrase “provided at birth” does not appear anywhere in the Act. I therefore decline to make changes to the question in response to this comment.

Other comments

In addition to the comments addressed above, I have also reviewed and considered all other comments that were submitted. I have accepted one such comment, which correctly pointed out that a comma should appear after “sports.” I have made this change to the final question.

Other comments offered a wide variety of proposed changes to the questions. Some suggested I should use artificial intelligence to write the question. I reject this suggestion as inconsistent with my constitutional and statutory obligation to “write the question.” 21-A M.R.S.A. § 906(6)(2); *see* Me. Const. art. IV, pt. 3, § 20. Some suggested I include reference to genitalia or nudity. I reject these suggestions because those terms or concepts do not appear in the Act. Several commenters proposed completely different questions. I reject these suggestions since, even if the proposed questions improved on the draft question (and, in my view, they did not) adopting them would deprive the public of a meaningful opportunity to comment on them. Another commenter suggested adding language to indicate that the Act originated out of state. I rejected this comment because it is outside the proper scope of the ballot question and, in any event, is not accurate, given that the application for the Act was submitted by a group of registered Maine voters. I also rejected other miscellaneous comments not specifically recounted here.

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Conclusion

In short, I conclude that the final question stated above satisfies my mandate to write the ballot question “in a clear, concise and direct manner that describes the subject matter of the . . . direct initiative as simply as is possible.” 21-A M.R.S.A. § 906(6).

A voter named in the application for this direct initiative as well as any other aggrieved voter may appeal this final decision to Superior Court within 10 days of the date of this decision, pursuant to 21-A M.R.S. § 905(2).

Sincerely,



Shenna Bellows
Secretary of State