



AMERICAN ATHEISTS

January 21, 2019

The Honorable Sen. Jim Bolin
Chair, Senate Education Committee
State Capitol Building
500 East Capitol Avenue, Room 423
Pierre, SD 57501-5070

Re: OPPOSITION for Senate Bill 49, a bill to deny participation in public school athletics activities to transgender students

Dear Chairperson Bolin and Members of the Senate Education Committee,

American Atheists, on behalf of its constituents in South Dakota, writes in opposition to SB 49, a controversial bill which would intensify systemic discrimination against transgender students in South Dakota's high school athletics programs. SB 49 would require transgender student athletes to be identified by the gender assigned on their birth certificate or, if the student lacks a birth certificate, noted by a physician on the South Dakota High School Activities Association Physical Exam Form. We urge you to vote against this discriminatory bill because it would violate federal law, it is extremely harmful to young people, and it would discourage the athletic participation of transgender students.

American Atheists is a national civil rights organization that works to achieve religious equality for all Americans by protecting what Thomas Jefferson called the "wall of separation" between government and religion created by the First Amendment. We strive to create an environment where atheism and atheists are accepted as members of our nation's communities and where casual bigotry against our community is seen as abhorrent and unacceptable. We promote understanding of atheists through education, outreach, and community-building and work to end the stigma associated with being an atheist in America. We reject efforts to undermine the education, acceptance, and well-being of gender diverse students based on the religious beliefs of lawmakers and educators.

SB 49 is unnecessary, and it harms an already vulnerable population of young people. Since 2015 the South Dakota High School Activities Association (SDHSAA) has allowed students to participate "regardless of their gender identity or expression in an environment free from discrimination" and "in a manner that is consistent with their gender identity, irrespective of the gender listed on a student's records."¹ These standards were adopted in based on national best practices, they accorded with federal non-discrimination protections, and they have served the students of South Dakota well for the past 4 years. There is no evidence that these rules have caused any problems in South Dakota schools. Instead, the rules have provided schools with much needed guidance on an issue which may be unfamiliar to many educators and administrators. Supporters of this bill insist, without evidence, that

¹South Dakota High School Activities Association (2015). South Dakota High School Activities Association Transgender Procedure. Available at <https://www.sdhxaa.com/Portals/0/PDFs/TransgenderProcedure.pdf>.

the gender assigned at birth is necessary to achieve ensure fairness in athletic competition. However, by doing so they are willing to sacrifice young people who already face a great deal of discrimination and to undermine the sound judgement of the SDHSAA.

Perhaps most importantly, this legislation would make transgender students far more susceptible to bullying and harassment in South Dakota due to state-mandated exclusion and opprobrium. The 2015 U.S. Transgender Survey described the rampant bullying and harassment that transgender students already face, concluding that:

- Fifty-four percent (54%) of those who were out or perceived as transgender in K–12 were verbally harassed, and 24% were physically attacked; and
- Seventeen percent (17%) of those who were out or perceived as transgender left a K–12 school because the mistreatment was so bad.²

The South Dakota Senate has a clear choice in this matter, either they choose to intensify the unnecessary victimization of a historically marginalized demographic of students or to foster empathy and diversity and set a precedent of equality by rejecting SB 49. Interscholastic sports encourage teamwork, inclusivity, self-confidence and determination amongst the students that participate, and thus, athletic opportunities should be equally available and encouraged for all students.

Lastly, we note that this bill stands in opposition to the requirements of federal Title IX,³ which courts have interpreted to both prohibit discrimination on the basis of sex stereotyping and transgender status.⁴ By passing this bill, the South Dakota Legislature would unnecessarily create liability for both school districts and the South Dakota High School Activities Association under federal law.

We urge you, please do not contribute to the discrimination against transgender young people by passing this bill. Please do not pass this intolerant legislation under a false conception of “fairness.” If you should have any questions regarding American Atheists’ opposition to SB 49, please contact me at 908.276.7300 x9 or by email at agill@atheists.org.

Very truly yours,



Alison Gill, Esq.
Vice President, Legal and Policy
American Atheists

² James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). The Report of the 2015 U.S. Transgender Survey. Washington, DC: National Center for Transgender Equality.

³ 20 U.S.C. §§ 1681–1688.

⁴ See Movement Advancement Project (2019). Federal Court Decisions. Available at <http://www.lgbtmap.org/equality-maps/federal-court-decisions>.