

SB 46 Testimony SSA – 1.14.22

Good Morning Mr. Chairman and Members of the committee.

My name is Jett Jonelis and I am the Advocacy Manager and a lobbyist for the ACLU of South Dakota. I'd like to thank you for the opportunity to testify in opposition of Senate Bill 46 today.

The ACLU of South Dakota opposes this bill because it is an unconstitutional attack on transgender women and girls, that will jeopardize their mental health, physical well-being and ability to access education opportunities comparable to their peers.



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If passed, Senate Bill 46 would violate the Constitution's Equal Protection Clause. Because this bill singles out transgender girls and young women based on the fact that they have a gender identity that does not match the sex assigned to them at birth, it necessarily discriminates on the basis of sex and trans status, triggering heightened equal protection scrutiny under the Constitution. To overcome such scrutiny in court, the state would have to demonstrate an exceedingly persuasive justification for Senate Bill 46. Given that there is no evidence of any type of transgender dominance in sports the South Dakota legislature has not offered the necessary justification.

In 2020, an Idaho court enjoined a similar ban on transgender women and girls participating in women's athletics and reached the "inescapable conclusion that the Act discriminates on the basis of transgender status" and thus triggered heightened scrutiny. Last year another sports ban in West Virginia was also enjoined at least as applied to the plaintiff in the legal challenge and the district court concluded that a transgender girl plaintiff was likely to succeed on her Equal Protection and Title IX claims.

If passed, Senate Bill 46 would also violate Title IX of the Civil Rights Act of 1964. Title IX protects all students—including students who are transgender—from discrimination based on sex. The overwhelming majority of courts to consider the issue have held that discrimination against transgender students in schools is prohibited sex discrimination under Title IX. By violating Title IX, this bill puts South Dakota schools at risk of losing hundreds of millions of dollars in federal education funding.

Ultimately, this bill violates the United States Constitution and federal civil rights law, puts South Dakota at risk of losing hundreds of millions of dollars in federal funding, and harms transgender youth, all to solve a problem that plainly does not exist. Transgender students deserve the chance to succeed and thrive like any other student. For these reasons, we urge you to vote no.

Thank you.