



AMERICAN ATHEISTS

March 20, 2019

The Honorable Rep. Robert Behning
Chairperson, House Education Committee
Indiana House of Representatives
200 W. Washington Street
Indianapolis, Indiana 46204

Re: OPPOSITION to SB 373, Testimony in opposition to legislation which would unconstitutionally undermine students' freedom of religion

Dear Chairperson Behning and Members of the Education Committee:

American Atheists, on behalf of its constituents in Indiana, writes in opposition to SB 373, a controversial bill which undermines the freedom of religion of Indiana's students by coercively encouraging religious education. Specifically, this bill would allow public school students to receive academic credit for religious instruction, which would impermissibly favor religious students and viewpoints. We strongly urge you to reject this unconstitutional bill.

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. As advocates for religious liberty, American Atheists believes that no young person should be subjected to religious coercion by the government.

Indiana law already allows for "release time" programs, which allow students in public schools to leave school during the day for religious instruction. The Supreme Court has said that these programs may be constitutional if they include safeguards to maintain the separation of religion and government and to protect students from coercion.¹ However, SB 373 would expand upon this law by allowing students who take religious classes to receive academic credit. This raises a number of significant constitutional concerns:

¹ For example, classes may not take place on public school grounds, no public funds may be expended, school staff may not promote the program, and students may not be coerced to participate. *Zorach v. Clauson*, 343 U.S. 306, 308-12 (1952).

- 1) SB 373 puts the school districts in the difficult position of deciding which religious education programs should qualify for educational credit and which should not. The complex constitutional considerations here make these decisions especially hazardous – and especially likely to give rise to liability for the school district. Even if the secular criteria are applied with exacting certitude, programs that fail to be accepted for credit may choose to bring suit.
- 2) SB 373 fosters excessive entanglement between religion and the government. The bill requires a searching review of the course syllabus and other materials to determine if the religious education qualifies for academic credit. However, this type of entanglement is prohibited by the First Amendment.²
- 3) SB 373 would pressure religious education programs to modify their curricula to conform to the school districts' identified criteria in order to qualify these programs for academic credit.
- 4) SB 373 would favor religion over nonreligion by giving religious students opportunities to receive academic credits that are not accessible to nonreligious students. The Supreme Court has made clear that the First Amendment mandates neutrality not only between religions, but between religion and nonreligion.³

In addition to First Amendment concerns outlined above, the system created by SB 373 would also be religiously coercive for students. Students of particular faiths may be directly pressured by their peers or teachers to participate in the religious education program associated with their faith. Or such pressure may be applied indirectly if these religious programs are (or are perceived to be) easier or less burdensome than other available classes. Nonreligious students and those of minority religions would have fewer options to receive academic credit than students of faiths which are able to offer qualifying religious education programs. Such students may be required to take burdensome, difficult, or otherwise undesirable classes to make up the credit difference.

Currently, about 23% of adults in the US are religiously unaffiliated, and atheists and agnostics make up about 7% of the total population.⁴ Among young people, studies show that approximately 13% of youth ages 13-18 identify as atheists and more than a third are non-religious.⁵ In Indiana, 26% of the population has no religious affiliation.⁶ The Indiana Legislature should not marginalize

² *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

³ *Epperson v. Arkansas*, 393 U.S. 97 (1968).

⁴ Pew Research Center. A Closer Look at America's Rapidly Growing Religious 'Nones' by Michael Lipka, 2015. Available at: <http://www.pewresearch.org/fact-tank/2015/05/13/a-closer-look-at-americas-rapidly-growing-religious-nones/> (Last Visited February 17, 2019).

⁵ Barna Group. Atheism Doubles Among Generation Z, 2018. Available at: <https://www.barna.com/research/atheism-doubles-among-generation-z/> (Last visited February 18, 2019).

⁶ Pew Research Center. Religious Composition of Adults in Indiana. Available at: <http://www.pewforum.org/religious-landscape-study/state/indiana/> (Last Visited February 16, 2019).

this sizeable and growing population by favoring religious students and granting them special opportunities for academic credit.

SB 373 would force Indiana's already questionably constitutional release time programs into a minefield of constitutional restrictions, religious preferences, coercion, and liability. Indiana's students, school districts, and taxpayers deserve better than this. We strongly urge you to reject this ill-conceived legislation. If you should have any questions regarding American Atheists' opposition to SB 373, please contact me at 908.276.7300 x309 or by email at agill@atheists.org.

Sincerely,



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

cc: All Members of the Indiana House Education Committee