



# AMERICAN ATHEISTS

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July 15, 2020

The Honorable Assemblyman Kenneth Zebrowski  
Chair, Assembly Committee on Governmental Operations  
LOB 623  
Albany, New York 12248

**Re: OPPOSE A5387, the so-called “New York Student Religious Liberties Act”**

Dear Chairperson Zebrowski and Members of the Assembly Committee on Governmental Operations:

American Atheists, on behalf of its more than 3,100 constituents in New York, writes in opposition to A5387, a controversial bill which would provide special privileges to religious students in public schools, allowing them wide latitude to engage in religious activities and expression, and potentially to interfere with the rights and education of other students. This bill fails to protect nonreligious students, who are at significantly higher risk for discrimination in education based on their beliefs. A5387 will foster religious coercion and undermine the education of young people in New York. Therefore, we strongly urge you to vote against this unnecessary and harmful legislation.

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 subject to religious discrimination or coercion in public school.

A5387 would give public school students wide latitude to “engage in religious activities or religious expression before, during and after the school day.” Additionally, A5387 requires school districts to create limited public forums to allow students to express their religious beliefs “at all school events at which a student is to publicly speak.” A5387’s “model policy” requires that students be allowed to express their religious beliefs at graduation ceremonies, athletic events, assemblies, pep rallies, and during opening announcements for the school day. However, such a policy risks exposing students to unwanted religious coercion. Students should not have to make a choice between missing out on athletic events, pep rallies, and graduation ceremonies or being subjected to the unwanted religious proselytization and coercion that would come with attending those events.<sup>1</sup> When it comes to opening announcements and required assemblies, students may not even have the option to avoid this religious proselytization and coercion.

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<sup>1</sup> See *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 312 (2000) (“The constitutional command will not permit the District to exact religious conformity from a student as the price of joining her classmates at a varsity football game.”) (citations omitted).

The policies introduced by this bill would have a significant negative impact on religious minorities, nonreligious students, and LGBTQ students, who are frequently the target of religion-based harassment and discrimination. While A5387 purports to protect religious liberty, it would have the opposite outcome for many students, subjecting them to religious coercion and undermining the separation of religion and government, which is the bedrock of religious liberty.

Currently, about 24% of adults are religiously unaffiliated, and atheists and agnostics make up about 7% of the total population.<sup>2</sup> Studies show that approximately 13% of youth ages 13-18 identify as atheists and more than a third are non-religious.<sup>3</sup> Another 6% of Americans follow various non-Christian faiths.<sup>4</sup> A recent survey of nearly 34,000 nonreligious people conducted by American Atheists found that nearly one third (29.4%) of participants had experienced negative events and discrimination in education because of their nonreligious identity.<sup>5</sup> Participants who faced such discrimination in education were 21.5% more likely to screen positive for depression.

A5387's policies would be especially harmful for religious minorities and atheists residing in communities that are heavily dominated by one religion, likely fostering bullying and harassment against these students because of their dissenting religious views. American Atheists' research found that nonreligious participants living in "very religious" communities were 2.5 times more likely to experience negative events in education than those living in "not at all" religious communities (42.4% vs. 17.5%).<sup>6</sup> New York lawmakers should not further marginalize this population by purposefully encouraging unconstitutional and exclusionary religious expression and activities in schools.

A5387 and bills like it are problematic because they emphasize the First Amendment's Free Exercise Clause and fail to address the restrictions imposed by the Establishment Clause.<sup>7</sup> A5387 explicitly acknowledges the Establishment Clause problems it creates, mentioning six separate times how this bill will create confusion about whether school districts are sponsoring and endorsing student religious activities and viewpoints. The proposed remedy for this confusion is for school districts to explicitly disclaim sponsorship or endorsement of students' religious expression. For example, the "model policy" suggests merely including a disclaimer in the fine print of a graduation ceremony program. Perhaps other school districts will hide the disclaimer at the end of a student handbook. A5387's meager attempts to address endorsement concerns are not enough to dispel the impression that school districts

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<sup>2</sup> Cox D & Jones RP. (2017). *America's Changing Religious Identity: Findings from the 2016 American Values Atlas*. Public Religion Research Institution: Washington, DC.

<sup>3</sup> The Barna Group. (2018). *Gen Z: The Culture, Beliefs and Motivations Shaping the Next Generation*. The Barna Group and Impact 360 Institute: Ventura, CA.

<sup>4</sup> Smith G, et al. (2015). *America's Changing Religious Landscape*. Pew Research Center.

<sup>5</sup> Frazer, S., El-Shafei, A., Gill, A.M. (2020). *Reality Check: Being Nonreligious in America*. Cranford, NJ: American Atheists, available at [www.secularsurvey.org](http://www.secularsurvey.org).

<sup>6</sup> *Id.*

<sup>7</sup> See *Lee v. Weisman*, 505 U.S. 577, 587 (1992) ("The principle that the government may accommodate the free exercise of religion does not supersede the fundamental limitations imposed by the Establishment Clause.").

are endorsing students' religious viewpoints, when under this bill, those viewpoints are expressed over and over again, "at all student events" whenever a student is allowed to publicly speak.<sup>8</sup>

Yet another problematic portion of A5387 is that it allows students to express their religious beliefs "in homework, artwork, and other written and oral assignments." While students have the right to include religious expression in their schoolwork, schools must establish limits. The expression must be responsive to the assignment, and the school is required to prohibit any expression that infringes on the rights of other students. For example, a teacher cannot allow a student to use an oral presentation as an opportunity to proselytize to the class, nor to harass other students.

Unfortunately, this legislation undermines those limitations. If A5387 passes, New York schools may very well be forced into impossible situations where they can neither prevent a student from proselytizing to the class, nor allow it because it would infringe on the religious liberty of other students in the classroom. In blurring the line about the constitutional duties of schools with regard to religion, A5387 will set teachers and administrators up for failure and create needless liability for school districts.

We strongly urge you to oppose this unnecessary and harmful bill. Religious freedom is a fundamental American value, but it must apply equally to all students, regardless of their religious beliefs or lack thereof, and it must be tempered with schools' constitutional obligations. If you should have any questions regarding American Atheists' opposition to A5387, please contact me at 908.276.7300 x309 or by email at [agill@atheists.org](mailto:agill@atheists.org).

Sincerely,



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

cc: All Members of the New York Assembly Committee on Governmental Operations

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<sup>8</sup> See generally Kauper, P., *Prayer, Public Schools and the Supreme Court*, 61 Mich. L. Rev. 1031, 1046 (1963) ("impressionable children are susceptible to a pressure to conform and to participate in the expression of religious beliefs that carry the sanction and compulsion of the state's authority").