



AMERICAN ATHEISTS

March 19, 2019

The Honorable Rep. Bill Taylor
Chairperson, House Higher Education Subcommittee
South Carolina House of Representatives
PO Box 11867
Columbia, South Carolina 29211

Re: OPPOSITION for H. 3099, Testimony from American Atheists in opposition to the so-called "Forming Open and Robust University Minds (FORUM) Act"

Dear Chairperson Taylor and Members of the House Higher Education Subcommittee:

American Atheists, on behalf of its more than 400 constituents in South Carolina, writes in opposition to H. 3099, a controversial bill which would undermine the ability of public colleges and universities to provide an open and inclusive campus and to prohibit discriminatory conduct. Although we believe this bill is well-intentioned to promote free speech on college and university campuses, as written the bill would instead allow for invidious discrimination within student organizations. We urge you to vote against this bill or, at a minimum, to amend the legislation to remove its discriminatory elements.

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 denied educational opportunities based on their religious beliefs.

The majority of public colleges and universities within the US have rules in place which require student organizations to comply with the institution's nondiscrimination policy, which generally prohibits discrimination based on race, sex, disability, sexual orientation, religion, and other categories. The US Supreme Court has endorsed this practice as constitutional and in alignment with First Amendment principles of freedom of speech and of assembly.¹ These policies are important because they create an open atmosphere on campuses and foster freedom of speech

¹ *Christian Legal Society v. Martinez*, 561 U.S. 661 (2010).

by prohibiting discrimination and allowing every student to participate fully in student organizations. On the other hand, if student organizations are allowed to discriminate, it limits the ability of disfavored students (whether due to their religion, sex, sexual orientation, or race) from fully participating in campus life.

Unfortunately, this bill would undermine these critical student nondiscrimination protections. Section 59-148-160 of this bill provides that:

A public institution of higher learning may not deny a religious, political, or ideological student organization a benefit or privilege available to another student organization, or otherwise discriminate against such an organization, based on the expression of the organization, including a requirement that the leaders or members of the organization:

- (1) affirm and adhere to the organization's sincerely held beliefs;
- (2) comply with the organization's standards of conduct; or
- (3) further the organization's self-defined mission or purpose.²

This language would prevent a college or university from enforcing its policies to prevent discrimination, thereby allowing religious, political, and ideological student organizations to exclude students, impose dangerous or discriminatory rules on students, or sanction harassment. Based on this language, for example a “College Nazi Club” could exclude Black and Jewish students, a “College Christian Club” could exclude atheists, LGBTQ students, or even Catholics, and a “Future Lawmakers Club” could exclude Republicans. And they could do so while receiving monies and resources provided by taxpayers and by other students at the institution. Although the language is framed in terms of preventing discrimination against the student organization, being required to comply with university nondiscrimination rules, like every other student organization, is not discrimination. Creating special rules to allow these organizations to discriminate is exclusionary and unfair. Therefore, we recommend that the last clause of this section, beginning with “including a requirement that...”, be stricken through amendment.

Colleges and universities know their students and their individual cultures better than lawmakers – the state should not apply a one-size-fits-all policy on institutions of higher learning. Instead, colleges and universities and the students that attend them should be free to set appropriate nondiscrimination rules for their campuses. Unfortunately, this bill, as currently drafted, would also make South Carolina public institutions of higher education less competitive with those of other states as well as private institutions, as students are much less likely to attend institutions where they could face discrimination, harassment, or exclusion. Finally, taxpayers and other students should not be forced to pay for student groups which are discriminatory and exclusionary.

² South Carolina H. 3099, Section 59-148-160 (2019).

We urge you to vote against H. 3099, or, at a minimum, to remove the language that permits discrimination from Section 59-148-160 of the bill. If you should have any questions regarding American Atheists' concerns about H. 3099, please contact me at 908.276.7300 x309 or by email at agill@atheists.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'AG', with a long horizontal stroke extending to the right.

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

cc: All Members of the South Carolina House Higher Education Subcommittee.