

# Transgender Athlete Ban, Backed by Noem, Clears Committee

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FILE - Advocates for transgender people march from the South Dakota governor's mansion to the Capitol in Pierre, S.D., on March 11, 2021. A South Dakota legislative committee on Friday, Jan. 14, 2022 approved a bill championed by Gov. Kristi Noem to ban transgender women and girls from participating in school sports leagues that match their gender identity. (AP Photo/Stephen Groves, File) The Associated Press

A South Dakota legislative committee has approved a bill championed by Gov. Kristi Noem to ban transgender women and girls from participating in school sports leagues that match their gender identity.

By STEPHEN GROVES, Associated Press

PIERRE, S.D. (AP) — A South Dakota legislative committee on Friday

approved a bill championed by Gov. Kristi Noem to ban transgender women and girls from participating in school sports leagues that match their gender identity.

With the Republican governor's full-fledged lobbying, the bill received enthusiastic approval in the Republican-dominated Senate State Affairs committee, clearing a legislative hurdle that has been a key roadblock to similar South Dakota bills in the past. It was the first bill the committee took up this year as lawmakers try to fast-track it through the Statehouse.

Every Republican on the committee approved the bill, despite warnings from opponents that it alienates and bullies transgender students and exposes public schools to legal action for a political cause that has not been an issue in South Dakota. Proponents say it protects girls' sports from trans athletes who may be bigger, faster and stronger than their peers.

"Passage of this bill would directly hurt children," said Jennifer Phalen, whose transgender daughter aspires to participate in school gymnastics. "It would directly hurt my daughter and take away her freedom to participate in activities with her peers."

## **Political Cartoons**

(Nick Anderson/Tribune Content Agency)

(Steve Breen/Creators)

“As a parent, I don’t really care if she becomes an elite athlete, but I want her to have the experiences of being on a team,” she told the committee in an emotional testimony.

If the bill passes the Legislature, South Dakota could be the 10th Republican-dominated state to adopt such a ban on transgender women or girls. In two of those states — Idaho and West Virginia — the laws have been halted by federal judges. The U.S. Department of Justice has challenged bans in other states, slamming them as violations of federal law.

But lawmakers have used as ammunition the Pennsylvania case of a 22-year-old transgender woman who has had a dominant year swimming for the University of Pennsylvania, as proof that trans

athletes possess an unfair advantage over their competition.

"Allowing males to compete destroys fair competition and athletic opportunities for girls," Rachel Oglesby, the governor's policy advisor, told the committee. "Similarly gifted and trained males will always have physical advantages over females."

The high school activities association asserted that it already has a policy in place that ensures fair competition. The schools evaluate applications from transgender athletes on a case-by-case basis and have only once allowed a trans girl to play in a girls' league. She did not spoil the competition, the athletics association has said.

Groups representing public schools said politicians are forcing them to choose between violating state law or federal policy. The Associated School Boards warned that schools could lose federal funds if an investigation from the U.S. Department of Health and Human Services found them to have violated students' rights.

"This particular bill does nothing, does absolutely nothing as far as helping young people," said Dianna Miller, representing South Dakota's largest school districts. "What it is is discriminatory, unfair, and it's not necessary."

In an acknowledgment that schools were being put at legal risk, the governor's office amended the bill to stipulate that the state would provide legal representation and pay the costs of any lawsuits. Mark Miller, the governor's chief of staff, insisted that the proposed law complied with the Constitution, that other states had successfully implemented similar laws and the state would prevail in court if sued.

Noem last year shied away from signing a similar bill, issuing a "style

and form veto" and arguing that it was flawed because it put the state at risk of litigation and retribution from the NCAA.

But this year, she seized on the momentum of a cause taking hold among Republicans and trumpeted her support for "protecting fairness in women's sports" as she tries to rehabilitate her standing with social conservatives.

Noem launched a campaign ad this week that claimed she "never backed down" on the issue. And if there was any doubt that her political ambitions lie beyond South Dakota — the state where she is running for reelection and where the proposed law would take effect — the ad is running on channels nationwide.

That's led critics to decry the bill as nothing more than propaganda.

"This isn't about an issue that's really happening in South Dakota," said Roger Tellinghuisen, representing the Human Rights Campaign, an organization that advocates for LGBTQ people. "It's a political statement — that's all it is."

Noem warming to the issue shows the growing clout of social conservatives in the GOP and their ability to cajole politicians into supporting legislation that discriminates against LGBTQ people.

Jon Schweppe, the director of policy at the social conservative group, American Principles Project, praised Noem's bill after last year slamming her for effectively killing the legislation.

"To see her now coming out with a stronger bill, to see her championing this issue and making it her priority, we haven't really seen anything like that before with Republicans," he said. "I think it's a significant

moment."

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