

Transgender Bathroom Ban Finds Surprise Opponent in South Dakota

In February, when legislators in South Dakota approved a bill that would require transgendered people to use bathrooms that match their birth gender, it was hailed by many as a victory for the pro-family movement.

The bill found a surprising opponent Tuesday, however, when Republican Gov. Dennis Daugaard, who initially reacted positively to the proposal but said he needed to research the issue, pulled out his veto pen. The governor said he feared lawsuits after the American Civil Liberties Union and the Human Rights Campaign insisted it was discriminatory.

In his cover letter explaining the bill's veto, Daugaard said:

"House Bill 1008 does not address any pressing issue concerning the school districts of South Dakota. As policymakers in South Dakota, we often recite that the best government is the government closest to the people. Local school districts can, and have, made necessary restroom and locker room accommodations that serve the best interests of all students, regardless of biological sex or gender identity.

"This bill seeks to impose statewide standards on "every restroom, locker room, and shower room located in a public elementary or secondary school." It removes the ability of local school districts to determine the most appropriate accommodations for their individual students and replaces that flexibility with a state mandate.

"If and when these rare situations arise, I believe local school officials are best positioned to address them.

Instead of encouraging local solutions, this bill broadly regulates in a manner that invites conflict and litigation, diverting energy and resources from the education of the children of this state.

“Preserving local control is particularly important because this bill would place every school district in the difficult position of following state law while knowing it openly invites federal litigation. Although there have been promises by an outside entity to provide legal defense to a school district, this provision is not memorialized in the bill. Nor would such defense eliminate the need for school or state legal counsel, nor avoid expenses relating to expert witnesses, depositions and travel, or other defense costs. Nor does the commitment extend to coverage over settlement or damage expenses. This law will create a certain liability for school districts and the state in an area where no such liability exists today.”

The bill’s sponsor, Rep. Fred Deutsch, a fellow Republican, said he would not seek an override vote on the veto. He and other GOP legislators offered the bill as a means to protect student privacy and to limit federal government overreach into local control of public schools.