

Constitutional Corner – Toilette Tyranny

The quest to fundamentally transform America continues unabated. Doesn't that just warm the cockles of your heart? Not content to glide out the remaining months of the President's eight-year reign as our supreme leader, the Obama administration has effectively ordered all the nation's public schools to allow gender-confused school kids to use whatever bathroom and shower-room facilities they choose to "identify" with.

Here's the background: On February 22nd, the City of Charlotte, North Carolina, passed an ordinance prohibiting businesses from discriminating against LGBT individuals. The ordinance also ordered businesses to allow such individuals to use any public bathroom they choose.

In a one-day special session on March 23rd, the North Carolina legislature passed HB2, with the support of 11 Democrats, I might add, which made it illegal for any municipality to expand upon the state's existing anti-discrimination laws, which is essentially what Charlotte and a few other cities had done. The new law contained a list of classes of people who are to be protected against discrimination, they included race, religion, color, national origin, age, handicap or biological sex as designated on a person's birth certificate. "Sexual orientation" and "gender transition" were conspicuously absent from the list.

The homosexual community vowed a court fight. But before that could be mounted the Obama Administration filed a civil rights suit against the state and the state countersued. Then came the bombshell, last week, on Friday the 13th no less, the Department of Education issued a "Dear Colleague" letter which stated that the Department expects any school receiving federal funding (hint) to allow transgender students to use whatever bathroom and locker room facilities they request to use.

Contemporaneous with the North Carolina issue is a controversy taking place right up the road from me in Gloucester County, VA. A female student at Gloucester High School, Gavin Grimm, has self-identified as a boy. With the support of her parents, Gavin is taking hormone treatments to facilitate a presumed future "transition" through gender surgery. Grimm was offered the use of a unisex bathroom at the school and things were fine for awhile, until she apparently decided this accommodation was unacceptable and sued the school district. Initial judgement went against Grimm and her parents appealed (I wonder who is financing their suit?). A three-judge panel of the 4th Circuit ordered the district to allow Grimm the use of whatever facilities she requests and the district responded by asking for an en banc review by the entire Circuit. How the DOE directive impacts the 4th Circuit ruling is unclear.

So “Can the federal government constitutionally order the nation’s schools to allow gender-confused kids to use any bathroom or locker-room, and, we assume, shower-room, that they “identify” with?” That is the legitimate question that we will explore today.

There are several constitutional issues attached to this, beginning with why we have a Department of Education at the federal level when the Constitution grants no specific power to establish one nor empowers it to set policy over education for the country’s public schools. The Northwest Ordinance of 1787, which is a full 25% of our country’s organic law, says that “Religion, morality and knowledge being necessary to good government, schools and the means of education will forever be encouraged” – encouraged, not controlled. So the constitutionality of the Department of Education is one issue.

Next is the issue of delegation of legislative authority by the Congress to this unconstitutional executive department. According to John Locke, that power cannot be delegated unless the people say so, and to my knowledge they have not. But according to the Supreme Court in *Mistretta v. U.S.* (1989) such delegation is not only authorized, it is absolutely necessary in today’s complex world. Hogwash! We can only fix that by electing Congressmen and women who understand the Constitution.

My own Congressman told me that Congress sees itself as setting the broad policy guidelines and then lets the executive agencies “fill in the details.” To my mind that is a dereliction of duty, a failure to support and defend the Constitution, and an impeachable misdemeanor in and of itself. But that’s just my opinion. Regardless, if Congress sets the policy guidelines, where does the Department of Education find the authority to change those guidelines at will?

Congress passed [Title IX](#) of the [Education Amendments](#) in 1972. Title IX reads: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.”

In 1972, the word “sex” meant only one thing: biological sex. But today there are people who want to redefine the word sex, just as they successfully (at least in the eyes of the Supreme Court) redefined the word “marriage.”

“When I use a word,” Humpty Dumpty said, in rather a scornful tone, “it means just what I choose it to mean — neither more nor less.”

“The question is,” said Alice, “whether you can make words mean so many different things.”

“The question is,” said Humpty Dumpty, “which is to be master — that's all.”¹ (emphasis added)

In 2014, the Department of Education issued guidelines stating that transgender students were to be allowed to attend sex-segregated classes based on their professed “identity,” not their genetics. There was no mention of bathrooms; what a difference two years make.

Martin Luther King is owed an apology for the way Attorney General Lynch couched this whole affair in civil rights terms and some in the Black Community have protested. Fighting for the right to be free of discrimination based on something you can't control, like the color of your skin, is quite different from claiming a supposed right to use whatever public bathroom you choose because today you decide you're a member of the opposite sex. By no means is this a civil rights issue, this is yet another attempt by this lawless administration to bypass the will of the people expressed in the Congress, and cram the LGBT agenda down American's throats.

The ultimate goal of that movement has nothing to do with “equality.” It is aimed at destroying the traditional American family, pure and simple. They don't aim to destroy Christianity, I think they recognize the futility of that, they only want to render the Christian church irrelevant, which the church has already accomplished, without outside help. The church is sticking its head in the sand and hoping this will all blow over. It will not. Bathrooms and locker rooms are merely the next logical step in erasing all distinctions between men and women. In an article entitled: “[We'll Win the Bathroom Battle When the Binary Burns](#),”² a homosexual activist says the real goal is to kill the notion of male and female altogether; to eradicate what he calls our “heterobinary structure.” If only God had created us as male, female and “other,” we wouldn't have this mess, right? ;-)

While the focus is on the schools, the Department of Health and Human Services quietly issued a proposed rule change (and rule changes do have the force of law) in which “sex discrimination” in health care was unilaterally rewritten to include “gender identity.” HHS is demanding that the entire health care industry include gender transition treatment as part of their services. Refuse, they warn, and kiss your Medicare and Medicaid dollars goodbye. The rule doesn't include no religious exemption, which is not surprising for this administration -- so much for hospitals run by religious organizations.

If only all states followed Utah's lead in at least considering severing their educational system from federal educational funding and the extortion that comes with it. As I said on a local radio show recently, it is long past time for states to regain control of their educational systems; yes, state taxes will have to go up, that is the price of independence. But we were willing to pay a price for independence in 1776; we should be today as well.

¹ http://sabian.org/looking_glass6.php

² <http://www.advocate.com/commentary/2016/4/29/well-win-bathroom-battle-when-binary-burns>

To their credit, [73 Congressmen have sent a letter](#)³ to the Attorney General asking her to explain “why schools must disregard the privacy, ‘discomfort,’ and emotional strain imposed on other students during use of bathroom, showering, and changing facilities and overnight accommodations as these schools comply with this guidance.” The letter also asks General Lynch to explain what will happen to “a teacher, school administrator, educator, school contractor, or person volunteering at a school who does not comply with this guidance.” Whooptedo! These are softball questions. Finally, the letter gets to the heart of the matter, it asks AG Lynch to: “delineate the statutory authority under which the ED and DOJ issued this guidance.” Now we’re talking!

To put a stop to this silliness all Congress need do is pass a clarification to the Title IX legislation which makes it clear gender refers to sex at birth. Or make the clarification in the [Dictionary Act](#).⁴ Will they do that? Not unless the people demand it.

In the meantime, every parent needs to be talking with their child’s principal and learn what he or she intends to do about this. Is the school going to roll over and implement this policy with the mere threat of the loss of funding, or will they choose to protect the safety and privacy of the 99.9% of the school’s students?

Pastors need to be talking about this with their congregations, but most won’t. Most will don their cultural blinders and “re-double their efforts to win souls for the Kingdom,” fiddling while Rome burns. Lest I be misunderstood: bringing souls into the Kingdom is important, but so is leaving a legacy of freedom for our kids and grandkids.

Ten other states have joined – you guessed it – Texas, in [suing the Obama Administration](#)⁵ over this issue. We can rightfully ask: What’s wrong with the other 39 states?

I believe this is the issue that parents can and should use to take back control of their local educational systems, recognizing that God holds parents and parents alone accountable for that education and all that it entails. Parents have an equal responsibility for the safety of their children, both psychological and physical, and this movement intentionally violates both. Moving your children from public school into Christian school is something that all Christian parents should consider, but this is only a partial answer; the children that remain in public school will continue to be harmed, and our tax dollars will facilitate it. This must be stopped.

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³ <http://dailysignal.com/2016/05/18/breaking-73-house-republicans-sign-letter-demanding-answers-on-obamas-bathroom-directive/>

⁴ <https://www.law.cornell.edu/uscode/text/1/1>

⁵ <https://www.washingtonpost.com/news/post-nation/wp/2016/05/25/texas-governor-says-state-will-sue-obama-administration-over-bathroom-directive/>