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Transgender Transformation: Hope and Change, One Locker Room at a Time?

Traditionally, lame-duck presidents have been to some degree hamstrung during the waning months of their second terms in office, as the country takes a deep cleansing breath, anticipating the potential ramifications of future administrations based on the electability of the leading candidates and the balance of power in the House and Senate. And although President Obama too has found his wings clipped regarding issues such as the Supreme Court vacancy created by Antonin Scalia's death, he is nevertheless making the most of his rapidly dwindling time in office. Despite Republican control of both houses of Congress, Obama pushes forward his radical agenda with shockingly little blowback from the beltway GOP, a dereliction of duty that no doubt plays a large role in the surprising ascendancy of rogue candidate Donald Trump.

A key reason for Obama's swan-song success is the way he has effectively circumvented democratic process and the rule of law since first taking office in early 2009. Ever since he eked out an unlikely victory in the messy legislative fiasco that was the Affordable Care Act — a brutal legal tussle that punctured his pretense of transparency and left his popularity greatly diminished, despite the herculean efforts of Chief Justice John Roberts to save him from his own overreach — team Obama has preferred to bribe, bully, threaten, and insinuate, rather than work with Congress to actually legislate. From the imposition of Common Core in the schools, to the neutering of our border policies, to the enacting of delusional environmental policy designed to retard the creation of wealth — not cleanse the biosphere — this administration has governed by fiat, executive order, and a systematic and questionably legal brand of arm-twisting more indicative of a subculture syndicate than a constitutional republic.

The Hypocrisy of Potty Politics

The latest example of Obama's extra-legal advancement of "hope and change" — the fulfillment of his promise to "fundamentally transform" America — is the administration's letter of May 13 directing public schools to give transgender students full access to the bathrooms and locker rooms of the opposite sex. The directive, crafted by Vanita Gupta, head of the Justice Department's Civil Rights Division, and Catherine Lhamon, assistant secretary of education for civil rights, has tremendous implications for all of America's public schools and the vast majority of colleges and universities that receive federal funding or labor under the Orwellian excesses of Title IX legislation. Take for instance

the following injunction from the section of the letter on "Restrooms and Locker Rooms":

A school may provide separate facilities on the basis of sex, but must allow transgender students access to such facilities consistent with their gender identity. A school may not require transgender students to use facilities inconsistent with their gender identity or to use individual-user facilities when other students are not required to do so. A school may, however, make individual-user options available to all students who voluntarily seek additional privacy.

In one fell swoop, the directive demands that schools accommodate transgender students by allowing *them* to determine which bathroom or shower they access, and forbids schools from forcing (or even encouraging) transgender students to utilize individualized bathrooms and showers created specifically to allow for a third way, one that would provide for the specific needs of transgender students without compromising the privacy of others. Privacy is clearly important — the letter plainly allows accommodation on the basis of it — but obviously not important enough to supersede the newly minted and exclusive rights of transgender students. The clear implication is that multi-user bathrooms and showers dedicated solely to transgender students are also discriminatory.

Paradoxically — and with no clarification or explanation — the letter asserts that schools may make individual bathroom and locker room options available to students who protest the "inclusive" accommodations put forth by the feds. Allowing such protest accommodations on the part of non-transgender students — on behalf of girls, for instance, who have the temerity to believe they are actually girls — underscores the illegitimacy of the entire enterprise, serving as little more than a cheap way to provide cover from the onslaught of legal action already massing in the wake of such ill-conceived social engineering. Thus, girls who protest the presence in the showers of boys who think they are girls can now demand the same individualized showers that are otherwise offensive when offered to protesting transgender students. That's right, third-party bathrooms and showers are now acceptable accommodations for offended non-transgender students, but discriminatory when the sole option available to transgender students.

Also paradoxically, schools may still "provide separate facilities on the basis of sex," but cannot restrict access to those who belong to that specific biological sex. What exactly is the point of allowing sex-based bathrooms and showers if they cannot be that for which they were mandated in the first place? In this inconsistent and contradictory system, the only students with absolute freedom of choice are transgender students: All other choices are compromised or negotiated. Besides all of these nonsensical distinctions without a difference, such changes are urged without any formal definition of transgender identity, no existing legislation affirming such parameters, and no legal precedent or voter mandate for incorporating such radical new policies.

Further, we already have ample evidence from social justice warriors of the type making these decisions that merely asking transgender students to verify or legitimate their gender identification is a form of inexcusable bigotry (potentially punishable by laws, should we ever again get around to actually passing them). As such, transgender identities are now *more* protected and less subject to politically correct deconstruction than either heterosexual or homosexual identities (and definitely more protected than the biological sex that underpins any of these alternatives). An unspoken but all-too-real consequence of this initiative is that gender not only trumps biology, but also that a person's gender is unassailably fluid to the point that it can change from day to day, hour to hour, or even minute to minute. A biologically male student who identifies as transgender may dress with the boys before gym

class and then shower with the girls after class ends. And the only true crime would be asking the student to explain the difference, let alone justify it.

And will we have to constantly issue new edicts as to whether the toilet seat be left up or down? Whether urinals are required in all women's bathrooms? Whether everyone in men's bathrooms must sit to do their business at all times? Whether sanitary pads must be available in all conceivable bathroom configurations? It would be much easier to simply require everyone to use the exact same bathrooms and shower rooms. And that is and always has been the point — just like ObamaCare was designed to eventually give way to Single Payer.

Let's be very clear about what is happening here. What American young person — of any sex or gender, real or make-believe — would consider it discriminatory to be provided a private bathroom or shower exclusively for his or her own personal use? The desire for bathroom privacy is a pervasive American cultural norm, and not just among the youth. In certain European countries, it is perhaps more common to find males and females occupying the same bathrooms. Nevertheless, it stands to reason that the preference would be for bathroom privacy even in these countries, should single-occupancy baths and showers be made available.

Such accommodations are a consummation devoutly to be wished, not a torment to be endured: unless, of course, you have a different agenda than simply utilizing the facilities to answer the call of nature. It does not tax any but the most progressive of imaginations to contemplate which of nature's urges the new bathroom policies might gratify for young men. There are few more liberated places than the University of Toronto, after all, and yet UT was forced to rescind its transgender bathroom policy after unambiguously male students were caught filming their demonstrably female classmates in the showers.

Perhaps the way to upend all of this nonsense is to convince legions of students whose sex and gender conform to demand their own private bathrooms in order to guarantee their rights to privacy as outlined in the federal government's mandate. As in the case of all such utopian planning, the ultimate objective is not fairness or tolerance, but the leveling of all distinction in pursuit of sameness and "equality." The push to create one universal bathroom and shower room that everyone uses in common — without distinction — foreshadows ever more bold plans aimed at the eradication of all difference in the name of social justice. Why is it that everyone but progressives can see that those screaming loudest about diversity are almost always those most eager to destroy it altogether in the name of "equity" and "fairness"?

Despite the highly proscriptive language of the letter, and the officiously absurd titles of the bureaucrats who wrote it, defenders of the directive are quick to insist that this is not "law," but merely a series of suggestions about how schools and universities can become more "inclusive." But the two unelected officials — the latest in a long line of unaccountable Obama surrogates regulating and restructuring every aspect of American culture — make it clear that there are indeed consequences for not conforming to the new bathroom order. The letter may not carry the force of law, but it does purport to be "significant guidance" about how the administration "evaluate[s] whether covered entities are complying with legal obligations," and implies quite directly that federal aid will be withheld from schools that do not comply: "As a condition of receiving Federal funds, a school agrees that it will not exclude, separate, deny benefits to, or otherwise treat differently on the basis of sex any person in its educational programs or activities unless expressly authorized to do so under Title IX or its

implementing regulations."

This default to Title IX is self-serving indeed, since the Obama administration was effectively rewriting Title IX to accommodate transgender identity as early as 2014. In April of that year, the Department of Education offered further "guidance" about the enforcement of Title IX, quietly adding an interpretation that incorporated gender identity:

Title IX's sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity and [the Office of Civil Rights] accepts such complaints for investigation. Similarly, the actual or perceived sexual orientation or gender identity of the parties does not change a school's obligations.

The prohibition "extends" — we are told without explanation — to discrimination over gender identity. Note the condescending and dismissive way that male and female — masculine and feminine — are reduced to mere stereotype. In other words, the DOE simply invented new "rights" and "obligations" out of whole cloth, and inserted them into existing legislation, no questions asked and with no other oversight or congressional approval.

Since then, the made-up accommodations have been used to bring various public schools to heel about transgender issues, especially with regard to bathrooms and shower facilities. The fact that these changes were "suggestive," rather than codified law, did not prevent the feds from successfully bullying the schools in question to conform, setting a dangerous but politically expedient precedent. Not surprisingly, groups such as the ACLU rallied to the federal government's made-up cause, defending the "right" of transgender students to use the bathrooms and showers of their choice. This is how social justice activism — usurping power that does not belong to it — imposes itself into existing statute without process or precedent, using the punitive power of government to enforce the legally unenforceable, as Congress nods, lawyers enrich themselves, school districts cave out of fear of lost funding, and the constitutional Republic devolves into a banana republic run by unaccountable apparatchiks and driven by political extortion. In a series of incremental, unnoticed, unopposed, and ultimately illegal steps, the federal government conflated biological sex with gender, inventing yet another protected class and compelling the nation at large to accommodate it without passing a single law or soliciting a single vote.

Gender Confused, or Confusing Sex and Gender?

A defining aspect of Obama's preferred method of governance is to shackle, restrain, and handcuff America's soldiers on the battlefield, while simultaneously empowering social justice warriors with the full force of shock and awe to steamroll opposition and swamp dissent under a sea of regulation and the threat of litigation. The vast majority of our local school boards and public school administrators — besides being sympathetic to progressive causes in general — are preternaturally paralyzed by anything that might portend the withdrawal of federal monies or open them to the threat of a federal lawsuit. This is why one unkempt curmudgeon toiling away in a basement with a fax machine is able to manipulate school administrators into banning Christmas carols, prohibiting Bible study, and now, transgendering bathrooms. And this is also why the feds win time and time again — without law, precedent, or common sense on their side — because the potential cost of fighting or even dissenting is just too steep. The federal government is not just a bully: It is a bully with deep pockets and endless resources, as likely to bribe or stonewall as to batter.

And yet sometimes a bridge to nowhere is still a bridge too far. We continue to see tremendous pushback against Common Core, for instance, and activists have warned us for years that the national standards are a Trojan Horse for the mainstreaming of transgender issues in the elementary-school classroom. Unlike Common Core, which was developed, funded, and implemented before parents and teachers had any idea it was coming, the move to transgender bathrooms is just beginning. But the stakes involved suggest that the issue will consolidate opposition and unify dissent in unprecedented ways. The absurdities, contradictions, and double standards that accompany the new bathroom policies are already becoming manifest in schools across the country. And they will only intensify moving forward. This fight is winnable.

Anyone with the stomach to monitor these changes in America's schools could point to any number of examples of dissent, dissatisfaction, and downright disgust with the federal government's unnecessary politicization of this issue and their heavy-handed method of implementation. But some examples stand out for special consideration, such as the events unfolding at Township High School District 211, in Palatine, Illinois. A group of parents are suing the U.S. Department of Education and the district — the largest in Illinois — for allowing a transgender (male) student access to the girls' locker room. The lawsuit — filed in federal court — maintains that the decision "trample[s] students' privacy" and creates an "intimidating and hostile environment" for the girls who now must share the shower room with the transgender student. Jerry Tedesco, an attorney with Alliance Defending Freedom who represents the families, argues, "Students have an expectation of privacy in restrooms and locker rooms, and that expectation is violated when a school puts the opposite-sex student in those kind of private and intimate facilities." Equally important is the lawsuit's contention that it was unlawful for the Department of Education to include gender identity under Title IX in the first place.

The unnamed student, who was already allowed to use the girls' bathroom, filed a complaint with the Department of Education's Office for Civil Rights after being denied access to the girls' locker room. To no one's surprise, the feds concluded that Township High School violated Title IX — the same Title IX they manipulated to force just such a crisis. As a result, the district stood to lose millions of federal dollars and open itself to legal action if the issue was not "resolved" (translation: if the district did not immediately surrender). And surrender they did, allowing the boy access to the girls' locker room and installing "privacy stalls." This of course brings up the next question: Do privacy stalls — which were not necessary when the room was designated for females (as federal directive allows) — not also discriminate against the boy who thinks he's a girl? Is it not insulting and prejudicial to erect privacy barriers where none existed before, when the entire premise is that all those allowed by law into girls' locker rooms are by definition *the same*?

District parent Vicki Wilson, co-founder of Parents for Privacy, argues, "No school should impose a policy like this against the will of so many parents." The school's reply — in the creepy new cryptography required of those who want to avoid being booted from the federal gravy train — came from District Superintendent Daniel Cates: "The district has faithfully honored our agreement with the Office for Civil Rights and our students have shown acceptance, support, and respect for each other.... We have implemented the agreement without any reports of incident or issue." How quaint that the superintendent is so uncritically faithful to whatever the feds say at the moment, by whatever means they came to say it, and regardless of the underlying legality of such pronouncements. Indeed, the only things Cates has shown "acceptance, support, and respect" for are the capricious and extralegal whims

of the federal government and the petulant demands of one boy who claims to be a girl.

Notably absent from Cates' disconnected kumbaya for tolerance, of course, are the complaints of the young girls who oppose the directive, the outrage of the parents who are suing the district and the federal government, and the resolve of the multiple organizations that are supporting the lawsuit and representing the parents. If you are one of the few remaining individuals who still need proof that America's public schools are now irremediably America's government schools, then consider the tens of thousands of Cateses who administer schools across the country.

Is This a Conservative Water-Loo?

It's not just the schools that are being compelled to accept transgender politics and transformed bathrooms. The feds are making a similarly brazen attempt to normalize and promote the transgender agenda in the workplace and the market place. After previously rejecting the Maloney amendment — Obama's executive order banning federal contractors from discrimination on the basis of sexual orientation and gender identity — Congress reconvened one week later, and on May 26, 2016, 43 Republicans joined with Democrats to pass the measure, which now becomes law as part of a yearly spending bill for energy and water programs. In so doing, these Republicans tacitly agreed with the Obama administration's curious elision of sex and gender, and the corresponding elevation of gender identity to the same protected class as race. The primary danger here is the absolute malleability of the definition of "discrimination," which can now permit the federal government to refuse to contract with private companies and organizations simply because they do not allow transgender persons to access the bathrooms and showers with which they identify.

With so much at stake, it is not surprising that states are beginning to fight back with a singularity of purpose we have not seen since the battle over the Affordable Care Act. The flush heard 'round the world occurred on February 22, 2016, in Charlotte, North Carolina, when the City Council voted 7 to 4 to allow transgender people to choose public bathrooms and showers that correspond to their preferred gender identity. By early March, Republican legislators rallied to call for a special legislative session to challenge the new ordinance in Charlotte, in large part because the City Council's vote contradicts North Carolina's state Constitution, which cedes the power to decide issues of labor and trade to the state, not to local municipalities. Predictably, mainstream media outlets ignored the broader question of the constitutionality of Charlotte's decision, choosing instead to focus on the perceived "trans-phobia" of the governor and the legislature. Charlotte simply did not have the legal standing to enact the ordinance, nor could they legally fine any business that refused to conform.

On top of that, North Carolina offered Charlotte a number of compromises that would have avoided a media circus altogether. The City Council previously defeated a similar measure one year earlier, in March of 2015, *after* removing the section that would have permitted bathroom choice based on gender identity. The ordinance was revisited in 2016 precisely because transgender activists and complicit members of the City Council wanted to force the issue for purely political reasons. Unbeknown to most, Charlotte already provided access to their city and county bathrooms to transgender people — all without any reprisal from the state. As Douglas Williams, writing at *The Federalist*, describes it, the reintroduced ordinance "was simply the final push to force those same standards on private business owners and all public accommodations" across the state. As a result of these nakedly political maneuvers, North Carolina passed House Bill 2, reaffirming that people must use the public bathrooms

and locker rooms that correspond to their sex at birth. Unlike the Charlotte ordinance, which aimed at imposing transgender choice on private as well as public entities, House Bill 2 does not apply to private businesses such as Target, who remain free to craft their own policies.

As ground zero for transgender intransigence, North Carolina was predictably hung out to dry by the advocacy media, who reflexively sided with Charlotte, despite the dubious legality, political grandstanding, and calculated inflexibility of the majority on the City Council, who simply wanted to force a crisis where none existed. Besides the drummed-up media outrage, celebrity Bruce Springsteen exercised without irony *his* right to discriminate, cancelling an April concert in Greensboro because of HB 2, arguing, "Some things are more important than a rock show, and this fight against prejudice and bigotry … is one of them." No comment from the Boss about the rights of duly elected state legislatures to override city ordinances that violate state constitutions.

And the international financial company PayPal cancelled its plans to open a $36 million operations center in Charlotte — the city that voted *for* the ordinance, even though transgender people were *already* using the public bathrooms of their choice throughout the city and county. The decision, which cost Charlotte 400 jobs, had no impact on PayPal's continued operations in other less-enlightened locations around the globe. PayPal executive Dan Schulman opined: "The new law perpetuates discrimination and it violates the values and principles that are the core of PayPal's mission and culture." Tough talk from a company that retains offices in places such as Dubai, where "gay" sex is punishable by death, and Moscow, where "gay propaganda" was outlawed in 2013, effectively making it impossible for homosexual and transgender activists to even protest discriminatory laws.

Despite progressive hypocrisy and the media's tedious double standard, officials in North Carolina fired back on May 9 by suing the federal government. The Justice Department demanded that Governor Pat McGrory not enforce HB 2, threatening to withhold billions in federal dollars from the state if he refused to comply. McCrory's lawsuit asks a federal judge to block the Justice Department from withholding the money, much of it allocated for the state's university system. Once again the newly revised Title IX — altered on the sly to include transgender protections — hands the federal government a big stick with which to beat the states. The University of North Carolina System — all 17 campuses — could forfeit as much as $1.4 billion in federal funding if the state does not knuckle under. And if the enforcement of HB 2 is determined to violate Title IX, another $800 million in federally underwritten student loans could be at risk too. As if North Carolina's universities needed 800 million more reasons to fight the governor and implement progressive reforms!

The Emperor Has No Clothes, Whatever His or Her "Gender"

Despite federal bullying, states are combining forces to sue the feds over the transgender directive, including — at this writing — Alabama, Arizona, Georgia, Louisiana, Maine, Oklahoma, Tennessee, Texas, Utah, West Virginia, and Wisconsin. These states will doubtless be joined by others, and in conjunction with the battle in North Carolina, the momentum is building to challenge federal overreach in the courts of law and the court of public opinion. The political way the feds have handled the issue of transgender rights affords a rare moment of clarity. This may be "the hill to die on," as the rapidly shifting sands of cultural change threaten to obscure the vision of the country enshrined in our founding documents: a nation dedicated to free speech, individual responsibility, and limited government.

Just to our north, in a move every bit as fascist as Putin's ban on "gay propaganda," Canadian Prime

Minister Justin Trudeau and his Liberal Party have introduced legislation that would ban all criticism of transgender people, or even speech critical of "gender fluid" ideology. The bill seeks to "extend the protection against hate propaganda … to any section of the public that is distinguished by gender identity or expression and to clearly set out that evidence that an offence was motivated by bias, prejudice or hate based on gender identity." If passed, those found guilty of improper speech or criticism could face up to *two years in prison*.

And on May 13, the *Charlotte Observer* published its editorial "Taking the Fear Out of Bathrooms," jointly authored by the *Observer* Editorial Board. The premise of the editorial is that yes, privacy will be compromised because of the new bathroom directives, but the rights of transgender people trump all other concerns:

Yes, the thought of male genitalia in girls' locker rooms — and vice versa — might be distressing to some. But the battle for equality has always been in part about overcoming discomfort — with blacks sharing facilities, with gays sharing marriage — then realizing that it was not nearly so awful as some people imagined.

Naked men in women's showers may be distressing … to some. And in one short sentence, distress becomes mere discomfort, which then becomes an opportunity for people to realize how completely natural it all was to begin with, and how silly and prejudicial are the fears of these women and girls. So here we have the *Observer* squawking that girls should just grow up and not be bothered by encountering male genitalia in the showers, in an editorial dedicated to the proposition that it is inhumane to force men with penises (who think they are women) to encounter male genitalia in men's showers! Do they no longer teach logical fallacies, internal inconsistencies, or the recognition of straw-man (excuse me, straw-person) arguments in journalism school? And wouldn't it be much easier, safer, and less impactful to simply tell these men that using the bathrooms of their biological sex is "not nearly so awful" as they think?

Aside from the insulting moral equivalency between the struggle of African-Americans and people who insist that their sex and gender do not conform, these treacly pieties are monumentally dismissive of the legitimate objections of women and girls, who are treated with condescending paternalism. How quickly the American Left moved on from the absolute right of women to determine the manner in which they and others view their bodies, and how they protect their intimate spaces from the intrusive and oppressive gaze of men. And while the musical silence of academic feminists is a boon not lightly questioned, one wonders how the movement can square this particular circle. In refusing to protect women's bodies and women's spaces, academic feminists effectively make themselves obsolete. Indeed, storied women's colleges are already admitting men who gender identify as women, deconstructing the very premise of the "female" so zealously guarded, extolled, and defended for decades. So absurd has this gender kabuki become that Mount Holyoke College — an all-women's school in Massachusetts — has cancelled their yearly production of *The Vagina Monologues* because it excludes women without vaginas! That would be "men" to you and me in our benighted provincialism.

And so we find ourselves down the rabbit hole. We live in a progressive fantasy landscape where "male" and "female" are social constructs, and a biological boy who thinks he's a girl cannot be challenged, but has an inalienable right to shower with girls. And yet the same progressives who believe such things nevertheless argue that wearing a kimono or a sombrero for Halloween is a racist cultural appropriation; that "white privilege" is an intrinsic, objective reality that can never be separated from

the "white person," no matter what they actually say or do; that the supposedly genetic origins of homosexuality necessitate same-sex "marriage," but the genetic foundations of sex have no bearing on our attitudes toward transgender issues.

But these self-serving hypocrisies are finally being challenged in meaningful ways, and if we persevere, there is hope that common sense can once again overcome cynical politics. As encouraging as it is that states are banding together to take on the federal government, this is little more than the tail wagging the dog. Why appeal to federal courts in the hopes that one branch of the federal government will limit the overreach of another branch? States have the right to nullify nonsensical federal bathroom policies within their borders. They must do so. The answer lies not in government, but in our collective willingness to pull our kids from these government schools, and the willingness of the states to exercise their constitutional prerogative and just say "no."

Photo: AP Images

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