Written by **Raven Clabough** on April 20, 2016

Federal Appeals Court Rules Va. School's Transgender Bathroom Policy Discriminatory

A federal appeals court has ruled that a Virginia high school violated the law by forcing a transgender teen to use the bathroom based on the biological sex that the teen was born. The case is expected to have significant implications for the recently passed North Carolina law that includes a similar provision.

The Virginia case involves a student named Gavin Grimm, who was born female but identifies as male. Though Grimm was permitted to use the boys' restroom for a short period of time in 2014, complaints from parents compelled the school board to adopt a policy that required students to use the restroom that corresponds to the sex that they were born, or opt to use a single-stall restroom instead.

"It shall be the practice of the (Gloucester County Public Schools) to provide male and female restroom and locker room facilities in its schools, and the use of said facilities shall be limited to the corresponding biological genders, and students with gender identity issues shall be provided an alternative private facility," the school board said in its 6-1 ruling on the issue.

Along with the adoption of the policy, the school built private unisex bathrooms for student use.

But despite the school's efforts to offer a fair alternative to its transgender students, members of the LGBTQ community have construed the policy as discriminatory.

Grimm brought her case to the 4th U.S. Circuit of Appeals, arguing that gender should be determined by psychology, not biology. On Tuesday, a three-judge panel of the 4th U.S. Circuit of Appeals ruled 2-1 to overturn the contested Gloucester County School Board policy.

Associated Press reports, "The court said the policy violated Title IX, the federal law that prohibits discrimination in schools." The court determined that the policy is in violation of a U.S. Department of Education rule that transgender students in public schools must be allowed to use restrooms that correspond with their gender identity.

"We agree that it has indeed been commonplace and widely accepted to separate public restrooms, locker rooms, and shower facilities on the basis of sex," the court wrote in its opinion. "It is not apparent to us, however, that the truth of these propositions undermines the conclusion we reach regarding the level of deference due to the department's interpretation of its own regulations."

According to the logic given in the majority opinion, if a government agency finds a situation that it deems unfair, because of one's sexual affiliation, it may make a regulation to fix that injustice, no

matter the cultural norms or what other Americans may want. So if the Centers for Disease Control and Prevention determines that ailments such as hypertension, stroke, and heart attacks can be greatly ameliorated by daily sexual activity — and further determines that unpopular boys/men face grave psychological and medical harm owing to their innate physical and mental makeups (because girls shun them) — the court has it within its power to force girls to give into the boys'/men's sexual desires.

Critics would contend that the justices are merely legalizing certain crimes — voyeurism, exhibitionism, and, in the comparative example, rape — under the guise of being anti-discriminatory.

The majority opinion was written by Judge Henry F. Floyd and joined by Judge Andre M. Davis, both Obama appointees, with George H.W. Bush appointee Paul V. Niemeyer writing the dissent. Judge Niemeyer contends that the majority's opinion "completely tramples on all universally accepted protections of privacy and safety that are based on the anatomical differences between the sexes."

The school board could appeal the decision to the full appeals court or the U.S. Supreme Court, but it's unclear whether this would make a significant difference. ABC News reports that the political dynamic of the court has been "reshaped" by President Obama.

Associated Press writes, "The Richmond-based court was long considered the nation's most conservative federal appeals court, but a series of vacancies in the last few years has allowed Obama to reshape it. Including the two senior judges, the court now has 10 judges appointed by Democrats and seven by Republicans."

David Patrick Corrigan, attorney for the school board, has not yet indicated whether the board would appeal.

University of North Carolina law professor Maxine Eichner indicates that the 4th Circuit ruling is sure to have implications on North Carolina's law pertaining to restroom use by transgender students, since the 4th Circuit Court of Appeals also covers North Carolina, along with Maryland, West Virginia, and South Carolina. "It is a long and well-considered opinion that sets out the issues," she said. "It will be influential in other circuits."

Chris Brook, legal director of the North Carolina chapter of the American Civil Liberties Union, which is challenging North Carolina's House Bill 2, said that the 4th Circuit ruling is likely to help their case. "We are going to be holding this opinion up high when we go into court to challenge this portion of House Bill 2," Brook said.

In response to the 4th Circuit ruling, North Carolina Governor Pat McCrory said that he remains opposed to the DOE "objective to force our high schools to allow a boy in a woman's or girl's locker room facility." McCrory contends that high schools should be permitted to make their own determinations regarding bathroom arrangements for "students that have unique circumstances."

Likewise, the North Carolina Values Coalition issued a statement in which it expressed its discontent with the ruling. "Students from all walks of life find it deeply humiliating and offensive to be forced to share intimate facilities with the opposite sex, but unfortunately the Court did not consider these harms or the voices of these children," the statement said, intimating that the court was discriminating against students who have morals.

North Carolina Senate President Pro Tem Phil Berger asserts that the 4th Circuit ruling is another step closer to a "radical social re-engineering of our society by forcing middle school-aged girls to share school locker rooms with boys."

"House Bill 2 was our effort to stop this insanity, and I hope this proves the bathroom safety bill has nothing to do with discrimination and everything to do with protecting women's privacy and keeping men out of girls' bathrooms," Berger (R-Rockingham) said in a statement.

WRAL reports that North Carolina lawmakers do not intend to repeal the bathroom law when they reconvene for their 2016 legislative session next week. And Governor McCrory expects the ruling to provoke a heated national discussion. "This is going to be a very interesting, not just a North Carolina discussion, this is now even more of a national discussion," he said.

Of course, since nothing in the Constitution allows a federal education department and since under the Constitution one person's rights do not overshadow someone else's, the answer should be simple: The state should nullify all federal encroachments into education and morals. Just as states have refused to follow pro-slavery laws (many years ago) and federal laws prohibiting marijuana, states should nullify this.