



Written by [Michael Tennant](#) on November 17, 2022

Biden Admin. Can't Force Doctors to Toe Transgender Line, Judge Rules

A federal judge [ruled](#) Friday that the Biden administration cannot force doctors to treat patients based on their “gender identity” rather than their biological sex, including by requiring doctors to prescribe hormones and surgery to alter their patients’ sex characteristics.

Judge Matthew Kacsmaryk of the U.S. District Court for the Northern District of Texas found that the Department of Health and Human Services’ (HHS) declaration that the Affordable Care Act (ACA) prohibits doctors from discriminating on the basis of sexual orientation and gender identity (SOGI) had absolutely no basis in law or Supreme Court precedent.



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The case, *Neese v. Becerra*, was a [class-action lawsuit](#) brought by two Texas physicians who, though they treat transgender patients, do not believe that catering to their patients’ delusions is normally in their patients’ best interest and could even be detrimental to their health, whether by permanently altering their bodies — particularly those of minors — or by failing to treat a condition specific to a patient’s biological sex. One of the plaintiffs, for instance, claimed he had to “firmly explain” to a male patient who had prostate cancer that he needed to get it treated even though he identified as a woman and therefore, in his mind, could not possibly have a prostate.

The doctors sued the government after the Supreme Court, in *Bostock v. Clayton County* (2020), [ruled](#) that Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating on the basis of SOGI and the Biden administration took the next logical “woke” step by applying the court’s reasoning across the board. HHS argued that the ACA’s prohibition on sex discrimination by healthcare providers, which refers to Title IX of the Education Amendments of 1974, actually extends to SOGI. According to a [press release](#) from America First Legal (AFL), which litigated the case, “The Biden Administration planned to use its interpretation to force doctors to provide medical care against their best medical judgment or face the loss of access to any medical plans that receive federal funding.”

There is much to criticize in this entire chain of events, from the federal government’s involvement in healthcare and education to its infringements on property rights (via antidiscrimination law) to the Supreme Court’s tortuous rewriting of Title VII, which Justice Samuel Alito observed in his *Bostock* dissent would keep the courts “mired for years in disputes about” its reach. Top that off with the Biden administration’s militant pro-LGBT stance, and the dangers to everyone’s liberty cannot be overstated.

Fortunately, Kacsmaryk, at least, isn’t buying the administration’s line that laws can be retroactively — and by executive or judicial fiat — altered in accordance with the political winds. In *Bostock*, he noted, the Supreme Court explicitly stated that its decision did not “sweep beyond Title VII” and that the court



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did not “prejudge” the question of whether other laws might be subject to similar reinterpretations. As to the ACA, “When adopting [the ACA], Congress could have included ‘sexual orientation’ and ‘gender identity’ in the statutory text. Congress chose not to do so. Instead, Congress limited [the ACA’s] protections to those afforded by other federal statutes — including Title IX. Because Title IX does not protect ‘sexual orientation’ or ‘gender identity’ status, neither does [the ACA].”

Kacsmark, in fact, went to great lengths to debunk the notion that Title IX, which bans sex discrimination in educational institutions receiving federal funds, has anything at all to do with SOGI. “Title IX,” he wrote, “says nothing about ‘sexual orientation’ and ‘gender identity.’ And why would it? Title IX’s protections center on differences between the two biological sexes.” The fact that members of Congress have tried — and failed — to amend Title IX to include “sexual orientation” and “gender identity” ought to be sufficient evidence that the law as it currently stands does not prohibit discrimination on the basis of SOGI.

“This is a historic victory against both the imperial presidency and extremist gender ideology. Forcing doctors to treat boys as girls and women as men is sheer anti-science lunacy,” said AFL President Stephen Miller. “This decision affirms that Biden broke the law by ordering doctors to substitute superstition for biology and to conduct barbaric experiments on children including chemical castration and permanent sterilization.”



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