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Parental Rights, Gender Ideology, and the Equality Act

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KEY TAKEAWAYS

The Equality Act would demolish existing civil rights and constitutional freedoms—and is a grave threat to parental rights.

The Equality Act would impose radical gender ideology on every American, with parents effectively losing the right to raise their children as they see fit.

The Equality Act would result in lifelong physical and emotional harm to countless children, who would be subject to even more dangerous drugs and surgeries.

The idea that parents have a fundamental right to direct the education and upbringing of their children in line with their values is widely shared across the political spectrum and has deep roots in our nation's history and tradition. The common law has long recognized that parental rights and obligations are natural and pre-political, and that respecting the integrity of the family and the decision-making authority of parents is an essential feature of limited government.

This long-standing common law tradition was explicitly affirmed by the Supreme Court in *Meyer v. Nebraska*[1] and *Pierce v. Society of Sisters*,[2] which recognized the rights of parents to direct the education of their children as fundamental constitutional rights. *Meyer*, which overturned a Nebraska law prohibiting foreign language instruction in schools, argued that

such restrictions are inimical to the principles of limited government and do "violence to both the letter and the spirit of the Constitution."[3] *Pierce*, which overturned an Oregon law prohibiting private schooling, stated unequivocally that "the child is not the mere creature of the State," and that "the fundamental theory of liberty upon which all governments in this Union repose excludes any power of the State to standardize its children by forcing them to accept instruction from public teachers only."[4]

The rise of gender ideology and the increasingly aggressive attempts to impose this ideology on all Americans is unjust and unconstitutional. A prime example of this is the so-called Equality Act,[5] which passed the House on February 25, 2021, and is currently being debated in the Senate, as well as the "compromise" Fairness for All Act, reintroduced by Congressman Chris Stewart (R–UT) at the end of February.[6] Both bills would result in egregious violations of parental rights—arguably even worse than the clearly unconstitutional laws at issue in *Meyer* and *Pierce*. They also endanger the health and well-being of children to a degree that is unparalleled in our nation's history.

What Is Gender Ideology?

Gender ideology denies the commonsense, scientifically grounded truth that maleness and femaleness are biological realities independent of subjective feelings or desires. Instead, gender ideology holds that what makes someone a man or a woman depends entirely on one's feelings or choices. This view is exemplified in the remarks of Johanna Olson-Kennedy, Medical Director of the Center for Transyouth Health and Development at Children's Hospital Los Angeles.[7]

Dr. Olson-Kennedy recounts how she "helped" an 8-year-old girl who preferred short hair and boy's clothing come to the "realization" that she was actually a boy trapped in a girl's body. At first, when Dr. Olson-Kennedy asked the child if she was a girl or a boy, the child looked confused and responded, "Well, I'm a girl, 'cause I have this body." But Dr. Olson-Kennedy quickly proceeded to disabuse the child of this politically incorrect biological understanding of gender with the following comparison:

> I said, "Do you ever eat pop tarts?" And the kid was like, oh, of course. And I said, "well you know how they come in that foil packet?" Yes. "Well, what if there was a strawberry pop tart in a foil packet, in a box that said 'Cinnamon Pop Tarts.'? Is it a strawberry pop tart, or a cinnamon pop tart?" The kid's like, "Duh! A strawberry pop tart." And I was like, "so..." And the kid turned to the mom and said, "I think I'm a boy and the girl's covering me up."[8]

In other words, according to pre-eminent gender therapists and the tenets of gender ideology, a person's body—including his or her biological capacity to play either a male or female role in reproduction, which is rooted in chromosomes and profoundly affects a person's overall biological development beginning just weeks after conception—is no more significant than a foil wrapper. On this view, who you are has nothing to do with your body, but is completely determined by your beliefs, feelings, and choices independent of biological reality.

How Gender Ideology Endangers Children's Health

On the basis of this ideology, the now-standard medical and psychological approach for dealing with children and adolescents who express confusion about their gender is unquestioning affirmation of the children's claims—regardless of a child's age or circumstances. According to these dominant protocols, children who identify as the opposite gender are helped to undergo "social transition," changing their names and pronouns and beginning to present themselves publicly as the gender with which they identify. If they have not yet undergone puberty, they are given puberty-blocking hormones (designed to delay precocious puberty, but not actually FDA-approved for the prevention of normal puberty in transgender-identifying children). If the transgender identification persists (which studies indicate is almost certain if this gender-affirming treatment protocol is followed),[9] adolescents are then given cross-sex hormones and perhaps gender-reassignment surgeries such as mastectomies and genital reconstruction surgeries to make their bodies appear more like those of the gender with which they identify.

Irreversible Medical Harm. This "gender-affirming" treatment protocol causes serious and irreversible medical harms. The American College of Pediatricians reports that puberty blockers not only prevent the development of secondary sex characteristics, but also "arrest bone growth, decrease bone accretion, prevent the sex-steroid dependent organization and maturation of the adolescent brain, and inhibit fertility by preventing the development of gonadal tissue and mature gametes for the duration of treatment."[10]

While it is claimed that puberty suppression is reversible because puberty will ensue once the treatment is stopped, it is not clear that the physical effects are fully reversible because the long-term effects have not yet been studied and going through puberty much later than all of one's peers can also cause isolation and other psychosocial harms. As explained in a *New Atlantis* special report by pediatrician and endocrinologist Paul Hruz, along with researcher Lawrence Mayer and psychiatry professor Paul McHugh:

> The claim that puberty-blocking treatments are fully reversible makes them appear less drastic, but this claim is not supported by scientific evidence. It remains unknown whether or not ordinary sex-typical puberty will resume following the suppression of puberty in patients with gender dysphoria. It is also unclear whether children would be able to develop normal reproductive functions if they were to withdraw from puberty suppression. It likewise remains unclear whether bone and muscle development will proceed normally for these children if they resume puberty as their biological sex. Furthermore, we do not fully understand the psychological consequences of using puberty suppression to treat young people with gender dysphoria.[11]

A Self-Fulfilling Prophecy. Further, the "gender-affirming" treatment protocol is a self-fulfilling prophecy. The DSM-5 (the current edition of the Diagnostic and Statistical Manual of the American Psychiatric Association) indicates that, while rates vary, as many as 88 percent of girls and 98 percent of boys who identify as transgender during childhood eventually come to accept and feel comfortable with their biological sex.[12] But these desistance rates change radically when puberty is suppressed and social transition is encouraged. In the only long-term study of gender dysphoric children who received puberty blockers, 100 percent persisted in their transgender identification and went on to request cross-sex hormones, a path that results in sterilization.[13]

Cross-sex hormones, which are sometimes given to minors even without parental consent, also involve serious long-term risks, including increased risk of coronary artery disease, blood clots, cardiovascular disease, high blood pressure, and reproductive cancers.[14] As the long-term effects of a lifetime of cross-sex hormone use have never been studied, it is likely that there are other unknown risks as well. Further, being on cross-sex hormones for even a short amount of time can cause irreversible changes.

This means, for example, that adolescent girls who begin taking testosterone to transition to a male gender identity, but then decide that they want to de-transition back to female, will continue to have male facial hair and a deeper voice for the rest of their lives, and their capacity to conceive and bear children may be irreversibly damaged even if they have already gone through puberty. Transgender-identifying adolescent girls can also obtain a mastectomy as early as 16 years of age (and doctors like Olson-Kennedy are pushing to lower the minimum age for "bottom surgery" as well[15]), immutably changing their bodies and subjecting themselves to additional irreversible health risks.

Lack of Evidence. Even worse, these experimental, irreversible, and medically risky "gender-affirming" treatment protocols have become the norm—despite the fact that there is no good evidence indicating that these interventions alleviate psychological distress or improve mental health in the long run. On the contrary, a report from the Centers for Medicare and Medicaid Services conducted under President Obama in 2016 found that "overall, the quality and strength of evidence were low" due to poor study designs, and that the most methodologically rigorous studies "did not demonstrate clinically significant changes...after GRS [gender reassignment surgery]."[16]

In fact, the report notes that a Swedish study—the largest and most rigorous long-term study that has yet been conducted—found that those who had received gender reassignment surgery had "increased mortality and psychiatric hospitalization compared to matched controls," with the increase in mortality caused primarily by suicide rates nearly 20 times higher than controls.[17] Other reviews of the literature conducted by respected research agencies such as Birmingham University's Aggressive Research Intelligence Facility and Hayes, Inc., came to similar conclusions.[18]

Rapid-Onset Gender Dysphoria. The experimental and risky nature of these treatment protocols is especially concerning given the rapid rise in what Brown University professor Lisa Littman describes as "rapid onset gender dysphoria," particularly among adolescent girls.[19] Littman reports that unprecedented numbers of adolescent girls are now identifying as transgender despite never having questioned their gender identity in the past. Littman believes that the phenomenon may be spreading through social contagion due to the influence of peers and social media. In the United Kingdom, for instance, the number of girls seeking gender reassignment treatment has risen by *4,000 percent* in the past decade. This new trend is particularly alarming because, historically, transgender identification was extremely rare and was found predominantly among biological males.[20]

Detransition Stories. In her eye-opening new book, *Irreversible Damage: The Transgender Craze Seducing Our Daughters*, journalist Abigail Shrier explores this troubling trend, recounting story after story of adolescent girls with no history of gender dysphoria suddenly proclaiming themselves to be transgender after being exposed to transgender ideology on social media, at school, or through the influence of peers. Many go on to receive cross-sex hormones and mastectomies—even against the objections of parents, later regretting their choice but forced to live with the irreversible effects.

Shrier writes:

> Each of the detransitioners I talked to told a remarkably similar story—of having had no gender dysphoria until puberty, when she discovered her trans identity online.... Nearly all of the destransitioners I spoke with are plagued with regret. If they were on testosterone for even a few months, they possess a startlingly masculine voice that will not lift. If they were on T for longer, they suffer the embarrassment of having unusual intimate geography—an enlarged clitoris that resembles a small penis. They hate their five-o'clock shadows and body hair. They live with slashes across their chests and masculine nipples...or flaps of skin that don't quite resemble nipples. If they retained their ovaries, once off testosterone, whatever breast tissue they have will swell with fluid when their periods return, often failing to drain properly.... Each of the desisters and detransitioners I talked to reported being 100 percent certain that they were definitely trans—until, suddenly, they weren't. Nearly all of them blame the adults in their lives, especially the medical professionals, for encouraging and facilitating their transitions.[21]

The heart-wrenching stories of many detransitioners like the ones Shrier interviewed—living with the irreparable damage caused by these experimental medical interventions—together with the testimonies of many concerned physicians,[22] led the British High Court to rule that children under 16 are too immature to consent to puberty blockers and cross-sex hormones.[23] Yet, as explained below, these risky and experimental interventions could become legally required even against the objections of parents if the Equality Act (or the Fairness for All Act) is passed.

The Equality Act: Imposing Gender Ideology, Threatening Parental Rights, and Endangering Children's Well-Being

The Equality Act adds sexual orientation and gender identity to race as protected classes under existing civil rights law, thus making it illegal to discriminate on the basis of sexual orientation and gender identity in the same way that it is illegal to discriminate on the basis of race. In doing so, it presumes that transgender identity is real in the same way that race is. It presumes, in other words, that just as being black or white is an objective, unchosen, and permanent aspect of one's identity, a transgender woman really *is* a woman (just as much as someone who is biologically female), and a transgender man really *is* a man (just as much as someone who is biologically male). Under the Equality Act, failing to treat a transgender woman the same way that you would treat a biological female counts as

discrimination, as does acting in line with the belief that maleness and femaleness are biological realities—even when it comes to the way that *parents* educate and raise their own children.

The "compromise" of the Fairness for All Act is no better. While it carves out limited religious exemptions, the substance of the bill is otherwise the same: It still defines belief in basic biological truths as bigoted—and does nothing for the many people whose objections are based on science and common sense, rather than religion.

To understand how radically the Equality Act would undermine parental rights, imagine that you are the parent of an adolescent girl who—like the many described by Shrier in her book—begins to identify as transgender after watching video testimonials of transgender-identifying adolescents on Tumblr, despite never previously having expressed discomfort with her gender. If you are worried that this is a social-media-induced fad and resist your daughter's demands to call her by a new name, buy her a chest binder and men's clothing, and allow her to begin taking testosterone, your caution and skepticism could be considered abusive or neglectful.

With the help of school officials, your daughter might begin presenting herself as a boy at school—adopting a new name and pronouns, using the boy's restroom and locker room, and participating in boys' sports, etc.—while she and the school officials work together to keep you, the parent, in the dark about what is going on. (Many school districts already have protocols in place to help students transition to a new gender identity without parents' knowledge—like the Madison Metropolitan School District policies being challenged by parents in *Doe v. Madison*—but under the Equality Act all schools that receive federal funding would likely be required to adopt such policies.)

Therapy Banned. If you try to find a therapist for your daughter who will not unquestioningly affirm her transgender identification, but who instead will do what therapists usually do, that is, probe more deeply to determine whether there are underlying psychological or social issues at the root of your daughter's gender dysphoria (there are high rates of psychiatric comorbidity among those with gender dysphoria)[24]—the Equality Act would make it even more difficult to find one than it already is. In fact, the bill would likely make it *illegal* for therapists to question a client's transgender identification.

The Equality Act outlaws "conversion therapy" as a form of discrimination, and the meaning of conversion therapy has been expanded to include not only voluntary communications between therapist and client about unwanted feelings of same-sex attraction, but also attempts to help clients

reconcile themselves with the gender identity that corresponds to their biological sex.[25] Clinicians who do not take children's transgender identity claims at face value, encourage them to transition socially, and facilitate their access to puberty blockers or cross-sex hormones could risk being sued for discrimination or losing their licenses.

Child Protective Services Intervention. If—despite your efforts to treat your daughter with affection, affirm that you love her just as she is, and express empathy for her suffering—your daughter complains at school or to a medical professional that your failure to unquestioningly affirm her new gender identity exacerbates her psychological distress, you could find yourself accused of abuse or neglect by state child protection officials. You could lose custody, and a judge could order that your daughter begin receiving cross-sex hormones *over your objections*. This could occur notwithstanding, as previously noted, such treatments: (1) are experimental[26] and risky;[27] and (2) cause irreversible changes that have not been proven to offer long-term psychological benefit. This could also occur despite growing evidence[28] that indicates the new phenomenon of rapid-onset gender dysphoria is spreading via social contagion, especially among adolescent girls.[29]

Loss of Custody, These predictions are not just hypothetical. Parents have already lost custody of their children for failing to allow them to take cross-sex hormones. In 2018, a judge removed a 17-year-old girl who identified as transgender from her parents' custody and mandated that the girl be given hormonal "treatment" for gender dysphoria despite the parents' objection—and despite the judge's own recognition that there is "a surprising lack of definitive clinical study available to determine the success of different treatment modalities" for gender dysphoria.[30] While the girl had no prior symptoms of gender dysphoria as a child, she was diagnosed with gender dysphoria by Cincinnati Children's Hospital Medical Center, where her parents had sent her for inpatient treatment for severe anxiety and depression. Cincinnati Children's is a well-known provider of care for transgender youth, and clearly follows the "gender affirming" model of care according to which a patient's self-reports should be believed without question. As the judge noted with concern, 100 percent of patients referred to them are recommended for hormone "treatment."[31]

Likewise, in 2019, a court removed a 14-year-old girl from her father's custody and awarded temporary custody to the girl's mother, whom he had divorced due to her ongoing affair with a man convicted of assaulting his three-year-old daughter in 1996.[32] While the daughter had a history of severe mental illness and had been hospitalized for self-harm, she had never previously questioned her gender identity. Yet upon being released

for the third time from a psychiatric hospital, she declared that she was transgender. While the father tried to be supportive, even agreeing to use her preferred name and pronouns, he did not want her to undergo irreversible hormonal or surgical "treatments." As the father explained, "I love my 14 year old [sic] daughter very much but I do not believe she is capable of making such a life-altering decision of sex change. I'm very concerned that she could come to regret the irreversible effects caused by hormone treatment, double mastectomy, and attachment of male sex organs."[33] The father's battle to regain custody and retain medical decision-making authority for his daughter appears to be ongoing.

By making "gender identity" a protected category, like race is in civil rights law, the Equality Act (and Fairness for All Act) threatens to make these alarming cases routine. More generally, these bills would endanger parents' ability to protect their children from the harms and confusion of indoctrination into gender ideology in school.

School Guidelines. Already, many schools have adopted curricular guidelines like the Madison School District's Guidance and Policies to Support Transgender, Non-Binary and Gender Expansive Students,[34] instructing teachers to, for instance, use "books and lessons that are inclusive of all identities and send messages of empowerment to students," to display "visual images and posters that send messages of gender inclusion," and to avoid using terms like "boys" and "girls" when teaching about bodily changes during puberty (but to speak instead of "people with penises" and "people with vaginas").

Under the Equality Act and Fairness for All Act, all public schools—and any school that receives federal funds—would have to adopt such confusing and unscientific curricula, and also to implement broader "gender-inclusive" policies such as giving students access to bathrooms, locker rooms, and athletic participation on the basis of their gender identification, regardless of their biological sex, and helping a child transition socially to the opposite gender in school while hiding this from parents (as the Madison Metropolitan School District and many others[35] already do).

Conclusion

Ending unjust discrimination and ensuring that all people are treated with respect are important and laudable goals. But the Equality Act and Fairness for All Act are not about ending unjust discrimination. Instead, they are about imposing a radical ideology with sweeping implications for all Americans. There is nothing discriminatory about acknowledging

biological reality or seeking to protect children from confusion and from harmful experimental "treatments." Indeed, protecting children from such harms is a fundamental right and duty of parents, which is rooted in the natural moral law and upheld by the Constitution.

The Equality Act and Fairness for All Act would violate this fundamental right of parents and cause irreparable harm to countless vulnerable children. Americans across the political spectrum should unite in opposition to this dangerous and polarizing legislation.

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