



The Transgender Movement and “Gender Identity” in the Law

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Virtually all people have a biological sex, identifiable at birth and immutable through life, which makes them either male or female. The transgender movement represents a denial of this physical reality.

A Mental Disorder

The belief that one is, or the desire to be, of a different “gender identity” from one’s biological sex has long been recognized as a mental disorder.¹ Psychiatrist Sander Breiner declares, “[W]hen an adult who is normal in appearance and functioning believes there is something ugly or defective in their appearance . . . there is a psychological problem.”² Another psychiatrist, Rick Fitzgibbons, calls it “a fixed false belief . . . specifically a delusion.”³ Psychiatrist Paul McHugh declares, “It is a disorder of the mind. Not a disorder of the body.”⁴

Those who choose not to live with the “gender identity” that corresponds to their biological sex are known as “transgender” persons. (Note: The tiny number of persons who are “intersexed” —born with a mix of male and female genetic or biological characteristics — are in a separate category and are *not* considered “transgender.”⁵)

After extensive lobbying by transgender activists, the American Psychiatric Association changed the diagnosis of “Gender Identity Disorder” to “Gender Dysphoria” in 2013. It remains on the list of disorders, though, because, “To get insurance coverage for the medical treatments, individuals need a diagnosis.”⁶

Causes and Treatment of “Gender Dysphoria”

While causality is difficult to determine, those who identify as transgender are more likely to have been victims of child sexual abuse or to have a history of trauma, loss, and family disruption.⁷

Susan Bradley, M.D. and Kenneth J. Zucker of the University of Toronto, leading experts in gender dysphoria in children, have declared that “clinicians should be optimistic, not nihilistic, about the possibility of helping the children to become more secure in their gender identity.”⁸ Psychiatrists have reported that gender dysphoria often occurs with other mental health problems in adults, and that it “improved in parallel during treatment” for those conditions.⁹

“Gender Reassignment” Surgery

Full transition involves hormone treatments, breast surgery (removal or implants), other cosmetic surgery, genital reconstruction, and a change of personal identification. However, not every person seeking to live as the other sex will undergo surgery.¹⁰

These surgical procedures are not always successful and can be extremely painful.¹¹ A lifetime of hormone treatments can also have profound physical and psychological consequences.¹² Psychiatrist Jon Meyer concluded that “surgery is not a proper treatment for a psychiatric disorder and it is clear to me that these patients have severe psychological problems that do not go away following surgery.”¹³ High rates of suicide exist even among those who have already received gender reassignment surgery, which suggests that suicidal tendencies result from an underlying pathology.¹⁴

Public Policy Implications of the Transgender Movement

Government Recognition

Ideally, the law would forbid government recognition, in any way (whether on birth certificates,¹⁵ driver’s licenses,¹⁶ passports,¹⁷ or any other government-issued identification), of any change in an individual’s biological sex as identified at birth. Alternatively, such recognition could be limited to cases where it is clear that the change is permanent and irreversible because gender reassignment surgery has already been performed.¹⁸

“Gender Identity Non-Discrimination” Laws

All Americans have equal rights before their government under the Constitution. However, laws or ordinances at the local, state, and federal level which would outlaw “discrimination” on the basis of so-called “gender identity” in employment, housing, and public accommodations would give persons who identify as transgender a special right to sue even private companies if they feel aggrieved. Such laws amount to forced affirmation of the myth that people can change their sex. They are thus wrong in principle and should always be opposed. Such bills sometimes acknowledge the importance of appearance, dress and grooming standards in the workplace, but dressing in ways that are culturally appropriate for one’s biological sex is the most fundamental “appearance, grooming, and dress standard” possible.¹⁹

The most extreme application of the principle of “gender identity” laws would be to the use of gender-separated restrooms, locker rooms, and showers. Even Rep. Barney Frank, a former Congressman who identifies as homosexual, acknowledged that what transgender activists want “is for people with [male anatomy] who identify as women to be able to shower with other women.”²⁰

Here are some additional reasons to oppose “gender identity non-discrimination” laws:

- They increase government interference in the free market.
- “Gender identity” is unlike most other characteristics protected in civil rights laws.²¹
- They would lead to costly lawsuits against employers.²²
- They mandate employment of those who identify as “transgender,” even in clearly inappropriate occupations, such as education.²³

“Gender Identity” in Schools

The employment of teachers and staff who identify as transgender (mandated under “non-discrimination” codes) would confuse children and potentially undermine their own developing sense of their sexual identity,²⁴ while teaching about “gender identity” in the curriculum may undermine parental authority to transmit their own values on such issues.²⁵ Concerns about safety and privacy if students who identify as transgender are allowed in restrooms, showers, and locker rooms would be even greater for children than for adults,²⁶ and questions would be raised about the fairness of sex-separated athletic competition if students can choose with which sex they will compete.²⁷ No student should be subjected to bullying, but imposing a new gender ideology on schools is not necessary to keep students safe.

Taxpayer-Funded “Gender Reassignment”

Taxpayers should not be forced to pay for gender reassignment – for public employees,²⁸ for prisoners,²⁹ or through programs such as Medicaid³⁰ and Medicare.³¹ Such treatments – involving the amputation of healthy body parts – are, arguably, a violation of medical ethics. Moreover, they are elective procedures rather than necessary health care – just like any other form of cosmetic or plastic surgery.

Government-Mandated Health Insurance Coverage for “Gender Reassignment”

The Obama administration has proposed a regulation under the Patient Protection and Affordable Care Act (“ObamaCare”) which would prohibit insurance companies from excluding coverage of gender reassignment surgery.³² This interferes with the free market and imposes costs on all employers and individuals who buy health insurance. It also violates the beliefs of many family-owned businesses and religious non-profit organizations that have religious or moral objections to paying for such procedures.

Instead of paying for – or forcing others to pay for – elective, cosmetic gender reassignment surgery, policy makers should consider ensuring that government or private insurance plans which already cover mental health services provide coverage for therapy to help people overcome (rather than indulge) gender dysphoria and associated psychological problems.

Transgender Service in the Military

Transgender status should continue to be a disqualifying psychiatric condition for military service, and gender reassignment surgery should be a disqualifying physical condition.³³ However, the Obama administration may soon change this.³⁴

The story of America’s most famous service member to identify as transgender tends to reinforce these concerns. Bradley Manning is the soldier convicted of espionage in 2013 for leaking confidential documents.³⁵ The day after Manning was sentenced to prison, he “came out” as transgendered.³⁶

For more information, see: Dale O’Leary and Peter Sprigg, “Understanding and Responding to the Transgender Movement,” Issue Analysis IS15F01 (Washington: Family Research Council, June 2015). Online at: <http://www.frc.org/transgender>

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¹ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition: DSM-5* (Washington, DC: American Psychiatric Publishing, 2013), 451.

² Sander Breiner, M.D., “Transsexuality Explained,” *NARTH Bulletin*, March 27, 2008.

³ Rick Fitzgibbons, M.D., “Gender Identity Disorder in Children: Will Jack Be Happier If We All Pretend He’s Jill?” *Aleteia*, January 12, 2015, accessed February 12, 2016, <http://aleteia.org/2015/01/12/gender-identity-disorder-in-children-will-jack-be-happier-if-we-all-pretend-hes-jill/>.

⁴ Perry Chiaramonte, “Controversial Therapy for Pre-Teen Transgender Patient Raises Questions,” *FoxNews.com*, October 17, 2011, accessed February 12, 2016, <http://www.foxnews.com/us/2011/10/17/controversial-therapy-for-young-transgender-patients-raises-questions/?test=latestnews>.

⁵ A very tiny percentage of people, once known as “hermaphrodites,” suffer from “intersex” conditions – also known as “disorders of sexual development” – which involve a mix of male and female genetic or biological characteristics. However, this rare medical condition is not relevant to the transgender debate, because the vast majority of “transgender” individuals have only a psychological gender dysphoria and are not biologically

"intersexed." See: Leonard Sax, "How Common is Intersex? A Response to Anne Fausto-Sterling," *The Journal of Sex Research*, Vol. 39, No. 3 (August 2002): 175.

⁶ American Psychiatric Association, *Gender Dysphoria*, American Psychiatric Publishing, 2013, accessed February 12, 2016,

<http://www.dsm5.org/documents/gender%20dysphoria%20fact%20sheet.pdf>.

⁷ K. Zucker and S. Bradley, *Gender Identity and Psychosexual Problems in Children and Adolescents*, (New York: Guilford, 1995).

⁸ *Ibid*, 281.

⁹ Isaac Marks, Richard Green, David Mataix-Cols, "Adult Gender Identity Disorder Can Remit," *Comprehensive Psychiatry* Vol. 41, No. 4 (July/August 2000): 273-275.

¹⁰ D. Schrock et al., "Transsexuals embodiment of womanhood," *Gender & Society*, (2003) 20 (10): 149.

¹¹ S. Krege et al., "Male-to-female transsexualism: a technique, results and long-term follow-up in 66 patients," *BJU International* 88 (2001): 396-402, <http://onlinelibrary.wiley.com/doi/10.1046/j.1464-410X.2001.02323.x/epdf>.

¹² H. Asscheman, L. Gooren, P. Eklund, "Mortality and morbidity in transsexual patients with cross-gender hormone treatment," *Metabolism*, vol. 38, Issue 9 (September 1989): 869-73,

http://www.researchgate.net/profile/Louis_Gooren/publication/20628202_Mortality_and_morbidity_in_transsexual_patients_with_cross-gender_hormone_treatment/links/0c9605187a882bdc08000000.pdf.

¹³ Michael Fleming et al., "Methodological Problems in Assessing Sex-Reassignment Surgery: A Reply to Meyer and Reter," *Archives of Sexual Behavior*, vol. 9 (5) (1980): 451,

<http://link.springer.com/article/10.1007%2FBF02115944?LI=true#page-2>

¹⁴ Cecilia Dhejne, et al., "Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden," *PLoS ONE*, Vol. 6, Issue 2 (February 22, 2011),

<http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0016885>

¹⁵ "Changing Birth Certificate Sex Designations: State-By-State Guidelines," Lambda Legal, updated February 3, 2015, accessed January 19, 2015, <http://www.lambdalegal.org/publications/changing-birth-certificate-sex-designations-state-by-state-guidelines>.

¹⁶ "ID Documents Center," National Center for Transgender Equality, updated February 1, 2016, accessed February 12, 2016, <http://www.transequality.org/documents>.

¹⁷ "New Policy on Gender Change in Passports Announced," U.S. Department of State, June 9, 2010, accessed February 12, 2016, <http://www.state.gov/r/pa/prs/ps/2010/06/142922.htm>.

¹⁸ For example, in 2014, New Jersey Gov. Chris Christie vetoed Assembly Bill No. 4097, which would have liberalized rules for amending birth certificates by dropping the requirement for sex reassignment surgery. See veto message at: http://www.njleg.state.nj.us/2012/Bills/A4500/4097_V1.PDF.

¹⁹ Peter Sprigg, "Sexual Orientation and Gender Identity (SOGI) Laws: A Threat to Free Markets and Freedom of Conscience and Religion," Family Research Council, October 2014, accessed February 12, 2016,

<http://www.frc.org/issuebrief/sexual-orientation-and-gender-identity-sogi-laws-a-threat-to-free-markets-and-freedom-of-conscience-and-religion>.

²⁰ Loren King, "Task Force Drops Support for Federal Anti-Bias Bill," *Bay Windows*, June 10, 1999; no longer available online as of January 20, 2015.

²¹ For example, the Civil Rights Act of 1964 only bars discrimination based on "race, color, national origin, sex, and religion." Public Law 88-352, "Civil Rights Act of 1964," July 2, 1964,

http://library.clerk.house.gov/reference-files/PPL_CivilRightsAct_1964.pdf.

²² For example, in 2009, a federal judge ordered the Library of Congress to pay \$491,190 in back pay and damages to a transgender job applicant who had alleged discrimination. See: "White House not appealing transgender ruling," Associated Press, July 1, 2009, accessed February 12, 2016,

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²³ Bernard Vaughan, "Gender-change teachers gets OK: Eagleswood board stands by decision to hire McBeth," *Press of Atlantic City*, February 28, 2006.

²⁴ *Ibid*.

²⁵ Todd Starnes, "Call it 'gender fluidity': Schools to teach kids there's no such thing as boys or girls,"

FoxNews.com, May 15, 2015, accessed February 12, 2016, <http://www.foxnews.com/opinion/2015/05/15/call-it-gender-fluidity-schools-to-teach-kids-there-s-no-such-thing-as-boys-or-girls.html>.

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- ²⁹ For example, a long-running lawsuit in Massachusetts claimed that it was “cruel and unusual punishment” for a Massachusetts prison to refuse to pay for gender reassignment surgery for a convicted murderer. In December 2014, the U.S. Court of Appeals for the First Circuit rejected that argument. See *Michelle Kosilek v. Luis S. Spencer*, No. 12-2194, U. S. Court of Appeals for the First Circuit, Opinion en banc (December 16, 2014), <http://media.ca1.uscourts.gov/pdf.opinions/12-2194P2-01A.pdf>.
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