

TEXAS REJECTS BIDEN'S SEXUAL POLITICS

Catholic League president Bill Donohue comments on the Biden administration's latest example of sexual politics:

On September 20, Texas Attorney General Ken Paxton sued the Biden administration in an attempt to stop a June 15 guidance, or legal notice, by the Equal Employment Opportunity Commission (EEOC) on the rights of transgender persons.

The EEOC says it is authorized to make a wide-ranging decision on the rights of transgender persons, leaning on the 2020 U.S. Supreme Court ruling in *Bostock v. Clayton County* for legitimacy. Texas disagrees saying that the EEOC is guilty of overreach, assuming powers it was never granted by this high court ruling.

According to the EEOC, relying on *Bostock*, it is empowered to force employers to allow biological persons to dress as a member of the opposite sex. However, as the Texas brief points out, there are state agencies that have a dress code, and if an employee were to dress as a member of the opposite sex, it would violate its standards.

Texas also objects to the EEOC directive that says employers must respect the right of biological persons to use the bathrooms, locker rooms, and showers of the opposite sex, meaning that males could use the facilities reserved for women.

The EEOC also seeks to force employers and employees to call persons of the opposite sex by the pronouns of their choice, so that it would be a violation not to call a woman who identifies as a man "he/him," or even "they/them," despite the fact that such nomenclature is biologically and grammatically illiterate. Texas not only refuses to discipline workers for

these alleged infractions, it insists that the guidance violates the free speech rights of employees.

Does *Bostock* give the EEOC the powers it claims it has?

No one disagrees that *Bostock* concluded that Title VII of the 1964 Civil Rights Act, which bars discrimination on the basis of race and sex, applies to discrimination based on sexual orientation and gender identity. This clearly means that no one can be fired from the workplace for simply being a homosexual or a transgender person. But what about dress codes, males showering with females, and transgender speech codes? They are not even hinted at in Title VII.

U.S. Supreme Court Justice Neil Gorsuch, who wrote the majority decision in *Bostock*, anticipated the first two concerns, and sought to alleviate fears that they could be justified on the basis of this ruling.

“The employers worry that our decision will sweep beyond Title VII to other federal or state laws that prohibit sex discrimination. And, under Title VII itself, they say sex-segregated bathrooms, locker rooms, and dress codes will prove unsustainable after our decision today. But none of these other laws are before us; we have not had the benefit of adversarial testing about the meaning of their terms, and we do not prejudge any such questions today. Under Title VII, too, we do not purport to address bathrooms, locker rooms, or anything else of the kind.”

In other words, the EEOC is deliberately ignoring the plain language of *Bostock* by granting itself the authority that is nowhere sanctioned in this Supreme Court ruling. As for forcing employees to yield their First Amendment right to free speech, the word “pronouns” is nowhere mentioned by Gorsuch; he is agnostic on this issue.

The Texas lawsuit also contends that the Fourteenth Amendment does not permit the federal government to “substantively

redefine a State's constitutional obligations." It argues that this is exactly what the EEOC power grab does.

Very few Americans want to see people discriminated against on the basis of any conventional demographic characteristic, but when it comes to matters involving privacy and modesty—to say nothing of looming sexual assault issues—that is a different story. Moreover, telling people what linguistic terms they must use in addressing coworkers is draconian.

The contempt that President Biden has for respecting elemental standards of decency, as well as his dismissal of our First Amendment right to free speech, did not begin with his administration's twisted interpretation of *Bostock*. It began on his first day in office.

On January 20, 2021, our "devout Catholic" president signed an executive order saying that biological persons can use the bathroom and locker room of their choice. On the same day, the White House website was updated to allow visitors to use whatever pronouns they want, thus setting the table for transgender-pronoun mandates in the workplace.

Never before has there been a presidential administration so determined to promote sexual engineering, complete with a wholesale disregard for freedom of speech. It is becoming increasingly clear that Biden is an abolitionist of the worst kind: he is bent on abolishing the nature-based differences between men and women. Moreover, he will punish those who do not adopt his sexually correct lexicon.

At a minimum, we need to know more about who is advising him on these issues. This is especially urgent given that it is becoming more obvious by the day that he is not in full command of his faculties.

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