

# How the Equality Act's Gender Ideology Would Harm Children

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## KEY TAKEAWAYS

America's children should not be used as pawns by political activists who do not respect the diverse viewpoints in contentious cultural conversations.

The Equality Act opens the door for destructive gender ideology to be pushed in schools, sports, medicine, and society at large—putting children at risk.

Parents would have less control over their children's exposure to transgender ideology, from how it would be taught to what mental health treatments are allowed.

In his April 2021 State of the Union Address, President Joe Biden urged Congress to pass the Equality Act and pledged to sign it. The Equality Act would amend the 1964 Civil Rights Act and Fair Housing Act to include sexual orientation and gender identity (SOGI) as protected classes.<sup>1</sup> Congress passed the 1964 Civil Rights Act to provide federal protection from invidious discrimination on the basis of race—an *immutable* characteristic. It addressed systematic, legally sanctioned discrimination that deprived African Americans of material and economic benefits.

All people have inherent human dignity and should be treated with respect, and no one should be discriminated against simply because they identify as transgender or gay. But the Equality Act places a person's *subjective* sense of gender identity and one political side's views on sexual orientation and

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marriage into the same legal categories as race. This act seeks to impose a progressive sexual orthodoxy on the nation—and penalize people who think, speak, or act on their own religious, moral, and/or scientific beliefs that there are two sexes or that marriage is between a man and a woman.

Infusing this ideology into education and medicine would harm children’s minds, bodies, and their relationships with their families. Passage of the Equality Act would pose serious challenges to the health and well-being of children.

## The Act’s Gender Ideology: Harming Children’s Minds

The Equality Act would lead to the imposition of a destructive gender ideology in school curricula that would cause more children to become distressed and confused about their bodies. Gender policies in schools would also pressure students to speak with the vocabulary and terminology of the transgender movement—rather than according to their own beliefs—during periods of their development in which peer pressure is already intense.<sup>2</sup>

Approximately 90 percent of American students attend public school.<sup>3</sup> Section 5 of the Equality Act amends Title IV in the 1964 Civil Rights Act, which required the desegregation of public education. As Sarah Parshall Perry has explained, school administrations could be ordered to implement SOGI curricula at the behest of federal judges citing the Equality Act, just as they did when they “required schools to remove educational materials considered racially biased, or to expand curricula to include black history” because they were “from a body of law focused on ‘equity jurisdiction.’”

Perry continues:

Under this principle, once the legal right of an individual (or class of individuals) and a violation of that right have been proven, a federal court’s power to remedy past wrongs is quite broad. It can include (and has included) changes to curriculums and teaching materials in order to eliminate both actual (“de facto”) and legal (“de jure”) segregation of school students.<sup>4</sup>

**Transitions and Parental Notification.** Gender identity curricula would harm children’s minds by promoting the concept that gender identity is fluid and introducing the possibility of “transitioning” from one sex to the other. In Rocklin County, California, as part of a kindergarten boy’s transition to a female gender identity, a teacher read two transgender-affirming children’s books to her class, leading up to the transitioning student’s reappearance dressed as a girl. Parents were not notified or allowed to opt out,

leading to outrage at a subsequent school board meeting. Parents reported that after being subjected to this material, their kindergarten children came home distressed and confused about their own sex and whether they could choose their genders.<sup>5</sup>

**Effects of Puberty Blockers.** Abigail Shrier’s book, *Irreversible Damage: The Transgender Craze Seducing Our Daughters*, documented that many middle school or high school girls identifying as transgender may be the result of social contagion.<sup>6</sup> Gender-identity curriculum would promote the controversial treatment of gender dysphoria with experimental puberty blockers and cross-sex hormones that have detrimental and irreversible effects, including sterilization.<sup>7</sup>

Some physicians urge a period of “watchful waiting.” This prudent approach is based upon reports that up to 98 percent of boys and up to 88 percent of girls who experience gender dysphoria will naturally resolve their dysphoria as they mature.<sup>8</sup>

**Pushing SOGI Curricula on States.** Currently, 10 states prohibit SOGI curricula while four states—California, Colorado, Illinois, and New Jersey—and the District of Columbia permit it in two disciplines, sex education and history.<sup>9</sup> A federal law like the Equality Act would put the status of these state laws that prohibit SOGI curricula into question—and likely would expand SOGI curricula to the remaining states that do not have such curricula or have affirmatively prohibited it in their public schools.

The majority of parents (66 percent) oppose K–12 curriculum on gender identity according to a Heritage survey.<sup>10</sup> Nevertheless, parents may not be able to opt their children out of this curriculum. This is already happening in states where specific curriculum is mandated. In Nevada, a mother sued a local charter school alleging the school would not allow her son to opt out of classes teaching critical race theory, forcing him to align with ideas she did not support.<sup>11</sup> The same could happen with SOGI curriculum if courts were to mandate it following passage of the Equality Act.

**Preferred Pronouns.** The Equality Act could also pressure school officials, teachers, and students to use the preferred names and pronouns of teachers and students who identify as transgender. This is already happening in schools that have SOGI policies. Peter Vlaming, a Virginia school teacher, was fired from his public high school for refusing to use a student’s preferred pronouns.<sup>12</sup> Sewanee State University officials punished philosophy professor Nicholas Meriwether for using biologically accurate pronouns for a student before the U.S. Court of Appeals for the 6th Circuit ultimately ruled in his favor on free speech and free exercise grounds.<sup>13</sup>

Courts are split on whether the use of preferred pronouns can be mandated, and the Equality Act *would* create a school environment in which not “affirming” transgender identity could be considered discriminatory. Imposition of a pronoun mandate on teachers and staff would violate First Amendment rights and create a school environment that stigmatizes students who hold the scientific understanding that there are only two sexes.

## The Act’s Gender Ideology: Harming Children’s Bodies

The Equality Act would politicize treatment of gender dysphoria by depriving children with gender dysphoria and their parents of body-affirming talk therapy. It would enable transgender activists to sue medical professionals for discrimination if the medical professionals dissent from gender orthodoxy and/or refuse to provide surgical, pharmaceutical, or other medical treatment in support of a child’s gender identity.

**Bathrooms, Locker Rooms, and Women’s Sports.** It could also endanger children’s bodies by depriving them of safety and privacy in single-sex facilities in schools and public accommodations. Likewise, allowing biological males to compete in sports, particularly contact sports, against female athletes not only takes away the opportunities for these female athletes to medal and win scholarships, it also increases their risk of physical injury.

**Banning Body-Affirming Therapy.** The Equality Act could also harm children by eliminating talk therapy for SOGI that does not conform to the new progressive orthodoxy. The Act describes talk therapy that works with children with gender dysphoria to become comfortable with their bodies as a “form of discrimination that harms LGBTQ people by undermining individuals’ sense of self-worth, increasing suicide [sic] ideation and substance abuse, exacerbating family conflict, and contributing to second class status.”<sup>14</sup>

However, the pejorative terminology above does not refer to any violent or coercive techniques. Rather, it refers to the view that through non-invasive talk therapy, girls and boys can eventually become comfortable with their bodies. Transgender activists have already succeeded in censoring this viewpoint in 20 states.<sup>15</sup> A federal law like the Equality Act could impose the ban nationwide.

In New Jersey, a mother repeatedly tried to arrange for therapy to help her 19-year-old son to become comfortable with his body after he became distressed about his sex.<sup>16</sup> All the therapists she contacted were trained by the World Professional Association for Transgender Health (WPATH) and affirmed her son as transgender. The WPATH is a membership organization

that includes any gender-affirming individual in fields including psychotherapy, family studies, sociology, anthropology, and sexology. Because of New Jersey's ban on talk therapy, she was unable to find a single counselor to affirm her son's biological sex, and now advocates for the removal of "gender identity" and "gender expression" from the ban.

Eliminating counselors who hold the viewpoint that gender-dysphoric children should go through a period of "watchful waiting" leaves parents without alternatives to counselors who "affirm" gender identity through hormones and surgeries.

**Mandating Transgender Surgeries.** Section 3 of the Equality Act expands the definition of public accommodations under Title II of the Civil Rights Act to "any establishment that provides a good, service, or program, including a store, shopping center, online retailer or service provider, salon, bank, gas station, food bank, service or care center, shelter, travel agency, or funeral parlor, or establishment that provides health care, accounting, or legal services."<sup>17</sup> The inclusion of health care will bring legal pressure to bear on medical professionals to participate in gender-affirming hormonal and surgical interventions.<sup>18</sup>

Evan Minton, who identifies as transgender, sued a Catholic hospital for refusing to perform a hysterectomy as part of a treatment plan for gender dysphoria.<sup>19</sup> In 2019, under a California SOGI law, a state court ruled that Dignity Health "discriminated" against Minton.<sup>20</sup>

**Cross-Sex Hormones.** But as Ryan T. Anderson has written, the decision of a hospital to remove only diseased and unhealthy organs rather than to remove healthy organs is the practice of good medicine, not discrimination. To do otherwise is unethical:

Administering cross-sex hormones to minors, in an attempt to make their bodies cosmetically resemble those of the opposite sex or of their preferred "gender identity," is likewise a violation of sound ethical norms and the bodily integrity of minors. Amputating reproductive organs or breasts to "affirm" a "gender identity"—as was done to thirteen-year-old girls who underwent double-mastectomies in taxpayer-funded "research"—is particularly concerning. Government authorities should prohibit rather than mandate this misuse of medical technology and protect children from these harms.<sup>21</sup>

**Puberty Blockers at *Nine*?** Transgender advocates recommend puberty blockers for children at age nine, cross-sex hormones at 16, and "sex-reassignment" surgery at 18. These recommendations have proven to be devastating for the health and well-being of children and youth. Such was the case with Keira Bell.

At 16 years old, Bell was referred to the United Kingdom’s only “Gender Identity Development Service,” where she received puberty blockers, hormone replacement therapy, and a mastectomy. Bell regretted her transition so much she sued the clinic. Based on her powerful testimony of transition and regret, the High Court ruled that children under 16 years of age cannot give consent to hormones for gender dysphoria, a major step forward in protecting young people in that country.<sup>22</sup> A major hospital in Sweden also recently announced that it will no longer prescribe hormones to treat children under 16 for gender dysphoria.<sup>23</sup> Finland has also announced that it will urge youth to undergo counseling before hormonal intervention.<sup>24</sup>

Children in America should have the same protections as children in Britain or Sweden. But, if the Equality Act passes, physicians in the U.S. who challenge children’s self-professed gender identity—as Keira Bell wishes her doctors had done—could be threatened with lawsuits for discrimination.

## The Equality Act’s Gender Ideology in Private Facilities

On Day One of his Administration, President Biden issued the “Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation.”<sup>25</sup> It stated, “Children should be able to learn without worrying about whether they will be denied access to the restroom, the locker room, or school sports.” The Executive Order advised organizations that receive federal funding to assess whether or not they are fully following these guidelines and to comply.

The Equality Act would codify Biden’s transgender facilities and sports policies. Schools that receive federal funds will be forced to allow students to use the restrooms, showers, locker rooms, and dorms of the opposite sex, reducing the privacy and safety of other students.

Nearly 6 percent of American children who attend private schools would also be affected.<sup>26</sup> Section 6 of the Equality Act adds SOGI protections to Title 6 of the 1964 Civil Rights Act, which attaches non-discrimination law to entities that receive federal funding. Therefore, even private schools that receive federal funds through something as simple as a reduced-lunch subsidy for low-income children could be affected by the act.<sup>27</sup>

**Bodily Privacy and Safety.** In Boyertown, Pennsylvania, students of both sexes sued their own school district for violating their bodily privacy rights by adopting a transgender policy for single-sex facilities.<sup>28</sup> The Supreme Court decided not to hear the students’ appeal of a decision by the Third Circuit, but a case in Georgia illustrates why these policies pose a particular danger to young girls.

In 2017, Pascha Thomas, the mother of a kindergartener, reported to public school authorities that her daughter had been sexually assaulted by a boy while using the restroom. The boy had been allowed to use the girl's restroom because of the schools' transgender restroom policy. Thomas had to remove her daughter from the school for her safety. Police investigated but did not take further action because of the ages of the children. Both children were in kindergarten at the time.<sup>29</sup> Ultimately, the Department of Education found that the school violated Title IX of the 1972 Education Amendments that protects equal opportunities for girls in education.<sup>30</sup>

**Self-Identification Without Requirements.** The Equality Act allows self-identification of gender identity with no objective requirements. Under Section 1101, Definitions and Rules, the Equality Act states that “the term ‘gender identity’ means the gender-related identity, appearance, mannerisms, or other gender-related characteristics of an individual, regardless of the individual’s designated sex at birth.”<sup>31</sup> Self-identification policies create loopholes for sexual predators (who may not be gender-dysphoric or transgender-identifying) to commit sexual assault.

Therefore, any male who simply identifies as a female would be able to enter any private space previously designated just for females because of the expanded public accommodation definition and inclusion of SOGI classifications under the Equality Act's amendment of Title II of the 1964 Civil Rights Act. In Alaska, a man tried to enter a shelter for battered women. When he was refused, he sued the organization for discrimination under a local SOGI ordinance.<sup>32</sup> Women in shelters who are seeking refuge from abuse by men—often with children in tow—should feel safe in a women-only environment. Giving any male permission to enter these spaces, as well as bathrooms in public facilities like restaurants and stores, also deprives children of the safety and privacy that they deserve.

## The Equality Act's Gender Ideology in Sports

Because Section 6 of the Equality Act modifies Title VI of the Civil Rights Act, schools that receive federal funds must allow biological males to compete on girls' sports teams.<sup>33</sup> Testosterone gives males multiple physiological advantages over females, including larger hearts and lungs, greater bone density, and stronger muscles—providing them a clear competitive edge.<sup>34</sup> The Equality Act would render Title IX irrelevant and destroy the gains that females have made in sports since its passage in 1972.<sup>35</sup>

**Females Losing at Female Sports.** Female high school athletes are already losing to male athletes. In 2019, at the Connecticut Indoor Track

& Field State Championships, the first and second spots in the race were taken by two male athletes who identify as female. This resulted in a female athlete, Selina Soule, losing an opportunity to qualify for the finals and to compete for a qualifying spot at the New England Regional Championships in the 55-meter dash. Another female athlete, Chelsea Mitchell, lost state championship titles to male athletes *four times*.

In total, the two Connecticut male athletes who identify as female have won 15 women's high school track championships that were once held by nine different girls.<sup>36</sup> In 2019, CeCe (formerly Craig) Telfer, a hurdler who had competed as a male the year prior, won the NCAA championship in hurdles when allowed to enter the women's division.<sup>37</sup>

**Contact Sports.** The Equality Act's passage would not only deprive girls of equal opportunities in athletics, but it could also endanger their physical safety in contact sports. Fallon Fox is a man who was allowed to compete against women in professional mixed martial arts because he identified as transgender. In September 2014, Fox fought Tamikka Brents and within minutes had "fractured Brents' skull...resulting in a concussion. Fox continued the brutal assault until Brents was knocked out."<sup>38</sup>

Allowing boys to compete against girls in contact sports such as soccer, wrestling, basketball, and field hockey could increase girls' risk of injury. Now a male weightlifter from New Zealand who identifies as a woman may be permitted to participate in women's weightlifting in the postponed 2020 Tokyo Olympics—potentially destroying fair competition for all female weightlifters in the world.<sup>39</sup>

## The Act's Gender Ideology: Harming the Parent-Child Relationship

The Equality Act's politicization of the treatment of gender dysphoria could also threaten parental rights. Disagreements between parents and gender-affirming medical organizations over the treatment of gender dysphoria in children have already played a decisive role in state court proceedings over custodial rights.

Supporters of the "gender affirmative care" model such as Dr. Diane Ehrenstadt state that hormonal and even surgical interventions are in the "best interests of children" who identify as transgender.<sup>40</sup> Judges consider "best interests" in cases of child abuse and neglect and custody proceedings. In the context of adoption and foster care, the Human Rights Campaign, the nation's largest LGBT lobbying group, argues that affirming a child's gender identity through hormones is in their "best interests" and that encouraging

them to become comfortable in their bodies is a form of abuse.<sup>41</sup> Transgender activists have also lobbied for children with gender distress to be labeled as “sexual minorities” in bills like the Child Abuse Prevention Treatment Act that also references the “best interests of the child” standard.

**Foster Care.** Section 2(21) of the Equality Act applies to foster care.<sup>42</sup> It states, “Barring discrimination in child welfare services will ensure improved treatment and outcomes for LGBTQ foster children.”<sup>43</sup> Since the Equality Act treats talk therapy to affirm a child’s biological sex as a form of discrimination, parents who foster a child could be accused of gender-identity discrimination if they do not support a foster child transitioning.

**Custody Proceedings.** In Washington State, the Department of Child, Youth, and Families found a pair of Seventh-Day Adventist great-grandparents unfit to foster their one-year-old great-granddaughter based on their answers to hypothetical questions about whether they would allow her transition to being a boy. Ultimately, a federal judge held in the great-grandparents’ favor.<sup>44</sup> The politicization of parental fitness analyses in foster care does not bode well for the rights of biological parents. Passage of the Equality Act would further complicate legal analysis of a child’s best interests with controversial gender ideology.

As Professor Melissa Moschella has written, parents have a fundamental right to direct the education and upbringing of their children in line with their values. This pre-political and constitutional right was explicitly affirmed by the Supreme Court in *Meyer v. Nebraska*<sup>45</sup> and *Pierce v. Society of Sisters*.<sup>46</sup>

However, as Moschella writes:

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.<sup>47</sup>

The use of hormones for gender-affirmation is off-label and experimental. However, the American Academy of Pediatrics (AAP) partnered with the Human Rights Campaign to promote the use of hormones as the standard of care for doctors treating gender dysphoria in minors.<sup>48</sup>

**Courts and Family Rights.** Family court judges who are unfamiliar with gender dysphoria are increasingly deferential to the opinions of doctors under the influence of gender-affirming organizations like AAP and the

Endocrine Society. Where judges have deferred to gender-affirming doctors, parental rights have been undermined. In Ohio, custody of a 17-year-old girl was given to her grandparents because her parents did not support nor facilitate her transitioning through the injection of testosterone. A judge in Hamilton County Juvenile Court decided to grant the minor's grandparents custody and the ability to make medical decisions for her.<sup>49</sup>

News articles reporting the testimonies show that the minor had been treated at Cincinnati Children's Hospital Medical Center, a gender-affirming clinic, since 2016. According to the Center's website, they treat transgender children as young as five years old.<sup>50</sup> The team there apparently "advised the court that he [the daughter who identifies as a boy] should start treatment as soon as possible to decrease his suicide risk."<sup>51</sup> Although the court expressed "concern" that the hospital deemed "100% of the patients... who present for care" to be "appropriate candidates for continued gender treatment," it nevertheless sided with the hospital's recommendation.<sup>52</sup> There is no evidence that gender-affirming care improves the mental health of children with gender dysphoria—and a Swedish study of adults found that their rate of suicide *increased* after they underwent surgery for gender affirmation.<sup>53</sup>

In Texas, the father of a seven-year-old boy had to fight to remain joint conservator with his ex-wife after she encouraged their son to identify as a girl whom she called "Luna." The father wished to avoid immediately pushing the boy toward a social or medical transition while the boy's mother was already encouraging the boy to wear feminine attire. During the trial, the child's medical team at Dallas Rainbow Therapy, a transgender-affirming clinic, provided written testimony in favor of the child's transition.<sup>54</sup>

In addition, school districts around the country are hiding information about children's gender distress from parents. The Equality Act would accelerate the trend of substituting the judgment of the children's parents with that of teachers, doctors, and government officials.<sup>55</sup>

**Desisting and Detransitioning.** Debates over treatment of gender dysphoria should also take into account the regrets of a growing number of young adults who either "desist" (no longer identify as transgender) or "detransition" (seek to live according to their biological sex).<sup>56</sup>

Like Keira Bell, they report that hormones and surgeries only changed their external appearance and did not resolve their underlying discomfort. In light of these emerging stories, courts should be cautious about relying solely on the opinions of children and gender-affirming activists and doctors in taking the extraordinary step of reducing or limiting parents' custody. Children may later come to regret not only the loss of their

reproductive capacity and secondary sex characteristics, but also the damaged relationships with their parents and other family members. Unfortunately, the Equality Act would accelerate the politicization of medicine and increase courts' skepticism towards parents who want to affirm their children's bodies.

## Conclusion

To protect the health and well-being of all American children, Congress should not pass the Equality Act. The Equality Act's harms to children's minds, bodies, and family relationships would be severe—and irreversible. The Equality Act would almost certainly promote gender confusion through K–12 curriculum. The Equality Act would decrease children's safety and security in private facilities in schools and public accommodations. The Equality Act would destroy opportunities for female athletes and put them at increased risk of injury.

By politicizing the treatment of gender dysphoria, the Equality Act would also reduce therapeutic choices for parents. Including gender identity as a protected class would impose destructive gender ideology in education and medicine that could also undermine parental rights.

America's children deserve better.

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