



Virginia's SB12 Transgender Flirtation Would Wreck Religious Freedom, Dillon Rule (As Intended)

OVERVIEW:

For the last several years, a coalition of anti-Christian groups spearheaded by Equality Virginia, Occupy Democrats, and the American Civil Liberties Union (ACLU) -- successful in the attempt to undermine Virginia's state constitution regarding the definition of marriage -- have turned to the next available target: *normalizing transgender behavior*.

The target? Virginia's public schools, where the ACLU has been prodigious about targeting "transgendered" kids and forcing public schools to radically overhaul their non-discrimination policies to accommodate special cases.

These new policies have produced precisely three cases: Gloucester, Stafford, and Fairfax Counties, and are designed to make opposition difficult by using children rather than arguing the merits of their case.

What Equality VA and the ACLU actually intend to accomplish? Including transgenders within the sphere of "public employment" as exposing oneself to Title IX non-discrimination tribunals.

Naturally, the problems with such an approach are legion. Not only does Equality VA and the ACLU trample over Virginia's Dillon Rule in pursuit of a narrow social agenda, but the term "public employment" encompasses a whole host of organizations, including churches, small businesses, and organizations with religious charters.

Equality VA and the ACLU have played a clever game, but one that has tremendous ramifications if the tactic is allowed to proceed unchallenged.

Quick Facts

- For several years, **Equality VA and the ACLU** have been trying to "balkanize" Virginia localities -- **pressuring them into accepting transgenders into their non-discrimination policies.**
- These policies are designed to normalize transgender behavior and pit Virginia localities against one another.
- **Such lawyer-imposed policies are a direct violation of Virginia's Dillon Rule**, which only permits such changes at the express permission of the state government.
- **TVC strongly urges a "no" vote on Ebbin's SB12**, as it would force churches, non-profits, and organizations with a religious charter to accommodate transgender employees and provide distinct services for yet another protected class under Title IX.
- **TVC strongly urges a "yes" vote on Del. LaRock's HB397** which would treat separation based on gender as outside the boundaries of non-discrimination regulations.
- **TVC also strongly urges a "yes" vote on Cole's HB663 and HB781** which would impose a \$50 civil fine should a transgender use a bathroom or other facility designated for the use of the opposite sex.
- 40 year old transgendered men don't belong in girls' locker rooms; they belong in therapy with a psychiatric counselor who can help them.

CASE IN POINT: OREGON 2012

In September 2012, Mr. Colleen Francis walked into a girls' locker room at a college in Oregon while a swim meet was occurring. Mr. Francis -- a transgendered male -- promptly undressed and entered the sauna, where the girls

(some as young as six) complained that there was a man in the girls' sauna.¹

Coaches on the girls' swim team were informed, and a police report was promptly filed. Mr. Francis took his case to the media and to law as an instance of discrimination, and

¹ Evergreen Police Report, September 2012:
<http://www.adfmedia.org/files/EvergreenPoliceReport.pdf>

was promptly rewarded with a segregated space all of his own *inside* the girls' locker room.² Local county prosecutors declined to charge Mr. Francis with indecent exposure, despite complaints from both the Alliance Defense Fund (ADF) and local parents and coaches.

The problem in this instance is that Mr. Collins *should* have been charged with indecent exposure. This entire event, as it was covered by local media, was designed for the express intent of generating media coverage -- as Mr. Collins, rather than expressing surprise, demanded that "his rights" be restored.

Virginia is not alone in grappling with such issues, as many states across the nation are under pressure from transgender rights organizations attempting to capstone the last achievement of the "gay rights" movement. After having smashed through the Virginia Constitution and in the aftermath of the disastrous *Obergefell v. Hodges* (and with new leadership in the White House, an equal and opposite counter effort to restore marriage can begin in earnest), well-funded organizations such as Equality Virginia and the ACLU are placing tremendous pressure on weak or otherwise hostile members of the Virginia General Assembly to crack on bills that would reverse what are otherwise objectionable or outright hostile bills with respect for conscience protections and religious freedom.

Already, the ACLU in conjunction with groups such as Occupy Democrats and Equality Virginia have pushed changes on local governments and local school boards, attempting to have their local non-discrimination policies altered to include gender identity.

To date, Gloucester County is currently embroiled in a lawsuit to keep their non-discrimination policy intact.³ Stafford County Public Schools changed their non-discrimination policy in a late night vote, only to overturn it as 400 outraged parents, teachers, and taxpayers turned out to demand it be rescinded.⁴

In Fairfax County, such a non-discrimination policy to include transgenderism passed in a heated 10-1 vote.⁵ Not only has Fairfax County Public Schools not responded adequately to a properly filed FOIA request, but is currently involved in a court dispute with Liberty Counsel and other

Such a scenario aimed at the Dillon Rule seems farfetched, but 10 years ago it would have been more reasonable to believe this than believe homosexual marriage could ever be enshrined as law in Virginia today.

litigants to ascertain precisely *how* and *why* FCPS arrived at their conclusions, who advised them, and why the administration collectively chose the course of action that at that date, no other locality in Virginia had embarked upon.

What is Gender Identity?

One of the biggest problems with SB12 and other bills like it such as the Employment Non-Discrimination Act (ENDA) is the language regarding gender identity. Accordingly, gender identity is defined as "*the gender-related identity, appearance, or mannerisms or other gender-related characteristics of an individual, with or without regard to the individual's designated sex at birth.*"

In other words, according to proponents of gender fluidity, an individual is free to act and dress in accord with whatever gender the individual wishes, on any given day, regardless of the individual's biological reality.

This definition of gender identity is highly problematic on many different levels. For one thing, one's gender identity is not necessarily a fixed and constant matter. Gender Spectrum, an organization that provides "consultation, training and events designed to help families, educators, professionals, and organizations understand and address the concepts of gender identity and expression," says that gender identity is sometimes fluid. According to their document on terms:⁶

Gender fluidity conveys a wider, more flexible range of gender expression, with interests and behaviors that may change, even from day to day.

² LifeSiteNews, "Transgender Man May Continue Using Girls' Locker Room, Says College," November 9th, 2012 <https://www.lifesitenews.com/news/transgender-man-may-continue-using-locker-room-with-six-year-old-girls>

³ <http://www.dailypress.com/news/gloucester-county/dp-nws-mid-gloucester-transgender-appeal-20151021-story.html>

⁴ http://www.fredericksburg.com/news/education/stafford-schools-reverse-restroom-stance-for-transgender-student/article_5b083186-d2a9-11e4-9b1d-2ffa10528634.html

⁵ https://www.washingtonpost.com/local/education/fairfax-board-approves-transgender-protections/2015/05/07/993d3b0e-f522-11e4-bcc4-e8141e5eb0c9_story.html

⁶

<https://www.genderspectrum.org/images/stories/08%20a%20word%20about%20words.gender.pdf>

Another LGBTQ organization⁷ identifies a variant of gender identity called "bi-gender." According to this group:

***Bi-gender** is a tendency to move between masculine and feminine gender-typed behavior depending on context, expressing a distinctly male persona and a distinctly female persona. It is recognized by the APA as a subset of the transgendered group ... Although there are patterns; the only firm characteristic is the sense of dual gender.*

Then there's this revealing comment by way of liberal organization **ThinkProgress**⁸, who counsels readers on the risks of complete transgender transformation under the knife:

Many transpeople never undergo such procedures, either because they are too expensive, because they do not want to lose their procreative ability, or because it simply isn't an important change for them to make to find authenticity in their identities.

In other words, under these new laws being pushed by transgender lobbyists, employers will have to figure out how to deal with the ever-changing behavior of an employee that shows up to work dressed and behaving as a man one day and dressing and behaving as a woman the next.

This very idea, if enshrined in law, would suggest that one's biological reality as identifiable by their genetic makeup is subject to the individual's desired reality. So, if a genetically identifiable male decides that he is actually a woman, then bills such as SB12 would dictate that the man be treated in accordance with his desired reality, regardless of what his biological reality indicates.

VIRGINIA'S DILLON RULE

What is emphatically clear is that a handful of well-financed organizations have invested a great deal of time and treasure in pressuring local governments to change their non-discrimination policies to include transgenderism. This effort is in direct violation of Virginia's Dillon Rule, which in effect states that no local jurisdiction of the state government can perform any action not expressly permitted by the legislature.⁹

The strategy that Equality Virginia and the ACLU have pursued to date effectively consists of the following framework:

⁷ <http://transpride.tumblr.com/post/969671220>

⁸ <http://thinkprogress.org/lgbt/2013/06/14/2161991/transgender-social-security/>

⁹ Ironically enough, Fairfax County has an rather robust definition of the Dillon Rule in Virginia. see: <http://www.fairfaxcounty.gov/government/about/dillon-rule.htm>

- 1) Target a handful of localities to accept something outside of what Virginia allows (**Fairfax, Gloucester, Stafford**)
- 2) Create a conflict between the vast majority of localities and the now-media driven few
- 3) Demand that the Virginia General Assembly rectify the issue with sweeping legislation (**Ebbin's SB12**)
- 4) Reject all laws restoring the norm as radical, counterproductive, or liable to be struck down by a court (**SB41, HB397, HB781, HB663**)
- 5) Find "weak sisters" from the opposition to collude in passing the transgender legislation.
- 6) Impose the new normal and crackdown on any alternatives by enforcing the very rule the progressive left flaunted in order to pass the bill (**insist upon strict enforcement of Dillon Rule**)

Such a strategy was precisely the one used to override the state marriage amendments which eventually culminated into the *Obergefell v. Hodges* ruling. Others will recognize the same strategy used to push the *Roe v. Wade* decision -- find a few governments to contradict the other, create conflict, utilize the media, and then push for radical social change. It's a savvy method for producing change in laws that are deemed final by the commentariat.

Nevertheless, such strategies -- when applied to Virginia's Dillon Rule -- open a Pandora's Box of problems as it concerns Virginia's economic prosperity.

Another example? If Virginia's clerk of courts began unilaterally rejecting homosexual marriage licenses in a massive act of resistance, would the homosexual and transgender lobby shrug at this as the rules of the game? Or would they insist that Virginia -- as a Dillon Rule state -- prevents such unilateral actions from even proceeding as a matter of course?

One of the strengths of Virginia's Dillon Rule is that it allows for one set of rules across all of Virginia's 134 localities. The precedent being set here on social issues -- namely that one can flaunt the Dillon Rule, then be rewarded with success by the General Assembly -- is openly dangerous in the face of calls for greater latitude from local governments. One does not have to be a fortune teller to know that local governments -- in the call for greater resources -- could very well simply grab what they require and then impose cold realities upon Richmond under this rubric.

Such a scenario aimed at the Dillon Rule seems farfetched, but 10 years ago it would have been more

reasonable to believe this than believe homosexual marriage could be enshrined as law in Virginia today.

SB12: "PUBLIC EMPLOYMENT"

State Senator Adam Ebbin's SB12 makes clear whom it intends to target. Not quite a Virginia version of an Employment Non-Discrimination Act (ENDA) but every bit as far reaching, the summary states very clearly:

***Nondiscrimination in public employment.** Prohibits discrimination in public employment on the basis of sexual orientation or gender identity, as defined in the bill.¹⁰*

Conservatives have warned for some time that radical transgender activists want to make sure that gender identity joins sexual preference and sex discrimination in Title IX hearings.

What Ebbin's bill accomplishes is a backdoor ENDA, one that does not limit itself merely to allowing transgendered men and women to use public facilities such as bathrooms, but will extend themselves to *any* public employment -- up to and including small businesses, pre-schools, private and religious chartered schools, non-profits with religious charters, and other faith-based institutions.

SOLUTIONS: DEFEAT SB12, SUPPORT AND REINFORCE THE DILLON RULE

First things first, the true intent of SB12 needs to be laid clear on the table. SB12 is nothing more than ENDA in disguised. It is the radical Holy Grail of the transgender left, and it must be opposed at every possible turn.

Those who do vote for this horrendous and despicable bill should be made very plainly aware that Traditional Values Coalition and countless others will remind their constituents of their utter betrayal of their values, and will consistently remind their voters of their anti-Christian and anti-family vote.

Second, Delegate Dave LaRock's HB397 would only permit separation based on one's biological sex, not on one's "gender fluidity" or personal desires. This bill deserves the strong consideration of the Virginia General Assembly, as it firmly counteracts any question of bills such as SB12 from emerging again in their present form.¹¹

Third, TVC strongly urges lawmakers to consider Delegate Mark Cole's bills HB662¹² and HB771.¹³ These two bills will not only prevent the ridiculous efforts of creating

"transgender bathrooms" in public schools, but impose a civil fine of \$50 on any transgender activist who chooses to follow in the footsteps of Mr. Colleen Francis of Oregon, expose himself in a locker room where girls as young as 6 are changing for swim practice, and suffer no penalty whatsoever.

CONCLUSIONS

Ebbin's SB12 is ENDA in shortform, a means of imposing the transgendered left's ideas and moral values through force of law, regardless of the values or beliefs of those who would disagree. This is not a question of rights, but rather a question of making the weird normal -- and plowing straight through the Dillon Rule to do so.

Simply put, this is gross. Kill SB12, and pass HB397, HB662, and HB771 -- and then let's move on.

¹⁰ <https://www.richmondsunlight.com/bill/2016/sb12/>

¹¹ <https://www.richmondsunlight.com/bill/2016/hb397/>

¹² <https://www.richmondsunlight.com/bill/2016/hb663/>

¹³ <https://www.richmondsunlight.com/bill/2016/hb781/>