The Phyllis Schlafly Report

Transgender Train Derails in Sixth Circuit

By John and Andy Schlafly

July 11, 2023

Republican legislatures in 20 states have banned the use of irreversible gender-changing procedures on children, overcoming the governor's veto in five of those states with a sixth override likely. But in six of the 20 states, liberal federal judges blocked these good laws in response to lawsuits by liberal groups including the ACLU and Southern Poverty Law Center.

Now comes the first appellate decision, and it's welcome news. On July 8, two of the finest appellate judges in the country, Jeffrey Sutton and the Trump-appointed Amul Thapar, delivered a setback to the transgender agenda by ruling to reinstate Tennessee's new law against transgender operations on minor children.

The margin was 2-1 on the Sixth Circuit appellate court, with a Democrat-aligned judge dissenting. Appeals are still pending of bad district court decisions in Alabama, Arkansas, Florida, Indiana, and Kentucky, where beneficial state laws were blocked by federal judges.

Other states have refused to protect children from transgender operations, and this cultural battle is far from over. In California, a recall campaign rages against a few conservatives who were elected last year to a school board near Los Angeles.

The Centers for Disease Control and Prevention, considered the foremost health authority in our country until it mishandled the Covid pandemic, has come out entirely on the side of the transgender agenda. Recently the CDC's website endorsed the ludicrous idea of "chestfeeding," whereby transgender persons without breasts attempt to fake the production of breast milk with the use of dangerous drugs.

Politics is downwind from culture, and this past weekend the Netherlands crowned as the winner of its Miss Universe pageant a man competing as a trans woman. Sporting an elegant hairdo, this winning candidate had previously competed on the television show "Holland's Next Top Model."

The University of Cincinnati, ironically located in the same city where the Sixth Circuit presides, rescinded its reprimand of a teacher for flunking a student for using the term "biological woman." Megan Rapinoe, the outspoken retiring player on the U.S. women's soccer

team, indicated she would welcome male-bodied trans women into that sport, even though her own women's team was easily defeated by an under-15-years-old boys team.

The media and many judges are firmly on the side of the transgender movement, and they expect to win. A Clinton-appointed judge just ordered a public school to let a boy who identifies as a girl to use the girls' bathroom, overriding a policy adopted by the elected school board in the town of Mukwonago, Wisconsin.

Law schools have fully embraced transgender follies, and unfortunately many courts will do likewise. The Supreme Court hires all of its law clerks from a handful of elite law schools, and those clerks perform the influential task of screening and describing cases before the Court either agrees to hear them or simply denies "cert" on a lower court decision.

The Supreme Court denied a recent application by West Virginia to reinstate its sensible law keeping boys out of girls sports, ducking this raging controversy just as the Court dodged all appeals about election fraud. For decades the Supreme Court accepted abortion cases only when the appeal was by the Left, and it will be interesting if Leftists appeal Judge Sutton's decision against them.

Two years ago, Harvard Law School welcomed its "first transgender women of color" as teachers at the school. They joined two transgender men on the faculty, one of whom maintains a personal website that brags about "working with sex worker art collective that protested digital gentrification."

Judge Sutton's ruling is persuasive, and carries added weight due to his strong reputation as a "feeder" of clerks to the Supreme Court. Judge Sutton is notorious in some quarters for ruling against legal recognition of same-sex marriage in the case that was later overturned by the now-retired, left-leaning Justice Anthony Kennedy.

Tennessee's new law, which was scheduled to go into effect on July 1st, prohibits "surgically removing, modifying, altering, or entering into tissues, cavities, or organs" of any person under the age of 18. It also bans "prescribing, administering, or dispensing any puberty blocker or hormone" to minor children.

"The State plainly has authority, in truth a responsibility, to look after the health and safety of its children," Judge Sutton wrote with the concurrence of Judge Thapar. "Tennessee could rationally take the side of caution before permitting irreversible medical treatments of its children," they added.

The court found it unlikely that the Supreme Court would create a new constitutional right to transgender operations, when no such right has existed in the Constitution for 235 years. “Life-tenured federal judges should be wary of removing a vexing and novel topic of medical debate from the ebbs and flows of democracy,” the Sixth Circuit majority concluded as they reinstated the Tennessee law.

John and Andy Schlafly are sons of Phyllis Schlafly (1924-2016) and lead the continuing Phyllis Schlafly Eagles Organizations with writing and policy work.