

Priorities: President Obama Still Fighting for His Transgender Mandate

Last August, a federal judge in Texas, Reed O'Connor—an appointee of President George W. Bush—determined the Obama Administration's "transgender mandate" for public schools was a gross overreach by the executive branch of government.

His decision was applied nationally just before classes were set to resume for the new school year.

Now, as President Barack Obama is set to leave the White House, attorneys representing his administration are seeking to get an 11th-hour decision from an appeals court overturning O'Connor's decision. They filed a motion with the 5th Circuit Court of Appeals, arguing the lower-court decision was too broadly applied and that the courts don't have jurisdiction over the federal regulation.

A coalition of a dozen states, led by Texas, accused the U.S. departments of Justice and Education of engaging in a "regulatory shell game" that involved the use of "regulatory dark matter." This included an avalanche of "guidance" documents, directives and notices that effectively created new policy without congressional legislation.

The Administration's Position

The departments of Justice and Education lawyers argue the guidelines only reflect the departments' interpretation of Title IX, and are not orders bearing the full force of law that were issued because of ambiguities in the law. Additionally, they argued, courts must defer to agency interpretations, so long as they are "reasonable."

The States' Position

The states claim, however, this allows agencies to evade review by the courts and achieve their policy objectives—because the “guidance” technically lacks the force of law, which makes it invulnerable to judicial review. But, school districts that do not follow the “guidance” are still punished in an effort to ensure compliance with what are considered “rules,” not laws.

Moot Point?

Back in October, the Supreme Court announced it would take up the case of “Gavin” Grimm, a girl who suffers from a psychological condition that makes her believe she is a boy. The student is suing for access to male bathroom and locker room facilities, despite the fact she is still physically and biologically a girl.

Currently, the Fourth Circuit Court of Appeals has decided in Grimm’s favor. In the current eight-member format, the high court would have to come to a 5-3 decision to overturn that decision. {eoa}