STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 937

By: Jett

AS INTRODUCED

An Act relating to schools; creating the School Establishment Clause Act (SECA); providing short title; defining terms; providing process to establish a student’s biological sex; prohibiting a public school from creating, enforcing, or endorsing certain policies; prohibiting a public school from certain activities to create, enforce, or endorse certain policies; prohibiting the enforcement of certain policies or statutes; allowing certain civil action and establishing awards; directing that public school officials that commit certain violations be declared in violation of certain oath and subjected to certain relief; allowing for the dismissal of school officials and officers and state employees who knowingly commit certain violation and directing that they be declared in violation of certain oath; prohibiting certain defense; prohibiting a public school from certain discrimination; allowing certain civil action and establishing awards; providing for affirmative defense; providing for certain construction of act; providing for severability; providing certain legislative recognition; providing for codification; providing for noncodification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:
SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-126 of Title 70, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the “School Establishment Clause Act (SECA)”. 

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-127 of Title 70, unless there is created a duplication in numbering, reads as follows:

As used in the School Establishment Clause Act (SECA):

1. “Biological female” means a female person, a woman, or a girl who was born with female anatomy and with two (2) X chromosomes in the person’s cells;

2. “Biological male” means a male person, a man, or a boy who was born with male anatomy and with X and Y chromosomes in the person’s cells;

3. “Coed” means a sports activity designation that permissibly involves biological males and biological females for secular and neutral purposes, not to advance a religious worldview;

4. “Contemporary community standards of decency” means standards based on the reasonable observer perspective which are violated by appeals to the prurient interest or the patently offensive to the extent the appeals harm the general decency, safety, health, and welfare of the community. Acts of licentiousness shall be considered antithetical to this standard;
5. “Drag queen story time” means a non-secular event where men dress up as women and display an inherently sexualized performance targeting minors with the purpose of promoting and normalizing the faith-based beliefs and practices that stem from the secular humanist religion. Drag queen story time shall include but not be limited to an event that targets children and promotes licentiousness in attempts to justify practices inconsistent with the peace or safety of the state from the reasonable observer perspective;

6. “Emotional appeal” means a method of persuasion through sentiment, not logic, designed to create an emotional response to achieve certain ends;

7. “Gender identity” means a faith-based construct, like the sexual orientation orthodoxy, that stems from the religion of secular humanism. Gender identity includes the belief that a person is the gender that they self-identify as or that they feel they are in the moment and may be used interchangeably with the term sexual orientation;

8. “Lemon test” means a three-prong test originally created by the United States Supreme Court and adopted by this state which is used to determine whether government action is unconstitutional under the Establishment Clause of the First Amendment to the United States Constitution. Government action violates the Establishment Clause and Article II, Section 5 of the Oklahoma Constitution if the
action fails to satisfy any of the prongs. The test requires that state action or government policy:

a. have a valid secular purpose,

b. not have the effect of advancing, endorsing, or inhibiting religion, and

c. not foster excessive entanglement with a particular religion;

9. “Logical nexus” means at least some minimal, relevant, legitimate, important, or rational connection and connotes a low-threshold standard;

10. “Non-secular” means faith-based, not proven, predicated on naked assertions, or emotional feelings, not self-evident objective fact;

11. “Non-secular self-asserted sex-based identity narrative” means an unproven faith-based identity that is implicitly religious and is not predicated on self-evident neutral truth and is a story that provides the individual with a sense of purpose and serves as a commentary on sexual practices, sexual preference, faith, morality, and life. The term shall include but not be limited to expressions and speech that are often controversial, sexualized, questionably moral, questionably plausible, and have a tendency to erode community standards of decency and promote licentiousness;

12. “Promote” means to advocate for, assist with, encourage, or popularize through advertising or publicity;
13. “Public school” means a public educational institution that is maintained at public expense for the education of the children of a community or district and that constitutes a part of a system of free public education including primary and secondary schools from grades prekindergarten through twelve. The term shall include accredited nonpublic educational institutions including primary and secondary schools from grades prekindergarten through twelve;

14. “Reasonable observer” means a person of ordinary prudence who views a policy or action from an objective standard point in the context of the state’s longstanding practice and through the lens of self-evident neutral, natural, and non-controversial transcultural morality;

15. “Religion” means a set of unproven answers to the greater questions like “why are we here,” “what should we be doing as humans,” “how do we get our identity,” and “what happens after death.” The term means a closed system and group or community that is organized, full, and provides a comprehensive code by which individuals may guide their daily activities. Religion includes an ultimate concern or sincere belief and can be non-theistic or theistic;

16. “Secular humanism” means a faith-based worldview that is also referred to as postmodern-western-individualistic moral relativism, expressive individualism, or antitheism and is often the mirror opposite of theism. The term refers to a religion that
worships man as the source of all knowledge and truth. The term includes a belief system that is centered on the unproven assumptions that there are no moral absolutes and no one moral doctrine should be used as the superior basis for law and policy, except for the religious doctrines of secular humanism. The term includes a series of unproven faith-based assumptions and naked assertions that suggest that morality and truth are man-made conventions and that at the heart of liberty is man’s ability to define his own meaning of the universe. The term refers to a religion that tends to promote licentiousness and to justify practices that are inconsistent with the peace and safety of the state. The term refers to the belief that man is merely a bundle of chemicals, animated pieces of meat, or accidental particles, that nature is all there is, and that there is nothing after death. Nonsecular self-asserted sex-based identity narratives and sexual orientation orthodoxy are doctrines that are inseparably linked to secular humanism. The term includes but is not limited to a religion that has many different denominational sects and is expressed in widely varying ways;

17. “Sexual orientation” means a person’s sexual identity or self-identification as homosexual, lesbian, or transgender. The term means a mythology, dogma, doctrine, ideology, or orthodoxy that is inseparably linked to the religion of secular humanism. The term includes non-secular self-asserted sex-based identity narratives
that are often predicated on a series of unproven faith-based assumptions and naked assertions that are implicitly religious and have a tendency to erode community standards of decency and promote licentiousness. The term may be used interchangeably with gender identity, given that they are both faith-based sexual commentaries on morality that come from secular humanism; and

18. “Taxpayer standing” means the standing of a taxpayer to file a lawsuit against a government actor that is directly or symbolically engaging in practices that violate the Establishment Clause of the First Amendment to the United States Constitution or Article II, Section 5 of the Oklahoma Constitution after the government actor actually or prospectively engaged in action that potentially failed at least one prong of the lemon test. A taxpayer shall have a logical nexus to a government actor’s violation to assert taxpayer standing. A person who pays sales tax in this state can successfully assert this form of standing before the courts of competent jurisdiction.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-128 of Title 70, unless there is created a duplication in numbering, reads as follows:

If the biological sex of a student is disputed, the student may establish the student’s sex by presenting a signed statement by a licensed physician that indicates the student’s sex based solely upon all of the following factors:
1. The student’s internal and external reproductive anatomy;
2. The student’s normal, endogenously produced levels of testosterone; and
3. An analysis of the student’s genetic makeup.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-129 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. Pursuant to the Establishment Clause of the First Amendment of the United States Constitution and Article II, Section 5 of the Oklahoma Constitution, a public school is prohibited from creating, enforcing, or endorsing a policy that respects, favors, endorses, or promotes non-secular self-asserted sex-based identity narratives or sexual orientation orthodoxy because such policies fail the lemon test for:

1. Constituting non-secular shams that lack a primary secular purpose;
2. Cultivating indefensible legal weapons against non-observers of the religion of secular humanism; and
3. Having the effect of excessively entangling the government with the religion of secular humanism.

B. Pursuant to the First Amendment to and the Establishment Clause of the United States Constitution, Article II, Section 5 of the Oklahoma Constitution, and the state’s compelling interest to discourage licentiousness, a public school shall not create or
enforce a policy that respects, endorses, favors, or promotes non-
secular self-asserted sex-based identity narratives or sexual
orientation orthodoxy by:

1. Exposing students to curriculum concerning non-secular self-
asserted sex-based identity ideology or sexual orientation orthodoxy
unless the curriculum is part of a sex education program and only
after a student’s parent or legal guardian has:
   a. intentionally opted their child into participating in
      the curriculum in writing, and
   b. received a notification from the school district or
      the State Department of Education that the messaging
      could expose their child to licentiousness and one
      particular religious worldview;

2. Permitting biological male students to participate in sports
designated for biological female students, as prohibited by Section
27-106 of Title 70 of the Oklahoma Statutes;

3. Permitting biological female students to participate in
sports designated for biological male students;

4. Permitting biological male students to enter or use a locker
room or restroom designated for biological female students, as
prohibited by Section 1-125 of Title 70 of the Oklahoma Statutes;

5. Permitting biological female students to enter or use a
locker room or restroom designated for biological male students, as
prohibited by Section 1-125 of Title 70 of the Oklahoma Statutes;
6. Mandating non-obvious pronoun changes that respect gender identity ideology and sexual orientation orthodoxy; or

7. Hosting or sponsoring drag queen story time for children or similar programming at a public school.

C. Pursuant to the First Amendment to and the Establishment Clause of the United States Constitution, Article II, Section 5 of the Oklahoma Constitution, and the state’s compelling interest to discourage licentiousness, all policies or statutes that violate subsections A or B of this section shall not be enforced by any school official, executive or judicial officer, or any other agent of the state.

D. The following persons may enforce subsection A or B of this section in a civil court of competent jurisdiction:

1. A taxpayer of this state or a political subdivision of this state that has taxpayer standing;

2. A parent or legal guardian who pays taxes in this state and who has a student in a public school that has violated subsection A or B and has taxpayer standing; and

3. A public school employee who is disciplined by a public school for refusing to promote non-secular self-asserted sex-based identity narratives or sexual orientation orthodoxy.

E. A plaintiff who brings a civil action against a public school for violating subsection A or B of this section may seek and be awarded the following by a court of competent jurisdiction:

...
1. Attorney fees and costs;
2. Actual damages;
3. Injunctive relief; and
4. Other forms of equitable relief deemed appropriate.

F. All public school officials that violate subsection A or B of this section may be declared to be in violation of their oath of office established under Article VI, Clause 3 of the United States Constitution and subjected to declaratory relief for a violation in a court of competent jurisdiction.

G. A school official, officer, or employee of the state who knowingly violates subsection A or B of this section may be dismissed from the person’s office or position, and the person’s employment may be terminated immediately.

H. All public school officials that violate subsection A or B of this section may be declared to be in violation of their oath of office established under Article VI, Clause 3 of the United States Constitution and subjected to declaratory relief for such a violation in a court of competent jurisdiction.

I. Sincerity of belief or emotional appeals may not constitute a valid defense for a violation under subsection A or B of this section.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-130 of Title 70, unless there is created a duplication in numbering, reads as follows:
A. Pursuant to the Free Exercise Clause of the First Amendment to the United States Constitution and Article II, Section 5 of the Oklahoma Constitution, a public school shall not discriminate against any person for believing in or for failing to believe in the plausibility of non-secular self-asserted sex-based identity narratives or sexual orientation orthodoxy.

B. A student or teacher who experiences discrimination by a public school as described in subsection A of this section shall have standing to file suit in a court of competent jurisdiction where they can seek:

1. Injunctive relief;
2. Declaratory relief;
3. Attorney fees and costs;
4. Actual damages; and
5. Other forms of relief.

C. It shall be an absolute and affirmative defense in a civil action brought pursuant to subsection A of this section that the public school was acting in compliance with the Establishment Clause of and the First Amendment to the United States Constitution or Article II, Section 5 of the Oklahoma Constitution, or other existing state and federal laws in undertaking the challenged action.
SECTION 6. NEW LAW  A new section of law to be codified in the Oklahoma Statutes as Section 1-131 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. The School Establishment Clause Act (SECA) is constructed on the premise that:

1. The United States is a constitutional republic of which the State of Oklahoma is a part;

2. The United States Constitution is the supreme sovereign law of this country that preempts all state and federal law;

3. The First Amendment to the United States Constitution applies to the states through the Fourteenth Amendment to the United States Constitution;

4. The Establishment Clause of the First Amendment to the United States Constitution and Article II, Section 5 of the Oklahoma Constitution were not merely designed to prevent the state from respecting and promoting the doctrines of institutionalized religions but those of non-institutionalized religions;

5. All members of the Legislature and all executive and judicial officers are bound by oath or affirmation pursuant to Article VI, Clause 3 of the United States Constitution to not create or enforce policies that violate the Establishment Clause or the Free Exercise Clause of the First Amendment to the United States Constitution regardless of the member’s or officer’s party affiliation or personal religious beliefs;
6. The Establishment Clause balanced with the Free Exercise Clause of the First Amendment to the United States Constitution is the controlling constitutional authority in informing this state on how to respond and react to self-asserted sex-based identity narratives and sexual orientation orthodoxy and the Equal Protection and substantive Due Process clauses of the Fourteenth Amendment to the United States Constitution have no applicability;

7. Emotional appeals shall not be used to usurp the Establishment Clause of the First Amendment to the United States Constitution or Article II, Section 5 of the Oklahoma Constitution in an effort to justify the government’s creation or enforcement of policies that respect non-secular self-asserted sex-based identity narratives or sexual orientation orthodoxy;

8. All policies put forth by public schools that respect or recognize non-secular self-asserted sex-based identity narratives and sexual orientation orthodoxy fail the lemon test first established by the United States Supreme Court and are thereby preempted by the Establishment Clause of the First Amendment to the United States Constitution and Article II, Section 5 of the Oklahoma Constitution in their making and enforcement and shall be enjoined from enforcement because the policies:

   a. constitute non-secular shams that lack a primary secular purpose;
b. cultivate indefensible legal weapons against non-
observers of the religion of secular humanism; and

c. have the effect of excessively entangling the
government with the religion of secular humanism;

9. The Legislature recognizes that in the wake of the decisions
by the United States Supreme Court that forced the state’s
entanglement with the religion of secular humanism, there has been
no rush on non-secular marriage, but there has been a rush on:

   a. public schools and public libraries by devout secular
     humanists for the sole purpose of targeting and
     indoctrinating minors with the licentious religion of
     secular humanism with the government’s stamp of
     approval at the taxpayers’ expense, and

   b. the social marginalization and systematic persecution
     of non-observers of the religion of secular humanism;

10. The Legislature recognizes that it is not proven or
disproven whether sexual orientation is predicated on immutability
and genetics and is, therefore, a matter of religious faith that
falls within the exclusive jurisdiction of the Establishment Clause
balanced with the Free Exercise Clause of the First Amendment to the
United States Constitution and Article II, Section 5 of the Oklahoma
Constitution; and

11. This state shall be particularly vigilant in monitoring
compliance with the Establishment Clause of the United States
Constitution in the public school context to protect minors from religious indoctrination with the government’s stamp of approval, especially when that religious ideology promotes licentiousness.

B. SECA shall not be construed as prohibiting students or teachers from believing in or from refusing to believe in the plausibility of non-secular self-asserted sex-based identity narratives or sexual orientation orthodoxy or secular humanist practices because such beliefs and practices are protected under the Free Exercise Clause of the First Amendment to the United States Constitution and under Article II, Section 5 of the Oklahoma Constitution. SECA shall be constructed on the premise that protections of religious practices under the Free Exercise Clause of the First Amendment to the United States Constitution and Article II, Section 5 of the Oklahoma Constitution are not absolute, and this state is authorized to regulate or prohibit certain religious practices pursuant to its inherent police powers afforded under the Tenth Amendment to the United States Constitution if those practices promote licentiousness or are inconsistent with the peace and safety of the state. The Legislature recognizes that it is self-evident that non-secular self-asserted sex-based identity narratives and sexual orientation orthodoxy promote licentiousness and attempts to justify practices are inconsistent with the peace and safety of this state.
SECTION 7.  NEW LAW     A new section of law to be codified in the Oklahoma Statutes as Section 1-132 of Title 70, unless there is created a duplication in numbering, reads as follows:

If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of the School Establishment Clause Act (SECA) is for any reason held to be unconstitutional or invalid, the holding shall not affect the constitutionality or validity of the remaining portions of SECA, the Legislature hereby declaring that it would have passed this and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 8.  NEW LAW     A new section of law not to be codified in the Oklahoma Statutes reads as follows:

The Legislature hereby recognizes the following findings:

1. The United States Constitution is not silent as to how this state shall respond and react to lesbian, gay, bisexual, transgender, and questioning (LGBTQ) issues and sexual orientation orthodoxy for the matters are addressed exclusively by the Establishment Clause and Free Exercise Clause of the First Amendment to the United States Constitution, not the substantive Due Process
Clause or Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, which have no applicability;

2. The Establishment Clause of the First Amendment to the United States Constitution states that the government “shall make no law respecting an establishment of religion,” and Article II, Section 5 of the Oklahoma Constitution states, “Public money or property – Use for sectarian purposes. No public money or property shall ever be appropriated, applied, donated, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary, or sectarian institution as such”;

3. The Free Exercise Clause of the First Amendment to the United States Constitution states that the government “shall make no law...prohibiting the free exercise [of religion]”;

4. The Establishment Clause of the First Amendment to the United States Constitution applies to this state through the Fourteenth Amendment, and the United States Supreme Court held in Hein v. Freedom From Religion Foundation Inc., 551 U.S. 587 (2007) that the Establishment Clause applies to the executive branch, which includes Oklahoma’s public schools;

5. The Establishment Clause of the United States Constitution was never solely designed to prohibit the government from respecting
and recognizing the doctrines of institutionalized religions but of
non-institutionalized religions, such as secular humanism;

6. The United States Supreme Court found that secular humanism
is a religion for the purposes of the First Amendment in:

   b. School District of Abington Township, Pa. v. Schempp,
      374 U.S. 203 (1963),
   c. United States v. Seeger, 380 US 163 (1965), and
   d. Welsh v. United States, 398 U.S. 333 (1970);

7. Most of the United States courts of appeals have found that
secular humanism is a religion for purposes of the First Amendment
in cases such as:

   a. Malnak v. Yogi, 592 F.2d 197 (3d Cir.1979),
   b. Theriault v. Silber, 547 F.2d 1279 (5th Cir.1977),
   d. Lindell v. McCallum, 352 F.3d 1107 (7th Cir.2003),
   e. Real Alternatives, Inc. v. Sec’y Dep’t of Health &
      Human Servs., 150 F.Supp. 3d 419, 2017 WL3324690 (3d
      Cir. Aug.4, 2017), and
   f. Wells v. City and County of Denver, 257 F.3d 1132
      (10th Cir. 2001);

8. Several former self-identified homosexual activists, medical
experts, licensed ministers, and persecuted Christians have
tested under oath that non-secular self-asserted sex-based
identity narratives, such as homosexuality and transgenderism, and
sexual orientation orthodoxy are doctrines, ideologies, and dogmas
that are part of a worldview consisting of a series of unproven
faith-based assumptions and naked assertions that are implicitly
religious and inseparably linked to the religion of secular
humanism;

9. The LGBTQ community is centered on a “closed system” that is
organized, full, and provides a comprehensive code by which
individuals may guide their daily activities, making LGBTQ secular
humanism a religion in view of the legal definition of what
constitutes a religion provided by the courts in cases such as
United States v. Seeger, 380 US 163 (1965); Welsh v. United States,
398 U.S. 333 (1970); and Real Alternatives, Inc. v. Sec’y Dep’t of
Health & Human Servs., 150 F. Supp. 3d 419 (3d Cir. Aug. 4, 2017);

10. Instead of having a cross, the Ten Commandments, or the
star and crescent, the LGBTQ secular humanist religion has the
rainbow-colored flag to symbolize its religious beliefs, practices,
and values;

11. The beliefs that a person “was born with a gay gene” or
“was born in the wrong body” and is thereby entitled to special
treatment amounts to a series of unproven faith-based assumptions
and naked assertions that are implicitly religious and cannot be
used as the basis for law and policy because the Establishment
Clause prohibits such beliefs from being legally promoted, endorsed, or respected by government;

12. Regardless of political affiliation, all members of the Legislature and all executive and judicial officers are bound by oath to put their own political and religious beliefs aside and to comply with their duty to honor their oath of office pursuant to Article VI, Clause 3 to uphold the United States Constitution and to, therefore, immediately stop creating, respecting, and enforcing policies that promote the plausibility of non-secular self-asserted sex-based identity narratives and sexual orientation orthodoxy because all of those policies fail all three prongs of the lemon test established by the United States Supreme Court in Lemon v. Kurtzman, 403 U.S. 602 (1971) for:

   a. constituting non-secular shams that lack a primary secular purpose,

   b. cultivating indefensible legal weapons against non-observers of the religion of secular humanism, and

   c. serving to excessively entangle the government with the religion of secular humanism;

13. The United States Supreme Court in Edwards v. Aguillard, 482 U.S. 578 (1987) and Agostini v. Felton, 521 U.S. 203 (1997) found that if government action fails one prong of the lemon test, it is unconstitutional, and the evidence shows that the enforcement and creation of policies that respect non-secular self-asserted sex-
based identity narratives or sexual orientation ideology fail all three prongs of the lemon test;

14. The United States Supreme Court in Lee v. Weisman, 505 U.S. 577 (1992) found that there are “heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools,” while also holding in Edwards v. Aguillard, 482 U.S. 578 (1987) that the government “should be particularly vigilant in monitoring compliance with the Establishment Clause in the public-school context,” when minors are subjected to religious indoctrination with the perception of the government’s stamp of approval;

15. The federal courts have held in cases like Holloman v. Harland, 370 F.3d 1252 (11th Cir. 2004) that neither emotional appeals nor sincerity of belief can be used to usurp the Establishment Clause of the First Amendment and all policies that respect and promote non-secular self-asserted sex-based identity narratives and sexual orientation orthodoxy have been based on a series of emotional appeals at the expense of this principle;

16. The Supreme Court in Obergefell v. Hodges, 135 S.Ct. 2584 (2015), United States v. Windsor, 133 S. Ct. 2675 (2013), and Bostock v. Clayton Cnty. Bd. of Commissioners, 139 S.Ct. 1599 (2019) misapplied the Fourteenth Amendment through an unprincipled ploy and issued decisions that were based solely on a series of emotional
appeals as a way to get around the Establishment Clause of the First Amendment to the United States Constitution;

17. In the wake of Obergefell v. Hodges, 135 S.Ct. 2584 (2015), United States v. Windsor, 133 S. Ct. 2675 (2013), and Bostock v. Clayton Cnty. Bd. of Commissioners, 139 S.Ct. 1599 (2019), there has not been the promised equality, tolerance, and unity, but instead there has been division, domination by secular humanists, the proliferation of moral superiority complexes by moral relativists, cancel culture, the erosion of the integrity of the legal basis supporting the race-based civil rights movement which is objectively based on immutability, increased sexual exploitation and licentiousness, the proliferation of sexual confusion amongst minors, and the marginalization and even violent oppression of non-observers of the religion of secular humanism, demonstrating that those decisions amount to some of the greatest non-secular shams since the inception of American jurisprudence;

18. The United States Supreme Court’s position in INS v. Chada, 462 U.S. 919 (1983) and Nixon v. U.S., 506 U.S. 224 (1993) emphasized that the legislative branch shall serve as a check on the judicial and executive branch, and by enacting the School Establishment Clause Act (SECA), the legislature shall be fulfilling that duty;

19. The United States Supreme Court held in Seminole Tribe of Fla. v. South Carolina, 517 U.S. 44 (1996) and in St. Joseph Stock
Yards Co. v. United States, 298 U.S. 38 (1936) that “Stare Decisis is at its weakest when the Supreme Court interprets the Constitution because its decisions can be altered only by constitutional amendment or by overruling prior decisions”;


21. The United States Supreme Court in Cooper Indus. v. Aviall Services, Inc. 543 U.S. 157 (2004) stated that “[constitutional] questions which merely lurk in the record, neither brought to [the] attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents;”

22. In Bostock v. Clayton Cnty. Bd. of Commissioners, 139 S.Ct. 1599 (2019), Obergefell v. Hodges, 135 S.Ct. 2584 (2015), and United States v. Windsor, 133 S. Ct. 2675 (2013), the controlling applicability of the Establishment Clause of the First Amendment to the United States Constitution regarding sexual orientation orthodoxy was lurking in the shadows of those cases but not decided upon by the Supreme Court, which means that Stare Decisis does not apply, and those cases are subjected to being overruled for being framed on the wrong constitutional narrative;
23. The United States Supreme Court has repeatedly held that the states have a compelling interest to uphold community standards of decency, to discourage licentiousness, and to enact policies that stop attempts to justify practices that are inconsistent with the peace and safety of the state, as underscored by the state’s inherent police powers in the Tenth Amendment to the United States Constitution;

24. The United States Supreme Court found in Ginsberg v. New York, 390 U.S. 629 (1968) and Mishkin v. State of New York, 383 U.S. 502 (1966) that “to simply adjust the definition of obscenity to social realities has always failed to be persuasive before the Courts of the United States”, and such adjustments fail to be persuasive to this state;

25. Courts, in cases like Schlegel v. United States, 416 F. 2d 1372 (Ct. Cl. 1969), have held as a matter of self-evident observation that “any schoolboy knows that a homosexual act is immoral, indecent, lewd, and obscene. Adult persons are even more conscious that this is true”;

26. A public school policy that permits self-identified transvestites who are biological males to participate in sports for biological females in an attempt to show respect to their non-secular self-asserted sex-based identity narrative fails the three prongs of the lemon test by a landslide, promotes licentiousness, erodes community standards of decency, and is an attempt to justify
practices that are inconsistent with the peace and safety of the state;

27. The United States Supreme Court decision in Bostock v. Clayton Cnty. Bd. of Commissioners, 139 S.Ct. 1599 (2019) was invalid because requiring that “sexual orientation” be read into the term “sex” in Title VIII, 42 U.S.C. §2000e-2(a)(1) causes the statute to lack a primary secular purpose and excessively entangles the government with the religion of secular humanism as advocated by the LGBTQ denomination;

28. Males and females are self-evidently different but equal as implicated by the following neutral and secular considerations:
   a. according to the United States Supreme Court in United States v. Virginia, 518 U.S. 515, 533 (1996), there are “inherent differences between men and women,” and these differences “remain cause for celebration, but not for denigration of the members of either sex or for artificial constraints on an individual’s opportunity”,
   b. these “inherent differences” range from chromosomal and hormonal differences to physiological differences,
   c. according to Neel Burton, “The Battle of the Sexes,” 33 Psychology Today (July 2, 2012), men generally have “denser, stronger bones, tendons, and ligaments” and
“larger hearts, greater lung volume per body mass, a higher red blood cell count, and higher hemoglobin”,

d. according to Doriane Lambelet Coleman, “Sex in Sport”, Law and Contemporary Problems 63-126 (2017) (quoting Gina Kolata, “Men, Women 2 and Speed. Words: Got Testosterone?”, N.Y. Times (Aug. 21, 2008)), men also have higher natural levels of testosterone, which affects traits such as hemoglobin levels, body fat content, the storage and use of carbohydrates, and the development of type 2 muscle fibers, all of which result in men being able to generate higher speed and power during physical activity,

e. the biological differences between men and women, especially related to natural levels of testosterone, explains the male and female secondary sex characteristics which develop during puberty and have life-long effects, including those most important for success in sport: categorically different strength, speed, and endurance, according to Doriane Lambelet Coleman and Wickliffe Shreve, “Comparing Athletic Performances: The Best Elite Women to Boys and Men,” Duke Law Center for Sports Law and Policy,

f. while classifications based on sex are generally disfavored, the United States Supreme Court in United
States v. Virginia, 518 U.S. 515, 533 (1996),
recognized that “sex classifications may be used to
compensate women for particular economic disabilities
[they have] suffered, promote equal employment
opportunity, [and] to advance full development of the
talent and capacities of our Nation’s people”,
g. one place where sex classifications allow for the
“full development of the talent and capacities of our
Nation’s people” is in the context of sports and
athletics,
h. courts have recognized that the inherent,
physiological differences between males and females
result in different athletic capabilities. For
example, Kleczek v. Rhode Island Interscholastic 26
of innate physiological differences, boys and girls
are not similarly situated as they enter athletic
competition.”); Petrie v. Ill. High Sch. Ass’n, 394
N.E.2d 855, 861 (Ill. App. Ct. 1979) (noting that
“high school boys [generally possess physiological
advantages over] their girl counterparts” and that
those advantages give them an unfair lead over girls
in some sports like “high school track”),
i. a recent study of female and male Olympic performances since 1983 by Valerie Thibault, et al., “Women and Men in Sport Performance: The Gender Gap Has Not Evolved Since 1983,” Journal of Sports Science & Medicine, Vol. 9, No.2 (2010), found that although athletes from both sexes improved over the time span, the “gender gap” between female and male performances remained stable, which suggests that “women’s performances at the high level will never match those of men”,

j. as Duke University School of Law professor and all-American track athlete Doriane Coleman, tennis champion Martina Navratilova, and Olympic track gold medalist Sanya Richards-Ross recently wrote, “[T]he evidence is unequivocal that starting in puberty, in every sport except sailing, shooting, and riding, there will always be significant numbers of boys and men who would beat the best girls and women in head-to-head competition. Claims to the contrary are simply a denial of science.” (Doriane Coleman, Martina Navratilova, et al., “Pass the Equality Act, But Don’t Abandon Title IX,” Washington Post (Apr. 29, 2019)),

k. the benefits that natural testosterone provides to male athletes are not diminished through the use of puberty blockers and cross-sex hormones. A recent
study on the impact of treatments regarding puberty blockers and cross-sex hormones found that even “after 12 months of hormonal 17 therapy,” a man who identifies as a woman and is taking cross-sex hormones “had an absolute advantage” over female athletes and “will still likely have performance benefits” over women. (Wilk, Anna, et al., “Muscle Strength, Size and Composition Following 12 Months of Gender-Affirming Treatment in Transgender Individuals,” The Journal of Clinical Endocrinology & Metabolism, Vol. 105, No. 3 (2019)), and

1. having separate sex-specific teams furthers efforts to promote sex equality and accomplishes this aim by providing opportunities for female athletes to demonstrate their skill, strength, and athletic abilities while also providing them with opportunities to obtain recognition and accolades, college scholarships, and the numerous other long-term benefits that flow from success in athletic endeavors.

SECTION 9. This act shall become effective July 1, 2023.

SECTION 10. It being immediately necessary for the preservation of the public peace, health, or safety, an emergency is hereby
declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.