

January 24, 2024

## POLICY MEMORANDUM: ELIMINATING COMPELLED PRONOUN POLICIES IN SCHOOLS

In recent years, school trustees, administrators, and teachers have increasingly found themselves thrust into the middle of an ideological battle over new theories of gender identity.

One major flashpoint in this cultural struggle revolves around the use of preferred pronouns in school settings. As one federal appeals court has observed, school pronoun policies represent the “struggle over the social control of language in a crucial debate about the nature and foundation, or indeed real existence, of the sexes.”<sup>1</sup>

Against this backdrop, more and more teachers who conscientiously object to using preferred pronouns are getting ensnared in the trap of school pronoun policies. In some states, educators have faced discipline for their insistence on using biologically accurate pronouns. And even in school districts with no written compelled pronoun policy, some educators feel pressure from administrators, parents, and students to use preferred pronouns—and these teachers rightly fear what might happen if they continue disregarding such demands.

Recognizing the threat posed by compelled pronoun

### KEY POINTS:

- *Compelled preferred pronoun policies force educators to choose between acting on their sincerely held beliefs or betraying their convictions to keep their jobs*
- *At least six states have enacted laws protecting teachers from legal and professional consequences for using biologically accurate pronouns*
- *These statutory protections are consistent with constitutional rights like freedom of speech and religious liberty, as well as federal laws like Title IX*

policies to fundamental constitutional rights like freedom of speech and religious liberty, some state legislatures enacted laws in 2023 that protect educators from professional or legal consequences for using biologically accurate pronouns:

- Arkansas lawmakers passed House Bill 1468, which protects teachers from adverse employment actions for declining to use a person’s preferred pronouns;

government officials may not force teachers to communicate messages with which they disagree.

Historically, pronouns were used to identify the biological sex of the subject being discussed. Still today, a speaker communicates a message about how he understands human nature when he chooses which pronouns to use. When a speaker uses biologically accurate pronouns, he communicates his belief that gender is objectively rooted in biological sex. Alternatively, using preferred pronouns conveys the belief that gender is simply an expression of a person's subjective feelings and desires.

Put simply, forcing speakers to use preferred pronouns violates the protections of the First Amendment by requiring them to communicate messages that may violate their sincerely held beliefs—and this applies to teachers in the classroom as well.<sup>6</sup> For example, the U.S. Court of Appeals for the Sixth Circuit held that Shawnee State University violated the free speech rights of a professor when it disciplined him for refusing to refer to a biologically male student as a woman.<sup>7</sup>

The Shawnee case underscores the constitutional problems with compelled pronoun policies at schools and universities. Teachers who use biologically accurate pronouns deserve protection from adverse employment action—and these

protections are both justified and necessary under the Free Speech Clause of the First Amendment.

**FREE EXERCISE OF RELIGION.** In addition to safeguarding freedom of speech, the First Amendment to the U.S. Constitution also “provid[es] broad protection for the free exercise of religion except where public ‘peace’ or ‘safety’ would be endangered.”<sup>8</sup>

People of many faiths – including Christians who hold to biblical teaching on sexuality and gender – believe that God has created each person with an immutable biological sex of either male or female. Furthermore, they believe that affirming gender identities inconsistent with biological sex is not only harmful to the gender-confused individuals, but is also a rejection of God's plan.

When biblically minded teachers are subjected to compelled pronoun policies, they often must choose between adherence to their sincerely held beliefs or adverse employment action. In light of this dilemma, forcing a public school teacher to speak that which violates their conscience in order to keep a job violates the spirit of the Free Exercise Clause, which “protects not only the right to harbor religious beliefs” but also the “ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through the performance (or abstention from) physical acts.”<sup>9</sup>

6. “Compelling an educator’s ‘speech or silence’ on such a divisive issue [that is, ‘gender-identity-based pronouns’] would cast ‘a pall of orthodoxy over the classroom’ on a topic that has ‘produced a passionate political and social debate.’” Vlaming v. West Point School Board, 895 S.E.2d 705, 740 (Va. 2023) (citations omitted).

7. Meriwether v. Hartop, 992 F.3d 492, (6th Cir. 2021).

8. Fulton v. City of Philadelphia, Pennsylvania, 593 U.S. \_\_\_ (2021) (Alito, S.A., concurring) (slip op., at 36).

9. Kennedy v. Bremerton School District, 597 U.S. 507, 524, (2022) (citation omitted).

education, it meant biological sex, i.e., discrimination between males and females.”<sup>15</sup> It is therefore clear that Congress intended Title IX to uphold the binary classification of sex and gender—and under Title IX, biological males can be addressed as men, and biological females can be addressed as women.

## CONCLUSION

In summary, there are both strong constitutional and legal justifications for laws protecting school employees who use biologically accurate pronouns

in classroom settings. These laws, already in effect in at least six other states, provide assurance that educators will not be compelled to compromise their convictions as a condition of employment. There is also much public support for these protections, with more than 62% of likely Idaho voters supporting this type of legislation.

Considering the stakes, it's crucial that Idaho lawmakers act quickly to establish similar protections for teachers here in the Gem State.

62%



believe Idaho law should protect public school teachers who use biologically accurate pronouns to refer to students

411 likely Idaho voters | Margin of error +/- 4.3%  
IVR phone survey conducted from November 14-21, 2023

