



# Herbert H. Slatery III Attorney General & Reporter

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## **AG COALITION RESPONDS TO MAJOR CHANGE IN FEDERAL EMPLOYMENT AND EDUCATION GUIDELINES**

*New protocols for employers, schools violate the Constitution, create confusion*

Nashville- In a letter to President Joe Biden, Attorney General Herbert H. Slatery III, along with 20 other state attorneys general, voiced opposition to the unlawful regulatory guidance recently issued by the Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Education. The new guidelines attempt to force radical changes on nearly every employer and school across the nation. The letter provides: “By unilaterally plunging ahead with these sweeping dictates,” the administration “harms the rule of law and undermines the legitimacy of these executive agencies.”

In the letter, the attorneys general object to the federal agencies’ disregard for procedural safeguards and democratic accountability in their interpretation and application of *Bostock v. Clayton County*. Instead of involving states, localities, and stakeholders, the EEOC and Department of Education instead chose to disregard the rule of law and precluded public notice and participation in the regulatory process. Yet, as the attorneys general write, “Americans are not passive recipients of the law, but rather active participants in the process of its creation and revision.”

On June 15<sup>th</sup>, without approval from other commissioners or the public, the EEOC Chairwoman issued technical guidance dictating that employers cannot protect the privacy of their employees and their ability to utilize sex-specific bathrooms or locker rooms. The guidance relies on *Bostock*, even though the Supreme Court’s narrow decision on employment discrimination explicitly refrains from addressing “sex-segregated bathrooms, locker rooms, and dress codes.”

Similarly, reaching well beyond *Bostock*, the Department of Education announced on June 16<sup>th</sup> that Title IX, a federal law that prohibits sex-based discrimination in any school or education program receiving federal money, also protects students from discrimination based on sexual identification and gender identity. No longer, according to the Department of Education, will schools be allowed to preserve the privacy of middle school and high school students by ensuring they can use sex-specific showers, locker rooms, and restrooms. “This is a matter of concern for millions of students and parents who appreciate the availability of private facilities for bathing and changing at school,” write the attorneys general.

The group also responds to the agencies’ claim that using biologically accurate pronouns could violate the law: “With respect to pronouns, the EEOC’s guidance comes across as an effort to



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leverage the authority of the federal government to chill protected speech disfavored by your administration.”

“Federal agencies do not have the authority to unilaterally change laws. That is the exclusive prerogative of Congress,” said General Slatery. “Actions like these exclude the voices, votes and participation of the people, and their representatives, which is neither right nor constitutional.”

The letter was led by Tennessee Attorney General Herbert H. Slatery III and signed by the attorneys general of: Alabama, Alaska, Arizona, Arkansas, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Ohio, Oklahoma, South Carolina, South Dakota, Texas, and West Virginia.

To read the letter, click here:

<https://www.tn.gov/content/dam/tn/attorneygeneral/documents/pr/2021/pr21-23-letter.pdf>

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