

Justice Ginsburg, a Woman Isn't a 'Demiboy'; If the Supreme Court redefines 'sex' to include 'gender identity,' the female sex will suffer.

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FULL TEXT

Should the legal meaning of "sex" be changed? That's what the Supreme Court will consider Tuesday when it hears oral arguments in the cases of *Harris Funeral Homes v. Equal Employment Opportunity Commission* and *Bostock v. Clayton County*. Should the justices decide to broaden the meaning of sex, it would spell disaster for women. The cases relate to whether federal law prohibits employment discrimination based on employees' sexual orientation (*Bostock*) or "presenting" as the opposite sex (*Harris Funeral Homes*). Many Americans support legal protections against employment discrimination for those categories. But rather than new legislation creating civil rights protections for those categories, the plaintiffs seek protection under Title VII of the 1964 Civil Rights Act, which prohibits discrimination "on the basis of sex."

In short, they are asking the justices to conflate sex with what is now known as gender identity. Yet "sex" has a concrete scientific definition—whether one is male or female as determined by chromosomes and biology. Gender means—well, ask Facebook. At one point the company's alternatives numbered as many as 71, including "pangender," "neutrois" and "androgynous." That wasn't enough to placate the vast gender-identity movement, which lambasted the social-media platform for those who were left out. Eventually, Facebook opted for "male," "female" and "custom."

The American Medical Association has a simpler approach in its style guide: "Sex refers to the biological characteristics of males and females," but "gender includes more than sex and serves as a cultural indicator of a person's personal and social identity." That could mean anything.

The problem with diluting the meaning of sex is more than rhetorical. It weakens the legal status of the sex that laws such as Title VII and Title IX are designed to protect. Women's rights hinge on our clearly defined status as women. We have endured centuries of discrimination because of our sex. In seeking to strip the term "sex" of legal meaning, gender-identity advocates would turn the clock back 55 years for women.

What becomes of women in a world where our legal status is in the same category as "two spirit" or "demiboy"? It sounds like a joke, yet already women find themselves all too often in a legal pretzel where they are accused of discrimination under laws once designed to protect them. A rape victim doesn't want a biological male in her safe house. A teenage athlete doesn't want one on the opposing team. No woman or girl wants one in the ladies' room. Expand the legal definition of sex to include gender identity, and girls and women will increasingly find themselves in those situations, and they could face discrimination lawsuits if they speak out.

Justice Ruth Bader Ginsburg, who popularized the phrase "on the basis of sex," wrote in 1975: "Separate places to disrobe, sleep, perform bodily functions are permitted, in some situations required, by regard for individual privacy." Today she and her colleagues are confronted with the question: Can a woman still claim a right to privacy on the basis of her sex?

Perhaps the deepest tragedy in winnowing the meaning of sex is the diminution of what it means to be a woman. Women have spent the better part of the past century building up our stature in society. I want my daughter to grow up proud of being a woman. I want her to be a part of expanding women's rights, not fighting for the basic

legal recognition we thought we'd won in 1964.

Ms. McGuire is the author of "Sex Scandal: The Drive to Abolish Male and Female."

Credit: By Ashley E. McGuire

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