



Written by [Selwyn Duke](#) on October 9, 2019

As SCOTUS Decides What “Sex” Means, Conservatives Still Confused About “Gender”

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It’s a sign of the times that the Supreme Court of the United States has to decide something we all once learned as little children: the meaning of “sex,” as in being male or female. But that is the case, as the SCOTUS will now address a lower court opinion that the term “sex” in the 1964 Civil Rights Act can mean “sexual orientation.” The issue becomes even more interesting because the purported defenders of language and constitutional integrity, conservatives, are themselves confused about “gender.”

Prompting this is the case of Kimberly Hively, a part-time adjunct professor at an Indiana community college, who “says she was repeatedly denied a full-time position, and then her part-time contract was not renewed, because she is a lesbian,” [writes](#) *National Review*’s George Will. The U.S. Court of Appeals for the Seventh Circuit found for Hively based on the ‘64 act, which prohibits discrimination because of a person’s “race, color, religion, sex, or national origin.”

The court “held, in effect, that Congress can now be said to have proscribed such discrimination without intending to,” writes Will. “Discrimination based on sexual orientation necessarily involves ‘taking the victim’s biological sex ... into account,’” Will elaborated, relating the judges’ “reasoning.” “Hence ‘it would require considerable calisthenics to remove the ‘sex’ from ‘sexual orientation.’”

Let’s put aside that “‘statutory updating’ is Congress’ job,” as Will reminds us, and that the ‘64 act is itself unconstitutional because the feds have no constitutionally granted power to prohibit workplace discrimination (the states do). For there’s another basic issue, one often ignored: How can conservatives be guardians of language integrity, and hence constitutional integrity (the Constitution is only understandable via language), if they unwittingly fall victim to the Left’s language manipulation?

Consider: Writing yesterday at *American Thinker*, conservative law professor Tadas Kilmas [stated](#) that the current SCOTUS case is about “whether, back in 1964, the Congress had meant that the word ‘sex’ in the Civil Rights act meant ‘gender’ or whether it meant, or can be interpreted as meaning, ‘sexual orientation’ or even just plain ‘sex’ as in ‘sexual harassment.’”

Then, GOP gubernatorial candidate Ralph Abraham recently drew fire for [saying in a campaign ad](#), “There are only 2 genders.” The problem?

Examine an older dictionary. You’ll see that “gender” is always defined as in my seventh printing, 1975 *American Heritage School Dictionary*: “In grammar, one of a number of categories, such as masculine, feminine, and neuter, into which words are divided.” It says nothing about people — because the term was rarely used to reference people.

That is, until the sexual devolutionaries co-opted it.

While I don’t know who first applied “gender” to human beings, a great proponent of such was a now discredited psychologist named Dr. John Money. A professor of pediatrics and medical psychology at



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Johns Hopkins University, he originated terms/concepts such as “gender role” and “gender identity,” advancing an idea now common among psychologists and activists.

To wit: “In general terms, ‘sex’ refers to the biological differences between males and females, such as the genitalia and genetic differences,” as *Medical News Today* [explains](#). “‘Gender’ is more difficult to define, but it can refer to the role of a male or female in society, known as a gender role, or an individual’s concept of themselves [*sic*], or gender identity.”

The issue? Gender’s new application facilitates the sexual devolutionary agenda. After all, to normalize the abnormal it helps to lump it in with the normal. It would have been futile claiming there are more than two sexes, however, as it was cemented in people’s minds and in science that there are only two. So a new term and concept were needed: “gender.”

And now, decades later, the number of “genders” is up in the dozens — and counting.

Why this matters may be obvious. Imagine a court ruled that the 1964 Civil Rights Act only protects “gender.” Its judges may just be thinking about the male/female biological distinction. They may have the best of intentions, just as Kilmas and Abraham do. But it could still be taken to mean that protected are people claiming the status of having one of the ever-metastasizing sexual-status delusions.

Oh, this could absolutely be relevant in a case such as Hively’s. Just consider that at the Fourth World Conference on Women in Beijing in 1995, organizers [sought](#) to define lesbians as a “gender.”

For the record, I do expect the SCOTUS to be specific in its opinion, whatever that opinion may be. But the larger questions for conservatives are: Why use the Left’s chosen language and play into its hands? Why use an activist-born term that’s “more difficult to define”?

Conservatives by nature conserve, but do you really want to conserve liberals’ past cultural victories?

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