

# Trump administration says your genitalia decides your sex.

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In the aftermath of this weekend's *New York Times* story reporting that the Trump administration might define the word "sex" in federal nondiscrimination law as "based on immutable biological traits identifiable by or before birth" we're being treated to a number of articles telling us that "science" declares that "[anatomy does not determine gender](#)" or that "[sex and gender are not the same](#)." Sexual identity should be a 'Big Head' choice rather than a 'Little head' choice. our goverment has too many people thinking with their dicks already.

But if you pay close attention to the Trump admin stories, you'll notice some sleight of hand — and it's sleight of hand with immense consequence for the meaning of the law. Let's begin with the basics.

First, let's begin with the by-now conventional argument that sex and gender are two distinct concepts. [As a CBS story explained it](#), "Sex typically refers to anatomy while 'gender goes beyond biology.'" Gender refers to the person's "inner sense of being male, female or somewhere in between."

Second, for the vast majority of people, their sex and their gender more or less align. They're biologically male or female, and they think of themselves as male or female. This is what activists call "cisgender."

Third, a small percentage of people do not believe their sex and gender align. While they are biologically male, for example, their mind tells them they're female. This person is said to suffer from gender dysphoria. People who have gender dysphoria often (but not always) describe themselves as "transgender."

It is this sex/gender distinction that has led a number of activists and lawmakers to embrace the notion that nondiscrimination laws aren't truly inclusive unless they bar discrimination on the basis of sex and gender identity. Why? Because — as noted above — they persistently argue that sex and gender are different things.

If you read federal nondiscrimination law, however, you'll note something very important. It prohibits discrimination on the basis of sex. For example, here's the language of Title IX:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

And here's relevant language from Title VII:

It shall be an unlawful employment practice for an employer (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.

So, when the Trump administration suggests a biological definition of “sex,” it is actually in line with the common understanding of the term. Sex is different from gender. Sex is biological.

But wait. Since Congress hasn’t passed a statute prohibiting discrimination on the basis of gender identity, now the Left is arguing that sex and gender are the same thing, and “sex” really means gender. Words that really, really matter when explaining the science of gender suddenly matter much less when explaining the obligations of federal law.

That isn’t science. It’s an ideological and legal argument designed to expand the law without changing its text. Moreover, it’s not “science” to argue that a person who identifies with a male gender despite being born into the female sex is truly a male. That’s a philosophical and ideological choice to value the person’s self-concept over their chromosomes. It’s a choice a person is free to make. A person is free to call Chelsea Manning or Caitlyn Jenner women. But it is not a choice the government should *mandate* that we make.

Simply put, until the text of the law changes, sex means sex, and the Trump administration’s proposed language is completely consistent with the science, both old and new.