

Defending Women from Gender Ideology an Individual's Sex Is Not a Simple Matter

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On January 20, 2025, President Donald Trump issued the executive order titled “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government.” This directive mandates that all federal agencies recognize only two biological sexes -- male and female -- defined at conception. It requires the replacement of the term “gender” with “sex” in official documents and policies and prohibits the use of gender-affirming language and practices within federal operations. Additionally, the order restricts the use of federal funds for gender-affirming care and disallows self-selection of gender on government-issued identification, such as passports and visas.

The executive order’s strict binary definition of sex may conflict with existing anti-discrimination laws that have been interpreted to protect individuals based on gender identity. Notably, the Supreme Court’s decision in *Bostock v. Clayton County* (2020) held that discrimination based on gender identity or sexual orientation constitutes sex discrimination under Title VII of the Civil Rights Act of 1964. By mandating a binary understanding of sex, the order could undermine these protections, leading to potential legal challenges.

The order rescinds previous directives that promoted diversity, equity, and inclusion (DEI) within federal agencies and among federal contractors. This includes the revocation of Executive Order 11246, which had prohibited discrimination by federal contractors and required affirmative action to ensure equal employment opportunities. The removal of these protections may lead to increased discrimination claims and legal disputes concerning employment practices.

By prohibiting self-selection of gender on federal identification documents, the order may create conflicts with state policies that recognize non-binary or transgender identities. This inconsistency could lead to legal challenges regarding the recognition of gender identity across different jurisdictions and the potential violation of individual rights to privacy and equal protection under the law.

The prohibition of federal funding for gender-affirming care, including within federal prisons, raises legal concerns related to the Eighth Amendment’s prohibition against cruel and unusual punishment. Denying necessary medical care to transgender individuals in federal custody could result in litigation alleging deliberate indifference to serious medical needs.

Civil rights organizations, including the American Civil Liberties Union (ACLU), have signaled intentions to challenge the executive order in court. Legal arguments are likely to focus on conflicts with established anti-discrimination laws, constitutional protections under the Equal Protection Clause, and precedents set by the Supreme Court affirming the rights of transgender individuals.

President Trump’s executive order represents a significant shift in federal policy regarding the recognition of sex and gender. Its implementation is poised to have far-reaching legal implications, particularly concerning anti-discrimination protections,

federal employment practices, identification policies, and access to medical care. As legal challenges emerge, courts will play a crucial role in determining the order's alignment with existing laws and constitutional principles.