



## ERASING FEMALES IN LANGUAGE AND LAW

BY MARY RICE HASSON

Two days into the new year, Nancy Pelosi unveiled disturbing changes to House rules: to “promote inclusion and diversity,” members of the House would be expected to “honor all gender identities by changing pronouns and familial relationships in the House rules to be gender neutral.”<sup>1</sup> Words like “mother,” “son,” or “grandfather” were suddenly stigmatized as remnants from a less-enlightened past when people still believed biological sex and identity were inherently connected. It was a sign of things to come under a new administration fervid in its commitment to gender ideology.

The Equality Act (“the Act”) ranks high among Democrat legislative priorities.<sup>2</sup> The Act is a sweeping civil rights bill that purports to “prohibit discrimination on the basis of sex, gender identity, and sexual orientation, and for other purposes.”<sup>3</sup> It sailed through the House in late February and, by mid-March 2021, the

Senate Judiciary Committee had initiated hearings to consider the bill. The Democrat narrative was—and still is—deceptively simple: because LGBTQ Americans suffer daily discrimination, America’s civil rights laws must protect “sexual orientation” and “gender identity” and stamp out bigotry wherever it exists, regardless of the resulting burdens on religious institutions and believers. Democrats flat out deny that the Act holds any negative consequences for females. In fact, they maintain the Act would “strengthen civil rights protections” for women.<sup>4</sup>

Nothing could be further from the truth. The Equality Act presents numerous substantive problems, including potentially devastating effects on the rights of religious believers and religious institutions to participate in the public square (concerns beyond the scope of this article).<sup>5</sup> The Act’s fatal flaw, however, is that it enshrines “gender identity” as a protected classification under civil

<sup>1</sup> Marisa Schultz, *Pelosi’s new House rules are gender-neutral, curtail GOP’s ability to force ‘gotcha’ votes*, Fox News (January 2, 2021), <https://www.foxnews.com/politics/new-democratic-house-rules-gender-neutral-curtail-gops-ability-force-gotcha-votes>.

<sup>2</sup> H.R. 5, 117th Cong. (2021), <https://www.congress.gov/bill/117th-congress/house-bill/5?s=2&r=3>. Although various pieces of legislation aiming to advance anti-discrimination goals relating to sexual orientation and gender identity were introduced in years past, the current version under consideration is largely similar to the bill introduced in the 2015-2016 legislative session and subsequent sessions as the Equality Act: H.R. 3185, 114th Cong. (2015), <https://www.congress.gov/bill/114th-congress/house-bill/3185/all-actions-without-amendments>.

<sup>3</sup> The Equality Act was passed by the U.S. House of Representatives on February 25, 2021. The Senate Judiciary Committee held hearings on March 17, 2021. As of this writing, it appears unlikely that the U.S. Senate will pass the Equality Act in 2021.

<sup>4</sup> See, e.g., *FACT SHEET: The Equality Act Will Provide Long Overdue Civil Rights Protections for Millions of Americans*, White House (June 25, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/25/fact-sheet-the-equality-act-will-provide-long-overdue-civil-rights-protections-for-millions-of-americans/>.

<sup>5</sup> The Act is sweeping in its intended scope, enacting broad changes to the historic Civil Rights Act of 1964: it expands the definition of “sex discrimination” to include sexual orientation and gender identity; extends the law’s reach in unprecedented ways by redefining “public accommodations” to include, for example, “public gatherings,” “any establishment that provides a good, service, or program,” including “online retailers” and “healthcare” providers; and expressly prohibits the use of the Religious Freedom Restoration Act of 1993 (42 U.S.C. § 2000bb to -4 (1993)) as “a claim concerning, or a defense to a claim” arising under the Equality Act. See generally H.R. 5, § 3 (“Public Accommodations”) and § 1107 (“Claims”). Section 1107 reads in full: “The Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb et seq.) shall not provide a claim concerning, or a defense to a claim under, a covered title, or provide a basis for challenging the application or enforcement of a covered title.” The net result is that the Equality Act would greatly expand the potential for liability or harassment from claimants alleging discrimination on the basis of sex, gender identity, or sexual orientation, while restricting the availability to raise a religious freedom claim or defense under the Religious Freedom Restoration Act. Although the Equality Act purports to build on the recent Supreme Court decision in *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020)—which the Equality Act describes as holding that the

rights law, redefines “sex” as “gender identity,”<sup>6</sup> then continues in circular fashion to define “gender identity” as “the gender-related identity, appearance, mannerisms, or other gender-related characteristics ... *regardless of the individual’s designated sex at birth.*”<sup>7</sup> It’s a wordy entitlement that privileges “gender identity” claims over the sex-based rights of females.

## WHY “GENDER IDENTITY” ANYWAY?

The Act’s amorphous definition of “gender identity,” unprecedented in federal legislation, betrays a far-reaching, ideological agenda.<sup>8</sup> “Gender identity” gained currency in the 1960s, arising from the work of Dr. John Money, and later Robert Stoller. Their clinical experience with transsexuals and patients with disorders of sexual development led them to theorize the possibility of a social identity divergent from the biological reality of the

person’s sexed body. This theory of gender identity “left behind the idea of sexuality as a natural relation between the sexed body and subjectivity,” writes attorney and moral theologian David Crawford. It was later “popularized” by second-wave feminists in the 1970s and soon embraced in academia, leading to the development of gender theory and later queer theory.<sup>9</sup> Gender ideologues today reject the idea of human nature and the “natural” order that underlies Christian norms of sexuality, often framing beliefs in human nature and sexual difference as biological “essentialism” and “ontological oppression.”<sup>10</sup>

In contrast to the Christian understanding of sexual identity as “given,” gender ideology insists that identity is the choice of the individual, regardless of biological sex.<sup>11</sup> Rejecting the unity of body and soul, gender ideology views the person as a composite of various dimensions of self, each existing on a spectrum (e.g., “sex

“prohibition on employment discrimination because of sex under title VII of the Civil Rights Act of 1964 inherently includes discrimination because of sexual orientation or transgender status”—it far exceeds *Bostock* in scope and implications.

<sup>6</sup> In full, the Equality Act redefines “sex” to include “a sex stereotype,” “pregnancy, childbirth, or a related medical condition,” “sexual orientation or gender identity,” and “sex characteristics, including intersex traits.” H.R. 5, § 1101(a)(4). For a short commentary on the implications of this redefinition of “sex,” see Mary Rice Hasson, *The Equality Act and the End of Females*, Newsweek (February 24, 2021), <https://www.newsweek.com/equality-act-end-females-opinion-1571432>.

<sup>7</sup> H.R. 5, § 1101(a)(4) (emphasis added). The Equality Act redefines “sex” to include “a sex stereotype,” “pregnancy, childbirth, or a related medical condition,” “sexual orientation or gender identity,” and “sex characteristics, including intersex traits.”

<sup>8</sup> “Gender identity” appears in “Hate Crimes” legislation, at 18 U.S.C. § 249, and in the Violence Against Women Act Reauthorization Act of 2021, H.R. 1620, 117th Cong. The definition used in both instances is limited, still circular in its language, but does not conflate “sex” and “gender identity” (unlike the Equality Act): “the term ‘gender identity’ means actual or perceived gender-related characteristics.” 18 U.S.C. § 249(c)(4).

<sup>9</sup> David Crawford, *Against the Fairness for All Act*, First Things (December 14, 2019), <https://www.firstthings.com/web-exclusives/2019/12/against-the-fairness-for-all-act>. “Gender” concepts took root in academia first in “women’s studies” and “gender theory,” and later in “queer theory,” which generally rejected norms of sexuality and identity in favor of transgressive acts and identities.

<sup>10</sup> Robin Dembroff, *Real Talk on the Metaphysics of Gender*, 46 *Phil. Topics*, no. 2, Fall 2018, at 21-50. Modern gender theorists argue that cultural institutions and social structures that reinforce “ontological oppression” are unjust and a “heterosexist state that fails to recognize queer and polyamorous relationships constructs ... [and] perpetuate[s] its heterosexist structures” must go. Language opposing “heterosexist” and “cis-normative” structures and assumptions are features of the modern educational landscape and beyond, as the most powerful institutions in our society—corporations, media, entertainment, big medicine, and public education—are fully onboard with the ontological revolution. Our legal systems and customary practices are already shifting to privilege gender identity in law. According to the Movement Advancement Project, twenty-one states permit an individual to change the sex (“gender”) designated on his or her driver’s license, no questions asked. An additional eleven permit changes to the listed sex as long as a healthcare provider confirms the person has taken steps towards expressing a transgender identity. Twenty states plus the District of Columbia permit individuals to self-identify as “X” instead of male or female on their driver’s license. All but one state permit an individual to change the sex listed on his or her birth certificate, although some may require a healthcare provider to attest to the person’s transgender status, although usually without specific medical requirements. *Identity Document Laws and Policies, Birth Certificates*, Movement Advancement Project, [https://www.lgbtmap.org/equality-maps/identity\\_document\\_laws/birth\\_certificate](https://www.lgbtmap.org/equality-maps/identity_document_laws/birth_certificate) (last visited July 24, 2021).

<sup>11</sup> For a Catholic critique of gender theory, see Congregation for Catholic Education, *Male and Female He Created Them: Towards a Path of Dialogue on the Question of Gender Theory* (2019), [https://www.vatican.va/roman\\_curia/congregations/ccatheduc/documents/rc\\_con\\_ccatheduc\\_doc\\_20190202\\_maschio-e-femmina\\_en.pdf](https://www.vatican.va/roman_curia/congregations/ccatheduc/documents/rc_con_ccatheduc_doc_20190202_maschio-e-femmina_en.pdf).

assigned at birth,” “gender identity,” “gender expression,” “sexual orientation”). In this fractured vision of the person, none of these dimensions need align with any other. As Crawford observes,

the new sexual economy thinks that “gender” is “assigned” and “presented.” The language conveys an external and arbitrary relationship between a given individual’s sexed body and the mental factors of self-experience.... [T]he implication is that there is nothing natural in the relationship between the sexed body and one’s sense of self as a sexed being. The organic unity of the embodied subject is thereby radically fragmented.... [T]he implicit philosophical anthropology presupposed by this move is precisely that of the “gender identity” movement ... [perceiving] the human subject according to an essentially “trans” paradigm and ... [imposing] that paradigm on the entire population as a matter of law.<sup>12</sup>

Untethered from the reality of the sexed body then, “gender identity” is a purely subjective notion, a label that indicates “how individuals perceive themselves and what they call themselves.”<sup>13</sup> This understanding of gender identity elevates a personal narrative (that defies biology) to the status of protected characteristic, backed by the force of law. “What’s important,” the Human Rights Campaign tells young people, “is

that you know your truth, and that you don’t let other peoples’ uninformed opinions direct your own narrative. You know who you are, and that is enough.”<sup>14</sup> By privileging one person’s “gender identity” narrative, even over the reality of biological sex, the law stands ready to compel others to play a role in that narrative, whether they want to or not, using proposed federal legislation like the Equality Act, state or local “gender identity” laws, or the power of the administrative state.<sup>15</sup> Gender identity ideology (or the “trans paradigm,” as Crawford calls it) has become a government-promoted anthropology, an alternative belief system that proposes its own (false) “truth” about the human person.

U.S. laws that protect the individual’s right to self-determine “gender identity,” regardless of sex, reflect the same faulty anthropology promoted by global LGBTQ activists. The U.N.’s Independent Expert on Sexual Orientation and Gender Identity, Victor Madrigal-Borloz, recently released a report to the U.N. Human Rights Council on gender theory and, in his press conference, linked “gender” not to the biological reality of “male” or “female,” but to the exercise of personal autonomy. According to Madrigal-Borloz, “gender is ... the relationship between a person’s free will and a series of stereotypes that assign behaviors or patterns or roles to a particular sex.”<sup>16</sup> The state, Madrigal-Borloz insisted, has no grounds to justify “restricting” a person’s “freedom” to self-determine an identity.<sup>17</sup>

<sup>12</sup> David Crawford, *The Metaphysics of Bostock*, First Things (July 2, 2020), <https://www.firstthings.com/web-exclusives/2020/07/the-metaphysics-of-bostock>.

<sup>13</sup> Human Rights Campaign, *Coming Out: Living Authentically as Transgender or Non-Binary* 44 (2020), <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/ComingOut-TNB-Resource-2020.pdf>.

<sup>14</sup> *Id.* at 20.

<sup>15</sup> The Supreme Court’s recent rebuff to florist Baronelle Stutzman suggests that those who refuse to genuflect before gender ideology will pay a heavy price. *Devastating News: U.S. Supreme Court Refuses to Hear Baronelle Stutzman’s Case*, Alliance Defending Freedom (July 2, 2021), <https://adfflegal.org/blog/devastating-news-us-supreme-court-declines-hear-barronelle-stutzmans-case>.

<sup>16</sup> Madrigal-Borloz also repudiated claims that “gender” is “inherent” in the person. Victor Madrigal-Borloz, U.N. Indep. Expert on Sexual Orientation & Gender Identity, Press Conference on Gender Theory at Human Rights Council (June 25, 2021), <https://media.un.org/en/asset/k10/k10or8mypy>. In contrast, the lone official definition of “gender” agreed to by U.N. member nations is found in the Rome Statute of the International Criminal Court, which states: “For the purpose of this Statute, it is understood that the term ‘gender’ refers to the two sexes, male and female, within the context of society. The term ‘gender’ does not indicate any meaning different from the above.” Rome Statute of the International Criminal Court art 7, ¶ 3, July 17, 1998, 2187 U.N.T.S. 90, <https://www.icc-cpi.int/resourcelibrary/official-journal/rome-statute.aspx#article7>.

<sup>17</sup> See Madrigal-Borloz, *supra* note 16. Madrigal-Borloz’s position reflects the consistent view of the U.N. bureaucracy, which has long supported the ideological blueprint for LGBTQ rights expressed in the unofficial, non-binding, but influential Yogyakarta Principles (2006) and Yogyakarta Principles + 10 (2017). The Yogyakarta documents claim a human right to self-determination expressed in the individual’s asserted gender identity, and that includes the right to access medical and surgical body modifications as an expression of gender identity. The Yogyakarta Principles, <https://yogyakartaprinciples.org/> (last visited July 24, 2020).

## THE HARMFUL IMPACT OF “GENDER IDENTITY” PROVISIONS

As many have noted, the practical consequences of inverting “sex” to include an individual’s self-perceived identity “regardless of . . . sex” are enormous, particularly for females.<sup>18</sup> Under the Equality Act, for example, “access to a shared facility, including a restroom, a locker room, and a dressing room” must be granted “in accordance with the individual’s gender identity.”<sup>19</sup> As a result, males can gain access to private spaces otherwise reserved for females on the basis of a self-declared “gender identity” (“I am a woman”). Single-sex spaces, such as shelters for female victims of domestic violence, hospital rooms in female-only wards, or cells in a women’s prison, would be open to any male who asserts a self-perceived identity as a “woman,” even temporarily. In schools and universities, sports teams, sororities, and other single-sex programs for females would, for all practical purposes, become co-ed. “Sex” as a “bona fide occupational qualification” would become meaningless, as the Act requires that “individuals [be] recognized as qualified in accordance with their gender identity,” regardless of sex.<sup>20</sup> Religious individuals and institutions adhering to biblical beliefs about the person (created male or female) or marriage (between a male and a female) would be cast as bigots and face an untenable choice: compromise their beliefs or be exiled from the public square. These are but a few of

the foreseeable effects of privileging “gender identity” claims over the sex-based rights of females.

There is, however, a smidgen of good news. As of this writing, the Equality Act seems unlikely to pass the Senate in 2021. Now the bad news: even without the Equality Act, the gender tsunami threatens to bring about the “end of females” in both law and language.<sup>21</sup>

Although conservatives, churches, religious believers, and women of all political stripes banded together in an apparently successful effort to stop the Equality Act, the gender juggernaut continues, as powerful as ever.<sup>22</sup> Thanks to activist judges and their ideological allies in law, business, medicine, media, education, and state legislatures, gender ideology is pervasive across our culture and its institutions—and the Biden Administration has accelerated those efforts. They know what they want: to force public acceptance of “gender identity,” seed the culture with an erroneous anthropology, and promote the perverse practice of

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“gender-affirming” care for adolescents as if it were an exciting “gender journey.”

Beginning on day one of his administration, President Biden issued a series of Executive Orders extending anti-discrimination protections to “gender identity” across the federal government. These new provisions attach to every aspect of the federal bureaucracy, affecting federal grants, benefit programs, contracting, and hiring and promotion, as well as substantive areas

<sup>18</sup> See *The Equality Act: LGBTQ Rights are Human Rights: Hearing Before the S. Comm. on the Judiciary*, 117th Cong. (Mar. 17, 2021) (statement of Abigail Shrier, independent journalist; statement of Mary Rice Hasson, Fellow, Ethics and Public Policy Center), <https://www.judiciary.senate.gov/meetings/the-equality-act-lgbtq-rights-are-human-rights>. See also *Statement for the Record for hearing on the Equality Act*, Women’s Liberation Front (Mar. 23, 2021), <https://www.womensliberationfront.org/court-filings>; Erika Bachiochi, *The Equality Act’s Implications for Abortion Would be Devastating for Pregnant Women in the Workplace*, America (Feb. 25, 2021), <https://eppc.org/publication/the-equality-acts-implications-for-abortion-would-be-devastating-for-pregnant-women-in-the-workplace/>.

<sup>19</sup> H.R. 5, § 1101(b)(2).

<sup>20</sup> H.R. 5, § 701A(b)(3).

<sup>21</sup> See Hasson, *supra* note 6.

<sup>22</sup> Opposition to the Equality Act has been fierce, uniting a diverse coalition of conservatives (who reject the Act’s expansive gender ideology and intrusive re-definition of “public accommodations” subject to anti-discrimination laws); radical feminists (unflinching in their defense of the sex binary), pro-life advocates (who decry the loophole that would fund abortion and potentially force medical providers to perform them), and religious individuals and institutions (who believe the person is created male or female and marriage is only between a man, and a woman and who refuse to be coerced into saying otherwise).

such as education (Title IX) and healthcare (Affordable Care Act, Section 1557).<sup>23</sup>

Public schools in most states have been deeply engaged in promoting gender ideology for over a decade already through anti-bullying initiatives, diversity and inclusion programs, LGBTQ-inclusive sex education and, in a few states, LGBTQ curriculum mandates.<sup>24</sup> The teachers' unions, state schools of education, and the education establishment have all embraced the LGBTQ agenda for years. Except for a few brave holdouts here and there, local school boards have toppled like dominoes, caving under intense pressure (and threats of lawsuits from the ACLU, Lambda Legal, and other activist litigators) to enact transgender-inclusive policies and "gender identity" protections.

In employment law, the Supreme Court already worked a sea change with its 2020 decision in *Bostock v. Clayton County*, ruling that discrimination because of "sexual orientation" and "transgender status" (or "gender identity") constitutes illegal sex discrimination under Title VII.<sup>25</sup> Although the Court "punted" on several important related issues, such as *Bostock's* application to Title VII exemptions for religious employers and to the Religious Freedom Restoration Act, the EEOC chair recently released an expansive, non-binding "technical

guidance" applying the *Bostock* decision to employment law.<sup>26</sup>

The EEOC guidance is instructive: it illustrates how the "doublespeak" now common in media and government publications is designed to camouflage the anthropological transformation at work under "gender identity" provisions. The EEOC technical guidance first assures employers that it is still legal to have "separate bathrooms, locker rooms, and showers for men and women," or to designate "unisex or single-use bathrooms, locker rooms, and showers." It then subverts the logic of single-sex, private facilities by instructing that "employers may not deny an employee equal access to a bathroom, locker room, or shower that corresponds to the employee's gender identity. In other words, if an employer has separate bathrooms, locker rooms, or showers for men and women, all men (including transgender men) should be allowed to use the men's facilities and all women (including transgender women) should be allowed to use the women's facilities."<sup>27</sup> Like other arms of the federal government, and some federal courts, the EEOC has stripped biological sex of social and legal significance.<sup>28</sup> It redefines "all men" to include "transgender men" (who are actually biological females) and similarly redefines "all women" to include "transgender

<sup>23</sup> See U.S. Dep't of Health and Human Serv., *HHS Announces Prohibition on Sex Discrimination Includes Discrimination on the Basis of Sexual Orientation and Gender Identity* [Press Release] (May 20, 2021), <https://www.hiv.gov/blog/hhs-announces-prohibition-sex-discrimination-includes-discrimination-basis-sexual-orientation>, and U.S. Dep't of Educ., *U.S. Department of Education Confirms Title IX Protects Students from Discrimination Based on Sexual Orientation and Gender Identity* [Press Release] (June 16, 2021), <https://www.ed.gov/news/press-releases/us-department-education-confirms-title-ix-protects-students-discrimination-based-sexual-orientation-and-gender-identity>. See, e.g., Department of Labor regulations regarding federal contracts resulting from Biden Executive Order 11246, <https://www.dol.gov/agencies/ofccp/faqs/lgbt>, and Office of Personnel Mgmt., *Guidance Regarding the Employment of Transgender Individuals in the Federal Workplace*, <https://www.opm.gov/policy-data-oversight/diversity-and-inclusion/reference-materials/Guidance-Regarding-Employment-of-Transgender-Individuals-in-the-Federal-Workplace.pdf>.

<sup>24</sup> See Mary Hasson and Theresa Farnan, *Get Out Now: Why You Should Pull Your Child from Public School Before It's Too Late* (2020).

<sup>25</sup> In *Bostock*, the Supreme Court assumed the meaning of sex referred to "biological distinctions between male and female" and not "norms concerning gender identity." *Bostock v. Clayton County*, 140 S. Ct. 1731, 1739 (2020). The Court found that Title VII's prohibition on discrimination because of sex included discrimination because of sexual orientation or transgender status. As Justice Alito noted in his dissent, "The Court tries to convince readers that it is merely enforcing the terms of the statute, but that is preposterous. Even as understood today, the concept of discrimination because of 'sex' is different from discrimination because of 'sexual orientation' or 'gender identity.' If 'sex' in Title VII means biologically male or female, then discrimination because of sex means discrimination because the person in question is biologically male or biologically female, not because that person is sexually attracted to members of the same sex or identifies as a member of a particular gender." *Bostock*, 140 S. Ct. at 1755 (Alito, J., dissenting).

<sup>26</sup> U.S. Equal Emp't Opportunity Comm'n, *Sexual Orientation and Gender Identity (SOGI) Discrimination*, <https://www.eeoc.gov/sexual-orientation-and-gender-identity-sogi-discrimination>.

<sup>27</sup> Chair of the EEOC, *Protections Against Employment Discrimination Based on Sexual Orientation or Gender Identity*, Technical Assistance document, June 15, 2021.

<sup>28</sup> See, e.g., *Grimm v. Gloucester Cty. Sch. Bd.*, No. 19-1952 (4th Cir. 2020), and *Adams v. Sch. Bd. of St. Johns Cty.* 968 F.3d 1286, 1292-93 (11th Cir. 2020).

women” (who are biological males). Sex no longer matters, which means the rights of females no longer matter either. “Gender identity” enjoys privileged status, overriding sex-based protections in every circumstance.

In language and in law, the fact of sexual difference is being overwritten (and, in some cases, directly repudiated) and replaced with deceptive terminology and an erroneous narrative about the person. Truth be told, the left has gained an almost insurmountable advantage. The gender tsunami is bearing down, and the casualty count—in damaged lives and souls lost—is growing daily.<sup>29</sup> The present moment seems particularly daunting as well in light of the number of religious believers who seem to view “gender issues” as just another skirmish in the perennial “culture wars,” a cloudburst amid generally sunny skies. Perhaps they think they can sit this one out, waiting for the storm to move on.

But just as there are no safe havens in a tsunami, it is impossible to “sit out” a cultural battle over what it means to be a human person. Everyone, from Supreme Court justices to kindergarten teachers, must take a stand. In a blistering critique of the *Bostock* decision, Hadley Arkes observed that “the stumbling block, which pops up on every path, is the question of whether there is indeed . . . a ‘truth’ that cannot be evaded, a truth about the way in which human beings are constituted as males and females. . . . as long as there are in the world human beings, there must be males and females. That is the very reason or purpose for which we have the bodies we have, marking us males and females. That is the telos that marks the hard meaning of ‘sex.’”<sup>30</sup>

David Crawford makes a similar observation. “Nothing,” writes Crawford, “is more basic to human nature than the division of humanity into men and women and the correlation of their bodies. Nothing is more central to history, civilization, and the future of the species. Nothing is more fundamental to personal well-being, integrity, and authentic personal identity. Our ties of kinship are inscribed in our bodies from birth. All of this is now to be subjected to the fragmenting and arbitrary

tendencies of the new sexuality, with its reduction of the body to mechanism and function and its consignment of the individual to the vagaries of mental states.”<sup>31</sup>

Our culture, and even our courts, appear to have forgotten the “hard meaning” of sex, the purpose of the sexed body, and the integral nature of sexual identity. It is time to remember. It is time to speak the truth about “who we are.” It is time to defend the truth about the human person or witness the erasure not only of “females and males” but also “mothers and fathers” and “sons and daughters,” and all we hold dear, in both language and law.

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<sup>29</sup> The number of adolescents identifying as transgender or non-binary has skyrocketed to nearly ten percent, a stark contrast to past figures suggesting a mere fraction of a percent of individuals identify as transgender over a lifetime. Although the number of youth gender clinics providing medical or surgical “gender affirmation” interventions is also up sharply, the true number of adolescents pursuing transgender body modification is not known, as the government does not collect data on this. Dan Avery, *Nearly 1 in 10 teens identify as gender-diverse in Pittsburgh study*, NBC News (May 21, 2021), <https://www.nbcnews.com/nbc-out/out-news/nearly-1-10-teens-identify-gender-diverse-pittsburgh-study-rcna993>.

<sup>30</sup> Hadley Arkes, *Conservative Jurisprudence Without Truth*, First Things (July 20, 2020), <https://www.firstthings.com/web-exclusives/2020/07/conservative-jurisprudence-without-truth>.

<sup>31</sup> Crawford, *supra* note 12.