

Terminology and Definition: Replacing “Gender-Affirming Care” with “Sex-Rejecting Procedures”

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This proposal offers insight into the terminology that policy makers use when discussing medical procedures connected with a so-called “gender transition.”

At present, these procedures are typically referred to as “gender-affirming care” or “gender-affirming treatment.” *These terms should be replaced because they are biased in favor of gender ideology.* They imply that the dissonance between the transgender-identifying person’s sex and asserted identity should be resolved by validating (“affirming”) the person’s asserted identity and disregarding the significance of the person’s sex. These terms also teach that, when packaged as “gender-affirming care,” disfiguring and damaging pharmaceutical and surgical interventions are positive, justifiable, and beneficial. **These implications are false and harmful.**

Some groups have proposed a new term, “sex-trait modifications.” But while this term is less biased towards gender ideology, it fails to convey critical distinctions and plays into gender ideology advocates’ nondiscrimination arguments.

Instead, this proposal argues that policy makers should refer to “sex-rejecting procedures.” This term is clear and reflects basic biological truths that should be front-and-center when discussing how best to respond to people that express discomfort with their sex.

This proposal explains why “sex-rejecting procedures” has advantages over other considered alternatives. It also argues that, whatever term is used, policies and regulations should provide a definition that focuses on the purpose of the procedures and that accurately targets the full scope of “gender-affirming care.”

“Sex-Trait Modification” is Problematic Terminology

Some policy groups and a recent HHS Proposed Rule have proposed replacing the term “gender-affirming care” with “sex-trait modification.” While an improvement, this term would create at least four significant problems.

1. “Sex-trait modification” is overinclusive because it designates a category that includes non-“gender- transition” medical procedures.

“Sex-trait modification” is overinclusive because it applies equally to “gender transition” procedures and medical procedures that address other medical conditions. Many legitimate medical procedures “modify” sex traits. Examples include: puberty blockers (to treat precocious puberty); hormone therapy (to support healthy development and sexual function consistent with the patient’s sex); breast reduction (to alleviate physical injuries to back, neck, or shoulder resulting from disproportionate size); mastectomy (to address breast cancer); breast reconstruction (after mastectomy); hysterectomy or oophorectomy (to treat endometriosis, fibroids, chronic pelvic pain, or to treat or prevent cancer); orchiectomy (to treat testicular cancer); and circumcision. Medical procedures to support detransitioners also modify sex traits. Contraception could also arguably qualify as a “sex-trait modification.”

Because “sex-trait modification” applies equally to “gender-transition” procedures and medical procedures that address other medical conditions, the term

is overinclusive. Overinclusive terms should be avoided where possible in law and in public policy debates. Overinclusive rules create confusion and unnecessary burdens, dilute a policy's intended impact, and increase the risk of legal or operational problems.

2. "Sex-trait modification" is underinclusive because many "gender-transition" procedures do not "modify" but rather *remove* sex characteristics.

"Sex-trait modification" is also underinclusive because many "gender-transition" procedures *remove* rather than "modify" sex characteristics. For example, castration, mastectomy, oophorectomy, vaginectomy, and hysterectomy permanently *remove* sex characteristics. The phrase, therefore, understates the severity and permanency of the procedures. Further, it could be argued that a restriction on "sex-trait modifications" would not apply to procedures that remove sex characteristics.

3. "Sex-trait modification" fails to distinguish between primary and secondary sex characteristics.

"Sex-trait modification" fails to distinguish between primary and secondary sex characteristics, which is a critical distinction related to the definition of sex. Sex is fundamentally a classification based on an organism's design to produce large or small gametes, which in mammals is a function of either ovaries or testes.

In 2022, the National Academies of Sciences sought to respond to the "growing visibility of transgender and intersex populations" by publishing a new "inclusive" definition of "sex."¹ The NAS defined sex as a "constellation of sex traits" or "a multidimensional

construct based on a cluster of anatomical and physiological traits that include external genitalia, secondary sex characteristics, gonads, chromosomes, and hormones." This definition advances gender ideology by suggesting that sex is equally defined by primary or secondary sex characteristics and that surgical or pharmaceutical procedures can change a person's sex. "Sex-trait modification", by failing to distinguish between primary and secondary sex characteristics, implicitly lends support to this claim.

4. "Sex-trait modification" makes it easier for gender ideology advocates to advance legal arguments against common-sense state laws and President Trump's gender ideology executive orders.

In many lawsuits,² including *United States v. Skrmetti* pending before the Supreme Court, gender ideology advocates have claimed that laws restricting "gender-transition" procedures violate civil rights laws. These arguments generally claim that these laws discriminate on the basis of sex (in violation of the Equal Protection Clause of the Fourteenth Amendment or nondiscrimination statutes) because the availability of the procedures purportedly depends on the patient's sex. For example, attorneys challenging restrictions on "gender-transition" procedures have claimed that these laws unlawfully allow a *male* teenager to access testosterone but not a *female* teenager, though the two are seeking the *same drug* for allegedly the *same purpose*: to develop male secondary sex characteristics.

Similarly, gender ideology advocates argue that both "cis" and "trans" people seek "gender-affirming care" and that laws restricting this "care" only for transgender-identifying persons reflects "anti-trans bias."³

¹ National Academies of Sciences, Engineering, and Medicine, Measuring Sex, Gender Identity, and Sexual Orientation (2022), <https://doi.org/10.17226/26424>.

² See Appendix for excerpts from court decisions, legal briefs, and oral arguments making these arguments.

³ See, e.g., Gender-Affirming Care for Cisgender People: Q&A with Theodore Schall and Jacob Moses, Hastings Center, June 14, 2023, <https://www.thehastingscenter.org/news/gender-affirming-care-for-cisgender-people-qa-with-theodore-schall-and-jacob-moses/>.

To defeat these arguments, the government must emphasize that males and females are not similarly situated with regard to these procedures. In the hypothetical above, for example, the male and the female seek testosterone **for different purposes** (the male to *support* healthy *male* puberty; the female to *disrupt* healthy *female* puberty and induce physical changes that *mimic* male pubertal development); **to treat different conditions** (the male to treat hypogonadism or the constitutional delay of growth and puberty; the female to treat a mental health disorder, “gender dysphoria,” or to fulfill her “embodiment goals”); **for different durations** (the male to receive testosterone for three to six months; the female to receive lifelong testosterone); and **with different effects** (the male experiences male sexual development and function, and typical male growth, including bone mass and accretion; the female suffers vaginal atrophy, loss of fertility, blood clots, tumors, and mental health and emotional impairments).

By glossing over these critical distinctions, the term “sex-trait modification” makes it easier for gender ideology advocates to claim—in court and in public debates—that restricting “gender-transition” procedures is sex discrimination.

Proposed Terminology: Sex-Rejecting Procedures

Another proposed replacement term—“sex-rejecting procedures”—does not have the same problems and offers many advantages.

To avoid the problems identified above, we propose to replace “gender-affirming care” with another term: **“sex-rejecting procedures.”** “Sex-rejecting procedures” offers many advantages over “sex-trait modification” and “gender-affirming care”:

- Clearly excludes non-problematic medical interventions on its face.
- Does not accept gender ideology’s framing of the issue as about “gender” (versus “sex”) and “affirmation” (versus harm).
- Does not use “affirming,” “care,” or “treatment” which imply something positive and good.

- Does not use charged language that could push some people away (e.g., “mutilation”).
- References sex (communicates that procedures are different whether performed on a male or female and that these procedures affect the sexed body, not merely subjective self-perception of “gender”).
- References the purpose (communicates that procedures performed to address gender dysphoria or help a patient reject his or her sex are fundamentally different than those performed to address other medical conditions).
- More effectively communicates the unnatural and disruptive nature of the targeted procedures.

“Sex-Rejecting Procedures” is Superior to Other Variants

“Sex-rejecting procedures” also has advantages over other replacement terms we considered, such as “sex-denying” instead of “sex-rejecting,” and “interventions” instead of “procedures.”

“Sex-denying” is **inaccurate** because it suggests that the patient who seeks these procedures does not even acknowledge the fact that he or she is born male or female. Yet those who pursue a “gender transition” might not “deny” their biology; indeed, the term “transgender” itself concedes that the person’s asserted identity conflicts with the person’s sex. As the DSM-5-TR criteria for “gender dysphoria” make clear, those experiencing gender dysphoria or seeking a “gender transition” are *rejecting* the social implications or physical manifestations that come with their sex:

- “A strong desire to be rid of one’s primary and/or secondary sex characteristics because of a marked incongruence with one’s experienced/expressed gender (or in young adolescents, a desire to prevent the development of the anticipated secondary sex characteristics).”
- “A strong desire for the primary and/or secondary sex characteristics of the other gender.”

The term “sex-rejecting,” on the other hand, reinforces the truth that the person *is* male or female (determined at conception and observed at or before birth) but has chosen to repudiate or reject his or her sex because of a strong desire for different body parts or to live *as if* he or she were not his or her given sex. The term “denying” less effectively communicates the purpose for which these procedures are undertaken. Additionally, using “denying” in policy or regulations would make it easier for people who identify as transgender to claim that restrictions on “sex-denying” procedures do not apply to them if they do not “deny” their sex.

“**Interventions**” is a **broad** term than “procedures” and could be interpreted to encompass social “gender transitions,” counseling, and other mental health services. Including these interventions would raise difficult challenges under the First

Amendment Free Speech Clause. It would also make restrictions difficult to apply for covered health care entities, insurance companies, and third-party administrators. Unlike medical procedures, which have billing codes tied to specific medical conditions (for example, testosterone prescribed to treat hypogonadism is coded differently than the same prescription to treat gender dysphoria), it appears there is no objective way to classify a mental health visit based on whether the provider was encouraging the patient to reject his or her sex.

The narrower term “procedures” excludes mental health and social interventions that raise difficult legal, free speech, and billing concerns. Our intended use of this phrase, like our proposed definition below, is consistent with laws in ten states that restrict “gender-transition” procedures for minors and define “procedures” to cover pharmaceutical and surgical interventions.⁴

Proposed Definition

Regardless of the term used, it is important for it to be defined and for the definition to focus on the purpose of the procedures and target the full scope (but not more) of “gender-affirming care.” We propose the following:

Definition. The phrase “sex-rejecting procedures” includes the following, when done for the purpose of treating gender dysphoria or otherwise attempting to align an individual’s physical appearance or body with an asserted identity that differs from the individual’s sex: the use of pharmaceutical or surgical interventions intended to (a) disrupt or suppress natural development of natural biological functions, or (b) alter an individual’s physical appearance or body, including the amputation, destruction or alteration of an individual’s sexual or reproductive organs to minimize or destroy his or her natural biological functions. Sex-rejecting procedures are sometimes referred to as “gender-affirming care” or “gender-transition procedures.”

Exclusion. “Sex-rejecting procedures” does not apply to procedures undertaken (a) to treat a person born with a medically verifiable disorder of sexual development, or (b) for purposes other than treating gender dysphoria or otherwise attempting to align an individual’s physical appearance or body with an asserted identity that differs from the individual’s sex.

⁴ Arkansas, Florida, Georgia, Indiana, Mississippi, Missouri, Nebraska, Oklahoma, South Carolina and Tennessee all use “procedure” to refer to both surgical and nonsurgical sex-rejecting procedures. These laws are excerpted in Appendix B to EPPC’s public comment in response to HHS’s Proposed Rule, “Patient Protection and Affordable Care Act; Marketplace Integrity and Affordability,” 90 Fed. Reg. 12942 (Mar. 19, 2025), available at <https://eppc.org/publication/eppc-scholars-submit-comment-supporting-hhss-proposed-removal-of-sex-rejecting-procedures-from-essential-health-benefits/>.

APPENDIX

EXCERPTS FROM RELEVANT LEGAL CASES

Courts that have enjoined laws restricting “gender-affirming” procedures have accepted the argument that these procedures may be generally described as helping a patient (whether a “cis” or “trans” child) develop desired sex traits and that it is therefore discriminatory to permit the procedures to support a healthy puberty but not for a “gender transition.” The following excerpts illustrate this pattern and thus make it easier to see the dangers, identified above, with choosing to employ the sex-neutral and purpose-neutral term “sex-trait modification.”

Washington v. Trump,⁵

“Put simply, a biological male can have hormone therapy and surgery to look more stereotypically male, but a biological female cannot. . . . [T]hese prohibitions on federally funded treatments cannot function without relying on direct discrimination. . . . For all these reasons, heightened scrutiny applies.”

PFLAG, Inc. v. Trump,⁶

“Defendants assert that the Healthcare Order ‘targets only specified treatments for minors based on their medical purpose’. . . . In making this argument, Defendants ignore that to determine the ‘medical purpose’ of each treatment and to determine whether it is permitted or restricted under the Order necessarily requires the evaluation of a patient’s sex assigned at birth and

then a determination of whether the treatment is sought to align the patient’s physical characteristics with that birth sex or with a different sex—one that aligns with the person’s identity. This is . . . ‘textbook sex discrimination.’”

Moe v. Yost,⁷

“If the state’s concerns about the propriety of prescribing gender-affirming medications to minors were genuine, the state would prohibit use of puberty blockers and hormone therapy for all patients under 18 *irrespective* of the type of medical condition they are being used to treat. The state’s choice to allow the same treatment for cisgender minors . . . undermines its contention that the challenged provisions are aimed at protecting children from ‘experimental’ treatment and the longer-term, irreversible effects that may be associated with some aspects of that treatment.”

Doe v. Ladapo,⁸

“[C]onsider a child that a physician wishes to treat with GnRH agonists to delay the onset of puberty. Is the treatment legal or illegal? To know the answer, one must know whether the child is cisgender or transgender. The treatment is legal if the child is cisgender but illegal if the child is transgender, because the statute prohibits GnRH agonists only for transgender children, not for anyone else.”

⁵ No. 2:25-CV-00244-LK, 2025 WL 659057 (W.D. Wash. Feb. 28, 2025) (holding that President Trump’s E.O. 14187, “Protecting Children from Chemical and Surgical Mutilation” (Jan. 28, 2025), likely violates the Fourteenth Amendment’s Equal Protection Clause), available at <https://caselaw.findlaw.com/court/us-dis-crt-w-d-was-at-sea/117014674.html>.

⁶ No. CV 25-337-BAH, 2025 WL 685124 (D. Md. Mar. 4, 2025) (holding that President Trump’s E.O. 14168, “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government” (Jan. 20, 2025), likely violates Section 1557 of the Affordable Care Act), available at <https://caselaw.findlaw.com/court/us-dis-crt-d-mar/117019317.html>.

⁷ No. 24AP-483 (Ohio Ct. App. Mar. 18, 2025), available at <https://www.supremecourt.ohio.gov/rod/docs/pdf/10/2025/2025-Ohio-914.pdf>.

⁸ 737 F. Supp. 3d 1240 (N.D. Fla. 2024), available at <https://caselaw.findlaw.com/court/us-dis-crt-n-d-fla/116263363.html>.

United States v. Skrametti, During the December 4 oral argument,⁹ the Biden Administration’s Solicitor General, the ACLU’s attorney, and several justices argued that a male and female are equally situated with regard to certain “gender-transition” procedures:

Solicitor General Prelogar

“The law restricts medical care only when provided to induce physical effects inconsistent with birth sex. Someone assigned female at birth can’t receive medication to live as a male, but someone assigned male can.”¹⁰

“Both males and females alike for decades have been prescribed puberty blockers, hormones, testosterone, estrogen. They produce the same physical characteristics . . . no matter whether your birth sex is male or female.”¹¹

“But, here, there’s a facial sex classification. No one can take these medications if it would be inconsistent with their sex. And that’s imposing on the face of the statute two parallel rules on classes of people according to their sex: all adolescent males who want to take these medications to feminize their bodies and all adolescent females who want to take these medications for masculinizing purposes. That’s a facial sex classification through and through.”¹²

ACLU Attorney Strangio

“[I]f you’re someone who was born male and you are going through puberty too early, [y]ou may receive puberty blockers so that you can develop as a typical boy. Someone who has a sex of female at birth is also receiving puberty blockers so that they can undergo a puberty

like other boys. And so it is the same purpose, and what makes the treatment prohibited for the birth sex female is their sex.”¹³

J. Alito

(to the Solicitor General) “[Y]ou have a *Bos-tock*-like argument, and you say that a girl who wants to live like a boy cannot be administered testosterone, but a boy who wants to live like a boy can be administered testosterone.”¹⁴

J. Kagan

“The whole thing is imbued with sex. I mean, it’s based on sex. You might have reasons for thinking that it’s an appropriate regulation, and those reasons should be tested and respect given to them, but it’s a dodge to say that this is not based on sex, it’s based on medical purpose, when the medical purpose is utterly and entirely about sex.”¹⁵

J. Jackson

“[Consider] a minor who would like to take this medication to affirm their gender as a male because the medication deepens their voice, for example. They want a deeper voice, and they are biologically male. . . . They, I think, can get that. . . . But a person who is biologically female who wants to take the medication for that same purpose, to deepen their voice because they would like to live as a male, can’t get it? Is that right?”¹⁶

J. Sotomayor

“The question is: Can you stop one sex . . . from receiving that benefit? . . . [T]he medical condition is the same.”¹⁷

⁹ Transcript of Oral Arg., *United States v. Skrametti*, No. 23-477 (U.S. Dec. 4, 2024), available at https://www.supremecourt.gov/oral_arguments/argument_transcripts/2024/23-477_c07d.pdf.

¹⁰ *Id.* at 4:10-15.

¹¹ *Id.* at 23:15-21.

¹² *Id.* at 27:6-16.

¹³ *Id.* at 96:2-13.

¹⁴ *Id.* at 21:2-7.

¹⁵ *Id.* at 125:21-126:3.

¹⁶ *Id.* at 68:18-69:8.

¹⁷ *Id.* at 117:24-118:12.