

The Trump administration has concepts of a sex. And another one. Exactly two sexes, actually

Kelly Chen (they/them)

Originally uploaded 3/4/2025; last updated 4/16/2025

On their first day in office, the second Trump administration released Executive Order (EO) #14168, “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government.”[1] This order declares that sex is binary, unchangeable, and “grounded in fundamental and incontrovertible reality.” It reverses prior federal recognition of transgender, nonbinary, and intersex individuals and explicitly prohibits acknowledgment of or data collection related to gender identity.

The Trump administration’s new stance on sex aligns with that of many prominent anti-transgender activists and biological essentialists:¹

“Sex” shall refer to an individual’s immutable biological classification as either male or female... “Female” means a person belonging, at conception, to the sex that produces the large reproductive cell. “Male” means a person belonging, at conception, to the sex that produces the small reproductive cell.

This definition is carefully worded to apply only to “person”s (which in this non-philosophical context we may presumably take to mean humans), an appropriate move given that there are plenty of other species whose individuals can produce asexually and/or produce both large and small reproductive cells, either simultaneously or sequentially.

Scope limitations aside, the definition initially appears to be concise and straightforward. So it is interesting that the EO still finds it necessary to direct the Secretary of Health and Human Services (HHS) to provide, within 30 days, “clear guidance expanding on the sex-based definitions set forth in this order.” Indeed, on February 19, 2025, HHS released a new webpage with the mandated information, “Sex-Based Definitions,” on the HHS Office on Women’s Health website.[2][3] (As far as I can tell from the Wayback Machine, the Office on Women’s Health website did not define or discuss sex at all prior to the EO’s release.)

This new page includes a discussion of why there cannot be more than two sexes of human:

There are only two sexes, female and male, because there are only two types of gametes. An individual human is either female or male based on whether the person is of the sex characterized by a reproductive system with the biological function of producing eggs (ova) or sperm.

The wording here is similar but not identical to the wording used in the EO. The discerning reader will note a subtle sleight of hand in both definitions: the EO does not say that a female or

¹Over the past several years, such activists have increasingly begun to favor gamete-based definitions of sex over other common definitions, such as those based on sex chromosomes. See, for example, this rather questionable article by a rather questionable author, and the other relevant people and events it discusses: <https://fairerdisputations.org/the-british-invasion/>

male individual is a person that *produces* eggs or sperm respectively; rather, it says that they belong to the *sex* that produces eggs or sperm. Similarly, the HHS webpage does not say that a female or male individual *possesses* a reproductive system whose function is to produce eggs or sperm; it says that they belong to the *sex* that is *characterized by* a reproductive system whose function is to produce eggs or sperm. Thus the Trump administration’s definitions of sex are not actually based upon the actual characteristics that a given individual possesses or does not possess. Rather, they describe two theoretical constructs—the female sex, which is associated with egg production, and the male sex, which is associated with sperm production—and then assert that a given individual is associated with exactly one of these two constructs. That is, people are not associated with egg or sperm production directly, but rather with the *concept* of egg or sperm production via the intermediary of “biological sex.”

This distinction is not accidental or merely semantic. It actually forms the entire foundation of the Trump administration’s account of sex. If maleness or femaleness were tied to sperm or egg production in itself, then it would be possible for an individual to be neither strictly male nor strictly female, for a variety of reasons. Tying maleness or femaleness to the *concept* of being male or female, which is then tied to the concept of producing sperm or eggs, allows HHS to sidestep these cases and insist that every person is either male or female, always and forever:

The sex of a human, female or male, is determined genetically at conception (fertilization), and is observable before birth. Having the biological function to produce eggs or sperm does not require that eggs or sperm are ever produced. Some females or males may not or may no longer produce eggs or sperm due to factors such as age, congenital disorders or other developmental conditions, injury, or medical conditions that cause infertility.

...The use of hormones or surgical interventions do not change a person’s sex because such actions do not change the type of gamete that the person’s reproductive system has the biological function to produce. Rare disorders of sexual development do not constitute a third sex because these disorders do not lead to the production of a third gamete. That is, the reproductive system of a person with such a disorder does not produce gametes other than eggs or sperm.

The HHS webpage has, at this point, spent more time describing what sex is *not* than what it actually is. Sex is *not* hormone levels. Sex is *not* anatomical features. Sex is *not* the past, present, or future production of gametes, or even the *potential* to produce gametes. And although sex is *determined by* genetics, it is not itself genetics.

The discerning reader may note a glaring complication that will arise when anybody attempts to apply the Trump administration’s definition of sex in the real world, and that is that it is not actually clear how to do so. Through EO #14168 and the companion HHS webpage, the Trump administration has merely asserted that there exists such a thing as “sex,” and that it has such and such properties—binariness, immutability, universality, determination at conception, and some conceptual relationship to gametes. But it has not described how to *construct* these two sexed categories from first principles. How are we to know what sex a fertilized egg has at conception when it is not yet clear what gametes it will eventually be associated with, given that human development is not genetically deterministic? How can we be sure that exactly one type of gamete *will* eventually be associated with it? If, once an individual has been associated with exactly one gamete type, there is no hormonal, anatomical, or functional criterion they absolutely must satisfy in order to “be” the sex characterized by production of that gamete, then how can we say that they absolutely by definition cannot be a sex characterized by production of a different type of

gamete? (If a cis man who does not produce sperm is nevertheless male, then a trans man who does not produce sperm cannot be regarded as not-male by virtue of his lack of sperm. The reason he would not be considered male by the Trump administration is simply that he has *already* been assigned female, a designation that can be made without reference to any concrete characteristic he possesses or does not possess.)

So in the end, the Trump administration’s definition of sex appears tautological. A female is someone associated with the female sex. A male is someone associated with the male sex. Don’t ask too many questions about how those associations are supposed to be made—but we do expect you to make them.

References

- [1] Executive Order #14168, “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government,” January 20, 2025. URL: <https://www.whitehouse.gov/presidential-actions/2025/01/defending-women-from-gender-ideology-extremism-and-restoring-biological-truth-to-the-federal-government/>.
- [2] US Department of Health and Human Services, Press Office, “HHS Takes Action on President Trump’s Executive Orders Defending Women and Children,” February 19, 2025. URL: <https://www.hhs.gov/about/news/2025/02/19/hhs-takes-action-president-trumps-executive-orders-defending-women-children.html>.
- [3] US Department of Health and Human Services, Office on Women’s Health, “Sex-Based Definitions,” February 19, 2025. URL: <https://womenshealth.gov/article/sex-based-definitions>.