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SEX AND HONOR

"Sex" is a word of several different meanings which may be loosely grouped under the categories of the sex you are and the sex you do. As used in the context of "sex discrimination" legislation and litigation, however, we are usually told that its meaning is confined to the sex you are, namely, your gender.

Many advocates of various legislation prohibiting discrimination "on account of sex" deny that such statutes refer to sexual conduct. They deny that laws against "sex" discrimination could prohibit us from invoking traditional rules against immoral conduct.

Now comes a U.S. District Court decision which uses the Title IX prohibition against discrimination on account of "sex" to forbid discrimination on account of immoral conduct. It's the case of Loretta Wort v. Vierling decided recently in Springfield, Illinois.

The issue was whether Title IX prohibited the local School Board from expelling from the National Honor Society a high school girl who had engaged in fornication. The facts were not in dispute, since she was obviously pregnant.

Membership in the National Honor Society is based on scholarship, leadership, service, and character. A high school student could certainly excel in scholarship and in service while engaging in premarital sexual activity, but it is impossible to see how such a high school student could be honored as exemplary in character or leadership.

Loretta received a letter from the NHS Executive Council dismissing her from membership in the National Honor Society, citing her deficiency in the areas of leadership and character. A formal appeal hearing was held and the action of the Executive Council was upheld. Another appeal was taken to the School Board, which voted to sustain the dismissal. Then Loretta sued.

The Federal Court spent a lot of unnecessary words in its decision coming to the conclusion that Title IX does cover honor societies even though social societies (such as fraternities and sororities) are exempt from Title IX. That point was really not in dispute; the legislative history is clear that honor societies are covered and may not exclude all boys or all girls.

However, the court did not bother to discuss the real point, namely, whether Title IX prohibits discrimination on account of the immoral "sex" involved in fornication (as distinguished from the "sex" of maleness versus femaleness). Instead, the court did a little side-step and cited a Department of Education regulation issued under Title IX which prohibits discrimination on the basis of "pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom."

The court simply overlooked the fact that this language was invented by the bureaucrats. The legislative history proves that Title IX was never intended to prohibit discrimination on account of pregnancy or abortion.

More important, the court simply ignored the fact that the immoral act which proved the character deficiency was the fornication, not the baby. The court held that dismissing Loretta from the Honor Society was sex discrimination in violation of Title IX.

The court also examined Loretta's case under the Equal Protection Clause of the 14th Amendment to the U.S. Constitution. This clause ensures that persons similarly situated must be treated the same, and that a classification into different groups must be rationally related to a legitimate governmental interest.

The court admitted that the school had a legitimate governmental interest in "the moral development of students." The court also admitted that Loretta was dismissed from the Honor Society because of a question of her morality.

In an amazing non sequitur, however, the court concluded that the school and the Honor Society "have not offered any rationale in support of the contention that the policy furthered the moral development of students." The court didn't seem to see any relationship between teenage fornication and morals.

So the court forbade the school and the Honor Society to enforce the policy that teenage fornication is inconsistent with "honor," "character," and "leadership." This decision makes clear that the word "sex" in legislation such as Title IX can be used in the courts to attack traditional moral standards about sex.

The Wort case is a good lesson in how seemingly innocuous laws can be converted by bureaucrats and judges into a legal weapon never intended by the lawmakers. If Title IX means that a school cannot discriminate against teenage fornication in giving awards for honor, character and leadership, then it is only a small step to other courts finding that the laws against "sex discrimination" also protect other types of immoral sex.