

# What would Justice Ginsburg say? Her words now part of the fight over pronouns

BY JONATHAN TURLEY, OPINION CONTRIBUTOR — 09/25/21 10:00 AM EDT 918  
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This past week the American Civil Liberties Union honored the late Supreme Court Justice Ruth Bader Ginsburg on the one-year anniversary of her death — by rewriting her famous defense of a woman’s right to abortion to remove offensive language. The offensive language? References to women and female pronouns.

While Ginsburg herself likely would have made short work of such “woke” revisionism, the incident highlighted a critical crossroads reached in politics and academia in the treatment of “misgendering” as a form of hate speech or discrimination.

Across the country, universities are ramping up misgendering rules for faculty and students. The most recent is Point Park University in Pittsburgh, which notified

students that its Office of Equity and Inclusion will enforce rules against misgendering, pronoun misuse and deadnaming for individuals who do not use their classmates' preferred pronouns. The university sent an email to students that states “any individual who has been informed of another person’s gender identity, pronouns, or chosen name is expected to respect that individual.” Students were informed that using the wrong pronoun was a violation and “action could be taken.”

Many of us have no objection to using a student’s preferred pronouns. Indeed, many faculty members try to avoid using pronouns altogether in class, rather than look up a student’s designated pronoun. Confirming the right pronouns can be challenging in the middle of a fast-moving class. Students today identify from a growing list of gender identities including, but not limited to, genderfluid, third-gender, amalgagender, demigender, bi-gender, pansgender, and a-gender. Pronouns can include, but are not limited to: He/She, They/Them, Ze/Hir (Ze, hir, hir, hirs, himself), Ze/Zir (Ze, zir, zir, zirs, ze), Spivak (Ey, em, eir, eirs, ey), Ve (Ve, ver, vis, vis, verself), and Xe (Xe, xem, xyr, xyrs, xe).

Pronouns are fast fading from common discourse under the threat of pronoun penalties. Cities, too, are enforcing misgendering rules; for example, the New York City Human Rights Law allows for fines if employers, landlords or professionals fail to use a preferred name, pronoun or title.

Yet some people have religious beliefs against following the new order and using such pronouns. As a result, there are serious free-speech and religious-freedom objections to mandatory usage rules.

We are seeing a new stage in the fight over pronouns, where usage is mandatory and misgendering is a sanctionable offense. In other countries, it can be a violation of the criminal code. In England, a woman, Kate Scottow, was arrested following a debate on twitter over transgender policy. A transgender activist charged Scottow with harassment and “deadnaming,” or using the prior name or gender of a transexual person.

It is not just religious conservatives objecting to misgendering and new identification rules. Some feminists have objected that the movement endangers feminist values and undermines advances for women. In Scotland, feminist activist Marion Millar was charged with “malicious communication” due to tweets criticizing gender self-identification. She has been labeled a “TERF” (trans-exclusionary radical feminist).

Will misgendering in the United States be treated as actual hate speech or discriminatory speech?

To protect students from misgendering, universities and agencies would have to compel speech. This already is being litigated in some lower courts. In Loudon County, Va., a school board is fighting the courts in its effort to fire teacher Byron “Tanner” Cross, who was suspended for speaking against gender policies in a public board meeting. Cross refused to use required pronouns and told the board: “It’s lying to a child, it’s abuse to a child, and it’s sinning against our God.” The courts, including the state supreme court, ruled for Cross, noting that he could keep his job, adhere to his faith and satisfy the policy by avoiding pronouns altogether.

Notably, the school’s rule extends to students themselves, who are required to use correct pronouns, and mandates punishment for those who “intentionally and persistently refuse to respect a student’s gender identity by using the wrong name and gender pronoun.” Religious families have said such a rule would require them to leave the public school system as a threshold exclusionary condition for public education.

The same objections are being heard in other areas. Recently, a California court ruled that misgendering patients is protected despite a landmark LGBTQ+ rights bill. The appellate court ruled that the 2017 law unconstitutionally restricted “freedom of speech” by classifying “willful and repeated” misgendering and deadnaming as a misdemeanor punishable by a fine of up to \$2,500 or imprisonment of up to 180 days. The court stated that “we recognize that misgendering may be disrespectful, discourteous, and insulting, and used as an inartful way to express an ideological disagreement with another person’s expressed gender identity. But the First Amendment does not protect only speech that inoffensively and artfully articulates a person’s point of view.”

Now, as shown by the ACLU, past pronoun offenses are being scrubbed away even for feminist icons like the “notorious” Ginsburg, for referring to the right of “women” to have abortions. Activists like Charlotte Clymer insisted that “trans men and non-binary folks need abortion access.” The result is deepening rather than closing the divide in our society.

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It is possible to allow for the adoption of alternative pronouns and the recognition of different gender identities without seeking to compel others to do so. We need to find a place of common accommodation and respect in our society. Religious people, conservatives and “TERFs” also are part of the diversity that we should seek to protect. In the end, a degree of mutual understanding and tolerance could produce greater integration of all of these groups.

Justice Ginsburg herself may have said it best when she advised people to “fight for the things you care about, but do it in a way that will lead others to join you.”

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