



September 5, 2017

Via e-mail to:

Taylor Glass, Legislative Director

Taylor.Glass@sen.ca.gov

Via U.S. Mail to:

Senator Scott Weiner

State Capitol, Room 4066

Sacramento, CA 95814-4900

Re: OPPOSITION to Senate Bill 219

Dear Senator Weiner:

Please accept these comments, submitted on behalf of the Women's Liberation Front (WoLF) and its members, including its members who reside in California, and on behalf of other women named below. All of our members are feminists, many of us are lesbian or bisexual, some of us are older, and some of us are disabled or have disabled children. We strongly object to the provisions of [Senate Bill 219](#) (SB 219) that aim to accommodate subjective and unverifiable claims of "gender identity" in a manner that violates the privacy and bodily integrity of women and girls in long-term care facilities, and silences or punishes their ordinary factual speech.¹

This bill applies to long-term care facilities for developmentally disabled individuals, facilities providing pediatric day health and respite care, as well as all facilities covered by the Mello-Granlund Older Californians Act, a landmark law adopted to "[p]rovide for protection of older individuals from physical and mental abuse, neglect, and fraudulent practices" in nursing or skilled nursing facilities and in residential care facilities for the elderly.² However, as discussed below, certain provisions in SB 219 undermine those crucial and longstanding statutory goals by exposing patients to privacy violations and to potential emotional, psychological, and sexual abuse.

1. SB 219 ignores and erases the profound social and biological significance of sex differences, conflating or replacing sex with subjective, self-declared "gender identity."

The primary problems in SB 219 stem from the bill's conflation of sex and "gender" or "gender identity," and its erasure of the legal significance of a person's sex in favor of a

¹ We take no position on provisions not addressed in this letter, some of which we would be able to support if introduced in a new bill that does not include flawed provisions based on "gender identity."

² SB 219 § 1439.50(e) (incorporating definitions of covered facilities under Cal. Health & Safety Code § 1418 and Cal. Welf. & Inst. Code § 9701(b)).

person's self-declared "gender identity." There is no serious question that the government has many legitimate interests in recognizing its residents' biological sex, for purposes of identification, tracking crimes, determining eligibility for sex-specific programs or benefits, determining admission to sex-specific spaces, and the provision of emergency medical and police services, to name just a few examples. But there is no legitimate governmental interest in attempting to validate a person's subjective internal feelings or personality traits by giving them legal significance *in lieu of* sex.

Sex and "gender identity" are distinct concepts. Sex refers to the two reproductive classes found in the human species: a woman is an adult human female, *i.e.*, an individual with XX chromosomes and predominantly female anatomy; a man is an adult human male *i.e.*, an individual with XY chromosomes and predominantly male anatomy.³ SB 219 misappropriates the term "sex assigned at birth," a term that was conceived in the context of research and advocacy for individuals with "intersex" conditions. But sex is *recorded* at birth by qualified medical professionals, it is not "assigned," and sex categorization is exceedingly accurate: an infant's sex is easily identifiable based on external genitalia and other factors in 99.982% (all but .018%) of all cases; moreover, the miniscule fraction of individuals who have "intersex" characteristics remain either male or female, or are difficult to characterize but do not constitute a third reproductive class.⁴

In stark contrast to sex, "gender identity" as used in SB 219 refers to nothing more than the degree to which one embraces or rejects stereotypical roles, personality or behavioral traits, and clothing fashions that are socially imposed on men and women—superficial stereotypes that are in constant flux according to changing social forces and trends. The superficial nature of "gender identity" is reflected in SB 219's definition of "gender-

³ Nat'l Institutes for Health, *Genetics Home Reference: X chromosome* (Jan. 2012), <https://ghr.nlm.nih.gov/chromosome/X.pdf> (noting that "[e]ach person normally has one pair of sex chromosomes in each cell. Females have two X chromosomes, while males have one X and one Y chromosome"); Joel, Daphna, *Genetic-gonadal-genitals sex (3G-sex) and the misconception of brain and gender, or, why 3G-males and 3G-females have intersex brain and intersex gender*, *Biology of Sex Differences*, DOI: 10.1186/2042-6410-3-27 (Dec. 2012) ("Whether a scientist or a layperson, when people think about sex differences in the brain and in behavior, cognition, personality and other gender characteristics, their model is that of genetic-gonadal-genitals sex. . . . 3G-sex is a categorization system in which ~99% of human subjects are identified as either 'male' or 'female', and identification with either category entails having all the characteristics of that category (*i.e.*, 'female' = XX, ovaries, uterus, fallopian tubes, vagina, labia minora and majora, clitoris, and 'male' = XY, testes, prostate, seminal vesicles, scrotum, penis)").

⁴ Sax, Leonard. "How Common Is Intersex? A Response to Anne Fausto-Sterling." *The Journal of Sex Research*, V. 39, no. 3 (2002): 174-78. <http://www.jstor.org/stable/3813612>; Dawkins, R. *The Ancestor's Tale, A Pilgrimage to the Dawn of Evolution*, 135 (Mariner Books ed. 2005) (stating that, "[i]ndeed, the gene determining maleness (called SRY [sex determining region y]) has never been in a female body"); Nat'l Institutes for Health, *Genetics Home Reference: SRY gene* (March 2015) <https://ghr.nlm.nih.gov/gene/SRY.pdf> (noting that "[a] fetus with an X chromosome that carries the SRY gene will develop male characteristics despite not having a Y chromosome").

nonconforming,” which is defined as nonconformity with “stereotypical expectations of how a man or woman should appear or act,” and the definition of “transition,” which is defined as changes to “physical sex characteristics or gender expression” such as “hairstyle, clothing, and restroom use,” undertaken with an aim to “match” the person’s “inner sense of being male or female.”⁵ SB 219’s proposed definition of the term “gender identity” in particular is linguistically, conceptually, and legally incoherent: “Gender identity” is determined by “the individual’s stated gender identity.”⁶ This is a circular definition, which means it is tautological and therefore unhelpful at best and legally invalid at worst.

In any event, superficial, stereotypical behavior or modes of fashion and hairstyles have nothing to do with the biological state of one’s sex. While some individuals may claim to feel or possess a “gender identity,” such feelings have no bearing whatsoever on the individual’s biological state of being either male or female. Yet SB 219 conflates or replaces sex with “gender” and “gender identity.” For example, although the bill refers to facilities “[w]here rooms are assigned by *gender*,” the context makes clear that this provision is intended to apply to rooms assigned by sex.⁷ But in another place the bill refers to restrooms “available to other persons of the same *gender identity*.”⁸ Given that restrooms are typically specified based on sex and not based on internal feelings, this provision can only make sense if it is intended to apply to sex-specific restrooms.

All of this demonstrates that the language in SB 219 is egregiously convoluted and, as discussed further in the following section, this matters greatly to women and girls. Access to sex-specific accommodations and programs in long-term care facilities, such as sex-specific restrooms, locker rooms, changing rooms, and group therapy sessions, has always been determined by sex. This is because women require secure and private space to bathe, to relieve themselves, and to deal with menstrual flow or other female-specific physical or medical conditions. The fact that some men may claim to have a woman’s “gender identity” is irrelevant.

2. SB 219 exposes and fails to protect women from violations of their privacy and safety—and even punishes patients and staff for objecting or attempting to avoid such violations.

We object to SB 219 because it allows any man to claim that he is a woman, based on his internal, subjective, and unverifiable “gender identity,” and to thereby gain access to sex-specific sleeping rooms, restrooms, shower rooms, and similar spaces where bodily privacy and integrity are crucial to the well-being of patients in need of long-term care. The same would be true for sex-specific spaces designed to give men privacy. Because violations

⁵ SB 219 § 1439.50(c), (i).

⁶ *Id.* § 1439.50(b).

⁷ *Id.* § 1439.51(b)(3) (emphasis added).

⁸ *Id.* § 1439.51(b)(4) (emphasis added).

of the underlying rules are punishable as a misdemeanor, any facility or staff member who objects to these mandates risks legal punishment.⁹

In particular, SB 219 makes it unlawful to refuse to assign a man to a room (including, presumably, sleeping rooms) “other than in accordance with” that man’s “gender identity,” unless at the resident’s request.¹⁰ SB 219 also makes it unlawful to “[p]rohibit a resident from using, or harass a resident who seeks to use or does use, a restroom available to other persons of the same gender identity, regardless of whether the resident is making a gender transition or appears to be gender-nonconforming.”¹¹ Under the bill, “harassment” could include simply calling a resident by his known name and the pronouns appropriate to his sex, or asking a resident to produce legal identification showing the individual is a woman before accessing women’s restrooms or shower rooms.¹² And, to the extent there are sex-specific programs, such as group fitness, therapy or enrichment programs designed to address women’s unique needs, SB 219 appears to grant men the right to demand access if they claim to have a woman “gender identity.”¹³

Although we disagree that it is physically possible to “transition” from one sex to the other, it is worth noting that the remarkably permissive approach embodied by SB 219 invites any man to claim access to women’s spaces and programs, without demonstrating even an iota of social, physical, or legal commitment or sincerity to that claim.

SB 219 would also force long-term care residents and staff to ignore or feign ignorance of an individual’s sex, and would compel them to engage in speech that contravenes their personal knowledge and understanding of an individual’s sex, under threat of being charged with a misdemeanor. Given that SB 219 applies to long-term care facilities for the elderly, disabled, and children – who may not be able to understand the convoluted concept of “gender identity” – imposing and enforcing these provisions of SB 219 is callous and cruel. The state has no legitimate governmental interests in punishing elderly or disabled women and girls simply for knowing that a man is a man, and referring to him as such, or as “he” or “him.”

This bill will have serious, potentially deadly consequences. As demonstrated consistently by the FBI’s Uniform Crime Reporting system and similar state programs, women face a dramatically disproportionate statistical risk of violence, rape, assault, or voyeurism, and in the vast majority of cases women suffer these harms at the hands of

⁹ As noted in the [bill analysis for the Assembly Committee on Judiciary](#) (July 7, 2017), violations of rules adopted under the California Residential Care Facility for the Elderly (RCFE) Act are punishable as a misdemeanor, potential fines up to \$1,000, and potential imprisonment in a county jail for up to one year.

¹⁰ SB 219, § 1439.51(3).

¹¹ *Id.* § 1439.51(4).

¹² *Id.* §§ 1439.51(4), (5).

¹³ *Id.* § 1439.51(7) (making it unlawful to “[r]estrict a resident’s right to associate with other residents... unless the restriction is uniformly applied to all residents in a nondiscriminatory manner”).

violent men. For crimes reported by law enforcement to the FBI in 2015, men (*i.e.* males) committed over 97% of rapes, nearly 80% of all violent crime (defined as murder, nonnegligent manslaughter, rape, robbery, or aggravated assault) and over 92% of sex offenses other than rape or prostitution.¹⁴

Elder abuse and abuse of dependent adults in particular continues to be a serious problem in California. According to statistics published by California’s Department of Social Services, the state received 6,382 reports of alleged abuse perpetrated by others (as opposed to self-neglect) in December 2015 alone. Of those, 1,465 were alleged physical abuse, 167 were alleged sexual abuse, and 2,325 were alleged psychological or mental abuse.¹⁵ It is entirely irresponsible to create, as SB 219 does, additional opportunities for men to abuse women in sex-specific spaces.

In short, by mandating the placement of men in intimate living spaces or restrooms with women, SB 219 places women in need of long-term care at greater statistical risk of harm, in order to promote fatally flawed “gender identity” ideology. The women and girls of California deserve better.

We urge you to withdraw this legislation immediately. If you have questions or would like to discuss, please feel free to contact us at contact@womensliberationfront.org.

Sincerely,

/s/ Natasha Chart
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¹⁴ Dept. of Justice Fed’l Bureau of Investigation, 2015 Crime in the United States, Table 33, *Ten-Year Arrest Trends by Sex, 2006–2015*. <https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/tables/table-33>.

¹⁵ See State of California Health and Human Services Agency, Adult Protective Services and County Services Block Grant Monthly Statistical Report SOC 242 for Dec. 2015 (v.2), <https://web.archive.org/web/20170212100305/http://www.cdss.ca.gov/research/res/pdf/soc242/2015/SOC242Dec15.pdf>

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