[Urging the California Supreme Court to Restore LGBTQ Anti-Discrimination Protections]

Resolution urging the California Supreme Court to review the Third District Court of Appeals ruling in Taking Offense v. California and restore anti-discrimination protections for LGBTQ residents of long-term care facilities.

WHEREAS, In 2017 the California Legislature passed California State Senate Bill No. 219 (Wiener), which created an LGBT Seniors Bill of Rights for seniors living in long-term care facilities; and

WHEREAS, Senate Bill 219 protects LGBTQ seniors from discrimination in long-term care facilities, including refusing to use a resident’s preferred name or pronoun, denying admission to a long-term care facility or transferring a resident within a facility or to another facility based on anti-LGBTQ attitudes of other residents, or evicting or involuntarily discharging a resident from a facility, on the basis of the resident’s actual or perceived sexual orientation, gender, gender identity, gender expression, or HIV status; and

WHEREAS, The bill further requires that all long-term care facilities post a notice regarding this form of discrimination where its current non-discrimination policy is posted; and

WHEREAS, Senate Bill 219 was supported by LGBTQ, senior and civil rights organizations including Equality California, the American Civil Liberties Union, California Advocates for Nursing Home Reform, Justice in Aging, the National Center for Transgender Equality, the San Francisco Human Rights Commission, the National Center for Lesbian Rights and Transgender Law Center; and

WHEREAS, LGBTQ Seniors are disproportionately vulnerable to marginalization, isolation, homelessness, poverty, and premature institutionalization; and while California has sought to protect the rights and dignity of its LGBTQ senior population, prior to SB 219 the
State had not detailed specific actions deemed discriminatory or made residents fully aware of their rights in order to hold long-term care facilities more accountable; and

WHEREAS, According to the 2011 study “Stories from the Field; LGBT Older Adults in Long-Term Care Facilities,” published by the National Senior Citizens Law Center, 89% of respondents indicated that they believed caretakers would discriminate against them for being LGBTQ and 43% had personally witnessed or experienced mistreatment of LGBTQ seniors; and

WHEREAS, In 2015 the San Francisco Board of Supervisors passed an Ordinance by then-Supervisors Wiener and Campos amending the Police Code (1) to prohibit discrimination against residents or patients at long-term care facilities in San Francisco on the basis of sexual orientation or gender identity; (2) to provide aggrieved persons with the right to seek investigation and mediation by the Human Rights Commission, as well as a private right of action; and (3) to impose treble damages on violators; and

WHEREAS, On July 16, 2021, in the case of Taking Offense v. California the State of California Third District Court of Appeals struck down the provision of SB 219 requiring nursing home staff to use the correct pronouns for trans and nonbinary patients, thereby eliminating critical anti-harassment protections for LGBTQ seniors in California; and

WHEREAS, In doing so the court failed to acknowledge the serious harm caused by the intentional misuse of transgender people’s names and pronouns; and

WHEREAS, Numerous studies of transgender and nonbinary people have found that misgendering can cause great personal harm with one 2014 study of around 130 transgender adults finding that 32.8% of participants said they felt “very stigmatized” when they were misgendered, and a 2020 review of 20 studies published since 2009 finding that the more frequently a trans person was misgendered, the more likely they were to experience distress; and
WHEREAS, Following the Third District Court of Appeals ruling, California Attorney General Rob Bonta, the California Department of Social Services and the California Department of Public Health filed a petition on August 25, 2021, for review before the Supreme Court of California; and

WHEREAS, This petition urges the Supreme Court to restore SB 219’s protections for LGBTQ seniors and other long-term care facility residents in California; now, therefore, be it

RESOLVED, That the San Francisco Board of Supervisors urges the Supreme Court of California to review the Court of Appeals ruling in Taking Offense v. California and to restore all of SB 219’s protections for LGBTQ seniors and other long-term care facility residents; and, be it

FURTHER RESOLVED, That upon final adoption of this Resolution, the Clerk of the Board of Supervisors is directed to transmit a copy to the Supreme Court of California.
Resolution urging the California Supreme Court to review the Third District Court of Appeals ruling in Taking Offense v. California and restore anti-discrimination protections for LGBTQ residents of long-term care facilities.

September 14, 2021 Board of Supervisors - ADOPTED

Ayes: 11 - Chan, Haney, Mandelman, Mar, Melgar, Peskin, Preston, Ronen, Safai, Stefani and Walton

File No. 210947

I hereby certify that the foregoing Resolution was ADOPTED on 9/14/2021 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

I hereby certify that the foregoing resolution, not being signed by the Mayor within the time limit as set forth in Section 3.103 of the Charter, or time waived pursuant to Board Rule 2.14.2, became effective without her approval in accordance with the provision of said Section 3.103 of the Charter or Board Rule 2.14.2.

Angela Calvillo
Clerk of the Board