

1 [Urging Privacy and Preventing Unnecessary Harm for Trans and Non-Binary Residents
2 Seeking Court Ordered Name and Gender Changes in Superior Courts]

3 **Resolution urging Governor Gavin Newsom and the California Legislature to extend**
4 **privacy and safety measures to guarantee that all residents petitioning the California**
5 **Superior Court for an order changing their name or gender marker for the purpose of**
6 **reflecting their authentic gender identity, can proceed under seal, and that both the**
7 **petition and the final court order would be sealed from public viewing, with an option**
8 **for the petitioner to elect to opt-out of these protections and proceed publicly.**

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10 WHEREAS, The California Legislature has taken important but incomplete steps to
11 guarantee the privacy and safety of transgender and non-binary residents seeking name and
12 gender change orders, underscoring the need for such measures to be expanded, as it is
13 recognized that the dangers and risks associated with such private medical information
14 becoming publicly known or available is imminent; and

15 WHEREAS, The California Legislature passed SB 179, the California Gender
16 Recognition Act, that was signed into law October 15, 2017, and eliminated the requirement
17 that transgender or non-binary residents disclose confidential and personal medical
18 information within their written petition to the Superior Court for an order to change their name
19 and gender marker; and

20 WHEREAS, The California Gender Recognition Act amended the state Code of Civil
21 Procedure to eliminate the requirement that a public hearing be conducted in the Superior
22 Court for name change petitions tied to gender identity; and

23 WHEREAS, The California Gender Recognition Act also eliminated the requirement
24 that the 'order to show cause' within the petition be published for four successive weeks in a
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1 newspaper of general circulation, eliminating the need to disclose the private medical and
2 identity information contained in the petition; and

3 WHEREAS, Despite these actions, which effectively further and advance the privacy
4 and safety of California residents, the remedy is incomplete, and the danger still exists, as
5 both the petition, which includes the petitioner’s declaration as to their gender identity, their
6 home address, their date and place of birth, and the resulting court order, all remain public
7 documents that can be easily located through online searches of court dockets; and

8 WHEREAS, California Rules of Court provide that a Court may order that a record be
9 filed under seal or sealed only on a finding of facts that establish: 1) there exists an overriding
10 interest that overcomes the right of public access to the record; 2) the overriding interest
11 supports sealing the record; 3) a substantial probability exists that the overriding interest will
12 be prejudiced if the record is not sealed; 4) the proposed sealing is narrowly tailored; and 5)
13 no less restrictive means exist to achieve the overriding interest; and

14 WHEREAS, The overriding interest here well exceeds the public’s limited right to
15 access this private medical information, insofar as this is an issue of the safety and privacy of
16 trans individuals, where the evidence is clear that “discovery” of people’s status as trans can
17 have deadly consequences, and that violence against trans people is an epidemic; and

18 WHEREAS, The Human Rights Campaign (“HRC”) documents fatal violence against
19 transgender individuals in the United States, and tracked 27 murders of transgender
20 individuals in 2019; and

21 WHEREAS, In 2019, the American Medical Association called the violence against
22 transgender people an "epidemic; and

23 WHEREAS, As of June 2020, HRC had already tracked 26 violent murders of
24 transgender people, cautioning that while these numbers are shockingly high, they are likely
25 much lower than the true numbers, due to these stories going unreported or undetected, in

1 part due to stigma, and in part due to police and medical examiner reports misidentifying the
2 true gender of the victims; and

3 WHEREAS, According to a report from the National Center for Transgender Equality
4 entitled the “2015 U.S. Transgender Survey”: 46% of the 28,000 respondents were harassed
5 in the past year because of being transgender; one in ten was physically attacked in the past
6 year because of being transgender; 47% of respondents were sexually assaulted during their
7 lifetime; and one in ten were sexually assaulted in the past year; and

8 WHEREAS, Transgender people are at a higher risk of self-harm and suicide, which
9 increases when the prospect of being “outed” is raised, because they know and are aware
10 that the discovery of this information will undermine their entire life, and everything they have
11 worked to create can be taken away in that one discovery; and

12 WHEREAS, There is no articulable public interest in publicizing private medical and
13 gender preference information to the public through the court docketing system, as there is no
14 adversarial party, and law enforcement would continue to have unfettered access to sealed
15 records for their purposes; and

16 WHEREAS, There is no less restrictive means of achieving the overriding interest here,
17 as court orders are required to change a person’s name and gender in order to update
18 government issued identification(s), so people must utilize the Superior Court to change their
19 name and gender change, which is in turn a critical aspect of becoming and living their
20 authentic selves; and

21 WHEREAS, To not act with greater urgency to remove this unnecessary risk of harm,
22 which serves no valid purpose, could and likely will have deadly consequences on our trans
23 and non-binary residents, who are already at higher risk of harm and have restricted access to
24 services; and

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1 WHEREAS, In order to ensure that petitioners seeking name and gender change have
2 the ability to keep this information public, for any reason that they choose to, there should
3 remain an option for the petitioner themselves to elect to forego this privacy protection, but
4 this election should be a proactive one, with the default being to seal the record; and

5 WHEREAS, Where petitioners may need to share the sealed court order with various
6 government agencies in order to update their identity documents, such a disclosure would not
7 be a violation of the sealing order; now, therefore, be it

8 RESOLVED, That the San Francisco Board of Supervisors urges Governor Newsom,
9 the California Legislature and all other state officials to enact legislation which will seal all
10 petitions and related documents filed in any California Superior Court for either 1) a change of
11 name to match the petitioner’s authentic gender, or 2) a change of name and gender; making
12 clear that providing a copy of such sealed name and/or gender change order to a government
13 entity for the purpose of changing a gender marker and/or name will not be a violation of the
14 sealing order; and, be it

15 FURTHER RESOLVED, That the San Francisco Board of Supervisors urges Governor
16 Newsom, the California Legislature and all other state officials to enact legislation that would
17 retroactively seal all such petitions while allowing any such petitioner the right to opt out of
18 these protections at any time; and, be it

19 FURTHER RESOLVED, That the San Francisco Board of Supervisors hereby directs
20 the Clerk of the Board to transmit copies of this resolution to the Honorable Governor Gavin
21 Newsom and to San Francisco’s delegation to the California Legislature with a request to take
22 all actions necessary to achieve the objectives of this Resolution.

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