

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

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

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7 WHEREAS, In 2017 the California Legislature passed California State Senate Bill No.
8 219 (Wiener), which created an LGBT Seniors Bill of Rights for seniors living in long-term care
9 facilities; and

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

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

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

23 WHEREAS, LGBTQ Seniors are disproportionately vulnerable to marginalization,
24 isolation, homelessness, poverty, and premature institutionalization; and while California has
25 sought to protect the rights and dignity of its LGBTQ senior population, prior to SB 219 the

1 State had not detailed specific actions deemed discriminatory or made residents fully aware of
2 their rights in order to hold long-term care facilities more accountable; and

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

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

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

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

20 WHEREAS, Numerous studies of transgender and nonbinary people have found that
21 misgendering can cause great personal harm with one 2014 study of around 130 transgender
22 adults finding that 32.8% of participants said they felt "very stigmatized" when they were
23 misgendered, and a 2020 review of 20 studies published since 2009 finding that the more
24 frequently a trans person was misgendered, the more likely they were to experience distress;
25 and

1 WHEREAS, Following the Third District Court of Appeals ruling, California Attorney
2 General Rob Bonta, the California Department of Social Services and the California
3 Department of Public Health filed a petition on August 25, 2021, for review before the
4 Supreme Court of California; and

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

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

11 FURTHER RESOLVED, That upon final adoption of this Resolution, the Clerk of the
12 Board of Supervisors is directed to transmit a copy to the Supreme Court of California.

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