

Californians Face This Frightening Possibility for 'Misgendering'

The debate over preferred pronouns is kicking into high gear in California, with the state's Supreme Court slated to hear a consequential case surrounding "misgendering."

The court will assess the constitutionality of a law passed in 2017 that prevents retirement home and long-term care workers from intentionally misgendering transgender residents, according to Bloomberg Law.

The debate over Senate Bill No. 219—also known as LGBTQ Senior Bill of Rights—has been nothing short of boisterous over the past few years, with critics warning the law could land people fined or even behind bars for repeatedly misgendering residents of these homes.

The law reads, in part, that it is unlawful for workers to "willfully and repeatedly fail to use a resident's preferred name or pronouns after being clearly informed of the preferred name or pronouns." It was signed into law in 2017 by former California Gov. Jerry Brown, with Fox News reporting the following at the time:

The law states that if provisions are violated, the violator could be punished by a fine "not to exceed one thousand dollars" or "by imprisonment in the county jail for a period not to exceed one year," or both.

We will further explore these claims later on in this analysis.

Inside the Legal Battle

The battle over the provision has volleyed back and forth,

with a California appeals court ruling against the law in July, stating it is a First Amendment violation to demand staff refer to transgender residents by preferred pronouns.

Inappropriately forcing people to say something with which they disagree became the basis of the appeals court conclusion.

“We agree with Taking Offense that ... the pronoun provision, is a content-based restriction of speech that does not survive strict scrutiny,” Justice Elena J. Duarte said in the unanimous ruling. “A person’s right to speak freely prohibits the government from compelling adoption of a government message and protects the right of citizens to refrain from speaking.”

Here’s more from Duarte:

“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.”

Some flatly reject these arguments, though. State Sen. Scott Wiener tweeted his disagreement with the court’s July finding and explained the reason the 2017 law was passed in the first place.

“We passed a law protecting LGBTQ seniors in nursing homes. It stops staff from deliberately misgendering trans seniors,” he wrote. “A court struck down this 1 part, b/c this harassment is simply ‘disrespectful, discourteous or insulting.’ No, it’s a harmful erasure.”

This was hardly the end of the ongoing dispute, though, as California Attorney General Rob Bonta asked the California Supreme Court to review the case—and, this month, the court

agreed.

“Attorney General Bonta urges the California Supreme Court to review the Court of Appeal’s erroneous decision, and restore SB 219’s protections for LGBTQ seniors and other long-term care facility residents,” an Aug. 25 press release read.

There’s no telling how the California Supreme Court will rule on this contended measure.

Could You Really Go to Prison?

One of the more confusing parts of the debate surrounding Senate Bill No. 219 are proclamations that repeated misgendering could lead to fines or jail time. Some have dismissed these claims or warned that the risks are being overstated. And while a 2017 investigation from Politifact did seem to allege overreactions, this line stands out:

But we also found an element of truth: Violations of the bill could, under limited circumstances, be treated as a misdemeanor with punishment of up to one year in jail and/or a \$1,000 fine.

The outlet interviewed U.C. Davis law professor Courtney Joslin, who said mistakes surrounding pronouns likely wouldn’t be punished and that perpetual and intentional issues seem to be the intended target of the law. {eo}

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