

TRANSADVOCATE

The Coming California Bathroom Initiative

By Autumn Sandeen

Published May 4, 2015 | Updated March 31, 2026

https://www.transadvocate.com/the-coming-california-bathroom-initiative_n_15165.htm

Abstract

The first line of what California's Personal Privacy Protection Act initiative would create as California Health & Safety Code § 118501, should it become law in 2016, is this: Notwithstanding any other provision of law, a person shall use facilities in accordance with their biological sex in all government buildings. The Personal Privacy Protection Act [...]

Article



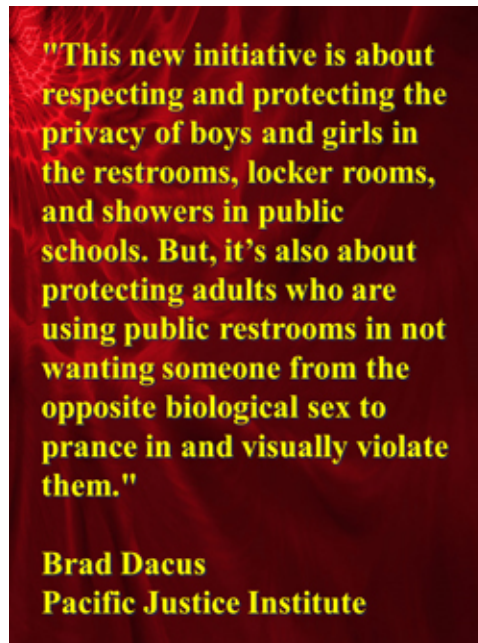


Figure 1. Brad Dacus's "Prancing Transgender Voyeurs" Quote

The first line of what California's Personal Privacy Protection Act initiative would create as California Health & Safety Code § 118501, should it become law in 2016, is this:

Notwithstanding any other provision of law, a person shall use facilities in accordance with their biological sex in all government buildings.

The Personal Privacy Protection Act is currently a request for a Title And Summary For Proposed Initiative that's been submitted to California Attorney General Kamala D. Harris -- in accordance with California law -- by the Privacy For All (PFA) coalition. When the title and summary are approved, the PFA coalition -- the same group who is also the Privacy For All Students coalition -- will have 180 days to collect 365,880 signatures. The measure is subject to a 30-day comment period before the attorney general issues a title and summary -- which means PFA should be able to begin collecting signatures shortly after May 18th.



Figure 2. Personal Privacy Protection Act (Filing and Text)

PFA counts the Pacific Justice Institute (PJI) as one of its member organizations. Attorney Brad Dacus is PJI's executive director, and he explained why he and PFA believe the initiative is required in the OneNewsNow article Objective in Calif.: 'Reclaim essential privacy rights': he and PFA believe transgender women and girls are prancing, transgender, voyeuristic monsters.

This new initiative is about respecting and protecting the privacy of boys and girls in the restrooms, locker rooms, and showers in public schools. But, it's also about protecting adults who are using public restrooms in not wanting someone from the opposite biological sex to prance in and visually violate them.



Figure 3. OneNewsNow article entitled “Objective in California: ‘Reclaim essential privacy rights,’” dated May 1, 2015

Previously, PJI claimed that a 16-year-old girl was harassing cisgender girls in Florence High School girl’s restrooms, and it turned out to be untrue. Florence School Superintendent Rhonda Vendetti stated:

This is one parent basically bringing their viewpoint about this situation to the media because they weren’t getting the responses that they hoped they would get from the district, from parents of students at the high school, or from the board and myself. So I think it’s just an attempt to elevate the situation to a point where maybe some more attention can be drawn to that in the hope of having a different outcome. But to our knowledge and based on our investigation, none of those things have actually happened. We do have a transgender student at the high school and she has been using the women’s restroom. There has not been a situation.

PJI later backtracked and stated that trans women and girls in women’s and girl’s restrooms are inherently intimidating and harassing.

The Salt & Light Council is affiliated with Calvary Chapel Movement, which is affiliated by their Calvary Chapel Association Council -- the association of Calvary Chapels functions as a quasi-denomination. Their non-partisan, socially conservative ministry is called the Salt and Light

Council. Dran Reese headed the Salt and Light Council in San Diego in October of 2013 when San Diego's Channel 10 News reported:

[Keanan] Gottlieb said claims that the accommodating transgender students will lead to rampant abuse is fear mongering. "There are other school districts like Los Angeles Unified that have had similar policies that have been very successful," said Gottlieb. In response, [Dran] Reese pointed out a recent case in which a Los Angeles-area high school student complained to her school that a transgender boy harassed her and peeked at girls over the stalls. The girl's family hired an attorney, but has yet to file a lawsuit.

One of the signers to the Personal Privacy Protection Act Request For Title And Summary For Proposed Initiative is Jack Hibbs, Pastor of the Chino Hills Calvary Chapel.

Another signer to the Request For Title And Summary For Proposed Initiative is Gina Gleason of the Capitol Resource Institute. She provided a statement in the announcement email for the announcement of the signature drive.

We have great compassion for any person that is uncomfortable in traditional, sex separated facilities.

But we also want to protect the privacy that most of us expect when we are in public bathrooms, showers and dressing areas.

Painting transgender women as voyeuristic monsters; lying about transgender women and girls -- this isn't compassion, it's bearing false witness against one's neighbors.



Figure 4. Privacy For All announcement email for the Personal Privacy Protection Act initiative signature drive, dated April 18, 2015

PJI's Brad Dacus believes this is a common-sense initiative, and of course compassionate (expect to hear this deceitful used word often throughout their campaign), but it's far from common sense.

The Personal Privacy Protection Act will allow Californians to reclaim essential privacy rights that have been trampled by our politicians. We can and we must be both compassionate toward those suffering from gender identity dysphoria, and exercise common sense in not casting aside crucial constitutional rights like privacy. This initiative strikes the appropriate balance.



Figure 5. Pacific Justice Institute's email 'New Initiative Would Expand Privacy Protections,' dated April 27, 2015

The text of the section of the Health and Safety Code that this initiative would create is incredibly problematic.



Figure 6. Personal Privacy Protection Act Text

And here is the text, with commentary, that would become California Health & Safety Code § 118501.

- (a) Notwithstanding any other provision of law, a person shall use facilities in accordance with their biological sex in all government buildings.
- (b) A civil claim for violation of privacy shall lie against a government entity or a person for willful violation of this section. Such claim includes equitable relief and damages up to a maximum of three times the amount of actual damage but in no case less than \$4,000, and attorney's fees that may be determined by a court. A claim is limited to individuals whose privacy was actually violated while using facilities or who did not use facilities because of a violation under the Act.
- (c) Notwithstanding any other provision of law, no business establishment shall be subject to criminal, civil, or administrative sanctions, or civil suits for requiring employees, patrons, students, or any other person to use facilities in accordance with their biological sex.
- (d) Definitions:
- (1) Biological sex means the biological condition of being male or female as determined at or near the time of birth or through medical examination or as modified by Health & Safety Code § 103425.

The section cited of California Health & Safety Code § 103425 is the section changed in 2012 by the Vital Statistics and Modernization Act. As of January 1, 2012, one doesn't have to have surgical intervention to have one's gender changed in California. So, changing one's legal gender in California in accordance with California Health & Safety Code § 103425 is in no way connected to changing "the biological condition of being male or female as determined at or near the time of birth or through medical examination." The standards of this initiative are contradictory and likely would have to be litigated.

As Ilona Turner, the legal director of the Transgender Law Center put it to me when I asked her over the phone, "The initiative's definition of 'biological sex' is confusing, unclear and not based on any kind of scientific or legal understanding of gender."

With a \$4000.00 and attorney's fees at a minimum, if this involves a state building for any trans person who may be caught up in litigation, this could be costly.

(2) Business establishment means any commercial or noncommercial entity open to, and serving, the public.

(3) Facilities mean restrooms, showers, dressing rooms, and locker rooms.

(4) Government entity shall include, but not be limited to, the state of California, any city, county, city and county, public university system, community college district, school district, special district, or any other political subdivision or governmental instrumentality of, or within, the state.

(5) Government building means a structure owned, rented or occupied by a government entity.

(6) Law means California statutes, regulations, codes, policies or other rule enacted by a government entity.

(e) Exceptions: This section does not apply to facilities constructed for single use. Further, this provision does not apply to (1) use of family restrooms or (2) facilities in which a child, or a person with a medical condition, requires the assistance of another.

(f) If the Attorney General fails to mount a defense of the Act against legal challenge, or appoint a special Attorney General to do so, initiative proponents shall have the right to act as the agent of California for purposes of any necessary defense of this Act against legal challenge.

(g) Severability: Any part of this Act held invalid shall be severable from the remaining portions.

So, in the end, what will be the "biological" standard? What if one is public like Bruce Jenner is, and because of their public status he (then she) is treated as male at a public business and not allowed to use the women's restroom? Or what if you're someone semi-public and sometimes recognizable like me? Section (c) of the amended California Health and Safety Code § 118501, should the initiative pass, appears to indicate that Jenner and I would have no recourse in any circumstance.

Or, maybe that's not the case. That section would seem to be in conflict with the Unruh Civil Rights Act that includes gender identity in its public accommodations protections. With a \$4000.00 civil penalty at a minimum, and attorney's fees at stake if this initiative becomes law, using a restroom in a state building could be costly if there's any question as to what one's "biological sex" is in accordance with the proposed California Health and Safety Code § 118501.

Masen Davis, the former executive director of the Transgender Law Center, commented on the issues of “biological sex” and this initiative on a Facebook page.



Figure 7. Masen Davis, former executive director of the Transgender Law Center

The Pacific ‘Justice’ Institute is at it again. This time they are promoting a California ballot initiative that would fine anyone who uses a restroom different than their ‘biological sex’ (‘the biological condition of being male or female as determined at or near the time of birth or through medical examination’) in government buildings (including public universities and schools). So, transgender men like me could be fined \$4,000 or more for using the men’s room. Please take this seriously, California.

This is going to be a time where it’s not going to be enough to know what we in the California trans community are against. We’re also going to have to know what we’re for, and then work and sacrifice for it. What we have the opportunity to be against is the evil and injustice of this initiative. What we have the opportunity to be for is creating a world where trans people are treated under the law as the gender of their gender identity.

But as Davis said, we trans Californians need to take this very, very seriously.

Suggested citation

Autumn Sandeen. "The Coming California Bathroom Initiative." TransAdvocate, May 4, 2015.
https://www.transadvocate.com/the-coming-california-bathroom-initiative_n_15165.htm