**LAW OFFICE OF NICOLE C. PEARSON**
*FACTS LAW TRUTH JUSTICE*

ASSEMBLY JUDICIARY COMMITTEE
1020 N Street, Room 104
Sacramento, California 95814

June 9, 2023

**RE: Opposition to AB223: change of gender, sex identifier**

Dear Chair and Honorable Members of the Assembly Judiciary Committee:

Please accept the following in **opposition** to ***the amended version*** of Assembly Bill 223 on behalf of *FACTS LAW TRUTH JUSTICE* and the 60,000+ followers it represents. **Please include in the analysis of this Bill the concerns stated herein due to the last-minute amendments published hours before the deadline to submit an opposition letter via the Portal by the Committee's deadline.** Please also consider, respond to, and vote **"No"** or **abstain** on AB223, unless these concerns are resolved.

***HISTORY OF AB223***

Assemblyman Ward and Senator Scott Wiener introduced AB223, the "Transgender Youth Privacy Act," to seal any petition for a change of gender or sex identifier filed by a minor. According to Ward:

> *[The Act] is focused to ensure that those documents are sealed from general public discovery as many of our documents have become digitized and are too easily accessible to those who would do these youth harm. AB 223 is about protecting youth from being bullied so they can navigate their daily lives as themselves.*

In the Bill, the authors acknowledge that, under existing California law, parent authorization is required for changing vital records for minors unless a court has emancipated the minor, and claim that AB223 does not change that process. Rather, it helps prevent online discovery of documents that could lead to "outing" or harassing the child.

On June 5, Assemblyman Ward and Senator Wiener, apparently, amended AB223 to require any "papers associated" with the minor's proceeding the change the minor's gender or sex identifier, or name be "kept confidential" by the court. Amended AB223 reads as follows:

**LAW OFFICE OF NICOLE C. PEARSON**
*FACTS LAW TRUTH JUSTICE*

**SECTION 1.** Section 103477 is added to the Health and Safety Code, to read:

If a person who seeks a change of gender and sex identifier pursuant to Section 103430 or a single petition for change to the petitioner's name and to recognize the change of the petitioner's gender and sex identifier pursuant to Section 103435 is under 18 years of age, the petition and any papers associated with the proceeding shall be ~~filed under seal.~~ *kept confidential by the court.*

The proposed Section 1 of Section 103477 also requires the court to "*limit access to the court records in the proceeding, including the register of actions, to the minor, any adult who signed the petition, the minor's parents or guardians or guardians ad litem, and any attorneys representing these individuals.*"

In short, AB223 reduces public access to public records containing vital statistics.

***EXISTING CALIFORNIA LAW RE: CHANGING A MINOR'S NAME OR GENDER***

In California, in order to change the name, gender, or sex identifier of a minor, a parent(s) or guardian(s) must file a petition with the Superior Court in the county where the minor resides, pursuant to California *Code of Civil Procedure,* sections 1275, 1276 (a).[1] The petition must state the place of birth and residence of the minor, the present and the proposed name, and the reasons for the change of name.

After the petition is filed, the court will set a hearing date 6 to 12 weeks later and issue an order directing anyone interested in the matter to appear before the court. If anyone objects to the change(s), a written objection with the reasons for the objection must be filed at least two days before the hearing. If no objection is filed, the petition may potentially be granted without a hearing. (Code of Civ. Pro., §1277(a)).

The process does **not** require publication; however, **if there is any living parent of the child who did not sign the petition, he or she must be served with a copy of the filed petition** at least 30 days before the court date.

[1] *Name Changes for Minors in California,* National Center for Transgender Equality [https://transequality.org/sites/default/files/docs/id/NameChangesforMinors/NCTE%20Minor%20Name%20Change%20California.pdf (last visited June 6, 2023)].

**LAW OFFICE OF NICOLE C. PEARSON**
*FACTS LAW TRUTH JUSTICE*

***SEALING PUBLIC RECORDS IN THE STATE OF CALIFORNIA***

In California, **the public policy is so strong for public access to public records that no record may be filed under seal without a court order, *even if the parties agree or stipulate to the same*.** (*See* CRC 2.551(a)). In order to seal records, the requesting party must file a motion or an application accompanied ***served on all interested parties*** by a memorandum and declaration containing facts justifying the sealing. (CRC 2.551(b)(1)). The motion / application **in addition to any opposition *must be heard and decided in court.*** If the motion / application is granted, the sealed records must be securely filed and kept separate from the public file in the case and, if the sealed records are in electronic form, appropriate access controls must be established to ensure that only authorized persons may access the sealed records. (CRC 2.551(f)). This long-standing, rigorous process upholds fundamental notions of **due process,** protection of fundamental rights (e.g. parents' rights to care for their children), and California's strong public policy in favor of accountability and transparency. (See *Cal. Public Records Act* (Govt. Code§ 6250 *et seq*.)).

***OPPOSITION TO AB223***

1. Sealing a minor's birth records does not prevent suicide, depression or harm.

The Legislative Counsel's Digest recognizes California's strong and long-standing public interest in maintaining transparency and integrity of the judicial system via the filing of public records, including the rigorous threshold that must be met in order for records to be sealed:

**SEC. 2.**

> The Legislature finds and declares that Section 1 of this act, which adds Section 103447 to the Health and Safety Code, **imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials** and agencies within the meaning of Section 3 of Article I of the California Constitution. [Emphasis added].
>
> Existing **constitutional provisions require that a statute that limits the right of access to the** meetings of public bodies or the **writings of public officials** and agencies **be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.** [Emphasis added].

/ / /

**LAW OFFICE OF NICOLE C. PEARSON**
*FACTS LAW TRUTH JUSTICE*

As admitted by the Digest, in order to seal public records, the requesting party must show (1) an interest protected by the restriction and (2) need for protecting it.

Despite recognizing these requirements, the authors do not meet them. They summarily claim that the interest they are protecting – and that is worthy of protecting – is the mental health of transgender and nonbinary youth by preventing their being "outed." While no one wants to see *any* child's mental health suffer, the authors have not proven – let alone *argued* – that having ones "assigned at birth gender" stated on a public record causes or attributes to mental health conditions or suicide, or how hiding this information will prevent it. Presumably, anyone seeking to officially change their name, gender, or sex identifier with the court **has already transitioned publicly,** undermining the need to protect this change from prying, public eyes.

What's more, as licensed attorneys actively litigating in the state and, thus, familiar with the court records system, while records containing vital statistics are public, they are ***extremely*** difficult to access. Once must go to the County Recorder's office, present an identification, fill out an application, and provide a reason for accessing ***another person's*** records. Additionally, whether seeking the records in person or online, it is not possible to access another individual's records if that person is identifying as another person, by name and/or gender. **How will a third party be able to locate – and publish or "expose" – a transgender or nonbinary individual's records if the transgender / nonbinary individual is not presenting themselves to the public by that name or gender? Where does the search start?!**

Finally, using the court's online system requires that the individual searching created a profile, conduct the search of hundreds of thousands of court cases, if they find the case, filter through the docket to identify the appropriate identifying documents, upload a credit card, pay for the documents and retrieve the documents from the court's online system. The individual must repeat this process in ***every* county** in which the petition may have been filed. This is a tedious process that is difficult and time-consuming to do for even the most seasoned attorney.

2. <u>There is another constitutional, legal process available to *every* individual who wants to seal their vital statistics records, while also protecting minors.</u>

In the words of our colleagues at the Pacific Justice Institute:

**Judges, not politicians, are in the best position to determine which documents should be filed under seal in the cases before them. Imposing a blanket exception for a politically connected sexual minority group does not advance the interests of**

**LAW OFFICE OF NICOLE C. PEARSON**
*FACTS LAW TRUTH JUSTICE*

**justice. It only shows that the Legislature believes some groups' privacy rights outweigh others' similar interests.**

More than this, however, are the numerous and **severe** unintended consequences of this bill:

First, it is unclear whether the sealing of records is either intended to or will have the effect of shutting out parents when their children may be making life-altering decisions. As noted by the legislative findings, youth struggling with their gender identity are at high risk for suicide. Keeping either custodial or non-custodial parents in the dark via sealed court records does not serve the best interests of children.

Second, AB 223 may have the intended or unintended effects of hampering law enforcement. Transgender youth, like non-transgender youth and adults, sometimes commit crimes ranging from petty theft to sexual assault to mass shootings. The Legislature would be remiss not to ensure that law enforcement is not hampered by sealed court records when trying to track a suspect across changing identities or aliases. It may be that existing processes would allow law enforcement to readily access such information in ways the general public could not, but it is incumbent on legislators to ensure public safety is not compromised.

***Conclusion***

We urge you to act in the interests of all Californians, including parents, journalists, and law enforcement – and not just ideological advocacy groups with powerful lobbyists – and refuse to hide more court records from public view, including parents and guardians who have a vested interest in knowing what their children are doing with their identity. Please vote no on AB 223.

Nicole C. Pearson, Esq.
*FACTS LAW TRUTH JUSTICE*