# Is Transgenderism Contagious?

By Paul Engel

- It appears that the confusion and mental disorder called transgenderism is contagious.
- Recent court cases have been placing the arbitrary opinions of a few of the facts and law of the land.
- What happens when people are given special rights, simply because they are confused about who they are?

A recent case out of the Court of Appeals of the State of California brings up some interesting questions. First, does someone have the legal right to tell you how to refer to them? Second, does a mental disorder give someone the legal authority to infringe on the rights of others? The opinion in this case shows the irrationality of both the transgender activists and the judicial branch. Which leads me to another question: Is the mental confusion we call transgenderism contagious?

The case in question, Taking Offense v. State of California, stems from California Senate Bill 219 (2017-2018 Reg. Session), which added code to the state's Health and Safety Code called the *Lesbian, Gay, Bisexual, and Transgender (LGBT) Long-Term Care Facility Residents' Bill of Rights*. Taking Offense challenged two provisions of this law:

***1439.51.*** *(a) Except as provided in subdivision (b), it shall be unlawful for a long-term care facility or facility staff to take any of the following actions wholly or partially on the basis of a person's actual or perceived sexual orientation, gender identity, gender expression, or human immunodeficiency virus (HIV) status:*

*(3) Where rooms are assigned by gender, assigning, reassigning, or refusing to assign a room to a transgender resident other than in accordance with the transgender resident's gender identity, unless at the transgender resident's request.*

*(5) Willfully and repeatedly fail to use a resident's preferred name or pronouns after being clearly informed of the preferred name or pronouns.*

**California Senate Bill 219**

First heard in state Superior Court, the decision was appealed to the state's Court of Appeals. The appeals court started with the "First Amendment Challenge" in subsection 5.

**First Amendment Challenge**

Taking Offense listed four specific problems with the speech requirements of the law.

*(1) a prior restraint on speech; (2) a violation of the freedom of thought, comparing transgender residents of long-term care facilities to "kings and masters over the rest of the people" and employees of long-term care facilities to "their virtual subjects and slaves"; (3) a violation of the freedom of "conscience, religion and belief"; and (4) a violation of the right to free exercise of religion.*

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The court agreed that subsection 5 of the law is a content-based restriction on freedom of speech. The court went on to explain:

*The First Amendment to the United States Constitution states: "Congress shall make no law . . . abridging the freedom of speech . . . ." This fundamental right to free speech applies to the states through the Fourteenth Amendment's due process clause.*

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As I've stated more times than I care to remember, this cannot be a First Amendment issue since Congress did not make this law. The legal fiction that the First Amendment applies to the states via the Fourteenth Amendment's Due Process Clause was made up out of thin air by the Supreme Court to federalize cases that the Constitution does not treat as federal issues. While this court focuses on the First Amendment, it does note that the protections of freedom of speech in California comes from the California Constitution.

*Similarly, article I, section 2, subdivision (a) of the California Constitution provides: "Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press." Article I's free speech clause enjoys existence and force independent of the First Amendment to the federal Constitution.*

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While we are free to speak, write, and publish on all subjects, what is stated in the California Constitution applies to the federal one as well: We are responsible for the abuse of this right. Often erroneously called the prohibition on "yelling fire in a crowded theater", we see this most often in libel, slander, and perjury laws. You cannot lie under oath or slander someone, then claim exemption from punishment because of free speech.

The State of California claims its compelling interest in preventing "misgendering" is sufficient for them to regulate free speech. The court agrees:

*We agree with the Attorney General that the state has a compelling interest in eliminating discrimination on the basis of sex. … The high court has recognized that discrimination on*

*the basis of "sex" includes discrimination on the basis of sexual orientation or transgender status.*

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While the "high court" may recognize that a person's belief is equivalent to the physical properties of sex, the Constitution of the United States does not. The *Bostock v. Clayton County* decision the court refers to is simply another example of the oligarchs on the Supreme Court placing their opinions above the supreme law of the land. Thankfully, in this case, government interest alone is not considered sufficient to infringe on your rights. The court found that alternatives to restricting speech showed that the government's case was insufficient to allow it to criminalize speech.

In regards to free speech though, we have a final question: Does the use of a pronoun other than the one preferred rise to a level of injury as to require state sanction? The court rightly found that it does not.

*The pronoun provision at issue here tests the limits of the government's authority to restrict pure speech that, while potentially offensive or harassing to the listener, does not necessarily create a hostile environment. As the Third Circuit Court of Appeals has recognized, " '[w]here pure expression is involved,' anti-discrimination law 'steers into the territory of the First Amendment.' "*

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**Equal Protection Challenge**

Now let's take a look at the challenge to the room assignment requirements based on the Equal Protection Clause.

*Taking Offense contends the room assignment provision violates the equal protection clause of the Fourteenth Amendment of the United States Constitution,8 article I, section 7 of the*

*California Constitution, and the Unruh Civil Rights Act. It makes two implicit assumptions about the room assignment provision: (1) the provision requires a facility to accommodate a transgender resident's request to be assigned to a room other than in accordance with the resident's gender identity; and (2) a resident's request to be assigned a room other than in accordance with the resident's gender identity is equivalent to dictating the gender or gender identity of the resident's roommate. Based on those assumptions, Taking Offense asserts the provision grants transgender residents "special rights" to choose whether to be assigned a roommate according to the transgender person's gender identity or the person's assigned sex at birth, while failing to recognize the same right of non-transgender residents. We disagree.*

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The question at hand is if California's room assignment provision of SB 219 unlawfully requires people to be treated differently under the law. A quick look at the language should make this perfectly obvious, since the roommate request of two residents are treated differently depending on whether one of them claims to be "transgendered".

Consider this example: In any room sharing situation, there are at least two people who will be sharing a room. If the room assignments are made according to sex, then the facility has a physical basis for making those assignments. However, if the room assignments are made based on "gender identity", the decision is made based on an arbitrary decision of only one of the residents. Now consider the situation where a woman is required to share a room with a man because he claims he is a woman. Not only is the roommate request of only one of the residents considered, but only the "transgendered" person is allowed to make such a request. This is not to be done based on a physical or medical condition, or even based on a legal relationship between the residents, but solely on the subjective assertion of one of the residents. Sounds pretty

unequal to me. Apparently though, this obvious discriminatory practice is not so obvious to the court.

*The equal protection clause requires the state to treat all persons similarly situated alike or, conversely, to avoid all classifications that are "arbitrary or irrational" and those that reflect " 'a bare . . . desire to harm a politically unpopular group.'*

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Aren't two or more residents in a long-term care facility who will be sharing a room "similarly situated"? Is the determination of "sexual orientation" arbitrary or irrational? Does the denial of the right to request a roommate of a specific sex to anyone not currently identifying with a group currently politically favored in California, show a "desire to harm a politically unpopular group"? I would say the answer to all three questions are yes. Apparently this is too difficult for the members of the court to understand.

*This provision creates a general rule and an exception to the rule. The general rule makes it unlawful for a long-term care facility or facility staff to assign, reassign, or refuse to assign a room to a transgender resident other than in accordance with the resident's gender identity. This requirement provides no special rights to transgender residents; rather, it only clarifies that gender-based room assignment decisions involving transgender residents must be made according to the resident's gender identity rather than their biological sex at birth.*

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According to the members of the court, the fact that only the "transgendered" resident gets to decide the sex of their roommate does not make that a special right. However, I must ask if what they want or desire rises to unequal treatment in this court's eyes? Not only do they not see the unequal

treatment of forcing a female resident to live with a male resident against her will, but the gross abuse of her rights? Somehow, I think only a lawyer or a judge could be so deluded. Perhaps we should not be surprised that this opinion came out of California. Based on other recent cases, I fear this elevation of a mental disorder above the supreme law of the land will be with us for quite some time.

**Conclusion**

So in this "split decision", we have one part which follows the law and protects the legitimate rights of everyone, while the other only cares about a politically favored group. Apparently, justice is not so blind as one would assume from looking at her statue.

While staff at long-term facilities in California will not be forced to keep a running track of who wants to be called what, the residents there are being forced to bow to the god of "transgenderism". It seems we've thrown reason, logic, and evidence out the window when a man can claim to be a woman or visa versa, and everyone is expected to act as if it were true. If a man with this disorder wants to share a room with a woman, I don't think the state should be involved. That means the state should not deny the request, but neither should it force a woman to comply against her will.

This opinion not only elevates those who suffer from the "transgender" mental disorder, it dehumanizes the vast majority of people who do not. In California, if you are not "transgendered", you are a second-class citizen and your rights only matter if the "transgendered" allow it. This disease is spreading across the nation. Are you prepared to defend yourself, your rights, and those of your family, against these attacks?



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[BIO: Paul Engel founded The Constitution Study in 2014 to help everyday Americans read and study the Constitution. Author and speaker, Paul has spent more than 20 years studying and teaching about both the Bible and the U.S. Constitution. Freely admitting that he “learned more about our Constitution from School House Rock than in 12 years of public school” he proves that anyone can be a constitutional scholar. You can find his books on Amazon and Apple Books. You can also find his books, classes and other products at the Constitution Study website (https://constitutionstudy.com). You can reach him at paul@constitutionstudy.com]