



Unit 530, Richville Corporate Tower, Madrigal Business Park, 1107 Alabang-Zapote Rd., Muntinlupa City
Metro Manila, Philippines Tel. No. (02) 987-2833; 0917-5419370
E-Mail: allianceforthefamily@gmail.com Website: www.alfi.org.ph

30 September 2019

The Honorable Senator Risa Hontiveros

Chairperson, Committee on Women, Children, Family Relations and Gender Equality
The Senate of the Philippines
GSIS Bldg., Financial Center
Diokno Blvd., Pasay City

Subject: S.B. Nos. 159, 412 and 689

Dear Chairperson Hontiveros:

We are attaching our Position Paper, in opposition to these bills.

Thank you very much for your consideration of our views.

Very truly yours,

A handwritten signature in black ink, appearing to read "Maria Concepcion S. Noche".

MARIA CONCEPCION S. NOCHE
President

A handwritten signature in black ink, appearing to read "Anna Kristina Cosio-Vitasa".

ANNA KRISTINA COSIO-VITASA
Vice-President



Unit 530, Richville Corporate Tower, Madrigal Business Park, 1107 Alabang-Zapote Rd., Muntinlupa City
Metro Manila, Philippines Tel. No. (02) 623-0300; 0917-5419370
E-Mail: allianceforthefamily@gmail.com Website: <http://alfi.org.ph/>

Position Paper on the SOGIE Equality Bill

September 30, 2019

Alliance for the Family Foundation (Philippines), Inc., respectfully submits the following discussion for consideration with regard to the SOGIE Equality Bill and all its versions in the Senate (S.B. No. 159, S.B. No. 689, and S.B. No. 412) – all entitled “An Act Prohibiting Discrimination On The Basis Of Sexual Orientation And Gender Identity or Expression (SOGIE) And Providing Penalties Therefor.”

The Alliance for the Family wholeheartedly agrees that the State must respect its constitutional obligation not to deny individuals equal protection of the laws, as guaranteed under Section 1, Article III of the Constitution. The discrimination sought to be avoided by the Constitution encompasses all discriminatory practices based on unreasonable classifications.

The SOGIE Equality Bill, however, does not protect equality before the law, but undermines freedom by creating special privileges based on sexual orientation and gender identity or expression. The bill is intended to prevent unjust discrimination by imposing legal sanctions against those who engage in it, yet Chapter 2 of the Civil Code of the Philippines provides sanctions against the same behaviors which the **Section for Discriminatory Practices** of the proposed law seeks to eliminate.^[1] Chapter 2 of the Civil Code of the Philippines does so for all victims of such behaviors by authorizing civil actions for damages, including moral damages, and even allowing for exemplary damages. On the other hand, the SOGIE Equality Bill sanctions the same behaviors with the same redress, but also imposes severe criminal penalties, including hefty fines and jail. However, it applies these criminal penalties only to persons victimized on the basis of sexual orientation or gender identity or expression. **Section 9a of S.B. Nos. 159 and 689 & Section 8 of S.B. No. 412** even mandate the inclusion of SOGIE concerns in all police stations, without providing any justification. As a result, special status is afforded to some persons seeking redress for harm suffered, while it is denied to others, such as those victimized because of disability, appearance, economic condition, language, religion, etc. This creation of two types of victims is invidious, and history indicates that it is dangerous to public order.

In addition, the proposed law is unwise and cannot be implemented fairly. Rather than eliminating unfair discrimination, it will create additional instances because it encompasses concepts that are not suitable for legislating. Under the **Section for Definition of Terms** in all versions of the bill, *Gender Identity* is defined as "the personal sense of identity as characterized, among others, by manner of clothing, inclinations, and behavior in relation to masculine or feminine conventions. A person may have a male or female identity with the physiological characteristics of the opposite sex." Meanwhile, *Gender Expression* is defined as "the outward manifestations of the cultural traits that enable a person to identify as male or female according to patterns, that, at a particular moment in history, a given society defines as gender appropriate." Both concepts—*Gender Identity* and *Gender Expression*—are highly subjective. Giving lawful preference to the subjective self-expression of one, irrespective of his or her sex is against the objective truth of basic biology known to the rest of the world. This, in itself, is an act of discrimination.

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Also, the bill is based on the premise that a biological male can become a female and vice versa, for as long as they "self-identify" as one. Citing **S.B. No. 159 Section 5f**, proponents of the bill insist that a "transgender woman" (a biological male who self-identifies as female) should be allowed to use the female public restroom, since he self-identifies as a woman. S.B. No. 159 author Senator Risa Hontiveros even went so far as to say that transwomen are real women. But science says otherwise. The scientific fact of the matter is that in humans, biological sex is determined by five factors present at birth: (1) The type of sex chromosomes. A person who has XX sex chromosomes is female, while one who has XY chromosomes is male. Chromosomal anomalies do occur, but they are extremely rare and make up only 0.1% of the population; (2) The type of gonads. Women have ovaries while men have testes; (3) The sex hormone levels. Although we all have estrogen and androgen in our bodies, women have much higher levels of estrogen, while men have much higher levels of androgen; (4) The internal reproductive anatomy, such as the fallopian tubes and uterus in females, and the epididymis and vas deferens in males; and (5) the external genitalia.^[2] These objective traits should be the basis for determining whether a person is male or female. When it comes to legislation, facts must take precedence over feelings.

Once society has accepted (or has been forced to accept through legislation) the unscientific claim that transwomen (biological males who self-identify as women) are real women, female-identifying biological males will be allowed to freely enter female-only restrooms, locker rooms, and dormitories, thereby violating women's privacy and putting their safety at risk. Single-sex institutions (like all girls/all boys schools) and organizations (like the Boy Scouts and Girl Scouts) will be forced to accept opposite-sex applicants who identify as the gender of the institution's/organization's population. Apart from these, female-identifying biological males will also be able to compete in various women's contests, including women's division in sports. This is grossly unfair because men are generally physically stronger than women. Females typically have 30-40% of muscle strength of the upper body of males and 50-60% of the lower body strength. It is no wonder MMA female fighter Tamikka Brents suffered a concussion and a broken skull after fighting with male-to-female transgender Fallon Fox in 2014.^[3] It is also no wonder male-to-female transgender Mary Gregory won nine out of nine events in the women's division of a world weightlifting competition on April 27 this year, though he was later stripped of his controversial records due to the weightlifting organization's ruling that Gregory was "actually a male in the process of becoming a Transgender female".^[4] Ignoring the obvious biological differences between men and women leads to women being judged against a male standard. This is real inequality.

Moreover, enacting a SOGIE law will create an open opportunity for men who do not actually self-identify as women to claim that they do, in order to have access to women and/or girls in vulnerable circumstances, such as public restrooms and locker rooms, in order to view or photograph them, or engage in sexual assault. This has already occurred in the US, UK and Canada, and perhaps in other countries that have adopted SOGIE legislation.

The existence of SOGIE laws and the associated climate of sexual questioning and experimentation has led to an enormous increase over the past several years of persons requesting medical and surgical treatment from the National Health Service in the UK to modify their appearance and hormones to resemble the opposite sex. There are now waiting lists of thousands of people for such services. Our Department of Health will be expected to institute programs to meet with a similar demand here, in order to comply with the anti-discrimination provisions of the law, or face legal action, the existence of such waiting lists in itself constituting illegal discrimination.

The bill lacks a stated exemption for religious institutions in the admission of clergy and educational personnel based on policies anchored on religious beliefs and practices. This is certainly an issue that must be dealt with in any version of the bill which is enacted into law, in order to comply with the Constitutional mandate for free exercise of religion.

Section 5g of S.B. Nos. 159 and 689 & Section 4f of S.B. No. 412 state that it shall be unlawful to “deny an application for or revoke a professional or other similar kind of license, clearance certification or any other similar document issues by the government due to the applicant’s sexual orientation or gender identity or expression.” We strongly believe this provision should be removed, or at least changed to eliminate marriage licenses, domestic partnerships and the like. These should not be sanctioned by the State without extensive national consultations, because they will fundamentally change the nature of Filipino society, as has occurred in other nations where such unions have been sanctioned. The numbers indicate that marriage itself is on its way to dying out in Scandinavia, for example, where same-sex marriage or civil unions have been legal for some time. Before the nation goes down this road of the practical abolition of marriage over the long term, all sectors of the society should be aware of the choice being made, and seriously consider its desirability, given the well-established negative effects on women and children of non-marital cohabitation as the family unit.

We also strongly oppose **Section 5j/k of S.B. Nos. 159 and 689** providing the illegality of “any other analogous acts”, as it is overly broad and vague. Strict guidelines should be incorporated in the law regarding when an action is considered to be an act of illegal discrimination. Otherwise, persons could be convicted and endure fine and imprisonment for actions of which it is purely a matter of ex post facto opinion that they are proscribed. This would make the law extremely invasive, intrusive and broad in practice. No one could be sure they were not violating it any time they interacted with someone of other than traditional heterosexual orientation. In fact, no one could be certain they are not violating it even in dealing with persons who have a traditional heterosexual orientation, because there is no way to know whether they do or not without enquiring. But under **Section 5b of S.B. Nos. 159 and 689 & Section 4b of S.B. No. 412** enquiring can itself be considered an illegal act of discrimination. As a practical matter, this would be strong motivation for all government agencies, businesses, institutions and even individuals to allow anyone who might conceivably be protected by the bill virtually unlimited latitude, rather than risk fine or imprisonment. This certainly would produce a backlash of resentment for special privileges and unfairness over the long term, conceivably resulting in the law’s eventual repeal. This in turn would leave the persons to be protected by the law even less protected than they are now, because of the consequent change in public sentiment.

This bill is intended to reduce isolation and stigma against the members of the LGBT community, but we do not see evidence of such isolation and stigma in the Philippines, other than in a few isolated instances. In fact, a survey conducted by Pew Research Center in 2013 revealed that the Philippines was one of the most LGBT-friendly countries in the world.^[5] One only has to turn to the mass media, television, radio and film to see that LGBT personalities are among the most popular in the country. Social media echo this. It is unwise to enact a law with severe penalties to address a problem that does not appear to exist. More importantly, if it does exist, this law is significantly more likely to increase rather than reduce it, due to its impact on the public. The proposed law’s effect on typical Filipinos will be to require them to take great care in interacting with anyone whose identity is unknown to them, because if that person happens to be a member of the LGBT community, anything they say or do that upsets or disturbs that person could under law cause them to be arrested, jailed, fined a large sum of money, and imprisoned for a year or more. It is likely that such incidents will be rare, as most people regardless of their orientation or identity do not easily take offense to perceived slights. However, some do, and with the consequences so severe no one will be able to discount them out of hand. These considerations will add an additional layer of stress to the already stressful lives of many of the citizenry. We all have experienced that stress leads to resentment, which will be the end result. The proposed law will over time isolate the LGBT community far more than they have ever been in the Philippines, where they have always been generally accepted and welcomed, despite the prejudices of a few.

Men and women, regardless of their sexual orientation and gender identity or expression, are already equal before the law and enjoy the same rights.^[6] We also already have existing laws that will protect everyone from unjust discrimination, harassment, and abuse (e.g. The 1987 Philippine Constitution, Labor Code of the Philippines, Civil Code of the Philippines, Anti-Graft and Corrupt Practices Act, Code of Conduct and Ethical Standards for Public Officials and Employees, The Revised Penal Code of the Philippines, Anti-Sexual

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Harassment Act of 1995, and the Safe Spaces Act).^[7] It would be unjust to grant special privileges to some persons at the expense of the basic rights of others. We can show respect and compassion towards our brothers and sisters in the LGBT community without having to sacrifice truth and common sense. No need for a SOGIE law.

References:

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5. Pew Research Center (4 June 2013). "The Global Divide on Homosexuality" <https://www.pewresearch.org/global/2013/06/04/the-global-divide-on-homosexuality/>
6. *The 1987 Constitution of the Philippines - Article III (Bill of Rights)*
7. *Why an LGBTQ member strongly opposes the SOGIE bill*: <http://www.interaksyon.com/politics-issues/2019/08/29/154073/sogie-bill-opposition-arguments/>