



Testimony of Vajra Ma, Chair, Women's Human Rights Campaign USA

Before the North Carolina Committee on Rules
and Operations of the Senate

On S.B. 396

OPPOSE

April 6, 2021

Thank you, members of the Committee, for allowing me the opportunity to provide written testimony in opposition to SB 396.

The Women's Human Rights Campaign (WHRC) is a global nonpartisan group of volunteer women dedicated to protecting women's sex-based rights. Our volunteers include academics, writers, organizers, activists, lawyers, and health practitioners. [The Declaration on Women's Sex Based Rights](#) ("The Declaration") was created by the founders of WHRC to lobby nations to maintain language protecting women and girls on the basis of sex rather than "gender" or "gender identity." The Declaration re-affirms women and girls' sex-based rights and challenges the discrimination we experience from the replacement of the category of sex with that of "gender identity."

I am the chair of WHRC USA, the U.S. chapter of WHRC. My interest in the legislation before the Committee today, SB 396, is based upon Article 1 of The Declaration, "Reaffirming that the rights of women are based upon the category of sex." This is in keeping with Article 1 of the CEDAW, which defines discrimination against women to mean, "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms"

Sex is defined by the United Nations as "the physical and biological characteristics that distinguish males from females." (Gender Equality Glossary, UN Women). The Declaration supports this well established definition of "sex". It has long been understood in the area of human rights that the stereotyped sex roles of men and women are a fundamental aspect of women's inequality and must be eliminated.

The Declaration provides: "States should maintain the centrality of the category of sex, and not 'gender identity', in relation to women's and girls' right to be free from discrimination." It does this because women and girls face discrimination based on our biology as females, and we are unable to "identify" our way out of sex discrimination. The Declaration further provides that this centrality of biological sex "should include the retention in law, policies and practice of the category of woman to mean adult human female, the category of lesbian to mean an adult human female whose sexual orientation is towards other adult human females, and the category of mother to mean a female parent; and the exclusion of men who claim to have a female 'gender identity' from these categories."

In contrast, SB 396 defines "protected status" to include "a person's race, color, national origin, religion, age, disability, sex, marital status, familial status, sexual orientation, gender identity, military or veteran status, or genetic information." This provision makes "gender identity" a protected category alongside sex, race, and other existing protected categories."

HB 396 does not define "gender identity." Assuming its usual meaning (i.e., an internal sense of self in relation to sex-role stereotypes, regardless of sex), the bill implicitly prioritizes "gender identity" over sex as a protected category wherever there is a conflict between "gender identity" and sex. But sex is determined at conception, is observed at or before birth and is immutable; whereas "gender" is nothing more than an unverifiable internal feeling in relation to sex-role stereotypes that harm women.

Furthermore, the bill's protection of "gender identity" also implicitly replaces sexual orientation wherever there is a conflict, because sexual orientation, or same-sex attraction, is based on sex, which in this bill is trumped by "gender identity."

WHRC-USA fully supports the protection of equal rights based on sexual orientation, and for all people who do not conform to sex-role stereotypes; in fact, we have proposed our own bill, called the ["Equality For All Act"](#) (EFAA), as a rational and just alternative to the so-called "Equality Act" that passed the U.S. House of Representatives in 2019 (HR 5). Our proposed bill provides comprehensive federal civil rights protection for women and girls on the basis of biological sex, for homosexuals of both sexes based on sexual orientation (which is based on sex), and for everyone on the basis on nonconformity with sex-role stereotypes. It does not provide any additional protection based on subjective feelings, because feelings are unverifiable and because feelings are not subject to discrimination; it is behavior and it is the state of being biologically female that need protection from sex discrimination.

Because of the language in SB 396 that I've previously cited, the bill as it stands currently is both incoherent and discriminatory. Accordingly, WHRC-USA strongly opposes this bill.



Chair, WHRC USA Steering Committee

