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Who Is A Female? New California Statute Provides An Answer

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California's new gender quota law, SB 826, has attracted widespread attention. The law mandates that a publicly held domestic or foreign corporation principal executive offices, according to the corporation's SEC Form 10-K, are located in California must have a minimum of one female director on its board by the close of 2019. No later than the close of 2021, the corporation must have a minimum of three female directors, if its number of directors is six or more; a minimum of two female directors if its number of directors is five, or a minimum of one female director if its number of directors is four or fewer. Some readers have questioned the definition of "female" for purposes of the statute.

The California legislature has defined "gender" in several different codes (*e.g.*, Civ. Code § 51; Educ. Code § 10.7; and Ins. Code § 10140). Recently, it has recognized at least three genders - female, male, and nonbinary. See [California Bill May Spur Rewriting Gender Boilerplate](#). I have been unable, however, to locate any existing California statute that defines "female", "male" or "nonbinary".

Given the substantial penalties that may be assessed for failure to have the prescribed minimum number of female directors, who counts as a female director could be an important question. The legislature provides a Delphic answer ("γυνῶθι ἑαυτόν") by defining a "female" for purposes of the gender quota requirements as "an individual who self-identifies her gender as a woman, without regard to the individual's designated sex at birth". Cal. Corp. Code § 301.3(f)(1).

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