

No. 16-1989

**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

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**JOAQUÍN CARCAÑO, et al.,**

*Plaintiffs-Appellants,*

v.

**PATRICK McCRORY**, in his official capacity as  
Governor of North Carolina,

*Defendant-Appellee,*

and

**PHIL BERGER**, in his official capacity as President *pro tempore* of the North  
Carolina Senate, and **TIM MOORE**, in his official capacity as Speaker of the  
North Carolina House of Representatives,

*Intervenors/Defendants-Appellees.*

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On Appeal from the United States District Court  
for the Middle District of North Carolina  
No. 1:16-cv-00236-TDS-JEP

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**JOINT APPENDIX**

**VOLUME I**

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Exhibit F: Rebecca Tippett, Non-NC Native Population by County, UNC Carolina Population Center: Carolina Demography (Aug. 4, 2014), <http://demography.cpc.unc.edu/2014/08/04/non-nc-native-population-by-county> ..... JA764

Transcript of Preliminary Injunction Hearing (Aug. 1, 2016)..... JA767

Exhibits to Defendants’ and Intervenor-Defendants’ Supplemental Brief in Opposition to Motions for Preliminary Injunction and Request for Stay of Proceedings in Light of *G.G.*

    Order on Application to Recall and Stay, *Gloucester County School Board v. G.G. ex rel. Grimm*, No. 16A52 (U.S. Aug. 3, 2016)..... JA910

Memorandum Opinion, Order, and Preliminary Injunction ..... JA911

Notice of Appeal ..... JA994

Second Amended Complaint for Declaratory and Injunctive Relief and Nominal Damages ..... JA997

**U.S. District Court  
North Carolina Middle District (NCMD)  
CIVIL DOCKET FOR CASE #: 1:16-cv-00236-TDS-JEP**

CARCANO et al v. MCCRORY, et al  
Assigned to: JUDGE THOMAS D. SCHROEDER  
Referred to: MAG/JUDGE JOI ELIZABETH PEAKE  
Related Cases: [1:16-cv-00425-TDS-JEP](#)  
[1:16-cv-00844-TDS-JEP](#)  
[1:16-cv-00845-TDS-JEP](#)

Date Filed: 03/28/2016  
Jury Demand: None  
Nature of Suit: 950 Constitutional - State Statute  
Jurisdiction: Federal Question

Case in other court: Fourth Circuit, 16-01989  
Cause: 28:2201 Constitutionality of State Statute(s)

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 OFFICE OF THE TEXAS ATTORNEY  
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**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

Counter Defendant

**AMERICAN CIVIL LIBERTIES  
 UNION OF NORTH CAROLINA**

represented by **CHASE B. STRANGIO**  
 (See above for address)  
**ATTORNEY TO BE NOTICED**

**ELIZABETH O. GILL**  
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**ATTORNEY TO BE NOTICED**

**JAMES D. ESSEKS**  
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**ATTORNEY TO BE NOTICED**

**JON W. DAVIDSON**

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*ATTORNEY TO BE NOTICED*

**KYLE ANTHONY PALAZZOLO**  
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*ATTORNEY TO BE NOTICED*

**LUKE C PLATZER**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**PAUL M SMITH**  
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**PETER C. RENN**  
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**TARA L. BORELLI**  
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*ATTORNEY TO BE NOTICED*

**CHRIST OPIER A. BROOK**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Counter Defendant**

**JOAQUIN CARCANO**

represented by **CHASE B. STRANGIO**  
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**ELIZABETH O. GILL**  
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**JON W. DAVIDSON**  
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**KYLE ANTHONY PALAZZOLO**  
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**LUKE C PLATZER**  
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**PAUL M SMITH**  
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**PETER C. RENN**  
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**TARA L. BORELLI**  
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*ATTORNEY TO BE NOTICED*

**CHRIST OPHER A. BROOK**  
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**Counter Defendant**

**EQUALITY NORTH CAROLINA**

represented by **CHASE B. STRANGIO**  
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*ATTORNEY TO BE NOTICED*

**ELIZABETH O. GILL**  
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**KYLE ANTHONY PALAZZOLO**  
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*ATTORNEY TO BE NOTICED*

**PETER C. RENN**  
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**TARA L. BORELLI**  
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**CHRIST OPHER A. BROOK**  
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**Counter Defendant**

**ANGELA GILMORE**

represented by **CHASE B. STRANGIO**  
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**ELIZABETH O. GILL**  
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**JON W. DAVIDSON**  
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**KYLE ANTHONY PALAZZOLO**  
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*ATTORNEY TO BE NOTICED*

**LUKE C PLATZER**

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**PAUL M SMITH**  
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**PETER C. RENN**  
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**CHRIST OPHER A. BROOK**  
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**Counter Defendant**

H.S.  
*BY HER NEXT FRIEND AND MOTHER,*  
*KATHRYN SCHAFER*

represented by **JON W. DAVIDSON**  
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*ATTORNEY TO BE NOTICED*

**LUKE C PLATZER**  
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**PAUL M SMITH**  
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*ATTORNEY TO BE NOTICED*

**CHRIST OPHER A. BROOK**  
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**Counter Defendant**

**PAYTON GREY MCGARRY**

represented by **CHASE B. STRANGIO**  
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**ELIZABETH O. GILL**  
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**JON W. DAVIDSON**  
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**KYLE ANTHONY PALAZZOLO**  
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**LUKE C PLATZER**

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**PAUL M SMITH**  
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**PETER C. RENN**  
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**TARA L. BORELLI**  
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**CHRIST OPHER A. BROOK**  
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**Counter Defendant**

**BEVERLY NEWELL**

represented by **JON W. DAVIDSON**  
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**LUKE C PLATZER**  
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*ATTORNEY TO BE NOTICED*

**PAUL M SMITH**  
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**CHRIST OPHER A. BROOK**  
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*ATTORNEY TO BE NOTICED*

**Counter Defendant**

**KELLY TRENT**

represented by **JON W. DAVIDSON**  
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**LUKE C PLATZER**  
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**PAUL M SMITH**  
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**CHRIST OPHER A. BROOK**  
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*ATTORNEY TO BE NOTICED*

Date Filed	#	Docket Text
03/28/2016	<a href="#">1</a>	COMPLAINT <i>FOR DECLARATORY AND INJUNCTIVE RELIEF</i> against W. LOUIS BISSETTE, JR, BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, THE, ROY A. COOPER, III, PATRICK MCCRORY, UNIVERSITY OF NORTH CAROLINA ( Filing fee \$ 400 receipt number 0418-1882104.), filed by ANGELA GILMORE, PAYTON GREY MCGARRY, AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, EQUALITY NORTH CAROLINA. (Attachments: # <a href="#">1</a> Civil Cover Sheet)(BROOK, CHRISTOPHER) (Entered: 03/28/2016)
03/28/2016	<a href="#">2</a>	CORPORATE DISCLOSURE STATEMENT filed pursuant to FRCP 7.1(a) by Plaintiff AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA (BROOK, CHRISTOPHER) (Entered: 03/28/2016)
03/28/2016	<a href="#">3</a>	CORPORATE DISCLOSURE STATEMENT filed pursuant to FRCP 7.1(a) by Plaintiff EQUALITY NORTH CAROLINA (BROOK, CHRISTOPHER) (Entered: 03/28/2016)
03/31/2016	<a href="#">4</a>	NOTICE of Appearance by attorney TARA L. BORELLI on behalf of Plaintiffs AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, EQUALITY NORTH CAROLINA, ANGELA GILMORE, PAYTON GREY MCGARRY (BORELLI, TARA) (Entered: 03/31/2016)
04/01/2016	<a href="#">5</a>	NOTICE of Appearance by attorney ELIZABETH O. GILL on behalf of Plaintiffs AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, EQUALITY NORTH CAROLINA, ANGELA GILMORE, PAYTON GREY MCGARRY (GILL, ELIZABETH) (Entered: 04/01/2016)
04/01/2016	<a href="#">6</a>	NOTICE of Appearance by attorney PETER C. RENN on behalf of Plaintiffs AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, EQUALITY NORTH CAROLINA, ANGELA GILMORE, PAYTON GREY MCGARRY (RENN, PETER) (Entered: 04/01/2016)
04/04/2016	<a href="#">7</a>	NOTICE of Appearance by attorney KYLE ANTHONY PALAZZOLO on behalf of Plaintiffs AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, EQUALITY NORTH CAROLINA, ANGELA GILMORE, PAYTON GREY MCGARRY (PALAZZOLO, KYLE) (Entered: 04/04/2016)
04/05/2016	<a href="#">8</a>	NOTICE of Appearance by attorney CHASE B. STRANGIO on behalf of Plaintiffs AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, EQUALITY NORTH CAROLINA, ANGELA GILMORE, PAYTON GREY MCGARRY (STRANGIO, CHASE) (Entered: 04/05/2016)
04/21/2016	<a href="#">9</a>	AMENDED COMPLAINT against defendant W. LOUIS BISSETTE, JR, BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, PATRICK MCCRORY, UNIVERSITY OF NORTH CAROLINA, filed by ANGELA GILMORE, PAYTON GREY MCGARRY, AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, H.S., by her next friend and mother, KATHRYN SCHAFER, KELLY TRENT, BEVERLY NEWELL.(BROOK, CHRISTOPHER) (Entered: 04/21/2016)
04/21/2016	<a href="#">10</a>	NOTICE of Appearance by attorney PAUL M SMITH on behalf of Plaintiffs AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, ANGELA GILMORE, H.S., by her next friend and mother, KATHRYN SCHAFER, PAYTON GREY MCGARRY, BEVERLY NEWELL, KELLY TRENT (SMITH, PAUL) (Entered: 04/21/2016)
04/21/2016	<a href="#">11</a>	NOTICE of Appearance by attorney LUKE C PLATZER on behalf of Plaintiffs

		AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, ANGELA GILMORE, H.S., by her next friend and mother, KATHRYN SCHAFER, PAYTON GREY MCGARRY, BEVERLY NEWELL, KELLY TRENT (PLATZER, LUKE) (Entered: 04/21/2016)
05/04/2016	<a href="#">12</a>	Summons Issued as to W. LOUIS BISSETTE, JR, BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, PATRICK MCCRORY, UNIVERSITY OF NORTH CAROLINA. (Attachments: # <a href="#">1</a> McCrory, # <a href="#">2</a> BOG, # <a href="#">3</a> Bisette)(Coyne, Michelle) (Entered: 05/04/2016)
05/04/2016	<a href="#">13</a>	Notice of Right to Consent. Counsel shall serve the attached form on all parties. (Attachments: # <a href="#">1</a> Consent Form)(Coyne, Michelle) (Entered: 05/04/2016)
05/09/2016	<a href="#">14</a>	WAIVER OF SERVICE of SUMMONS by BEVERLY NEWELL, H.S., ANGELA GILMORE, PAYTON GREY MCGARRY, AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, KELLY TRENT. PATRICK MCCRORY waiver sent on 4/21/2016, answer due 6/20/2016. (BROOK, CHRISTOPHER) (Entered: 05/09/2016)
05/09/2016	<a href="#">15</a>	WAIVER OF SERVICE of SUMMONS by BEVERLY NEWELL, H.S., ANGELA GILMORE, PAYTON GREY MCGARRY, AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, KELLY TRENT. UNIVERSITY OF NORTH CAROLINA waiver sent on 4/21/2016, answer due 6/20/2016. (BROOK, CHRISTOPHER) (Entered: 05/09/2016)
05/09/2016	<a href="#">16</a>	WAIVER OF SERVICE of SUMMONS by BEVERLY NEWELL, H.S., ANGELA GILMORE, PAYTON GREY MCGARRY, AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, KELLY TRENT. W. LOUIS BISSETTE, JR waiver sent on 4/21/2016, answer due 6/20/2016. (BROOK, CHRISTOPHER) (Entered: 05/09/2016)
05/09/2016	<a href="#">17</a>	WAIVER OF SERVICE of SUMMONS by BEVERLY NEWELL, H.S., ANGELA GILMORE, PAYTON GREY MCGARRY, AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, KELLY TRENT. BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA waiver sent on 4/21/2016, answer due 6/20/2016. (BROOK, CHRISTOPHER) (Entered: 05/09/2016)
05/13/2016	<a href="#">19</a>	NOTICE of Appearance by attorney JON W. DAVIDSON on behalf of Plaintiffs AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, ANGELA GILMORE, H.S., PAYTON GREY MCGARRY, BEVERLY NEWELL, KELLY TRENT Associated Cases: 1:16-cv-00236-TDS-JEP, 1:16-cv-00425-TDS-JEP(DAVIDSON, JON) (Entered: 05/13/2016)
05/16/2016	<a href="#">20</a>	MOTION to Exceed Page Limit <i>in Support of Their Motion for Preliminary Injunction</i> by AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, H.S., PAYTON GREY MCGARRY. Responses due by 6/9/2016 (Attachments: # <a href="#">1</a> Proposed Order)(BROOK, CHRISTOPHER) (Entered: 05/16/2016)
05/16/2016	<a href="#">21</a>	MOTION for Preliminary Injunction by AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, H.S., PAYTON GREY MCGARRY. Responses due by 6/9/2016 (BROOK, CHRISTOPHER) (Entered: 05/16/2016)
05/16/2016	<a href="#">22</a>	MEMORANDUM filed by Plaintiffs AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, H.S., PAYTON GREY MCGARRY re <a href="#">21</a> MOTION for Preliminary Injunction filed by AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, H.S., PAYTON GREY MCGARRY. (Attachments: # <a href="#">1</a> Expert Declaration of Deanna Adkins, M.D., # <a href="#">2</a> Exhibit A, # <a href="#">3</a> Exhibit B, # <a href="#">4</a> Declaration of Joaquin Carcao, # <a href="#">5</a> Expert Declaration of Randi Ettner,

		Ph.D, # <a href="#">6</a> Exhibit A, # <a href="#">7</a> Exhibit B, # <a href="#">8</a> Declaration of H.S., # <a href="#">9</a> Declaration of Payton Grey McGarry, # <a href="#">10</a> Expert Declaration of Assistant Chief of University Police Aran C. Mull in Support of Plaintiffs' Motion for Preliminary Injunction, # <a href="#">11</a> Exhibit A, # <a href="#">12</a> Exhibit B, # <a href="#">13</a> Exhibit C, # <a href="#">14</a> Exhibit D, # <a href="#">15</a> Declaration of Sarah Preston, # <a href="#">16</a> Expert Declaration of Jonathan Routh, M.D., # <a href="#">17</a> Exhibit A, # <a href="#">18</a> Exhibit B, # <a href="#">19</a> Declaration of Monica Walker)(BROOK, CHRISTOPHER) (Entered: 05/16/2016)
05/16/2016	<a href="#">23</a>	DECLARATION filed by Plaintiffs AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, H.S., PAYTON GREY MCGARRY re <a href="#">22</a> Memorandum,,, / <i>Declaration of Luke C. Platzer</i> filed by AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, H.S., PAYTON GREY MCGARRY. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C, # <a href="#">4</a> Exhibit D, # <a href="#">5</a> Exhibit E, # <a href="#">6</a> Exhibit F, # <a href="#">7</a> Exhibit G, # <a href="#">8</a> Exhibit H, # <a href="#">9</a> Exhibit I, # <a href="#">10</a> Exhibit J, # <a href="#">11</a> Exhibit K, # <a href="#">12</a> Exhibit L, # <a href="#">13</a> Exhibit M, # <a href="#">14</a> Exhibit N, # <a href="#">15</a> Exhibit O, # <a href="#">16</a> Exhibit P, # <a href="#">17</a> Exhibit Q, # <a href="#">18</a> Exhibit R, # <a href="#">19</a> Exhibit S, # <a href="#">20</a> Exhibit T, # <a href="#">21</a> Exhibit U, # <a href="#">22</a> Exhibit V, # <a href="#">23</a> Exhibit W, # <a href="#">24</a> Exhibit X, # <a href="#">25</a> Exhibit Y, # <a href="#">26</a> Exhibit Z, # <a href="#">27</a> Exhibit AA, # <a href="#">28</a> Exhibit AB, # <a href="#">29</a> Exhibit AC, # <a href="#">30</a> Exhibit AD, # <a href="#">31</a> Exhibit AE, # <a href="#">32</a> Exhibit AF, # <a href="#">33</a> Exhibit AG, # <a href="#">34</a> Exhibit AH, # <a href="#">35</a> Exhibit AI, # <a href="#">36</a> Exhibit AJ, # <a href="#">37</a> Exhibit AK, # <a href="#">38</a> Exhibit AL, # <a href="#">39</a> Exhibit AM, # <a href="#">40</a> Exhibit AN, # <a href="#">41</a> Exhibit AO, # <a href="#">42</a> Exhibit AP, # <a href="#">43</a> Exhibit AQ, # <a href="#">44</a> Exhibit AR)(BROOK, CHRISTOPHER) (Entered: 05/16/2016)
05/16/2016	<a href="#">24</a>	NOTICE of Appearance by attorney KARL S. BOWERS, JR on behalf of Defendant PATRICK MCCRORY (BOWERS, KARL) (Entered: 05/16/2016)
05/17/2016	<a href="#">25</a>	NOTICE of Appearance by attorney WILLIAM WOODLEY STEWART, JR on behalf of Defendant PATRICK MCCRORY (STEWART, WILLIAM) (Entered: 05/17/2016)
05/17/2016	<a href="#">26</a>	NOTICE of Appearance by attorney FRANK J. GORDON on behalf of Defendant PATRICK MCCRORY (GORDON, FRANK) (Entered: 05/17/2016)
05/17/2016	<a href="#">27</a>	Additional Attachments to Main Document re <a href="#">21</a> MOTION for Preliminary Injunction / <i>Proposed Order Granting Plaintiffs' Motion for Preliminary Injunction</i> . (BROOK, CHRISTOPHER) (Entered: 05/17/2016)
05/17/2016	<a href="#">28</a>	NOTICE of Appearance by attorney BRENNAN TYLER BROOKS on behalf of Defendant PATRICK MCCRORY (BROOKS, BRENNAN) (Entered: 05/17/2016)
05/17/2016	<a href="#">29</a>	NOTICE of Appearance by attorney THOMAS J. ZIKO on behalf of Defendants W. LOUIS BISSETTE, JR, BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, UNIVERSITY OF NORTH CAROLINA (ZIKO, THOMAS) (Entered: 05/17/2016)
05/18/2016	<a href="#">30</a>	Amended MOTION to Exceed Page Limit / <i>Plaintiffs' Amended, Unopposed Motion for Leave to File Excess Pages in Support of Their Motion for Preliminary Injunction</i> by AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, H.S., PAYTON GREY MCGARRY. (Attachments: # <a href="#">1</a> Proposed Order) (BROOK, CHRISTOPHER) (Entered: 05/18/2016)
05/18/2016		Motion Submitted to JUDGE THOMAS D. SCHROEDER: <a href="#">30</a> Plaintiffs' Amended, Unopposed Motion for Leave to File Excess Pages in Support of Their Motion for Preliminary Injunction. (Engle, Anita) (Entered: 05/18/2016)
05/19/2016	<a href="#">31</a>	ORDER signed by JUDGE THOMAS D. SCHROEDER on 05/19/2016; that Plaintiffs' unopposed motion for leave to submit their memorandum of law in support of their Motion for Preliminary Injunction which exceeds the court's local rule page limits is hereby GRANTED. The Clerk is directed to accept as filed the Memorandum of Law in

		Support of Plaintiffs Motion for Preliminary Injunction. (Garland, Leah) (Entered: 05/19/2016)
05/20/2016	<a href="#">32</a>	NOTICE of Appearance by attorney CAROLYN C. PRATT on behalf of Defendants W. LOUIS BISSETTE, JR, BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, UNIVERSITY OF NORTH CAROLINA (PRATT, CAROLYN) (Entered: 05/20/2016)
05/25/2016	<a href="#">33</a>	MOTION to Intervene by Philip Berger, Tim Moore. Responses due by 6/20/2016 (Attachments: # <a href="#">1</a> Text of Proposed Order)(DUNCAN, STUART) (Entered: 05/25/2016)
05/25/2016	<a href="#">34</a>	MEMORANDUM filed by Intervenor Defendants Philip Berger, Tim Moore re <a href="#">33</a> MOTION to Intervene filed by Philip Berger, Tim Moore. (Attachments: # <a href="#">1</a> Exhibit, # <a href="#">2</a> Exhibit, # <a href="#">3</a> Exhibit)(DUNCAN, STUART) (Entered: 05/25/2016)
05/25/2016	<a href="#">35</a>	NOTICE of Appearance by attorney STUART K. DUNCAN on behalf of Intervenor Defendants Philip Berger, Tim Moore (DUNCAN, STUART) (Entered: 05/25/2016)
05/25/2016	<a href="#">36</a>	<i>Proposed Answer and Counterclaims</i> BRIEF re <a href="#">33</a> MOTION to Intervene by Intervenor Defendants Philip Berger, Tim Moore filed by Philip Berger, Tim Moore. (DUNCAN, STUART) (Entered: 05/25/2016)
05/25/2016	<a href="#">37</a>	NOTICE of Appearance by attorney ROBERT D. POTTER, JR on behalf of Intervenor Defendants Philip Berger, Tim Moore (POTTER, ROBERT) (Entered: 05/25/2016)
05/27/2016		Motions Submitted to JUDGE THOMAS D. SCHROEDER: <a href="#">33</a> MOTION to Intervene. (Engle, Anita) (Entered: 05/27/2016)
05/27/2016		<a href="#">33</a> Motion to Intervene No Longer Submitted to JUDGE THOMAS D. SCHROEDER. Awaiting Response from Plaintiffs' Counsel. (Engle, Anita) (Entered: 05/27/2016)
05/27/2016	<a href="#">38</a>	MOTION to Stay <i>Proceedings Against UNC Defendants</i> by W. LOUIS BISSETTE, JR, BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, UNIVERSITY OF NORTH CAROLINA. Responses due by 6/20/2016 (Attachments: # <a href="#">1</a> Affidavit Declaration of President Margaret Spellings, # <a href="#">2</a> Exhibit Exhibit 1 to Spellings Declaration, # <a href="#">3</a> Exhibit Exhibit 2 to Spellings Declaration, # <a href="#">4</a> Exhibit Exhibit 3 to Spellings Declaration, # <a href="#">5</a> Exhibit Exhibit 4 to Spellings Declaration, # <a href="#">6</a> Exhibit Exhibit 5 to Spellings Declaration)(PRATT, CAROLYN) (Entered: 05/27/2016)
05/27/2016	<a href="#">39</a>	MEMORANDUM filed by Defendants W. LOUIS BISSETTE, JR, BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, UNIVERSITY OF NORTH CAROLINA re <a href="#">38</a> MOTION to Stay <i>Proceedings Against UNC Defendants</i> filed by W. LOUIS BISSETTE, JR, BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, UNIVERSITY OF NORTH CAROLINA. (PRATT, CAROLYN) (Entered: 05/27/2016)
05/27/2016	<a href="#">40</a>	MOTION for Extension of Time to File <i>Answer and Response to Plaintiffs' Motion for Preliminary Injunction</i> by W. LOUIS BISSETTE, JR, BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, UNIVERSITY OF NORTH CAROLINA. (PRATT, CAROLYN) (Entered: 05/27/2016)
05/31/2016	<a href="#">41</a>	RESPONSE filed by Plaintiffs AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, ANGELA GILMORE, H.S., PAYTON GREY MCGARRY, BEVERLY NEWELL, KELLY TRENT re <a href="#">33</a> MOTION to Intervene filed by Philip Berger, Tim Moore filed by AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, ANGELA GILMORE, H.S., PAYTON GREY MCGARRY, BEVERLY NEWELL, KELLY TRENT. Replies due by 6/17/2016. (Attachments: # <a href="#">1</a> Proposed Order)(BROOK, CHRISTOPHER) (Entered: 05/31/2016)

06/01/2016	<a href="#">42</a>	RESPONSE filed by Plaintiffs AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, ANGELA GILMORE, H.S., PAYTON GREY MCGARRY, BEVERLY NEWELL, KELLY TRENT re <a href="#">40</a> MOTION for Extension of Time to File Answer and Response to Plaintiffs' Motion for Preliminary Injunction filed by UNIVERSITY OF NORTH CAROLINA, BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, W. LOUIS BISSETTE, JR. filed by AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, ANGELA GILMORE, H.S., PAYTON GREY MCGARRY, BEVERLY NEWELL, KELLY TRENT. Replies due by 6/20/2016. (Attachments: # <a href="#">1</a> Proposed Order)(BROOK, CHRISTOPHER) (Entered: 06/01/2016)
06/02/2016		Motion Submitted to JUDGE THOMAS D. SCHROEDER: <a href="#">40</a> MOTION for Extension of Time to File Answer and Response to Plaintiffs' Motion for Preliminary Injunction. (Engle, Anita) (Entered: 06/02/2016)
06/03/2016	<a href="#">43</a>	REPLY, filed by Intervenor Defendants Philip Berger, Tim Moore, to Response to <a href="#">33</a> MOTION to Intervene filed by Philip Berger, Tim Moore. (Attachments: # <a href="#">1</a> Exhibit) (DUNCAN, STUART) (Entered: 06/03/2016)
06/05/2016		Motion Submitted to JUDGE THOMAS D. SCHROEDER: <a href="#">33</a> MOTION to Intervene. (Engle, Anita) (Entered: 06/05/2016)
06/06/2016	<a href="#">44</a>	MEMORANDUM ORDER signed by JUDGE THOMAS D. SCHROEDER on 06/06/2016; that the proposed intervenors' motion to intervene (Doc. <a href="#">33</a> ) is GRANTED. (Garland, Leah) (Entered: 06/06/2016)
06/06/2016	<a href="#">45</a>	ORDER signed by JUDGE THOMAS D. SCHROEDER on 6/6/2016. For the reasons stated herein, UNC Defendants' Motion for Extension of Time (Doc. 40) is GRANTED <b>IN PART and DENIED IN PART</b> . UNC Defendants' response to amended complaint (Doc. 9) shall be due thirty days after the court issues a ruling on motion to stay (Doc. 38). UNC Defendants' response to Plaintiffs' motion for preliminary injunction (Doc. 21) remains due June 9, 2016.(Engle, Anita) (Entered: 06/06/2016)
06/07/2016	<a href="#">46</a>	NOTICE of Appearance by attorney NOEL J. FRANCISCO on behalf of Defendants W. LOUIS BISSETTE, JR, BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, UNIVERSITY OF NORTH CAROLINA (FRANCISCO, NOEL) (Entered: 06/07/2016)
06/07/2016	<a href="#">47</a>	NOTICE of Appearance by attorney GLEN D. NAGER on behalf of Defendants W. LOUIS BISSETTE, JR, BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, UNIVERSITY OF NORTH CAROLINA (NAGER, GLEN) (Entered: 06/07/2016)
06/07/2016	<a href="#">48</a>	NOTICE of Appearance by attorney JAMES M. BURNHAM on behalf of Defendants W. LOUIS BISSETTE, JR, BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, UNIVERSITY OF NORTH CAROLINA (BURNHAM, JAMES) (Entered: 06/07/2016)
06/09/2016	<a href="#">49</a>	MOTION for Leave to File Excess Pages by W. LOUIS BISSETTE, JR, BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, UNIVERSITY OF NORTH CAROLINA. (Attachments: # <a href="#">1</a> Text of Proposed Order Proposed Order) (FRANCISCO, NOEL) (Entered: 06/09/2016)
06/09/2016	<a href="#">50</a>	RESPONSE in Opposition re <a href="#">21</a> MOTION for Preliminary Injunction filed by W. LOUIS BISSETTE, JR, BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, UNIVERSITY OF NORTH CAROLINA. Replies due by 6/27/2016. (Attachments: # <a href="#">1</a> Affidavit Declaration of Noel Francisco, # <a href="#">2</a> Exhibit Spellings April 11

		Statement, # <a href="#">3</a> Exhibit Shanahan April 13 Letter, # <a href="#">4</a> Exhibit Spellings May 9 Letter) (FRANCISCO, NOEL) (Entered: 06/09/2016)
06/09/2016	<a href="#">51</a>	ANSWER to Amended Complaint by PATRICK MCCRORY. (STEWART, WILLIAM) (Entered: 06/09/2016)
06/09/2016	<a href="#">52</a>	MOTION for Discovery <i>To More Fully Respond</i> ( Responses due by 7/5/2016), MOTION for Extension of Time to File Response/Reply as to <a href="#">21</a> MOTION for Preliminary Injunction () by PATRICK MCCRORY. (STEWART, WILLIAM) (Entered: 06/09/2016)
06/09/2016	<a href="#">53</a>	MEMORANDUM filed by Defendant PATRICK MCCRORY re <a href="#">52</a> MOTION for Discovery <i>To More Fully Respond</i> MOTION for Extension of Time to File Response/Reply as to <a href="#">21</a> MOTION for Preliminary Injunction filed by PATRICK MCCRORY. (Attachments: # <a href="#">1</a> Supplement Unpublished Opinion - Sabal Trail, # <a href="#">2</a> Supplement Unpublished Opinion - ForceX Inc., # <a href="#">3</a> Supplement Unpublished Opinion - Lab Corp)(STEWART, WILLIAM) (Entered: 06/09/2016)
06/09/2016	<a href="#">54</a>	ANSWER to Amended Complaint , Counterclaim against by Philip Berger, Tim Moore. (DUNCAN, STUART) (Entered: 06/09/2016)
06/09/2016	<a href="#">55</a>	RESPONSE in Opposition re <a href="#">21</a> MOTION for Preliminary Injunction filed by PATRICK MCCRORY. Replies due by 6/27/2016. (Attachments: # <a href="#">1</a> Exhibit A - King 5 News Article, # <a href="#">2</a> Exhibit B - NBC 4 Washington Article, # <a href="#">3</a> Exhibit C - CNN Article, # <a href="#">4</a> Exhibit D - Slate Article, # <a href="#">5</a> Exhibit E - ABC News Article, # <a href="#">6</a> Exhibit F - WSJ Article, # <a href="#">7</a> Supplement Unpublished Opinion - State v. Rhodes, # <a href="#">8</a> Supplement Unpublished Opinion - Flick v. Aurora, # <a href="#">9</a> Supplement Unpublished Opinion - Grimm v. Gloucester) (STEWART, WILLIAM) (Entered: 06/09/2016)
06/09/2016	<a href="#">56</a>	NOTICE of Appearance by attorney ROBERT C. STEPHENS on behalf of Defendant PATRICK MCCRORY (STEPHENS, ROBERT) (Entered: 06/09/2016)
06/09/2016	<a href="#">57</a>	Consent MOTION for Leave to File Excess Pages by Philip Berger, Tim Moore. (Attachments: # <a href="#">1</a> Text of Proposed Order)(DUNCAN, STUART) (Entered: 06/09/2016)
06/09/2016	<a href="#">58</a>	<b>**FILED IN ERROR**</b> Consent MOTION for Leave to File Excess Pages by Philip Berger, Tim Moore. (Attachments: # <a href="#">1</a> Text of Proposed Order)(DUNCAN, STUART) Modified on 6/10/2016 (Engle, Anita). (Entered: 06/09/2016)
06/09/2016	<a href="#">59</a>	<b>**FILED IN ERROR**</b> Consent MOTION for Leave to File Excess Pages by Philip Berger, Tim Moore. (Attachments: # <a href="#">1</a> Text of Proposed Order)(DUNCAN, STUART) Modified on 6/10/2016 (Engle, Anita). (Entered: 06/09/2016)
06/09/2016	<a href="#">60</a>	<b>**FILED IN ERROR**</b> Consent MOTION for Leave to File Excess Pages by Philip Berger, Tim Moore. (Attachments: # <a href="#">1</a> Text of Proposed Order)(DUNCAN, STUART) Modified on 6/10/2016 (Engle, Anita). (Entered: 06/09/2016)
06/09/2016	<a href="#">61</a>	RESPONSE in Opposition re <a href="#">22</a> Memorandum,, <a href="#">21</a> MOTION for Preliminary Injunction , <a href="#">57</a> Consent MOTION for Leave to File Excess Pages filed by Philip Berger, Tim Moore. Replies due by 6/27/2016. (DUNCAN, STUART) (Entered: 06/09/2016)
06/10/2016		Motions Submitted to JUDGE THOMAS D. SCHROEDER: <a href="#">49</a> MOTION for Leave to File Excess Pages , and <a href="#">57</a> Consent MOTION for Leave to File Excess Pages. (Engle, Anita) (Entered: 06/10/2016)
06/13/2016	<a href="#">62</a>	ORDER Signed by JUDGE THOMAS D. SCHROEDER on 6/13/2016 granting <a href="#">49</a> Motion for Leave to File Excess Pages. (Engle, Anita) (Entered: 06/13/2016)
06/13/2016	<a href="#">63</a>	ORDER signed by JUDGE THOMAS D. SCHROEDER on 6/13/2016 granting <a href="#">57</a>

		Motion for Leave to File Excess Pages. (Engle, Anita) (Entered: 06/13/2016)
06/14/2016	<a href="#">64</a>	NOTICE of Appearance by attorney GENE C. SCHAERR on behalf of Intervenor Defendants PHILLIP BERGER, TIM MOORE (SCHAERR, GENE) (Entered: 06/14/2016)
06/15/2016	<a href="#">65</a>	NOTICE of Appearance by attorney ROBERT N. DRISCOLL on behalf of Defendant PATRICK MCCRORY (DRISCOLL, ROBERT) (Entered: 06/15/2016)
06/17/2016	<a href="#">66</a>	<p>Transcript of telephone conference/motion hearing held on 6/16/2016, before Judge Thomas D. Schroeder. Court Reporter Briana L. Nesbit, Telephone number 336-734-2514. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.</p> <p><b>NOTICE RE: REDACTION OF TRANSCRIPTS: The parties have 5 business days to file a Notice of Intent to Request Redaction and 21 calendar days to file a Redaction Request. If no notice is filed, this transcript will be made electronically available to the public without redaction after 90 calendar days. Transcript may be viewed at the court public terminal or purchased through the court reporter before the 90 day deadline. After that date it may be obtained through PACER.</b></p> <p>Redaction Request due 7/11/2016. Redacted Transcript Deadline set for 7/21/2016. Release of Transcript Restriction set for 9/19/2016. Associated Cases: 1:16-cv-00425-TDS-JEP, 1:16-cv-00236-TDS-JEP(Nesbit, Briana) (Entered: 06/17/2016)</p>
06/20/2016	<a href="#">67</a>	<p>RESPONSE in Opposition re <a href="#">38</a> MOTION to Stay <i>Proceedings Against UNC Defendants</i> filed by AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, H.S., PAYTON GREY MCGARRY. Replies due by 7/8/2016.</p> <p>(Attachments: # <a href="#">1</a> Declaration of Paul M. Smith, # <a href="#">2</a> Exhibit A, # <a href="#">3</a> Exhibit B, # <a href="#">4</a> Exhibit C, # <a href="#">5</a> Exhibit D, # <a href="#">6</a> Exhibit E, # <a href="#">7</a> Exhibit F, # <a href="#">8</a> Exhibit G, # <a href="#">9</a> Exhibit H, # <a href="#">10</a> Declaration of Payton G. McGarry, # <a href="#">11</a> Exhibit A, # <a href="#">12</a> Proposed Order)(BROOK, CHRISTOPHER) (Entered: 06/20/2016)</p>
06/24/2016	<a href="#">68</a>	NOTICE of Appearance by attorney MARK R. SIGMON on behalf of Amicus Proposed Amici Curiae School Administrators (SIGMON, MARK) (Entered: 06/24/2016)
06/24/2016	<a href="#">69</a>	NOTICE of Appearance by attorney CYNTHIA C. ROBERTSON on behalf of Amicus Proposed Amici Curiae School Administrators (ROBERTSON, CYNTHIA) (Entered: 06/24/2016)
06/24/2016	<a href="#">70</a>	MOTION for Leave to File <i>Amicus Brief</i> by Proposed Amici Curiae School Administrators. (Attachments: # <a href="#">1</a> Text of Proposed Order Proposed Order Granting Motion for Leave to File Amicus Brief)(SIGMON, MARK) (Entered: 06/24/2016)
06/24/2016	<a href="#">71</a>	Proposed BRIEF by Amicus Proposed Amici Curiae School Administrators filed by Proposed Amici Curiae School Administrators. (SIGMON, MARK) (Entered: 06/24/2016)
06/27/2016	<a href="#">72</a>	MOTION to Exceed Page Limit / <i>Plaintiffs' Unopposed Motion For Leave to File a Reply Memorandum In Support of Their Motion for Preliminary Injunction In Excess of 10 Pages</i> by AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, H.S., PAYTON GREY MCGARRY. (Attachments: # <a href="#">1</a> Proposed Order)(BROOK, CHRISTOPHER) (Entered: 06/27/2016)
06/27/2016	<a href="#">73</a>	MEMORANDUM filed by Plaintiffs AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, H.S., PAYTON GREY MCGARRY re <a href="#">21</a> MOTION for Preliminary Injunction / <i>Plaintiffs' Reply Memorandum In Support of Their</i>

		<i>Motion For Preliminary Injunction</i> filed by AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, H.S., PAYTON GREY MCGARRY. (Attachments: # <a href="#">1</a> Declaration of Payton G. McGarry, # <a href="#">2</a> Declaration of Luke C. Platzer, # <a href="#">3</a> Exhibit A, # <a href="#">4</a> Exhibit B, # <a href="#">5</a> Exhibit C, # <a href="#">6</a> Exhibit D, # <a href="#">7</a> Exhibit E, # <a href="#">8</a> Exhibit F) (BROOK, CHRISTOPHER) (Entered: 06/27/2016)
06/28/2016		Motions Submitted to JUDGE THOMAS D. SCHROEDER: <a href="#">21</a> MOTION for Preliminary Injunction, and <a href="#">72</a> MOTION to Exceed Page Limit / <i>Plaintiffs' Unopposed Motion For Leave to File a Reply Memorandum In Support of Their Motion for Preliminary Injunction In Excess of 10 Pages.</i> (Engle, Anita) (Entered: 06/28/2016)
06/28/2016	<a href="#">76</a>	NOTICE of Appearance by attorney SCOTT B. WILKENS on behalf of Plaintiffs AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, ANGELA GILMORE, H.S., PAYTON GREY MCGARRY, BEVERLY NEWELL, KELLY TRENT (WILKENS, SCOTT) (Entered: 06/28/2016)
06/30/2016		Telephone Conference set for 7/1/2016 at 11:00 AM before JUDGE THOMAS D. SCHROEDER. Associated Cases: 1:16cv236, 1:16cv425(Engle, Anita) (Entered: 06/30/2016)
06/30/2016	<a href="#">77</a>	MOTION for Leave to File Surreply in Opposition to Motion for Preliminary Injunction by W. LOUIS BISSETTE, JR, BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, UNIVERSITY OF NORTH CAROLINA. Responses due by 7/25/2016 (Attachments: # <a href="#">1</a> Proposed Surreply Brief)(FRANCISCO, NOEL) (Entered: 06/30/2016)
06/30/2016	<a href="#">78</a>	RESPONSE in Opposition re <a href="#">52</a> MOTION for Discovery To More Fully Respond MOTION for Extension of Time to File Response/Reply as to <a href="#">21</a> MOTION for Preliminary Injunction filed by AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, H.S., PAYTON GREY MCGARRY. Replies due by 7/18/2016. (Attachments: # <a href="#">1</a> Proposed Order)(BROOK, CHRISTOPHER) (Entered: 06/30/2016)
07/01/2016	<a href="#">79</a>	RESPONSE filed by Defendants W. LOUIS BISSETTE, JR, BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, UNIVERSITY OF NORTH CAROLINA re <a href="#">52</a> MOTION for Discovery To More Fully Respond MOTION for Extension of Time to File Response/Reply as to <a href="#">21</a> MOTION for Preliminary Injunction filed by PATRICK MCCRORY filed by W. LOUIS BISSETTE, JR, BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, UNIVERSITY OF NORTH CAROLINA. Replies due by 7/18/2016. (FRANCISCO, NOEL) (Entered: 07/01/2016)
07/01/2016		Minute Entry for proceedings held before JUDGE THOMAS D. SCHROEDER: Telephone Conference held on 7/1/2016. Attorneys Christopher Brook and Jon Davidson present for Plaintiff Carcano, et al. and Attorney Corey Stoughton present for the United States. Attorney Noel Francisco present for UNC Defendants, Attorney Butch Bowers present for Defendants State of North Carolina, Governor McCrory and North Carolina Dept. of Public Safety, Attorney Kyle Duncan present for Legislative Intervenors Berger and Moore, Attorney Cynthia Robertson present for Proposed Amici School Administrators, Attorney James Campbell present for Proposed Intervenor North Carolinians for Privacy and Proposed Pro se Intervenor Steven-Glenn: Johnson present. (Court Reporter Briana Nesbit.) Associated Cases: 1:16cv236, 1:16cv425(Engle, Anita) (Entered: 07/01/2016)
07/01/2016		TEXT ORDER signed by JUDGE THOMAS D. SCHROEDER on 7/1/2016, GRANTING Plaintiffs' Unopposed Motion for Leave to File a Reply Memorandum in Support of Their Motion For Preliminary Injunction in Excess of 10 Pages. (Doc. 72) The

		Clerk is directed to accept as filed Plaintiffs' Reply Memorandum in Support of Their Motion for Preliminary Injunction. (Doc. 73)(Engle, Anita) (Entered: 07/01/2016)
07/01/2016		Motion Submitted to JUDGE THOMAS D. SCHROEDER: <a href="#">77</a> MOTION for Leave to File Surreply in Opposition to Motion for Preliminary Injunction. (Engle, Anita) (Entered: 07/01/2016)
07/05/2016	<a href="#">80</a>	ORDER signed by JUDGE THOMAS D. SCHROEDER on 07/05/2016; that UNC Defendants' motion for leave to file a surreply in opposition to Plaintiffs' Motion for Preliminary Injunction is hereby GRANTED. UNC Defendants are directed to file their Surreply forthwith. (Garland, Leah) (Entered: 07/05/2016)
07/05/2016	<a href="#">81</a>	SURREPLY filed by Defendants W. LOUIS BISSETTE, JR, BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, UNIVERSITY OF NORTH CAROLINA re <a href="#">21</a> MOTION for Preliminary Injunction filed by W. LOUIS BISSETTE, JR, BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, UNIVERSITY OF NORTH CAROLINA. (FRANCISCO, NOEL) (Entered: 07/05/2016)
07/05/2016	<a href="#">82</a>	MOTION to Strike Or, <i>In The Alternative, To Dismiss Defendants-Intervenors'</i> Counterclaims by AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, ANGELA GILMORE, H.S., PAYTON GREY MCGARRY, BEVERLY NEWELL, KELLY TRENT. Responses due by 7/29/2016 (Attachments: # <a href="#">1</a> Proposed Order, # <a href="#">2</a> Memorandum of Law)(BROOK, CHRISTOPHER) (Entered: 07/05/2016)
07/06/2016	<a href="#">83</a>	MEMORANDUM filed by Plaintiffs AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, ANGELA GILMORE, H.S., PAYTON GREY MCGARRY, BEVERLY NEWELL, KELLY TRENT re <a href="#">82</a> MOTION to Strike Or, <i>In The Alternative, To Dismiss Defendants-Intervenors'</i> Counterclaims filed by AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, ANGELA GILMORE, H.S., PAYTON GREY MCGARRY, BEVERLY NEWELL, KELLY TRENT. (BROOK, CHRISTOPHER) (Entered: 07/06/2016)
07/08/2016	<a href="#">84</a>	REPLY, filed by Defendants W. LOUIS BISSETTE, JR, BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, UNIVERSITY OF NORTH CAROLINA, to Response to <a href="#">38</a> MOTION to Stay <i>Proceedings Against UNC Defendants</i> filed by W. LOUIS BISSETTE, JR, BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, UNIVERSITY OF NORTH CAROLINA. (FRANCISCO, NOEL) (Entered: 07/08/2016)
07/11/2016		Motion Submitted to JUDGE THOMAS D. SCHROEDER: <a href="#">38</a> MOTION to Stay <i>Proceedings Against UNC Defendants</i> . (Engle, Anita) (Entered: 07/11/2016)
07/12/2016		Telephone Conference set for 7/13/2016 at 1:00 PM before JUDGE THOMAS D. SCHROEDER. Associated Cases: 1:16cv236, 1:16cv425, 1:16cv844, 1:16cv845(Engle, Anita) (Entered: 07/12/2016)
07/13/2016		Minute Entry for proceedings held before JUDGE THOMAS D. SCHROEDER: Telephone Conference held on 7/13/2016. Participating in the call: Attorney Smith for Carcaño Plaintiffs, Attorney Stoughton for Plaintiff United States, Attorney Campbell for Plaintiff/Proposed Intervenor North Carolinians for Privacy, Attorney Duncan for Legislative Plaintiffs/Intervenors, Attorney Berwick for Defendant United States, Attorney Bowers for State Defendants, Attorney Francisco for UNC Defendants, Attorney Boizelle for Amici 68 Companies, Attorney Sigmon for Proposed Amici School Administrators, and Proposed Pro se Intervenor Steven-Glenn: Johnson. Written Order

		forthcoming. (Court Reporter Briana Nesbit.) Associated Cases: 1:16cv236, 1:16cv425, 1:16cv844, 1:16cv845 (Engle, Anita) (Entered: 07/13/2016)
07/14/2016	<a href="#">85</a>	ORDER GRANTING LEAVE TO FILE <i>AMICI CURIAE</i> BRIEF signed by JUDGE THOMAS D. SCHROEDER on 07/14/2016; that the motion is GRANTED and amici shall file their brief in a new docket entry not designating the brief as "Proposed." (Garland, Leah) (Entered: 07/14/2016)
07/14/2016	<a href="#">86</a>	ORDER signed by JUDGE THOMAS D. SCHROEDER on 07/14/2016; Parties in case 1:16CV236 shall appear on Monday, August 1, at 10:00 a.m. in Courtroom 1 of the Hiram H. Ward Federal Building, Winston-Salem, North Carolina, for a hearing on the Carcano Plaintiffs' motion for preliminary injunction (Doc. <a href="#">21</a> in 1:16CV236) and UNC defendants' motion to stay proceedings (Doc. <a href="#">38</a> in 1:16CV236). Counsel for United States may participate in the hearing as set out. Trial on merits, etc. in United States' action to be consolidated with hearing on United States' motion for preliminary injunction (Doc. 73 in 1:16cv425). Trial in all four HB2 cases will take place in late October or early November, 2016 depending on pretrial schedule to be determined by the Magistrate Judge as set out. Parties shall file a short joint notice identifying any agreements reached and explaining their respective positions no later than 5:00 p.m. on July 22, 2016. Associated Cases: 1:16-cv-00236-TDS-JEP, 1:16-cv-00425-TDS-JEP, 1:16-cv-00844-TDS-JEP, 1:16-cv-00845-TDS-JEP (Garland, Leah) Docket entry modified on 7/19/2016. (Powell, Gloria). (Entered: 07/14/2016)
07/14/2016		Set Motion Hearing: Motion Hearing set for 8/1/2016 10:00 AM in Winston-Salem Courtroom #1 in front of JUDGE THOMAS D. SCHROEDER. (See <a href="#">86</a> Order) (Garland, Leah) Modified docket text on 7/28/2016. (Garland, Leah) (Entered: 07/14/2016)
07/14/2016		Set Deadlines: Joint Notice due by 7/22/2016 no later than 5:00 PM. (See <a href="#">86</a> Order in 16CV236, <a href="#">93</a> Order in 16CV425, <a href="#">29</a> Order in 16CV844, and <a href="#">37</a> Order in 16CV845) Associated Cases: 1:16-cv-00236-TDS-JEP, 1:16-cv-00425-TDS-JEP, 1:16-cv-00844-TDS-JEP, 1:16-cv-00845-TDS-JEP (Garland, Leah) (Entered: 07/14/2016)
07/14/2016	<a href="#">87</a>	<i>Amici Curiae</i> BRIEF in Support of Plaintiffs' Motion for Preliminary Injunction by Amicus AMICI CURIAE SCHOOL ADMINISTRATORS filed by AMICI CURIAE SCHOOL ADMINISTRATORS. (ROBERTSON, CYNTHIA) (Entered: 07/14/2016)
07/15/2016	<a href="#">88</a>	ORDER signed by MAG/JUDGE JOI ELIZABETH PEAKE on 07/15/2016; that this matter is set for an Initial Pretrial Conference on July 22, 2016, at 1:00 p.m. in Courtroom 3 of the United States Courthouse in Winston-Salem, North Carolina. FURTHER ORDERED that the parties must file their Rule 26(f) Report(s), whether jointly or individually, by July 20, 2016, as noted herein. Associated Cases: 1:16-cv-00236-TDS-JEP, 1:16-cv-00425-TDS-JEP, 1:16-cv-00844-TDS-JEP, 1:16-cv-00845-TDS-JEP (Garland, Leah) (Entered: 07/15/2016)
07/15/2016		Set Initial Pretrial Conference: Initial Pretrial Conference set for 7/22/2016 at 1:00 PM in Winston-Salem Courtroom #3. (See <a href="#">88</a> Order in 16CV126; <a href="#">94</a> Order in 16CV425; <a href="#">30</a> Order in 16CV844; <a href="#">38</a> Order in 16CV845) Associated Cases: 1:16-cv-00236-TDS-JEP, 1:16-cv-00425-TDS-JEP, 1:16-cv-00844-TDS-JEP, 1:16-cv-00845-TDS-JEP (Garland, Leah) (Entered: 07/15/2016)
07/15/2016		Set Rule 26(f) Report Deadline: Rule 26(f) Reports (individually or jointly) due by 7/20/2016. (See <a href="#">88</a> Order in 16CV126; <a href="#">94</a> Order in 16CV425; <a href="#">30</a> Order in 16CV844; <a href="#">38</a> Order in 16CV845) (Garland, Leah) (Entered: 07/15/2016)
07/18/2016	<a href="#">89</a>	MOTION to Dismiss by W. LOUIS BISSETTE, JR, BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, UNIVERSITY OF NORTH CAROLINA. Responses due by 8/11/2016 (FRANCISCO, NOEL) (Entered: 07/18/2016)

07/18/2016	<a href="#">90</a>	MEMORANDUM filed by Defendants W. LOUIS BISSETTE, JR, BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, UNIVERSITY OF NORTH CAROLINA re <a href="#">89</a> MOTION to Dismiss filed by W. LOUIS BISSETTE, JR, BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, UNIVERSITY OF NORTH CAROLINA. (FRANCISCO, NOEL) (Entered: 07/18/2016)
07/19/2016	<a href="#">91</a>	Transcript of Telephonic status conference held on 7/13/2016, before Judge Thomas D. Schroeder. Court Reporter Briana Nesbit, Telephone number (336)734-2514. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. <P> <b>NOTICE RE: REDACTION OF TRANSCRIPTS: The parties have 5 business days to file a Notice of Intent to Request Redaction and 21 calendar days to file a Redaction Request. If no notice is filed, this transcript will be made electronically available to the public without redaction after 90 calendar days. Transcript may be viewed at the court public terminal or purchased through the court reporter before the 90 day deadline. After that date it may be obtained through PACER.</b> </P> Redaction Request due 8/12/2016. Redacted Transcript Deadline set for 8/22/2016. Release of Transcript Restriction set for 10/20/2016. Associated Cases: 1:16-cv-00845-TDS-JEP, 1:16-cv-00236-TDS-JEP, 1:16-cv-00425-TDS-JEP, 1:16-cv-00844-TDS-JEP(Nesbit, Briana) (Entered: 07/19/2016)
07/19/2016		Motion Referred to MAG/JUDGE JOI ELIZABETH PEAKE RE: <a href="#">52</a> MOTION for Discovery To <i>More Fully Respond</i> MOTION for Extension of Time to File Response/Reply as to <a href="#">21</a> MOTION for Preliminary Injunction. (Engle, Anita) (Entered: 07/19/2016)
07/20/2016	<a href="#">92</a>	Rule 26(f) Report (Joint) filed by all parties by AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, ANGELA GILMORE, H.S., PAYTON GREY MCGARRY, BEVERLY NEWELL, KELLY TRENT.(BROOK, CHRISTOPHER) (Entered: 07/20/2016)
07/21/2016		Motion Referred to MAG/JUDGE JOI ELIZABETH PEAKE RE: <a href="#">92</a> Rule 26(f) Report (Joint) filed by all parties. (Engle, Anita) (Entered: 07/21/2016)
07/21/2016	<a href="#">93</a>	NOTICE of Appearance by attorney JAMES D. ESSEKS on behalf of Counter Defendant AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, Plaintiff AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA (ESSEKS, JAMES) (Entered: 07/21/2016)
07/22/2016	<a href="#">94</a>	NOTICE of Appearance by attorney NATHANIEL ROBERT SMITH on behalf of Amicus AMICI CURIAE SCHOOL ADMINISTRATORS (SMITH, NATHANIEL) (Entered: 07/22/2016)
07/22/2016		Minute Entry for proceedings held before MAG/JUDGE JOI ELIZABETH PEAKE: Pretrial Scheduling Conference held on 7/22/2016 in WS-3. Present at the conference were: Attorney Wilkins for Carcaño Plaintiffs, Attorney Stoughton for Plaintiff United States, Attorney Dalton for Plaintiff/Proposed Intervenor North Carolinians for Privacy, Attorney Duncan for Legislative Plaintiffs/Intervenors, Attorney Gardner for Defendant United States, Attorney Bowers for State Defendants, and Attorney Francisco for UNC Defendants. The Court sets Telephone Status Conferences for 8/19/2016, 9/2/2016, 9/16/2016 and 9/30/2016 at 10:00 AM before Judge Peake. Joint Status of Issues to be Resolved to be filed by the close of business the Wednesday before each scheduled Telephone Status Conference. If no Status Conference is necessary, Parties are to notify Case Manager. In light of Scheduling Conference, Defendant McCrory's Motion for Leave to Conduct Expedited Discovery (Doc. 52 in 1:16CV236) is moot and Motion to Intervene filed by North Carolinians for Privacy (Doc. 58 in 1:16CV425) is withdrawn.

		Written Order forthcoming.(Court Reporter Briana Nesbit.) Associated Cases: 1:16cv236, 1:16cv425, 1:16cv844, 1:16cv845 (Engle, Anita) (Entered: 07/22/2016)
07/22/2016		Set Hearing: Telephone Status Conference set for 8/19/2016 at 10:00 AM before MAG/JUDGE JOI ELIZABETH PEAKE. Associated Cases: 1:16cv236, 1:16cv425, 1:16cv844, 1:16cv845 (Engle, Anita) (Entered: 07/22/2016)
07/22/2016		Set Hearing: Telephone Status Conference set for 9/2/2016 at 10:00 AM before MAG/JUDGE JOI ELIZABETH PEAKE. Associated Cases: 1:16cv236, 1:16cv425, 1:16cv844, 1:16cv845 (Engle, Anita) (Entered: 07/22/2016)
07/22/2016		Set Hearing: Telephone Status Conference set for 9/16/2016 at 10:00 AM before MAG/JUDGE JOI ELIZABETH PEAKE. Associated Cases: 1:16cv236, 1:16cv425, 1:16cv844, 1:16cv845 (Engle, Anita) (Entered: 07/22/2016)
07/22/2016		Set Hearing: Telephone Status Conference set for 9/30/2016 at 10:00 AM before MAG/JUDGE JOI ELIZABETH PEAKE. Associated Cases: 1:16cv236, 1:16cv425, 1:16cv844, 1:16cv845 (Engle, Anita) (Entered: 07/22/2016)
07/22/2016	<a href="#">95</a>	NOTICE by AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, ANGELA GILMORE, H.S., PAYTON GREY MCGARRY, BEVERLY NEWELL, KELLY TRENT re <a href="#">86</a> Order,,,, <i>Joint Notice Pursuant the Court's July 14, 2016 Order</i> (BROOK, CHRISTOPHER) (Entered: 07/22/2016)
07/25/2016	<a href="#">96</a>	ORDER signed by MAG/JUDGE JOI ELIZABETH PEAKE on 07/25/2016; that the Court adopts the Joint Rule 26(f) Report and the discovery schedule set forth above. FURTHER ORDERED that this matter is set for telephonic conferences at 10:00 am on August 19, 2016, September 2, 2016, September 16, 2016, and September 30, 2016. Associated Cases: 1:16-cv-00236-TDS-JEP, 1:16-cv-00425-TDS-JEP, 1:16-cv-00844-TDS-JEP, 1:16-cv-00845-TDS-JEP (Garland, Leah) (Entered: 07/25/2016)
07/26/2016	<a href="#">97</a>	NOTICE of Voluntary Dismissal as to party(s) PHILLIP BERGER and TIM MOORE, filed by Counter Claimants PHILLIP BERGER, TIM MOORE (DUNCAN, STUART) (Entered: 07/26/2016)
07/27/2016	<a href="#">98</a>	WITHDRAWAL of Motion by Defendants W. LOUIS BISSETTE, JR, BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, UNIVERSITY OF NORTH CAROLINA re <a href="#">38</a> MOTION to Stay <i>Proceedings Against UNC Defendants</i> filed by UNIVERSITY OF NORTH CAROLINA, BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, W. LOUIS BISSETTE, JR. (FRANCISCO, NOEL) (Entered: 07/27/2016)
07/27/2016	<a href="#">99</a>	NOTICE of Appearance by attorney JOHN M. GORE on behalf of Defendants W. LOUIS BISSETTE, JR, BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, UNIVERSITY OF NORTH CAROLINA (GORE, JOHN) (Entered: 07/27/2016)
07/28/2016	<a href="#">100</a>	ORDER signed by MAG/JUDGE JOI ELIZABETH PEAKE on 7/28/2016, that the Court adopts the briefing schedule set out in the Joint Notice (Doc. # <a href="#">112</a> ) in 1:16CV425, but any issues that the parties wish to raise in these cases should still be addressed in the dispositive motions and trial briefs on the schedule set out in the July 25, 2016 Scheduling Order, so that all of the relevant issues can be addressed in November after the period of expedited discovery. Associated Cases: 1:16-cv-00236-TDS-JEP, 1:16-cv-00844-TDS-JEP, 1:16-cv-00845-TDS-JEP(Daniel, J) (Entered: 07/28/2016)
07/29/2016	<a href="#">101</a>	Transcript of Pretrial Scheduling Conference held on 7/22/2016, before Judge Joi E. Peake. Court Reporter Briana L. Nesbit, Telephone number (336) 734-2514. Transcript may be viewed at the court public terminal or purchased through the Court Reporter

		<p>before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. &lt;P&gt;<b>NOTICE RE: REDACTION OF TRANSCRIPTS: The parties have 5 business days to file a Notice of Intent to Request Redaction and 21 calendar days to file a Redaction Request. If no notice is filed, this transcript will be made electronically available to the public without redaction after 90 calendar days. Transcript may be viewed at the court public terminal or purchased through the court reporter before the 90 day deadline. After that date it may be obtained through PACER.</b>&lt;/P&gt; Redaction Request due 8/22/2016. Redacted Transcript Deadline set for 9/1/2016. Release of Transcript Restriction set for 10/31/2016. Associated Cases: 1:16-cv-00236-TDS-JEP, 1:16-cv-00425-TDS-JEP, 1:16-cv-00844-TDS-JEP, 1:16-cv-00845-TDS-JEP(Nesbit, Briana) (Entered: 07/29/2016)</p>
08/01/2016	<a href="#">102</a>	<p>Minute Entry for proceedings held before JUDGE THOMAS D. SCHROEDER in WS-1: Preliminary Injunction Hearing held on 8/1/2016 (see Witness and Exhibit List). Present at the hearing: Attorney Paul Smith and Scott Wilkens for Carcaño Plaintiffs, Attorney Butch Bowers for State Defendants, Attorney Noel Francisco for UNC Defendants, Attorney Kyle Duncan for Legislative Intervenors, Attorney Nathaniel Smith and Mark Sigmon for Amici School Administrators and Attorney Corey Stoughton and USA Rand for Participant United States. Briefing on the Title IX Redundancy Issue as stated from the bench due by close of business 8/5/2016. Matter taken under advisement. (Court Reporter Briana Nesbit.) (Engle, Anita) (Entered: 08/01/2016)</p>
08/04/2016		<p>Telephone Conference set for 8/4/2016 at 4:00 P.M. before JUDGE THOMAS D. SCHROEDER. Associated Cases: 1:16cv236, 1:16cv425, 1:16cv845(Engle, Anita) (Entered: 08/04/2016)</p>
08/04/2016	<a href="#">103</a>	<p>Transcript of Preliminary Injunction held on 8/1/2016, before Judge Thomas D. Schroeder. Court Reporter Briana L. Nesbit, Telephone number (336) 734-2514. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.</p> <p><b>NOTICE RE: REDACTION OF TRANSCRIPTS: The parties have 5 business days to file a Notice of Intent to Request Redaction and 21 calendar days to file a Redaction Request. If no notice is filed, this transcript will be made electronically available to the public without redaction after 90 calendar days. Transcript may be viewed at the court public terminal or purchased through the court reporter before the 90 day deadline. After that date it may be obtained through PACER.</b></p> <p>Redaction Request due 8/29/2016. Redacted Transcript Deadline set for 9/9/2016. Release of Transcript Restriction set for 11/7/2016. Associated Cases: 1:16-cv-00236-TDS-JEP, 1:16-cv-00425-TDS-JEP, 1:16-cv-00844-TDS-JEP, 1:16-cv-00845-TDS-JEP(Nesbit, Briana) (Entered: 08/04/2016)</p>
08/04/2016		<p>Minute Entry for proceedings held before JUDGE THOMAS D. SCHROEDER: Telephone Conference held on 8/4/2016. Participating in the call: Attorney Smith for Carcaño Plaintiffs, Attorney Stoughton for Plaintiff United States, Attorney Campbell for Plaintiff North Carolinians for Privacy, Attorney Duncan for Legislative Intervenors, Attorney Berwick for Defendant United States, Attorney Bowers for State Defendants, Attorney Francisco for UNC Defendants, and Attorney Smith for Proposed Amici School Administrators. Written Order forthcoming. (Court Reporter Briana Nesbit.) Associated Cases: 1:16cv236, 1:16cv425, 1:16cv845(Engle, Anita) (Entered: 08/04/2016)</p>
08/04/2016		<p>TEXT ORDER signed by JUDGE THOMAS D. SCHROEDER on 8/4/2016. On August 3, 2016, the Supreme Court issued a stay of the Fourth Circuit's mandate in <u>G.G. v. Gloucester County School Board</u>, case number 16A52, which held that the U.S.</p>

		Department of Education's guidance as to the interpretation of "on the basis of sex" in its regulation implementing Title IX was entitled to Auer deference. As a result of today's telephone hearing, the court directs the parties to address the following: (1) whether, and if so how, the Supreme Court's stay of the mandate in <u>G.G. v. Gloucester County School Board</u> affects this court, including as to the rules of law this court must apply; (2) this courts authority to grant preliminary injunctive relief, on a facial basis or otherwise, beyond the scope of the individually named Plaintiffs (both under Title IX and as a constitutional matter). Plaintiffs' briefs are due by 5:00 p.m. Monday, August 8, 2016. Defendants' responses are due by noon on Friday, August 12, 2016. Briefs are limited to 20 pages per side, and the parties are encouraged to work together. In addition, the parties are directed to meet and confer to determine if there is any value in adjusting the pretrial or trial schedule and whether or not there is agreement to participate in this district's mediation process. Parties are to report back via letter to Ms. Engle as to the results of the conference by 5:00 p.m. on August 8, 2016. SO ORDERED. Associated Cases: 1:16cv236, 1:16cv425, 1:16cv845(Engle, Anita) (Entered: 08/04/2016)
08/04/2016	<a href="#">104</a>	NOTICE of Hearing: Bench Trial set for 11/14/2016 at 09:30 AM in Winston-Salem Courtroom #1 before JUDGE THOMAS D. SCHROEDER. Exhibit and witness lists and deposition designations shall be filed no later than October 24, 2016. Any objections thereto, as well as any counter-designations, shall be filed no later than November 2, 2016. Pre-trial briefs shall be submitted no later than November 7, 2016. No opposition briefs shall be allowed. Associated Cases: 1:16cv236, 1:16cv425, 1:16cv845(Engle, Anita) (Entered: 08/04/2016)
08/05/2016	<a href="#">105</a>	SUPPLEMENTAL BRIEF re <a href="#">21</a> MOTION for Preliminary Injunction by Defendants W. LOUIS BISSETTE, JR, BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, UNIVERSITY OF NORTH CAROLINA filed by W. LOUIS BISSETTE, JR, BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, UNIVERSITY OF NORTH CAROLINA. (FRANCISCO, NOEL) (Entered: 08/05/2016)
08/05/2016	<a href="#">106</a>	MEMORANDUM Regarding <i>Title IX</i> by Counter Claimants PHILLIP BERGER, TIM MOORE, Intervenor Defendants PHILLIP BERGER, TIM MOORE, Defendant PATRICK MCCRORY. (STEWART, WILLIAM) (Entered: 08/05/2016)
08/05/2016	<a href="#">107</a>	BRIEF re <a href="#">21</a> MOTION for Preliminary Injunction . (Attachments: # <a href="#">1</a> Declaration of Scott B. Wilkens, # <a href="#">2</a> Exhibit A, # <a href="#">3</a> Exhibit B)(BROOK, CHRISTOPHER) (Entered: 08/05/2016)
08/08/2016	<a href="#">108</a>	RESPONSE re <a href="#">107</a> Brief filed by UNIVERSITY OF NORTH CAROLINA. (FRANCISCO, NOEL) Modified on 8/8/2016 to remove unnecessary reply deadline. (Garland, Leah) (Entered: 08/08/2016)
08/08/2016		CASE REFERRED to JUDGE THOMAS D. SCHROEDER RE: Supplemental Briefs <a href="#">105</a> , <a href="#">106</a> , and <a href="#">107</a> , and <a href="#">108</a> Response Brief. (Engle, Anita) (Entered: 08/08/2016)
08/08/2016	<a href="#">109</a>	Second Supplemental Memorandum re <a href="#">21</a> MOTION for Preliminary Injunction of <i>Carcano Plaintiffs and United States</i> by Plaintiffs AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, H.S., PAYTON GREY MCGARRY. (BROOK, CHRISTOPHER) (Entered: 08/08/2016)
08/11/2016	<a href="#">110</a>	RESPONSE in Opposition re <a href="#">89</a> MOTION to Dismiss filed by AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, ANGELA GILMORE, H.S., PAYTON GREY MCGARRY, BEVERLY NEWELL, KELLY TRENT. Replies due by 8/29/2016. (Attachments: # <a href="#">1</a> Declaration of Scott B. Wilkens, # <a href="#">2</a> Exhibit A)(BROOK, CHRISTOPHER) (Entered: 08/11/2016)

08/12/2016	<a href="#">111</a>	<i>Second SUPPLEMENTAL BRIEF</i> re <a href="#">21</a> MOTION for Preliminary Injunction by Defendants W. LOUIS BISSETTE, JR, BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, UNIVERSITY OF NORTH CAROLINA filed by W. LOUIS BISSETTE, JR, BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, UNIVERSITY OF NORTH CAROLINA. (FRANCISCO, NOEL) (Entered: 08/12/2016)
08/12/2016	<a href="#">112</a>	Second Supplemental Memorandum re <a href="#">21</a> MOTION for Preliminary Injunction by Counter Claimants PHILLIP BERGER, TIM MOORE, Intervenor Defendants PHILLIP BERGER, TIM MOORE, Defendant PATRICK MCCRORY. (Attachments: # <a href="#">1</a> Appendix Table of Contents, # <a href="#">2</a> Exhibit A: Supreme Court Order in Gloucester Cnty. v. G.G., # <a href="#">3</a> Exhibit B: Stay Application in Gloucester Cnty. v. G.G., # <a href="#">4</a> Exhibit C: Response to Stay Application in Gloucester Cnty. v. G.G., # <a href="#">5</a> Exhibit D: Reply to Stay Application in Gloucester Cnty. v. G.G., # <a href="#">6</a> Exhibit E: Plaintiffs' Initial Disclosures) (STEWART, WILLIAM) (Entered: 08/12/2016)
08/12/2016		CASE REFERRED to JUDGE THOMAS D. SCHROEDER RE: <a href="#">109</a> Supplemental Memorandum, <a href="#">112</a> Supplemental Memorandum and <a href="#">111</a> Brief filed pursuant to Text Order dated 8/4/2016. (Engle, Anita) (Entered: 08/12/2016)
08/12/2016	<a href="#">113</a>	MOTION to Stay <i>Proceedings in Light of G.G.</i> by PHILLIP BERGER, TIM MOORE. Responses due by 9/6/2016 (Attachments: # <a href="#">1</a> Text of Proposed Order)(DUNCAN, STUART) (Entered: 08/12/2016)
08/12/2016	<a href="#">114</a>	Consent MOTION to Expedite <i>Responses to Motion to Stay Proceedings</i> by PHILLIP BERGER, TIM MOORE. (Attachments: # <a href="#">1</a> Text of Proposed Order)(DUNCAN, STUART) (Entered: 08/12/2016)
08/12/2016	<a href="#">115</a>	MEMORANDUM filed by Defendants W. LOUIS BISSETTE, JR, BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, UNIVERSITY OF NORTH CAROLINA re <a href="#">113</a> MOTION to Stay <i>Proceedings in Light of G.G.</i> filed by W. LOUIS BISSETTE, JR, BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, UNIVERSITY OF NORTH CAROLINA. (Attachments: # <a href="#">1</a> Declaration of John Gore, # <a href="#">2</a> Order in Williams v. Guilford Tech. Cmty. Coll., # <a href="#">3</a> Carcano Plfs' Initial Disclosures, # <a href="#">4</a> United States' Initial Disclosures)(FRANCISCO, NOEL) (Entered: 08/12/2016)
08/12/2016		Motions Submitted to JUDGE THOMAS D. SCHROEDER: (142 in 1:16cv425) Consent MOTION to Expedite <i>Responses to Motion to Stay Proceedings</i> , (114 in 1:16cv236) Consent MOTION to Expedite <i>Responses to Motion to Stay Proceedings</i> . Associated Cases: 1:16cv236, 1:16cv425(Engle, Anita) (Entered: 08/12/2016)
08/15/2016	<a href="#">116</a>	MOTION for Leave to File <i>Second Amended Complaint</i> by AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, ANGELA GILMORE, H.S., PAYTON GREY MCGARRY, BEVERLY NEWELL, KELLY TRENT. Responses due by 9/9/2016 (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Text of Proposed Order)(BROOK, CHRISTOPHER) (Entered: 08/15/2016)
08/17/2016	<a href="#">117</a>	MOTION for Leave to File <i>Consolidated Reply Brief</i> by W. LOUIS BISSETTE, JR, BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, UNIVERSITY OF NORTH CAROLINA. Responses due by 9/12/2016 (Attachments: # <a href="#">1</a> Proposed Reply Brief, # <a href="#">2</a> Exhibit A to Proposed Reply Brief, # <a href="#">3</a> Text of Proposed Order)(FRANCISCO, NOEL) (Entered: 08/17/2016)
08/17/2016	<a href="#">118</a>	NOTICE of Appearance by attorney IRENA COMO on behalf of Plaintiffs AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, EQUALITY NORTH CAROLINA, ANGELA GILMORE, H.S., PAYTON GREY

		MCGARRY, BEVERLY NEWELL, KELLY TRENT (COMO, IRENA) (Entered: 08/17/2016)
08/17/2016	<a href="#">119</a>	NOTICE by PHILLIP BERGER, TIM MOORE re <a href="#">96</a> Rule 26f (Joint), Order on Rule 26f Report - Individual, <i>JOINT NOTICE OF ISSUES FOR STATUS CONFERENCE</i> (POTTER, ROBERT) (Entered: 08/17/2016)
08/17/2016		TEXT ORDER signed by JUDGE THOMAS D. SCHROEDER on 8/17/2016. For good cause shown, IT IS ORDERED that the motion to expedite responses to motion to stay proceedings by Defendants and Plaintiff North Carolinians for Privacy (Doc. <a href="#">114</a> in 1:12CV236 and <a href="#">142</a> in 1:16CV425) is hereby GRANTED ; Plaintiffs' response to the motion to stay proceedings, if any, shall be filed on or before Monday, August 22, 2016; because Defendants and Plaintiff North Carolinians for Privacy have agreed to forego filing a reply in support of their stay motion, the motion will therefore be submitted to the court upon the filing of a response by Plaintiffs, assuming that a response is filed by Monday, August 22, 2016. IT IS FURTHER ORDERED that the motion of Defendants State of North Carolina, Governor McCrory, and the North Carolina Department of Public Safety, and Intervenor-Defendants President Pro Tempore Phil Berger and Speaker Tim Moore for leave to submit a memorandum not to exceed 70 pages in opposition to the United States' motion for preliminary injunctive relief (Doc. <a href="#">144</a> ) is hereby GRANTED . IT IS FURTHER ORDERED that the motion of Attorney Holly A. Thomas to Withdraw as attorney for Proposed Amici Curiae (Doc. <a href="#">145</a> ) is hereby GRANTED ; and IT IS FURTHER ORDERED that UNC Defendants unopposed motion for leave to submit a consolidated reply brief of up to 18 pages (Doc. <a href="#">117</a> in 1:16CV236 and <a href="#">146</a> in 1:16CV425) in support of its motions to dismiss in United States v. North Carolina (1:16CV425) and Carcao v. McCrory (1:16CV236) is hereby GRANTED . The UNC Defendants are directed to file their reply brief in both cases forthwith. Associated Cases: 1:16cv425, 1:16cv236 (Engle, Anita) (Entered: 08/17/2016)
08/17/2016	<a href="#">120</a>	REPLY, filed by Defendants W. LOUIS BISSETTE, JR, BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, UNIVERSITY OF NORTH CAROLINA, to Response to <a href="#">89</a> MOTION to Dismiss filed by W. LOUIS BISSETTE, JR, BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, UNIVERSITY OF NORTH CAROLINA. (Attachments: # <a href="#">1</a> Exhibit U.S. Br. in Texas v. United States)(FRANCISCO, NOEL) (Entered: 08/17/2016)
08/18/2016		CASE REFERRED to MAG/JUDGE JOI ELIZABETH PEAKE RE: Joint Notice of Issues for Status Conference ( <a href="#">119</a> in 1:16cv236), ( <a href="#">56</a> in 1:16cv845), ( <a href="#">147</a> in 1:16cv425). Associated Cases: 1:16cv236, 1:16cv425, 1:16cv845 (Engle, Anita) (Entered: 08/18/2016)
08/18/2016		TEXT ORDER signed by MAG/JUDGE JOI ELIZABETH PEAKE on 8/18/2016 CANCELLING the Telephone Status Conference set for 8/19/2016 at 10:00 AM. Parties are directed to file a Joint Status Report by Wednesday, 8/24/2016. Associated Cases: 1:16cv236, 1:16cv425, 1:16cv845 (Engle, Anita) (Entered: 08/18/2016)
08/19/2016	<a href="#">121</a>	MOTION for Extension of Time to <i>Designate Rebuttal Expert Witnesses</i> by AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, ANGELA GILMORE, H.S., PAYTON GREY MCGARRY, BEVERLY NEWELL, KELLY TRENT. (Attachments: # <a href="#">1</a> Declaration of Scott B. Wilkens, # <a href="#">2</a> Exhibit A to Declaration of Scott B. Wilkens, # <a href="#">3</a> Proposed Order)(BROOK, CHRISTOPHER) (Entered: 08/19/2016)
08/22/2016		Motion Referred to MAG/JUDGE JOI ELIZABETH PEAKE RE: <a href="#">121</a> MOTION for Extension of Time to <i>Designate Rebuttal Expert Witnesses</i> . (Engle, Anita) (Entered: 08/22/2016)

08/22/2016	<a href="#">122</a>	NOTICE of Appearance by attorney DAVID CHRISTOPHER OSBORN on behalf of Intervenor Defendants PHILLIP BERGER, TIM MOORE (OSBORN, DAVID) (Entered: 08/22/2016)
08/22/2016	<a href="#">123</a>	NOTICE of Appearance by attorney LESLIE J. COOPER on behalf of Plaintiffs AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, EQUALITY NORTH CAROLINA, ANGELA GILMORE, H.S., PAYTON GREY MCGARRY, BEVERLY NEWELL, KELLY TRENT (COOPER, LESLIE) (Entered: 08/22/2016)
08/22/2016	<a href="#">124</a>	NOTICE by PHILLIP BERGER, PATRICK MCCRORY, TIM MOORE re <a href="#">21</a> MOTION for Preliminary Injunction , <a href="#">55</a> Response in Opposition to Motion,, <a href="#">113</a> MOTION to Stay <i>Proceedings in Light of G.G.</i> SUPPLEMENTAL AUTHORITY (Attachments: # <a href="#">1</a> Exhibit A: PI Order - State of Texas v. USA)(STEWART, WILLIAM) (Entered: 08/22/2016)
08/22/2016	<a href="#">125</a>	RESPONSE in Opposition re <a href="#">113</a> MOTION to Stay <i>Proceedings in Light of G.G.</i> filed by AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, ANGELA GILMORE, H.S., PAYTON GREY MCGARRY, BEVERLY NEWELL, KELLY TRENT. (BROOK, CHRISTOPHER) (Entered: 08/22/2016)
08/23/2016		Motions Submitted to JUDGE THOMAS D. SCHROEDER: MOTION to Dismiss ( 89 in 1:16cv236 and 98 in 1:16cv425) and MOTION to Stay <i>Proceedings in Light of G.G.</i> (113 in 1:16cv236 and 141 in 1:16cv425) Associated Cases: 1:16cv236, 1:16cv425 (Engle, Anita) (Entered: 08/23/2016)
08/24/2016	<a href="#">126</a>	NOTICE by PHILLIP BERGER, W. LOUIS BISSETTE, JR, BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, PATRICK MCCRORY, TIM MOORE, UNIVERSITY OF NORTH CAROLINA <i>JOINT NOTICE OF ISSUES FOR STATUS CONFERENCE</i> (STEWART, WILLIAM) (Entered: 08/24/2016)
08/25/2016		CASES REFERRED to MAG/JUDGE JOI ELIZABETH PEAKE RE: Joint Notice of Issues for Status Conference ( <a href="#">126</a> in 1:16cv236, <a href="#">155</a> in 1:16cv425, and <a href="#">59</a> in 1:16cv845). Associated Cases: 1:16cv236, 1:16cv425, 1:16cv845 (Engle, Anita) (Entered: 08/25/2016)
08/25/2016		TEXT ORDER signed by MAG/JUDGE JOI ELIZABETH PEAKE on 8/25/2016. In light of the Joint Notice filed by the parties, the Court will <u>not</u> set this matter for a status conference on August 26, 2016. However, it appears that a status conference in the near future would be appropriate, in order to address any discovery and scheduling issues. Therefore, the Court will plan to conduct a discovery status conference on September 2, 2016, and given the potential issues to be addressed, the Court will conduct that status conference in person rather than by telephone hearing. Therefore, this matter will be set for a discovery status conference on September 2, 2016 at 10:00 a.m. in Courtroom 3 of United States Courthouse in Winston-Salem, NC. The parties should file their Joint Notice by August 31, 2016 to outline any issues that they would seek to raise at the status conference. Associated Cases: 1:16cv236, 1:16cv425, 1:16cv845 (Engle, Anita) (Entered: 08/25/2016)
08/25/2016		Set Hearing: Status Conference set for 9/2/2016 at 10:00 AM in Winston-Salem Courtroom #3 before MAG/JUDGE JOI ELIZABETH PEAKE. Associated Cases: 1:16cv236, 1:16cv425, 1:16cv845(Engle, Anita) (Entered: 08/25/2016)
08/26/2016	<a href="#">127</a>	MEMORANDUM OPINION, ORDER AND PRELIMINARY INJUNCTION signed by JUDGE THOMAS D. SCHROEDER on 08/26/2016; that Plaintiffs' motion for preliminary injunction (Doc. <a href="#">21</a> ) is GRANTED IN PART and DENIED IN PART as set out. The court reserves ruling on Plaintiffs' motion for preliminary injunction on their

		Due Process claims. If Plaintiffs wish to submit additional briefing on these claims, they must do so no later than September 9, 2016. Any response briefs must be filed no later than September 23, 2016, and any reply briefs must be filed no later than October 7, 2016. (Garland, Leah) (Entered: 08/26/2016)
08/29/2016	<a href="#">128</a>	NOTICE OF APPEAL as to <a href="#">127</a> Memorandum and Opinion, Order, Preliminary Injunction, by AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, H.S., PAYTON GREY MCGARRY. Filing fee \$ 505, receipt number 0418-1975602. (BROOK, CHRISTOPHER) (Entered: 08/29/2016)
08/29/2016	<a href="#">129</a>	RESPONSE re <a href="#">113</a> MOTION to Stay Proceedings in Light of G.G. / Conditional Withdrawal of Opposition to Defendants' Motion to Stay Proceedings filed by AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, ANGELA GILMORE, PAYTON GREY MCGARRY, BEVERLY NEWELL, KELLY TRENT. Replies due by 9/15/2016. (BROOK, CHRISTOPHER) (Entered: 08/29/2016)
08/29/2016	<a href="#">130</a>	Electronic Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals re <a href="#">128</a> Notice of Appeal. (Garland, Leah) (Entered: 08/29/2016)
08/30/2016	<a href="#">131</a>	NOTICE of Docketing Record on Appeal from USCA re <a href="#">128</a> Notice of Appeal, filed by H.S., AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, PAYTON GREY MCGARRY, JOAQUIN CARCANO. USCA Case Manager is Cathy Herb. USCA Case Number 16-1989. (Garland, Leah) (Entered: 08/30/2016)
08/31/2016	<a href="#">132</a>	NOTICE of Appearance by attorney DAVID A. NIMOCKS on behalf of Amicus Parties Proposed Amici Curiae - TEXAS, ARKANSAS, ARIZONA, WEST VIRGINIA, ALABAMA, WISCONSIN, GEORGIA, NEBRASKA, LOUISIANA, SOUTH CAROLINA, COMMONWEALTH OF KENTUCKY, by and through Governor Matthew G. Bevin, U, Proposed Amici Curiae - TEXAS, ARKANSAS, ARIZONA, WEST VIRGINIA, ALABAMA, WISCONSIN, GEORGIA, NEBRASKA, LOUISIANA, SOUTH CAROLINA, COMMONWEALTH OF KENTUCKY, by and through Governor Matthew G. Bevin, U, Proposed Amici Curiae - TEXAS, ARKANSAS, ARIZONA, WEST VIRGINIA, ALABAMA, WISCONSIN, GEORGIA, NEBRASKA, LOUISIANA, SOUTH CAROLINA, COMMONWEALTH OF KENTUCKY, by and through Governor Matthew G. Bevin, U, Proposed Amici Curiae - TEXAS, ARKANSAS, ARIZONA, WEST VIRGINIA, ALABAMA, WISCONSIN, GEORGIA, NEBRASKA, LOUISIANA, SOUTH CAROLINA, COMMONWEALTH OF KENTUCKY, by and through Governor Matthew G. Bevin, U Associated Cases: 1:16-cv-00425-TDS-JEP, 1:16-cv-00236-TDS-JEP, 1:16-cv-00844-TDS-JEP, 1:16-cv-00845-TDS-JEP(NIMOCKS, DAVID) (Entered: 08/31/2016)
08/31/2016	<a href="#">133</a>	<b>***FILED IN ERROR***</b> MOTION for Leave to File <i>Brief as Amici Curiae</i> by Proposed Amici Curiae - TEXAS, ARKANSAS, ARIZONA, WEST VIRGINIA, ALABAMA, WISCONSIN, GEORGIA, NEBRASKA, LOUISIANA, SOUTH CAROLINA, COMMONWEALTH OF KENTUCKY, by and through Governor Matthew G. Bevin, U. (Attachments: # <a href="#">1</a> Supplement, # <a href="#">2</a> Text of Proposed Order) Associated Cases: 1:16-cv-00425-TDS-JEP, 1:16-cv-00236-TDS-JEP, 1:16-cv-00844-TDS-JEP, 1:16-cv-00845-TDS-JEP(NIMOCKS, DAVID) Modified on 9/2/2016 to reflect filed in error and terminated public access. (Daniel, J) (Entered: 08/31/2016)
08/31/2016	<a href="#">134</a>	NOTICE of Appearance by attorney JENIFER R. WOLFE on behalf of Plaintiffs AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO (WOLFE, JENIFER) (Entered: 08/31/2016)
08/31/2016	<a href="#">136</a>	NOTICE by PHILLIP BERGER, W. LOUIS BISSETTE, JR, BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, PATRICK

		MCCRORY, TIM MOORE, UNIVERSITY OF NORTH CAROLINA re Order,,, Joint Notice of Issues for Status Conference (STEWART, WILLIAM) (Entered: 08/31/2016)
09/01/2016	<a href="#">137</a>	REPLY, filed by Counter Claimants PHILLIP BERGER, TIM MOORE, Intervenor Defendants PHILLIP BERGER, TIM MOORE, Defendants W. LOUIS BISSETTE, JR, BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, PATRICK MCCRORY, UNIVERSITY OF NORTH CAROLINA, to Response to <a href="#">113</a> MOTION to Stay Proceedings in Light of G.G. filed by PHILLIP BERGER, W. LOUIS BISSETTE, JR, BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, PATRICK MCCRORY, TIM MOORE, UNIVERSITY OF NORTH CAROLINA. (STEWART, WILLIAM) (Entered: 09/01/2016)
09/01/2016		CASE REFERRED to MAG/JUDGE JOI ELIZABETH PEAKE RE: Joint Notice of Issues for Status Conference ( <a href="#">136</a> in 1:16cv236 and <a href="#">163</a> in 1:16cv425) Associated Cases: 1:16cv236, 1:16cv425 (Engle, Anita) (Entered: 09/01/2016)
09/02/2016		Minute Entry for proceedings held before MAG/JUDGE JOI ELIZABETH PEAKE: Status Conference held on 9/2/2016 in WS-3. In attendance were: Attorney Wilkens for Carcaño Plaintiffs, Attorney Stoughton for Plaintiff United States, Attorneys Duncan and Potter for Legislative Intervenors, Attorney Bowers and Stewart for State Defendants, and Attorney Gore for UNC Defendants. As stated from the bench, <a href="#">121</a> Motion for Extension of Time to Designate Rebuttal Expert Witnesses filed by Plaintiffs in 1:16CV236 is GRANTED, MOTION to Stay Proceedings in Light of G.G. ( <a href="#">113</a> in 1:16CV236 and 141 in 1:16CV425) is GRANTED IN PART and DENIED IN PART, <a href="#">165</a> Attorney BENSING'S Motion to Withdraw filed in 1:16CV425 is GRANTED. Parties are to submit Supplemental Rule 26(f) Reports by 9/12/2016. Status Conference set for 9/16/2016 at 10:00 a.m. in Courtroom 3 in Winston-Salem. Written Order forthcoming. (Court Reporter Briana Nesbit.) Associated Cases: 1:16cv425, 1:16cv236 (Engle, Anita) (Entered: 09/02/2016)
09/02/2016		ORAL ORDER by MAG/JUDGE JOI ELIZABETH PEAKE on 9/2/2016 GRANTING <a href="#">121</a> Motion for Extension of Time. (Engle, Anita) (Entered: 09/02/2016)
09/06/2016	<a href="#">138</a>	ORDER signed by MAG/JUDGE JOI ELIZABETH PEAKE on 09/06/2016; that Defendants' Motion to Stay Proceedings [Doc. # <a href="#">113</a> in 1:16CV236 and Doc. # 141 in 1:16CV425] is GRANTED IN PART and DENIED IN PART, as set out herein and that this matter is set for a Supplemental Pretrial Conference and Status Conference on September 16, 2016 at 10:00 a.m. in Courtroom 3 of the United States Courthouse in Winston-Salem, North Carolina. The parties are directed to file Rule 26(f) Reports by September 12, 2016, and to file a Joint Notice by September 13, 2016, setting out any additional issues that need to be addressed at the Status Conference. Associated Cases: 1:16-cv-00236-TDS-JEP, 1:16-cv-00425-TDS-JEP(Garland, Leah) (Entered: 09/06/2016)
09/06/2016		Set Hearings: Supplemental Pretrial Conference and Status Conference set for 9/16/2016 10:00 AM in Winston-Salem Courtroom #3 before MAG/JUDGE JOI ELIZABETH PEAKE. Associated Cases: 1:16-cv-00236-TDS-JEP, 1:16-cv-00425-TDS-JEP (Garland, Leah) (Entered: 09/06/2016)
09/06/2016	<a href="#">140</a>	NOTICE of Appearance by attorney LEAH D. MCDOWELL on behalf of Plaintiffs PHIL BERGER, TIM MOORE Associated Cases: 1:16-cv-00236-TDS-JEP, 1:16-cv-00425-TDS-JEP, 1:16-cv-00844-TDS-JEP(MCDOWELL, LEAH) (Entered: 09/06/2016)
09/09/2016	<a href="#">142</a>	RESPONSE filed by Counter Claimants PHILLIP BERGER, TIM MOORE, Intervenor Defendants PHILLIP BERGER, TIM MOORE, Defendant PATRICK MCCRORY re <a href="#">116</a> MOTION for Leave to File <i>Second Amended Complaint</i> filed by H.S., AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, BEVERLY NEWELL, KELLY TRENT, ANGELA GILMORE, PAYTON GREY MCGARRY, JOAQUIN CARCANO

		filed by PHILLIP BERGER, PATRICK MCCRORY, TIM MOORE. Replies due by 9/26/2016. (STEWART, WILLIAM) (Entered: 09/09/2016)
09/09/2016	<a href="#">143</a>	<p>Transcript of Proceedings held on 09/02/2016, before Judge Joi E. Peake. Court Reporter Briana L. Nesbit, Telephone number 336-734-2514. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.</p> <p><b>NOTICE RE: REDACTION OF TRANSCRIPTS: The parties have 5 business days to file a Notice of Intent to Request Redaction and 21 calendar days to file a Redaction Request. If no notice is filed, this transcript will be made electronically available to the public without redaction after 90 calendar days. Transcript may be viewed at the court public terminal or purchased through the court reporter before the 90 day deadline. After that date it may be obtained through PACER.</b></p> <p>Redaction Request due 10/3/2016. Redacted Transcript Deadline set for 10/14/2016. Release of Transcript Restriction set for 12/12/2016. Associated Cases: 1:16-cv-00236-TDS-JEP, 1:16-cv-00425-TDS-JEP, 1:16-cv-00844-TDS-JEP, 1:16-cv-00845-TDS-JEP(Nesbit, Briana) (Entered: 09/09/2016)</p>
09/12/2016	<a href="#">144</a>	Rule 26(f) Report (Joint) filed by all parties by AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, ANGELA GILMORE, H.S., PAYTON GREY MCGARRY, BEVERLY NEWELL, KELLY TRENT. (BROOK, CHRISTOPHER) (Entered: 09/12/2016)
09/12/2016	<a href="#">145</a>	JOINT MOTION <i>for Entry of Stipulated Confidentiality Agreement and Protective Order</i> by AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, ANGELA GILMORE, H.S., PAYTON GREY MCGARRY, BEVERLY NEWELL, KELLY TRENT. (Attachments: # <a href="#">1</a> Text of Proposed Order)(BROOK, CHRISTOPHER) (Entered: 09/12/2016)
09/13/2016		CASE REFERRED to MAG/JUDGE JOI ELIZABETH PEAKE RE: Rule 26(f) Report (Joint) filed by all parties ( <a href="#">144</a> in 1:16cv236 and 175 in 1:16cv425). Associated Cases: 1:16cv236, 1:16cv425 (Engle, Anita) (Entered: 09/13/2016)
09/13/2016		Motion Referred to MAG/JUDGE JOI ELIZABETH PEAKE RE: JOINT MOTION <i>for Entry of Stipulated Confidentiality Agreement and Protective Order</i> ( <a href="#">145</a> in 1:16cv236 and 174 in 1:16cv425). Associated Cases: 1:16cv236, 1:16cv425(Engle, Anita) (Entered: 09/13/2016)
09/13/2016	<a href="#">146</a>	NOTICE by PHILLIP BERGER, TIM MOORE re <a href="#">138</a> Order on Motion to Stay, Joint Notice by All Parties (DUNCAN, STUART) (Entered: 09/13/2016)
09/13/2016		TEXT ORDER signed by MAG/JUDGE JOI ELIZABETH PEAKE on 9/13/2016. In light of the Joint Rule 26(f) Report and the Joint Notice, the Status Conference scheduled for Friday, September 16, 2016 at 10:00 a.m. will be a telephone hearing. The Parties are directed to contact the case manager to set up the call. Associated Cases: 1:16cv236, 1:16cv425 (Engle, Anita) (Entered: 09/13/2016)
09/13/2016		Motion Referred to MAG/JUDGE JOI ELIZABETH PEAKE RE: <a href="#">116</a> MOTION for Leave to File <i>Second Amended Complaint</i> . (Engle, Anita) (Entered: 09/13/2016)
09/16/2016		Minute Entry for proceedings held before MAG/JUDGE JOI ELIZABETH PEAKE in WS-3: Telephone Conference held on 9/16/2016. Participating in the call were: Attorney Wilkens for Carcaño Plaintiffs, Attorney Kisch for Plaintiff United States, Attorney Duncan for Legislative Intervenors, Attorney Bowers for State Defendants, and Attorney Gore for UNC Defendants. Parties Joint Rule 26(f) Report adopted with modifications as stated from the bench. Parties are to file a Joint Notice of Issues by 9/28/2016 with

		respect to the Telephone Conference previously set for 9/30/2016 at 10:00 a.m. Written Order forthcoming. (Court Reporter Briana Nesbit.) (Engle, Anita) Associated Cases: 1:16cv236, 1:16cv425 (Entered: 09/16/2016)
09/20/2016	<a href="#">147</a>	ORDER signed by MAG/JUDGE JOI ELIZABETH PEAKE on 9/20/2016, that the Court adopts the Parties' Joint Rule 26(f) Report (Doc. # <a href="#">144</a> in 1:16CV236 and Doc. #175 in 1:16CV425) as modified herein. The Parties shall submit a Joint Notice of Issues by 9/28/2016, and this matter remains set for a telephone Status Conference on 9/30/2016 at 10:00 a.m. This case is set for a Hearing and Status Conference on 10/28/2016. The ACLU Plaintiffs' Motion for Leave to file Second Amended Complaint (Doc. # <a href="#">116</a> in 1:16CV236) is GRANTED. Plaintiffs may file the Second Amended Complaint, and within the time otherwise required to respond to the Second Amended Complaint, the Defendants shall file a responsive pleading. Associated Cases: 1:16-cv-00236-TDS-JEP, 1:16-cv-00425-TDS-JEP(Daniel, J) (Entered: 09/20/2016)
09/20/2016	<a href="#">148</a>	Stipulated Confidentiality Agreement and Protective Order. Signed by MAG/JUDGE JOI ELIZABETH PEAKE on 9/20/2016. (Daniel, J) (Entered: 09/20/2016)
09/20/2016	<a href="#">149</a>	STIPULATION regarding <i>Electronically Stored Information (ESI)</i> by AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, ANGELA GILMORE, H.S., PAYTON GREY MCGARRY, BEVERLY NEWELL, KELLY TRENT. (BROOK, CHRISTOPHER) (Entered: 09/20/2016)
09/21/2016	<a href="#">150</a>	NOTICE of Appearance by attorney KRISTEN A. LEJNIEKS on behalf of Defendants W. LOUIS BISSETTE, JR, BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, UNIVERSITY OF NORTH CAROLINA (LEJNIEKS, KRISTEN) (Entered: 09/21/2016)
09/21/2016	<a href="#">151</a>	Second AMENDED COMPLAINT against defendant PHILLIP BERGER, PATRICK MCCRORY, TIM MOORE, UNIVERSITY OF NORTH CAROLINA, MARGARET SPELLINGS, filed by H.S., AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, PAYTON GREY MCGARRY, JOAQUIN CARCANO, ANGELA GILMORE.(BROOK, CHRISTOPHER) (Entered: 09/21/2016)
09/21/2016	<a href="#">152</a>	SUPPLEMENTAL PROTECTIVE ORDER. Signed by MAG/JUDGE JOI ELIZABETH PEAKE on 9/21/2016. Associated Cases: 1:16-cv-00236-TDS-JEP, 1:16-cv-00425-TDS-JEP(Daniel, J) (Entered: 09/21/2016)
09/23/2016	<a href="#">153</a>	Joint MOTION for Protective Order re: <i>Legislative Privilege</i> by PHILLIP BERGER, TIM MOORE. Responses due by 10/7/2016 (Attachments: # <a href="#">1</a> Text of Proposed Order proposed order, # <a href="#">2</a> Exhibit A, # <a href="#">3</a> Exhibit B, # <a href="#">4</a> Exhibit C, # <a href="#">5</a> Exhibit D-1, # <a href="#">6</a> Exhibit D-2, # <a href="#">7</a> Exhibit D-3, # <a href="#">8</a> Exhibit E, # <a href="#">9</a> Exhibit F, # <a href="#">10</a> Exhibit G, # <a href="#">11</a> Exhibit H, # <a href="#">12</a> Exhibit I, # <a href="#">13</a> Exhibit J, # <a href="#">14</a> Exhibit K)(DUNCAN, STUART) (Entered: 09/23/2016)
09/23/2016	<a href="#">154</a>	MEMORANDUM IN SUPPORT OF Joint MOTION for Protective Order re: <i>Legislative Privilege</i> by PHILLIP BERGER, TIM MOORE. (DUNCAN, STUART) Modified on 9/26/2016 to properly set out pleading title, terminate motion and response deadline. (Garland, Leah) (Entered: 09/23/2016)
09/28/2016	<a href="#">155</a>	NOTICE by PHILLIP BERGER, TIM MOORE re <a href="#">147</a> Rule 26f (Joint), Order on Motion for Leave to File,,,,,,,,,,,,, Joint (POTTER, ROBERT) (Entered: 09/28/2016)
09/29/2016		CASE REFERRED to MAG/JUDGE JOI ELIZABETH PEAKE RE: Notice ( <a href="#">155</a> in 1:16cv236 and 190 in 1:16cv425) Associated Cases: 1:16cv236, 1:16cv425 (Engle, Anita) (Entered: 09/29/2016)
09/30/2016		Minute Entry for proceedings held before MAG/JUDGE JOI ELIZABETH PEAKE in WS-3: Telephone Conference held on 9/30/2016. Participating in the Telephone

		Conference were: Attorney Wilkens for Carcaño Plaintiffs, Attorney Stoughton for Plaintiff United States, Attorney Duncan for Legislative Intervenors, Attorney Stewart for State Defendants, and Attorney Gore for UNC Defendants. Parties are to file a joint written proposal regarding deposition limits by the end of today. Written order forthcoming. (Court Reporter Briana Nesbit.) Associated Cases: 1:16cv236, 1:16cv425(Engle, Anita) (Entered: 09/30/2016)
09/30/2016	<a href="#">156</a>	<i>Supplemental Due Process</i> BRIEF re <a href="#">127</a> Memorandum and Opinion, Order, Preliminary Injunction,,,,,, by Plaintiffs AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, H.S., PAYTON GREY MCGARRY filed by AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, H.S., PAYTON GREY MCGARRY. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C)(BROOK, CHRISTOPHER) (Entered: 09/30/2016)
09/30/2016	<a href="#">157</a>	NOTICE by AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, ANGELA GILMORE, H.S., PAYTON GREY MCGARRY <i>Joint Notice of Proposal Regarding Deposition Limits</i> (BROOK, CHRISTOPHER) (Entered: 09/30/2016)
10/02/2016		CASE REFERRED to Judge MAG/JUDGE JOI ELIZABETH PEAKE RE: Joint Notice of Proposal Regarding Deposition Limits ( <a href="#">157</a> in 1:16cv236 and 195 in 1:16cv425) Associated Cases: 1:16cv236, 1:16cv425(Engle, Anita) (Entered: 10/02/2016)
10/07/2016	<a href="#">158</a>	NOTICE by MARGARET SPELLINGS, UNIVERSITY OF NORTH CAROLINA re <a href="#">151</a> Amended Complaint, (FRANCISCO, NOEL) (Entered: 10/07/2016)
10/07/2016	<a href="#">159</a>	Transcript of Status Conference held on 09/16/2016, before Magistrate Judge Joi E. Peake. Court Reporter Briana L. Nesbit, Telephone number 336-734-2514. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. <P> <b>NOTICE RE: REDACTION OF TRANSCRIPTS: The parties have 5 business days to file a Notice of Intent to Request Redaction and 21 calendar days to file a Redaction Request. If no notice is filed, this transcript will be made electronically available to the public without redaction after 90 calendar days. Transcript may be viewed at the court public terminal or purchased through the court reporter before the 90 day deadline. After that date it may be obtained through PACER.</b> </P> Redaction Request due 10/31/2016. Redacted Transcript Deadline set for 11/10/2016. Release of Transcript Restriction set for 1/9/2017. Associated Cases: 1:16-cv-00236-TDS-JEP, 1:16-cv-00425-TDS-JEP, 1:16-cv-00844-TDS-JEP, 1:16-cv-00845-TDS-JEP(Nesbit, Briana) (Entered: 10/07/2016)
10/07/2016	<a href="#">160</a>	RESPONSE in Opposition re <a href="#">153</a> Joint MOTION for Protective Order re: <i>Legislative Privilege</i> filed by AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, JOAQUIN CARCANO, ANGELA GILMORE, H.S., PAYTON GREY MCGARRY. Replies due by 10/24/2016. (BROOK, CHRISTOPHER) (Entered: 10/07/2016)
10/11/2016		Reset Reply Deadline re: <a href="#">153</a> Joint MOTION for Protective Order re: <i>Legislative Privilege</i> : Replies due by 10/14/2016 pursuant to <a href="#">147</a> Order (Garland, Leah) (Entered: 10/11/2016)
10/11/2016	<a href="#">161</a>	JOINT ANSWER to Amended Complaint by PHILLIP BERGER, PATRICK MCCRORY, TIM MOORE. (STEWART, WILLIAM) (Entered: 10/11/2016)
10/11/2016	<a href="#">162</a>	ORDER signed by MAG/JUDGE JOI ELIZABETH PEAKE on 10/11/2016; that the Court adopts the Parties' Joint Proposal Regarding Deposition Limits [Doc. # <a href="#">157</a> in 1:16CV236 and Doc. # 195 in 1:16CV425] in full, and the most recent Scheduling Order [Doc. # <a href="#">147</a> in 1:16CV236 and Doc. # 178 in 1:16CV425] is modified accordingly. Any

		other time limits for particular depositions may be stipulated by the Parties or requested in a separate Motion for a Protective Order. FURTHER that the Hearing and Status Conference previously set for October 28, 2016 shall be rescheduled for November 18, 2016, at 1 p.m. The Parties are instructed to follow the briefing schedule set out above for any discovery disputes surrounding Plaintiffs' or Plaintiffs' witnesses' medical records, and the most recent Scheduling Order [Doc. # <a href="#">147</a> in 1:16CV236 and Doc. # 178 in 1:16CV425] is modified accordingly. Associated Cases: 1:16-cv-00236-TDS-JEP, 1:16-cv-00425-TDS-JEP (Garland, Leah) (Entered: 10/11/2016)
10/11/2016		Reset Hearings: Status Conference set for 11/18/2016 01:00 PM. (See 199 Order) Associated Cases: 1:16-cv-00236-TDS-JEP, 1:16-cv-00425-TDS-JEP (Garland, Leah) (Entered: 10/11/2016)
10/12/2016	<a href="#">163</a>	MOTION for Extension of Time to File Response/Reply <i>ISO Motion for Protective Order based on Legislative Privilege</i> by PHILLIP BERGER, TIM MOORE. (Attachments: # <a href="#">1</a> Text of Proposed Order)(MCDOWELL, LEAH) (Entered: 10/12/2016)
10/13/2016		Motions Referred to MAG/JUDGE JOI ELIZABETH PEAKE RE: MOTION for Extension of Time to File Reply <i>ISO Motion for Protective Order based on Legislative Privilege</i> ( <a href="#">163</a> in 1:16cv236 and 200 in 1:16cv425) Associated Cases: 1:16cv236, 1:16cv425(Engle, Anita) (Entered: 10/13/2016)
10/13/2016	<a href="#">164</a>	ORDER signed by MAG/JUDGE JOI ELIZABETH PEAKE on 10/13/2016; that the Motion for Extension of Time is hereby GRANTED. State Defendants and Intervenor-Defendants shall file their reply brief on or before Wednesday, October 19, 2016. Associated Cases: 1:16-cv-00236-TDS-JEP, 1:16-cv-00425-TDS-JEP (Garland, Leah) (Entered: 10/13/2016)
10/14/2016	<a href="#">165</a>	<p>Transcript of Status Conference held on 09/30/2016, before Judge Joi E. Peake. Court Reporter Briana L. Nesbit, Telephone number 336-734-2514. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.</p> <p><b>NOTICE RE: REDACTION OF TRANSCRIPTS: The parties have 5 business days to file a Notice of Intent to Request Redaction and 21 calendar days to file a Redaction Request. If no notice is filed, this transcript will be made electronically available to the public without redaction after 90 calendar days. Transcript may be viewed at the court public terminal or purchased through the court reporter before the 90 day deadline. After that date it may be obtained through PACER.</b></p> <p>Redaction Request due 11/7/2016. Redacted Transcript Deadline set for 11/17/2016. Release of Transcript Restriction set for 1/17/2017. Associated Cases: 1:16-cv-00236-TDS-JEP, 1:16-cv-00425-TDS-JEP, 1:16-cv-00844-TDS-JEP, 1:16-cv-00845-TDS-JEP (Nesbit, Briana) (Entered: 10/14/2016)</p>

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**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

JOAQUÍN CARCAÑO; PAYTON GREY  
MCGARRY; H.S., by her next friend and  
mother, KATHRYN SCHAFER; ANGELA  
GILMORE; KELLY TRENT; BEVERLY  
NEWELL; and AMERICAN CIVIL  
LIBERTIES UNION OF NORTH  
CAROLINA,

*Plaintiffs,*

v.

PATRICK MCCRORY, in his official capacity  
as Governor of North Carolina; UNIVERSITY  
OF NORTH CAROLINA; BOARD OF  
GOVERNORS OF THE UNIVERSITY OF  
NORTH CAROLINA; and W. LOUIS  
BISSETTE, JR., in his official capacity as  
Chairman of the Board of Governors of the  
University of North Carolina,

*Defendants.*

No. 1:16-cv-00236-TDS-JEP

**FIRST AMENDED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE RELIEF**

**INTRODUCTION**

1. This lawsuit challenges a sweeping North Carolina law, House Bill 2 (“H.B. 2”), which bans transgender people from accessing restrooms and other facilities consistent with their gender identity and blocks local governments from protecting lesbian, gay, bisexual, and transgender (“LGBT”) people against discrimination in a wide

variety of settings. By singling out LGBT people for disfavored treatment and explicitly writing discrimination against transgender people into state law, H.B. 2 violates the most basic guarantees of equal treatment and the U.S. Constitution.

2. In February 2016, the City of Charlotte enacted an ordinance (the “Ordinance”) that extended existing municipal anti-discrimination protections to LGBT people. In light of the pervasive discrimination faced by LGBT people—and particularly transgender people—advocates had long pressed the Charlotte City Council for these protections. Because North Carolina state law does not expressly prohibit discrimination based on sexual orientation or gender identity, many LGBT residents of Charlotte—as well as LGBT residents throughout the state—are exposed to invidious discrimination in their day-to-day lives simply for being themselves. After two hours-long hearings, in which there was extensive public comment on both sides of the issue, the Charlotte City Council voted to adopt the Ordinance.

3. Before the Ordinance could take effect, the North Carolina General Assembly rushed to convene a special session with the express purpose of passing a statewide law that would preempt Charlotte’s “radical” move to protect its residents from discrimination. In a process rife with procedural irregularities, the legislature introduced and passed H.B. 2 in a matter of hours, and the Governor signed the bill into law that same day. Lawmakers made no attempt to cloak their actions in a veneer of neutrality, instead openly and virulently attacking transgender people, who were falsely portrayed as predatory and dangerous to others. While the discriminatory, stated focus of the

legislature in passing H.B. 2—the use of restrooms by transgender people—is on its own illegal and unconstitutional, H.B. 2 in fact wreaks far greater damage by also prohibiting local governments in North Carolina from enacting express anti-discrimination protections based on sexual orientation and gender identity.

4. Plaintiffs are individuals and a nonprofit organization whose members and constituents will be directly impacted by H.B. 2. Like the three transgender plaintiffs in the case, transgender people around the state of North Carolina immediately suffered harm under H.B. 2 in that they are not able to access public restrooms and other single-sex facilities that accord with their gender identity. Additionally, all LGBT people are harmed by H.B. 2 in that it strips them of, or bars them from, anti-discrimination protections under local law. Plaintiffs seek a declaratory judgment that H.B. 2 violates their or their members' constitutional and statutory rights to equal protection, liberty, dignity, autonomy, and privacy, as well as an injunction preliminarily and permanently enjoining enforcement by of H.B. 2 by Defendants.

## **PARTIES**

### **A. Plaintiffs.**

5. Plaintiff Joaquín Carcaño (“Mr. Carcaño”) is a 27-year-old man who resides in Carrboro, North Carolina. Mr. Carcaño is employed by the University of North Carolina, and he works at the University of North Carolina at Chapel Hill (“UNC-Chapel Hill”). He is transgender.

6. Plaintiff Payton Grey McGarry (“Mr. McGarry”) is a 20-year-old man who resides in Greensboro, North Carolina. Mr. McGarry is a full-time student at the University of North Carolina at Greensboro (“UNC-Greensboro”). He is transgender.

7. Plaintiff H.S. is a 17-year-old young woman from Raleigh, North Carolina who attends school and resides in Winston-Salem, North Carolina. Plaintiff H.S. is a student at the University of North Carolina School of the Arts High School (“UNCSA-HS”). She is transgender.

8. Plaintiff Angela Gilmore (“Ms. Gilmore”) is a 52-year-old woman who resides in Durham, North Carolina and is an Associate Dean and Professor at North Carolina Central University School of Law. Ms. Gilmore is a lesbian.

9. Plaintiffs Kelly Trent (“Ms. Trent”) and Beverly Newell (“Ms. Newell”) are a lesbian couple who reside in Charlotte, North Carolina. Ms. Trent is a 39-year-old registered nurse, and Ms. Newell is a 46-year-old realtor.

10. Plaintiff American Civil Liberties Union of North Carolina (“ACLU of NC”) is a private, non-profit membership organization with its principal office in Raleigh, North Carolina. It has approximately 8,500 members in the State of North Carolina, including LGBT members. The mission of the ACLU of NC is to defend and advance the individual freedoms embodied in the United States Constitution, including the rights of LGBT people to be free from invidious discrimination and infringements on their liberty interests. The ACLU of NC sues on behalf of its members, some of whom are transgender individuals who are barred by H.B. 2 from using restrooms and other

facilities in accordance with their gender identity in schools (including those subject to N.C. Gen. Stat. § 115C-521.2) and government buildings, and some of whom are lesbian, gay, bisexual, or transgender individuals who have been stripped of or barred from local non-discrimination protections based on their sexual orientation and sex, including gender identity.

**B. Defendants.**

11. Defendant Patrick McCrory (“Defendant McCrory” or “Governor McCrory” or “the Governor”) is sued in his official capacity as the Governor of North Carolina. Pursuant to Article III, Section 1 of the State Constitution, “the executive power of the State” is vested in Defendant McCrory in his capacity as Governor. Article III, Section 5(4) also provides that it is the duty of Defendant McCrory in his capacity as Governor to “take care that the laws be faithfully executed.” Governor McCrory is a person within the meaning of 42 U.S.C. § 1983 and was acting under color of state law at all times relevant to this complaint.

12. Defendant University of North Carolina is an education program or activity receiving federal financial assistance. Defendant University of North Carolina includes its constituent institutions, the University of North Carolina at Chapel Hill, the University of North Carolina at Greensboro, and the University of North Carolina School of the Arts High School.

13. Defendant Board of Governors of the University of North Carolina (“the Board”) is a corporate body charged with the general control, supervision, and

governance of the University of North Carolina's constituent institutions. The Board is capable of being sued in "all courts whatsoever" pursuant to N.C. Gen. Stat. § 116-3.

14. Defendant W. Louis Bisette, Jr. ("Defendant Bisette" or "Mr. Bisette") is sued in his official capacity as the Chairman of the Board of Governors of the University of North Carolina and has the power to ensure the Board's compliance with any injunctive relief.

15. Defendants, through their respective duties and obligations, are responsible for enforcing H.B. 2. Each Defendant, and those subject to their direction, supervision, or control, has or intentionally will perform, participate in, aide and/or abet in some manner the acts alleged in this complaint, has or will proximately cause the harm alleged herein, and has or will continue to injure Plaintiffs irreparably if not enjoined. Accordingly, the relief requested herein is sought against each Defendant, as well as all persons under their supervision, direction, or control, including, but not limited to, their officers, employees, and agents.

### **JURISDICTION AND VENUE**

16. This action arises under 42 U.S.C. § 1983 to redress the deprivation under color of state law of rights secured by the United States Constitution and under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, *et seq.* ("Title IX").

17. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1343 because the matters in controversy arise under laws of the United States and the United States Constitution.

18. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1) and (2) because Defendant University of North Carolina resides within the District, and all Defendants reside within the State of North Carolina; and because a substantial part of the events that gave rise to the Plaintiffs' claims took place within the District.

19. This Court has the authority to enter a declaratory judgment and to provide preliminary and permanent injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure, and 28 U.S.C. §§ 2201 and 2202.

20. This Court has personal jurisdiction over Defendants because they are domiciled in North Carolina.

## **FACTUAL ALLEGATIONS**

### **A. Plaintiffs.**

21. **Plaintiff Joaquín Carcaño** works for the University of North Carolina at Chapel Hill ("UNC-Chapel Hill") Institute for Global Health and Infectious Disease as a Project Coordinator. The project that he coordinates provides medical education and services such as HIV testing to the Latino/a population.

22. Mr. Carcaño is a man.

23. Until the passage of H.B. 2, Mr. Carcaño was recognized and treated like all other men at his job at UNC-Chapel Hill.

24. Mr. Carcaño is transgender. What that means is that his sex assigned at birth was female, as his birth certificate reflects, but that designation does not accurately reflect his gender identity, which is male.

25. A person's gender identity refers to the person's internal sense of belonging to a particular gender. There is a medical consensus that gender identity is innate and that efforts to change a person's gender identity are unethical and harmful to a person's health and well-being.

26. The gender marker on a birth certificate is designated at the time of birth generally based upon the appearance of external genitalia. However, determinations of sex can involve multiple factors, such as chromosomes, hormone levels, internal and external reproductive organs, and gender identity.

27. Gender identity is the primary determinant of sex.

28. Mr. Carcaño was diagnosed with gender dysphoria, the medical diagnosis for the clinically significant distress that individuals whose gender identity differs from the sex they were assigned at birth can experience.

29. Gender dysphoria is a serious medical condition that, if left untreated, can lead to clinical distress, debilitating depression, and even suicidal thoughts and acts.

30. Gender dysphoria is a condition recognized in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fifth ed. (2013) (DSM-V), and by the other leading medical and mental health professional groups, including the American Medical Association and the American Psychological Association.

31. Medical treatment for gender dysphoria must be individualized for the medical needs of each patient.

32. Treatment for gender dysphoria includes living one's life consistent with one's gender identity, including when accessing single-sex spaces such as restrooms and locker rooms.

33. Forcing a transgender person to use single-sex spaces that do not match the person's gender identity is inconsistent with medical protocols and can cause anxiety and distress to the transgender person and result in harassment of and violence against them.

34. Mr. Carcaño was born and raised in South Texas. Since a very young age, around 7 or 8 years old, Mr. Carcaño was aware that he did not feel like a girl, but he did not know how to express how he felt.

35. Mr. Carcaño ultimately acknowledged his male gender identity to himself later in his adult life.

36. Since 2013, Mr. Carcaño has been in the continuous care of a licensed mental health clinician, who diagnosed Mr. Carcaño with gender dysphoria. Mr. Carcaño initially sought treatment for depression, which was caused in part by his gender dysphoria.

37. Mental health and medical professionals worldwide recognize and follow the evidence-based standards of care for the treatment of gender dysphoria developed by the World Professional Association for Transgender Health ("WPATH"). After diagnosing Mr. Carcaño with gender dysphoria, his therapist developed a course of treatment consistent with those standards. The goal of such treatment is to alleviate distress by helping a person live congruently with the person's gender identity, the

primary determinant of sex. Consistent with that treatment and his identity, in January 2015, Mr. Carcaño explained to his family and friends that he is a man.

38. A critical component of the WPATH Standards of Care is a social transition to living full-time consistently with the individual's gender identity. For Mr. Carcaño, that includes living in accordance with his gender identity in all respects, including the use of a male name and pronouns and use of the men's restrooms.

39. For transgender people, it is critical that social transition include transition in the workplace, including with respect to restrooms. Excluding a transgender man from the restroom that corresponds to his gender identity, or forcing him to use a separate facility from other men, communicates to the entire workplace that he should not be recognized as a man and undermines the social transition process.

40. Mr. Carcaño also began using Joaquín as his first name in January 2015. His friends, family, and coworkers now recognize him as a man, and they refer to him using his male name and male pronouns.

41. Also consistent with the WPATH Standards of Care, Mr. Carcaño's physician recommended and prescribed hormone treatment, which Mr. Carcaño has received since May 2015. For both hormone therapy and surgical treatment, the WPATH Standards of Care require persistent, well-documented gender dysphoria, which is a criterion that Mr. Carcaño satisfied. Among other therapeutic benefits, the hormone treatment has deepened Mr. Carcaño's voice, increased his growth of facial hair, and given him a more masculine appearance. This treatment helped alleviate the distress Mr.

Carcaño experienced due to the discordance between his birth-assigned sex and his identity and helped him to feel more comfortable with who he is.

42. As part of the treatment for his gender dysphoria, Mr. Carcaño also obtained a bilateral mastectomy and nipple reconstruction (also known as “top surgery”) in January 2016. Consistent with WPATH Standards of Care, Mr. Carcaño satisfied the requirement of having a referral from a qualified mental health professional in order to obtain the surgical treatment.

43. As part of his social transition, Mr. Carcaño began using the men’s restroom at work and elsewhere in late 2015, which occurred without incident for the five months or so before H.B. 2’s enactment. Mr. Carcaño’s therapist had also specifically recommended that he use only the men’s restroom. She was concerned that using the women’s restroom could compromise his mental health, well-being, and safety. By late 2015, Mr. Carcaño had facial hair facilitated by hormone treatment, and his therapist indicated that others would recognize Mr. Carcaño as a man based on his physical appearance.

44. Mr. Carcaño is now comfortable with the status of his treatment and, with the exception of the distress now caused by the passage of H.B. 2, his distress has been managed through the clinically recommended treatment he has received. He plans to continue treatment under the supervision of medical professionals and based on his medical needs.

45. Apart from the building where he works, Mr. Carcaño also used other men's restrooms on the UNC-Chapel Hill campus without incident for approximately five months prior to H.B. 2's passage. In addition, when out in public, such as at restaurants and stores, Mr. Carcaño uses the men's restroom.

46. The only restrooms on the floor where Mr. Carcaño works at UNC-Chapel Hill are designated either for men or for women. H.B. 2 thus excludes him from using the same restrooms that his coworkers typically use. This exclusion is stigmatizing and marks him as different and lesser than other men.

47. Using the women's restroom is not a viable option for Mr. Carcaño, just as it would not be a viable option for non-transgender men to be forced to use the women's restroom. Forcing Mr. Carcaño to use the women's restroom would also cause substantial harm to his mental health and well-being. It would also force him to disclose to others the fact that he is transgender, which itself could lead to violence and harassment.

48. The idea of being forced into the women's restroom causes Mr. Carcaño to experience significant anxiety, as he knows that it would be distressing for him and uncomfortable for others. He fears for his safety because of the passage of H.B. 2.

49. In the initial period after H.B. 2's passage, Mr. Carcaño generally used a single-occupancy restroom not designated either for men or for women in another building on campus, which was approximately a 10-15 minute walk away from his building each way.

50. Mr. Carcaño was subsequently informed by administrative staff in the building where he works that they had learned of a single-occupancy restroom based on building floor plans. It is accessible using a special service elevator, and the restroom is tucked away in a cubby down a hallway in a part of the building used for housekeeping.

51. Mr. Carcaño is not only humiliated by being singled out and forced to use a separate restroom from his colleagues and all other men that he works with, but also burdened by having to use a separate restroom on a different floor, which increases the likelihood that he will delay or avoid going to the restroom.

52. Mr. Carcaño also visits public agencies as defined by N.C. Gen. Stat. § 143-760(4), and intends to and will do so in the future. For example, as part of his job at UNC-Chapel Hill, Mr. Carcaño has had to visit the offices of the North Carolina Department of Health and Human Services many times in the past, and he will continue to need to do so in the future. Prior to the passage of H.B. 2, he used the men's restroom while at their office, but he will be banned from doing so in the future under H.B. 2.

53. Similarly, Mr. Carcaño has visited state courthouses in Chapel Hill as part of a process to obtain a name change from his current legal name, which includes a traditionally feminine first name, to the name he currently uses. Because that name change process is ongoing, Mr. Carcaño will continue to visit state courthouses in the future, but he will be banned from using the men's restroom there under H.B. 2.

54. Mr. Carcaño has also visited the Division of Motor Vehicles under the North Carolina Department of Transportation on prior occasions (*e.g.*, to obtain a driver's

license) and anticipates doing so again in the future, where he will be banned from using the men's restroom under H.B. 2.

55. Mr. Carcaño also regularly uses the North Carolina Rest Area System, which maintains public restrooms along highways and is operated by the North Carolina Department of Transportation. For example, he uses the restrooms provided by that system when he travels approximately once a month to visit his brother in Atlanta, and when he visits Washington, D.C. periodically. He will need to continue to use those restrooms in the future, but he will be banned from using the men's restroom under H.B. 2.

56. There have been no incidents or, to the best of Mr. Carcaño's knowledge, complaints related to his use of the restrooms designated for men.

57. Mr. Carcaño is currently in the process of pursuing and exhausting administrative remedies before the Equal Employment Opportunity Commission with respect to his rights under Title VII of the Civil Rights Act of 1964.

58. Mr. Carcaño is a member of the ACLU of NC.

59. **Plaintiff Payton Grey McGarry** is a full-time student at the University of North Carolina at Greensboro ("UNC-Greensboro"), where he is double majoring in Business Administration and Accounting. He is also a skilled musician and has played trumpet in many ensembles at UNC-Greensboro. He plays the guitar, baritone, clarinet, and saxophone.

60. Mr. McGarry is close to his family and has a younger brother who is also a member of the LGBT community. Mr. McGarry hopes to use his education to eventually go to law school and work to defend people's civil rights.

61. Mr. McGarry is a man.

62. Mr. McGarry is transgender. As is true for Mr. Carcaño, Mr. McGarry's sex assigned at birth was female, as his birth certificate reflects, but that designation does not conform to his gender identity, which is male.

63. Mr. McGarry was diagnosed with gender dysphoria.

64. Mr. McGarry was born and raised in Wilson, North Carolina. Throughout his childhood, Mr. McGarry felt like a boy and never really thought of himself as a girl. It was not until he started to go through puberty that he began to wrestle with the disconnect between his identity as a boy and his assigned birth sex.

65. Mr. McGarry realized while he was in high school that he is transgender.

66. In October 2013, during his senior year in high school, Mr. McGarry began mental health treatment with a licensed clinical social worker who diagnosed him with gender dysphoria.

67. After diagnosing Mr. McGarry with gender dysphoria, his therapist developed a course of treatment in accordance with medical standards for treating the condition.

68. Consistent with that treatment and his identity, in the fall and winter of 2013, Mr. McGarry explained to his friends and family that he is male and began to use male pronouns.

69. In April 2014, under the care of an endocrinologist, Mr. McGarry began hormone therapy. This treatment helped alleviate the distress that Mr. McGarry experienced due to the discordance between his birth-assigned sex and his identity and helped him to feel more comfortable with who he is.

70. By the time he graduated high school in June 2014, Mr. McGarry used the name Payton and male pronouns in all aspects of his life. He is known as Payton McGarry to his family, friends, and peers, although he has not yet changed his legal first name to Payton.

71. In the fall of 2014, Mr. McGarry enrolled as a freshman at UNC-Greensboro as Payton McGarry and as male.

72. Since arriving at UNC-Greensboro, Mr. McGarry has identified and has been known to others as male for all purposes.

73. Mr. McGarry is a member of Phi Mu Alpha Sinfonia, a music fraternity, and is the Vice President of the Iota Epsilon Chapter of that fraternity. His fraternity brothers are aware that he is transgender and have no concerns with his use of men's restrooms and locker rooms.

74. Though Mr. McGarry currently lives off campus, he is on campus six or seven days per week and always uses the restroom designed for men in on-campus buildings.

75. Mr. McGarry regularly uses the locker room facilities at UNC-Greensboro and always uses the facilities designed for men.

76. For the past year and a half since he enrolled at UNC-Greensboro, Mr. McGarry has used the men's restrooms and locker rooms on-campus without incident. Mr. McGarry is unaware of any instance in which any person has complained about his use of the men's restroom or locker room.

77. Mr. McGarry works part-time as a visual technician for marching bands at different high schools around the state and regularly uses the bathroom for men when working as a visual technician. There have been no incidents or, to the best of Mr. McGarry's knowledge, complaints related to his use of the restrooms designated for men.

78. In addition, when out in public, such as at restaurants and stores, Mr. McGarry always uses the men's restroom.

79. To Mr. McGarry's knowledge, there are very few single-user restrooms on the UNC-Greensboro campus, and there are no single-user bathrooms in many buildings where he has classes.

80. If Mr. McGarry could not use the men's restroom at UNC-Greensboro, he would have to search for single-user restrooms outside of the buildings where his classes are held every time he had to use the restroom. This would disrupt his ability to attend

class and would interfere with his educational opportunities. Expelling him from the multiple occupancy restrooms and locker rooms available to all other male students is stigmatizing and marks him as different and lesser than other men.

81. Since he started testosterone two years ago, Mr. McGarry's voice has deepened and his face and body have become more traditionally masculine in appearance.

82. Using the women's restroom is not a viable option for Mr. McGarry, just as it would not be a viable option for non-transgender men to be forced to use the women's restroom. Forcing Mr. McGarry to use the women's restroom would also cause substantial harm to his mental health and well-being. It would also force him to disclose to others the fact that he is transgender, which itself could lead to violence and harassment.

83. The idea of being forced into the women's restroom causes Mr. McGarry to experience significant anxiety, as he knows that it would be distressing for him and uncomfortable for others. He fears for his safety because of the passage of H.B. 2.

84. Since the passage of H.B. 2, Mr. McGarry has been barred from using the men's restrooms on campus. Given that he cannot use the women's restroom and there are only a few available single-user restrooms, he often avoids going to the restroom all day.

85. Mr. McGarry has also visited public agencies as defined by N.C. Gen. Stat. § 143-760(4), and intends to and will do so in the future. For example, Mr. McGarry has

visited the Division of Motor Vehicles under the North Carolina Department of Transportation on prior occasions (*e.g.*, to obtain a driver's license) and anticipates doing so again in the future, where he will be banned from using the men's restroom under H.B. 2.

86. Mr. McGarry also has used and will continue to use the North Carolina Rest Area System, which maintains public restrooms along highways and is operated by the North Carolina Department of Transportation. He will need to continue to use those restrooms in the future, but he will be banned from using the men's restroom under H.B. 2.

87. **Plaintiff H.S.** is a junior at the University of North Carolina School of the Arts High School ("UNCSA-HS"). The oldest of four children, she is close to her family, who love and support her. She is an accomplished artist and studies visual arts at UNCSA-HS.

88. H.S. is a girl.

89. Until the passage of H.B. 2, H.S. was recognized as a girl at school and when out in public.

90. H.S. is transgender. She was assigned the sex of male at birth, as her birth certificate reflects, but that designation does not accurately reflect her gender identity, which is female.

91. H.S. has been diagnosed with gender dysphoria.

92. H.S. was born in New Jersey but moved to North Carolina when she was 11 years old. From as young an age two or three, H.S. gravitated towards clothing and toys generally associated with girls. Like many other girls, she would always want to wear the pink princess dresses at pre-school and to play with Barbie dolls.

93. After completing pre-school, H.S. did not feel comfortable expressing her identity as a girl and tried to immerse herself in traditionally masculine spaces and activities. She tried to do things that she felt she was supposed to do as a boy. But nothing felt right.

94. Starting in seventh grade, H.S. again began to gravitate toward clothes and activities that were considered more feminine.

95. By eighth grade, H.S. again began to express a more stereotypically feminine gender and at times would wear makeup and high-heel shoes at school.

96. As puberty began to approach in ninth grade, severe gender dysphoria and anxiety began to hit H.S., and she experienced significant distress around her body and identity. She finally went to her parents, who recognized that she was suffering.

97. In ninth grade, H.S. began therapy with an expert on treating transgender young people and was diagnosed with gender dysphoria.

98. In 2013, H.S. started high school at Broughton High School in Raleigh. In the middle of her freshman year, H.S. began hormone blockers to prevent the onset of male puberty and the development of secondary sex characteristics associated with men. This treatment delayed puberty while H.S. continued to understand her female identity.

Though H.S. continued to experience some distress and dysphoria, the hormone blockers greatly reduced her suffering.

99. At the end of ninth grade, H.S. felt fully comfortable embracing her identity as a girl at school and had the full support of her parents. On the last day of school her freshman year, H.S. wore a skirt to school that her mother had purchased for her. It was an important and symbolic turning point in her comfort with and embrace of her identity as a girl.

100. By sophomore year, H.S. was perceived as a girl and began to use the girls' bathroom at school and in public. She was also known by female pronouns—such as she, her, and hers—by this time.

101. During her sophomore year, H.S. was elected to the Queen's Court at her school, an honor that had, in the seventy-five years of the tradition, been shared only among non-transgender girls.

102. Under the care of her endocrinologist, during her sophomore year in high school, H.S. continued to assess her medical treatment for gender dysphoria and began to consider hormone replacement therapy. At the end of her sophomore year, in the spring of 2015, H.S. began estrogen therapy to continue her medical transition.

103. An accomplished visual artist, H.S. applied to the UNCSEA-HS for her junior year and was accepted.

104. In the fall of 2015, H.S. moved to Winston-Salem to attend UNCSEA-HS as a boarding student. She studies visual arts and aspires to a career in fashion.

105. H.S. lives in the girls' dormitory at UNCSEA-HS.

106. Until the passage of H.B. 2, H.S. exclusively used the girls' restroom at school and could not imagine ever using a restroom designated for boys. H.S. is unaware of any instance in which any person has complained about her use of the girls' restroom.

107. In addition, when out in public, such as at restaurants and stores, H.S. uses the restrooms designated for women and girls.

108. Outside of H.S.'s dorm room, there are no single-user restrooms available to her at UNCSEA-HS and it would be disruptive to H.S.'s education to have to avoid the use of the restroom or to return to her room or locate a single-user restroom off campus every time she needed to go to the restroom.

109. Forcing H.S. out of spaces shared with her female peers is stigmatizing and marks her as different and lesser than other girls at school.

110. Particularly because she never went through puberty as a boy and began estrogen treatment earlier this year, H.S. has a traditionally feminine appearance. She is recognized as female in all aspects of her life.

111. Using the boys' or men's restroom is not a viable option for H.S., just as it would not be a viable option for non-transgender women and girls to be forced to use the restrooms designated for men and boys. Forcing H.S. to use the restroom designated for men and boys would also cause substantial harm to her mental health and well-being and would put her in danger of harassment and violence. It would also force her to disclose

to others the fact that she is transgender, which itself could lead to violence and harassment.

112. The idea of being forced into the restroom designated for boys and men at school and in public causes H.S. to experience significant anxiety and brings up painful memories and anxiety from her earlier childhood. She fears for her safety because of the passage of H.B. 2.

113. Since the passage of H.B. 2, H.S. has limited or delayed use of the bathroom because of fear of reprisals if she uses the restroom designated for women and girls and because she fears for her safety if she uses the restroom designated for men and boys, as the law requires.

114. H.S. has also visited public agencies as defined by N.C. Gen. Stat. § 143-760(4), and intends to and will do so in the future. For example, H.S. has visited the Division of Motor Vehicles under the North Carolina Department of Transportation on prior occasions (*e.g.*, to obtain a driver's license) and anticipates doing so again in the future, where she will be banned from using the women's restroom under H.B. 2.

115. H.S. has used and will continue to use the North Carolina Rest Area System, which maintains public restrooms along highways and is operated by the North Carolina Department of Transportation. She will need to continue to use those restrooms in the future, but she will be banned from using the women's restroom under H.B. 2.

116. **Plaintiff Angela Gilmore** is a resident of Durham, North Carolina. Ms. Gilmore has lived in North Carolina since 2011, when she moved from Florida to

take a job at North Carolina Central University. She is currently the Associate Dean for Academic Affairs and Professor of Law at North Carolina Central University.

117. Ms. Gilmore is a lesbian, and has been in a relationship with her wife, Angela Wallace, for almost twenty years. Ms. Gilmore and Ms. Wallace were married in Washington, D.C. in 2014.

118. Ms. Gilmore looked for and accepted a job in North Carolina, after she and her wife fell in love with the state during a visiting teaching job Ms. Gilmore had at Elon University School of Law in Greensboro, North Carolina, in 2010.

119. Both Ms. Gilmore and her wife, African American lesbians, felt that North Carolina, and Durham in particular, was a place where they could be fully themselves, comfortable in terms of both their race and sexual orientation.

120. Ms. Gilmore and her wife love living in Durham—they feel very much part of the community—and prior to the passage of H.B. 2, they had been looking at small towns in North Carolina where they might want to retire.

121. Since moving to North Carolina, Ms. Gilmore has worked towards increasing non-discrimination protections for LGBT people. Ms. Gilmore is a member of the ACLU of NC, and she was on the ACLU of NC board between 2014 and 2015. During that time, the ACLU of NC actively worked to defeat anti-LGBT bills proposed in the state legislature and to pass local ordinances, like the Ordinance, and to protect LGBT people from discrimination at the local level. Ms. Gilmore also has spoken on

panels at her law school and other law schools regarding non-discrimination protections for LGBT people.

122. The passage of H.B. 2 has caused Ms. Gilmore and her wife distress, in that it has significantly undone their sense of belonging and value in the state, which is why they moved to North Carolina. Ms. Gilmore and her wife experience H.B. 2 as sending a clear message to them as lesbians that they are not welcome in North Carolina.

123. Ms. Gilmore and her wife have visited the City of Charlotte and they plan to do so in the future. As two women traveling together with the same first name, they are often asked about the nature of their relationship, and they therefore regularly reveal themselves to be a lesbian couple. Under the Ordinance, Ms. Gilmore and her wife would have been protected from sexual orientation discrimination in public accommodations in the City of Charlotte. With the passage of H.B. 2, Ms. Gilmore worries that she and her wife will now be exposed to discrimination based on their sexual orientation.

124. With the passage of H.B. 2, Ms. Gilmore also is limited in her ability to increase and benefit from non-discrimination protections for LGBT people in North Carolina. Were she able to, Ms. Gilmore would continue to advocate for local ordinances that prohibit discrimination based on sexual orientation and gender identity.

125. As a non-transgender woman who always uses the facilities designated for women in both public and private spaces, Ms. Gilmore does not feel safer in these facilities because of the passage of H.B. 2.

126. **Plaintiffs Kelly Trent and Beverly Newell** are residents of Charlotte, North Carolina. Ms. Trent and Ms. Newell met in 2013, and they were married in Charlotte in December 2014.

127. As a lesbian couple and as residents of Charlotte, Ms. Trent and Ms. Newell would have been protected by the Ordinance from discrimination based on their sexual orientation by public accommodations in Charlotte. With the passage of H.B. 2, public accommodations in Charlotte are now legally permitted to discriminate based on sexual orientation. Ms. Trent and Ms. Newell fear that they are likely to experience discrimination based on their sexual orientation in Charlotte in the future, based on their recent experience of discrimination on that basis.

128. In February 2016, Ms. Trent reached out to a fertility clinic, the website for which listed an office in Charlotte, and made an appointment for an initial consult in early April 2016. Ms. Trent and Ms. Newell are trying to become parents, and they are hoping to have Ms. Trent carry a child. Because they are a lesbian couple, they plan on using donor sperm. At the time of her contact with the clinic, Ms. Trent made it clear that she and Ms. Newell are a same-sex couple seeking fertility services and that they plan on using donor sperm.

129. On April 1, 2016—soon after the passage of H.B. 2—a representative of the clinic called Ms. Trent and cancelled the appointment, claiming that the clinic did not serve “single sex couples” or “same sex couples.” The next week, the clinic’s website was changed to state that the clinic now does not provide services “requiring the use of

donor sperm,” although the clinic does continue to provide services for clients using a “husband’s” sperm. The clinic’s refusal to serve Ms. Trent and Ms. Newell appears to be based on their sexual orientation.

130. The passage of H.B. 2 prevented Ms. Trent and Ms. Newell from being able to file a public accommodations discrimination complaint with the City of Charlotte Community Relations Committee regarding the clinic’s actions, or from having their complaint investigated or conciliated. Had H.B. 2 not passed and preempted the Ordinance, Ms. Trent and Ms. Newell would have filed such a complaint. If Ms. Trent and Ms. Newell suffer future discrimination based on their sexual orientation in a place of public accommodation in Charlotte, they will similarly be denied the ability to avail themselves of the City of Charlotte’s Community Relations Committee procedure for receiving, investigating, or conciliating complaints.

131. With the passage of H.B. 2, Ms. Trent and Ms. Newell are also limited in their ability to increase and benefit from non-discrimination protections for LGBT people in North Carolina. As residents of Charlotte, Ms. Trent and Ms. Newell supported the Ordinance, and were they able to, they would support other local ordinances that prohibit discrimination based on sexual orientation and gender identity.

132. As non-transgender women who always use the facilities designated for women in both public and private spaces, Ms. Trent or Ms. Newell do not feel safer in these facilities because of the passage of H.B. 2.

**B. The City of Charlotte's Enactment of a Non-Discrimination Ordinance.**

133. Advocates have long worked for the passage of an ordinance that would ensure that LGBT people were expressly protected from discrimination within the City of Charlotte. Prior to the vote on the Ordinance, there had been an earlier round of intensive public engagement in late 2014 to early 2015, when the Charlotte City Council previously considered expanding non-discrimination protections to include sexual orientation and gender identity and expression.

134. There was again extensive discussion and deliberation leading up to the February 2016 vote on the Ordinance. The Charlotte City Council heard hours of robust public comment in a forum that included hundreds of people—both those who were in support of the Ordinance and those who were in opposition to the Ordinance. The Charlotte City Council also received significant legal analysis from the Office of the City Attorney regarding its authority to enact the Ordinance and the effect of the Ordinance.

135. The impetus for the Ordinance is the reality that LGBT people often face pervasive discrimination. Although same-sex couples may now marry throughout the United States as a result of the U.S. Supreme Court's 2015 ruling in *Obergefell*, lesbian, gay, and bisexual people remain vulnerable to discrimination in states like North Carolina where there is no express protection for sexual orientation in state law, making local anti-discrimination protections even more vital. Discrimination is especially pervasive for transgender people, as evidenced by a 2011 national study of transgender Americans,

*Injustice at Every Turn*, which documented the high levels of harassment, discrimination, and violence that transgender people have faced and continue to face.

136. In the 2011 national report cited above, 90% of respondents reported being harassed at work or taking actions to avoid harassment, while 26% reported being fired because they are transgender. Forty-seven percent reported some form of employment discrimination because they are transgender, including not being hired, not being promoted, or being fired. Fifty-three percent reported being verbally harassed or disrespected in a place of public accommodation, and 22% reported being denied equal treatment by a government agency or official because they are transgender.

137. In 2013, it was estimated that there were more than 250,000 LGBT adults in North Carolina, out of an adult population of approximately eight million people. Among this population of North Carolinians, there are an estimated 37,800 transgender people (of any age), including 15,600 individuals who are 13 to 19 years old. While transgender individuals only make up a small minority of the population, they are disproportionately targeted for hate crimes in the United States.

138. On Monday, February 22, 2016, by a 7-to-4 vote, the Charlotte City Council approved the Ordinance, which, *inter alia*, amended its existing public accommodations protections by barring discrimination in public accommodations based on “gender identity, gender expression” and “sexual orientation.”

139. The City Council’s vote was met with a firestorm of opposition from vocal opponents of the part of the Ordinance that would have required certain public

accommodations to allow transgender people to use single-sex facilities, such as restrooms and locker rooms, in accordance with their gender identity.

140. Opponents of the Ordinance distorted the truth of what the Ordinance's non-discrimination requirement would accomplish and formed a vocal campaign decrying a purported attempt to permit "men in women's restrooms."

**C. The Events Leading to H.B. 2, Contemporary Statements by Decisionmakers, and Departures From the Normal Legislative Process Revealed a Series of Official Actions Taken for Invidious Purposes.**

141. The State of North Carolina has rarely, if ever, exercised authority to preempt local ordinances providing broader protections than under state law. For example, in 1968 Charlotte adopted an ordinance prohibiting discrimination in public accommodations on the basis of race, color, religion, and national origin. In 1972, the Council amended the ordinance to prohibit discrimination based on sex, which the Council further modified in 1985.

142. Even though all of these protections extended beyond the reach of the State's public accommodations law, which until H.B. 2 prohibited only public accommodations discrimination based on disability, the State allowed Charlotte's ordinance to stand undisturbed for decades. It was only after Charlotte took steps to protect LGBT people that the State rushed to preempt the ordinance.

143. Even before the Charlotte City Council had cast its vote on the Ordinance, Governor McCrory informed Charlotte City Council members that the State would likely take immediate action to put a halt to the Ordinance—even as Governor McCrory

conceded that was an exceedingly unusual step. In an email to Charlotte City Council members, Governor McCrory noted that he “made a point as the former 14 year Mayor and current Governor to stay out of specific issues being voted on by the Charlotte City Council.” Governor McCrory nonetheless characterized the Ordinance’s non-discrimination protections for LGBT people as “changing basic long-established values and norms” surrounding “public restrooms,” and he ominously warned of “possible danger from deviant actions by individuals taking improper advantage of a bad policy.” Governor McCrory said that the Ordinance would “most likely cause immediate State legislative intervention which I would support as governor.”

144. On Tuesday, February 23, 2016, the Speaker of the North Carolina House of Representatives, Tim Moore (“Speaker Moore”), issued a press release announcing that he would work with fellow Republicans to explore a “legislative intervention to correct [Charlotte’s] radical course.”

145. In North Carolina, it is the state’s Governor who typically calls a special session, but in this case, Governor McCrory refused to call a special session because he was concerned that the legislature would go beyond addressing the Charlotte Ordinance.

146. As a result of the Governor’s refusal to call a special session, legislative leaders opted for a rarely used law that allows special sessions when three-fifths of legislators in both chambers support the call. That provision in the state constitution had not been used since 1981, according to Lt. Governor Dan Forest’s chief of staff, Hal Weatherman. The special session cost approximately \$42,000 to convene.

147. The text of H.B. 2, which was named the “Public Facilities Privacy and Security Act,” was not shared with most legislators until they arrived to debate the bill.

148. North Carolina House of Representatives Minority Leader Larry Hall (“Minority Leader Hall”) stated “We don’t know what we’re discussing here, we don’t know what we’re voting on. *What we’re doing is a perversion of the process.*”

149. Minority Leader Hall said that Democrats were initially told that the special session would take place on Thursday, March 24, 2016, when instead the special session was held on March 23, 2016. Minority Leader Hall stated that, as a result, a number of legislators were “caught off guard” and were “scrambling to try to come back” for the session.

150. The special session, which lasted a single day, was substantially shorter than previous special sessions. Before H.B. 2 had been filed, Speaker Moore announced that the committee hearing for the bill would begin five minutes after introduction of the bill and adjournment of the morning session. Shortly thereafter, approximately twelve minutes after the House came to order, H.B. 2 was filed—the first time it was officially made available to the public or the legislators.

151. Approximately three minutes after H.B. 2 was filed, the chairman of the House Judiciary IV Committee—the committee to which H.B. 2 was assigned—stated, in response to a fellow member’s question, that it was his “intention” to permit time for public comment on the bill during the committee hearing. Upon information and belief, no prior public notice of the time and place for public comment on H.B. 2 was provided.

152. Only forty-five minutes were allotted for public comment, which was insufficient to permit those who had signed up to speak on H.B. 2 to be heard.

153. In response to complaints during the committee hearing that members had not been given an opportunity to read the text of H.B. 2, the chairman permitted a five-minute break to allow members to read the bill.

154. After a favorable referral from the House Judiciary IV Committee, H.B. 2 received only three hours of debate in the House, after which it was passed and referred to the Senate.

155. The roll call for H.B. 2 in the Senate was called after all Democratic members of the Senate walked out of the chambers in protest, with North Carolina State Senate Democratic Leader Dan Blue calling the special session an “affront to democracy” and stating that the Democratic caucus in the Senate “choose[s] not to participate in this farce.” With every Democratic member absent, the Senate passed H.B. 2 unanimously.

156. Comments made by lawmakers both during the debate, in the press, and through their social media used vitriolic language to make clear their aim at undoing Charlotte’s protections for LGBT people:

a. North Carolina State Senate President Pro Tempore Phil Berger’s descriptions of the legislature’s work included:

i. “Senate unanimously votes to stop radical ordinance allowing men into public bathrooms with women and young girls.”

ii. “Lawmakers were forced to come back to session to address the serious safety concerns created by the dangerous ordinance—which violated existing state criminal trespass law, indecent exposure law and building codes and created a loophole that any man with nefarious motives could use to prey on women and young children . . .”

iii. “How many fathers are now going to be forced to go to the ladies’ room to make sure their little girls aren’t molested?”

b. North Carolina State Senator Buck Newton said, “The Charlotte City Council should have never passed this unlawful and reckless bathroom and locker room ordinance. Politics have reached a new extreme when a municipality’s top priority is allowing men into women’s bathrooms and locker rooms. But tens of thousands of our constituents from across the state have called on us to stand up to the political correctness mob, fight for common sense and put a stop to this nonsense once and for all.”

c. North Carolina State Senator David Curtis (“Senator Curtis”) said, “This liberal group is trying to redefine everything about our society. Gender and marriage — just the whole liberal agenda.” Senator Curtis added that while, “We generally don’t get involved in local politics. We need to do what’s right.” Senator Curtis said that H.B. 2 was necessary because, “The gays would go into a business, make some outrageous demand that they know the owner cannot comply with and file a lawsuit against that business owner and put him out of business.” Senator Curtis suggested that H.B. 2 was broadly drafted specifically for the purpose of defending the bathroom

provision it in court: “[w]e feel like we can successfully defend the law and the fact that we made the law much broader,” explaining that “[i]n addition to the bathroom issue we restricted the rights of cities and towns to impose a higher minimum wage. The bill has to do with restricting rights of cities and counties. I suspect we will defend it based on that.”

d. North Carolina State Senator Andrew Brock said, “You know, \$42,000 is not going to cover the medical expenses when a pervert walks into a bathroom and my little girls are in there.”

e. Speaker Moore said “They want to protect adults who feel compelled to dress up like the opposite sex. I, on the other hand, oppose the ordinance to protect children, who from the time they’ve been potty trained, know to go into the bathroom of their god given appropriate gender. Honestly, it’s ridiculous we are even having this discussion. I look forward to invalidating this ordinance as soon as possible.”

f. North Carolina State Representative Mark Brody said Charlotte’s ordinance “violates my Christian values and it violates decency values,” adding that he “had to stop it.” Representative Brody further stated that “[t]he homosexual community has just stepped too far and that had to stop and that’s my basic opinion,” noting that “[t]his is driven by the homosexual community and they’re emboldened by their victory in the courts on homosexual marriage.” Brody elaborated further that H.B. 2 “sends a message to these municipalities who have been taken over by the liberal, homosexual,

prohomosexual ideology that we are going to stick up for traditional values and we'll stick up for them constantly if that's what we have to do.”

g. North Carolina State Representative John Blust opined that he “think[s] it's ridiculous that your anatomy isn't what governs what restroom you use,” adding that he does not “understand why they have to make way for this .0001 percent of the population.”

157. Debate in both chambers of the North Carolina General Assembly focused specifically on reversing the Charlotte Ordinance, with lawmakers in both chambers condemning the anti-discrimination protections for LGBT people, including transgender individuals' right to use facilities in accordance with their gender identity.

158. Fewer than 10 hours after it was introduced, the bill passed both houses. Governor McCrory signed the bill that same night, issuing a signing statement making clear once again the targets of H.B. 2. His signing statement said, “This radical breach of trust and security under the false argument of equal access not only impacts the citizens of Charlotte but people who come to Charlotte to work, visit or play. This new government regulation defies common sense and basic community norms by allowing, for example, a man to use a woman's bathroom, shower or locker room.” H.B. 2 took effect immediately.

**D. H.B. 2 Harms Transgender People.**

159. H.B. 2 amended North Carolina's General Statutes to mandate that school boards *require* students to use restrooms and other single-sex facilities in accordance with

their “biological sex” providing that,

Local boards of education shall require every multiple occupancy bathroom or changing facility that is designated for student use to be designated for and used only by students based on their biological sex.

160. H.B. 2 also imposes the same mandate on all executive branch agencies (which are expressly defined to include Defendant University of North Carolina), and all public agencies, providing that they

shall require every multiple occupancy bathroom or changing facility to be designated for and only used by persons based on their biological sex.

161. Each of those provisions defines “biological sex” as follows,

Biological sex. – The physical condition of being male or female, which is stated on a person’s birth certificate.

162. Changing the gender marker on one’s birth certificate is not a viable option for many transgender people, as every jurisdiction has a different set of often onerous and unnecessary requirements for updating the gender listed on a birth certificate.

163. For instance, a person born in North Carolina can only update the gender marker listed on a North Carolina-issued birth certificate with proof of certain surgeries that may not be medically necessary, advisable, or affordable for any given person. Meanwhile, a person born in neighboring Tennessee can never change the gender listed on a Tennessee-issued birth certificate.

164. Medical treatment such as the surgery required to update a person’s North Carolina birth certificate does not alter a person’s gender (or what H.B. 2 calls “biological sex”), but rather merely brings a person’s body into alignment with the

gender they have always been. Gender identity is instead the chief determinant of a person's gender.

165. H.B. 2's provisions requiring use of single-sex facilities in accordance with the sex stated on their birth certificate not only disproportionately burdens transgender people, but intentionally targets them for differential treatment. Lawmakers made clear that H.B. 2 was specifically aimed at transgender people. For example, an FAQ released by Governor McCrory after H.B. 2's enactment states, "Why did North Carolina pass this law in the first place? Answer: The bill was passed after the Charlotte City Council voted to impose a regulation requiring businesses to allow a man into a women's restroom, shower, or locker room if they choose," even though it does not do that, but only allows a transgender woman to use a women's restroom or other multiple user facility for women and a transgender man to use a men's restroom or other multiple user facility for men.

166. Prior to the passage of H.B. 2, it was already illegal for a person to enter a restroom or locker room to assault or injure another. Moreover, protecting transgender people from discrimination in public accommodations, as has been done in numerous states and hundreds of localities, has resulted in no increase in public safety incidents in any jurisdiction anywhere in the United States, and including transgender people in public life in no way impacts the safety or well-being of non-transgender people.

167. The painful message of stigma sent by H.B. 2 echoes the dehumanizing rhetoric employed by a number of lawmakers, suggesting that transgender people are

somehow predatory or dangerous to others. In fact, it is H.B. 2 that exposes transgender people to harassment and potential violence. Transgender people are already disproportionately targeted for physical violence and harassment in North Carolina and across the country. When a transgender person is forced to disclose their transgender status to strangers, such disclosure puts them at a high risk for violence. H.B. 2's requirement that transgender people be shunted into single-sex spaces that do not match their gender identity invades their privacy and exposes this vulnerable population to harassment and potential violence by others.

168. Upon information and belief, after the enactment of H.B. 2, some school officials that had been respecting their students' gender identity without any problem called parents to say that their children would be forced out of the single-sex facilities that match their gender identity.

169. H.B. 2's broad sweep means that the same result applies to executive and public agencies, including routine places such as libraries, public health centers, airports, and the Division of Motor Vehicles, as well as places where people may turn in times of crisis, such as state hospitals, police departments, and courthouses. Transgender individuals working in such agencies may not be able to safely use any bathroom any longer, threatening their ability to keep their job.

170. Following the enactment of H.B. 2, the City Attorney of the City of Charlotte issued a memorandum dated April 1, 2016 to the Mayor and City Council of the City of Charlotte, regarding the effect of H.B. 2 on the Ordinance and other city laws

or policies. The memorandum noted that H.B. 2 “invalidates . . . the February 22 amendments to the public accommodations ordinance,” and concluded that “[d]ue to the preemption described above, the Community Relations Committee can no longer receive, investigate, and conciliate complaints for violations of the public accommodations ordinance.” The memorandum also expressed uncertainty regarding whether H.B. 2 preempted the city’s non-discrimination protections for city employees.

171. Following the enactment of H.B. 2, the University of North Carolina President issued a memorandum dated April 5, 2016 to chancellors of constituent UNC schools, including UNC-Chapel Hill, UNC-Greensboro, and UNC-Asheville. The memorandum specifically states that “University institutions must require every multiple-occupancy bathroom and changing facility to be designated for and used only by persons based on their biological sex.” The memorandum included a copy of H.B. 2, which includes its definition of “biological sex.”

172. Following the enactment of H.B. 2, Governor McCrory issued Executive Order No. 93, dated April 12, 2016. The order affirmed that “[u]nder current law, every multiple occupancy restroom, locker room, or shower facility located in a cabinet agency must be designated for and only used by persons based on their biological sex,” and that “restrooms, locker rooms, and shower facilities in public buildings, including our schools” would be maintained by the State “on the basis of biological sex.” In a press release and video statement accompanying Executive Order No. 93, the governor stated

that the Executive Order “[m]aintains . . . gender-specific restroom and locker room facilities in government buildings and schools.”

173. Executive Order No. 93 required that N.C. Gen. Stat. § 143-760 (H.B. 2, Section 1.3) be interpreted consistent with the following guidance: “[w]hen a private entity leases State real property and the property in the lessee’s exclusive possession includes multiple occupancy restrooms, locker rooms or other like facilities, the private entity will control the signage and use of these facilities.”

174. Executive Order No. 93 also sought to clarify the ambiguity regarding the scope of preemption provision noted by the City Attorney of the City of Charlotte, stating that “N.C. Gen. Stat. § 143-422.2(c) permits local governments or other political subdivisions of the State to set their own employment policies applicable to their own personnel,” and affirming that “local governments may establish their own non-discrimination employment practices.”

175. H.B. 2’s restroom ban also deters transgender people from participating in the state and local democratic process. It bans them from using the restroom consistent with their gender identity when visiting the North Carolina General Assembly, petitioning their legislator, or entering any building operated by the legislative branch. It also bans them from using the restroom consistent with their gender identity at a city council meeting or at a mayor’s office.

176. H.B. 2’s harms extend even farther, creating conflicts between state law and various federal laws. The conflict with Title IX, for example, puts at risk the more

than \$4.5 billion in federal education funding that North Carolina is expected to receive in 2016. H.B. 2 also could lead to financial penalties under Executive Order 11246, which prohibits federal contractors (such as the University of North Carolina) from barring transgender employees from the restrooms consistent with their gender identity. In addition, public employers subject to Title VII will violate the U.S. Equal Employment Opportunity Commission's decree that discriminating against transgender people with respect to restroom use is impermissible sex discrimination. Public hospitals that receive federal funding also will violate Section 1557 of the Affordable Care Act if they comply with H.B. 2.

177. The enactment of H.B. 2 follows a history of discrimination by decision-makers against transgender people, including, for example, Governor McCrory's participation in a Fourth Circuit *amicus curiae* brief arguing that a transgender student's request to access restrooms in accordance with his gender identity is "radical."

**E. H.B. 2 Harms Lesbian, Gay, and Bisexual Individuals, as well as Transgender Individuals.**

178. H.B. 2 also disproportionately burdens lesbian, gay, and bisexual individuals, as well as transgender individuals, by stripping them of or barring them from anti-discrimination protections under local law. H.B. 2 took aim at the Charlotte ordinance in a section providing,

The General Assembly declares that the regulation of discriminatory practices in employment is properly an issue of general, statewide concern, such that this Article and other applicable provisions of the General Statutes supersede and preempt any ordinance, regulation, resolution, or policy adopted or imposed by a unit of local government or other political subdivision of the State that regulates or

imposes any requirement upon an employer pertaining to the regulation of discriminatory practices in employment, except such regulations applicable to personnel employed by that body that are not otherwise in conflict with State law.

179. H.B. 2 stripped lesbian, gay, and bisexual individuals of anti-discrimination protections in Charlotte, because no such sexual orientation anti-discrimination protections exist in state law. The preemptive effect of this section did not fall equally on all North Carolinians, however.

180. Recognizing that North Carolina law had no statewide public accommodations protection of any kind except for people with disabilities, H.B. 2 actually enacted a new public accommodations statute—so that the other groups whose protections also would have been preempted under the Charlotte Ordinance were spared that result. The new public accommodations statute prohibits discrimination based on “race, religion, color, national origin, or biological sex”—omitting the sexual orientation protections that had been included in the Charlotte Ordinance.

181. The North Carolina legislature has a history of targeted discrimination toward lesbian, gay, and bisexual people. For example, the legislature approved and referred to voters a constitutional amendment barring access to marriage for same-sex couples. Legislative leaders also intervened in litigation challenging the constitutionality of the exclusion of same-sex couples from marriage pursuant to a statute authorizing them to act on behalf of the General Assembly. In 2015, the legislature also passed a bill that allows county magistrates to recuse themselves from performing civil marriages.

182. The preemptive effect of H.B. 2 also harmed transgender people. While the Charlotte Ordinance had prohibited discrimination based on sex, gender identity, and gender expression, the new public accommodations statute restricted its protections solely to “biological sex,” which is defined in an effort to deliberately exclude transgender people from protection.

## **CLAIMS FOR RELIEF**

### **COUNT I**

#### **Deprivation of Equal Protection**

##### **U.S. Const. Amend. XIV**

183. Plaintiffs incorporate paragraphs 1 through 182 as though fully set forth herein.

184. Plaintiffs state this cause of action against Defendants in their official capacities for purposes of seeking declaratory and injunctive relief, and challenge H.B. 2 both facially and as applied to them.

185. The Fourteenth Amendment to the United States Constitution, enforceable pursuant to 42 U.S.C. § 1983, provides that no state shall “deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1.

#### **A. Discrimination Based on Sex and Transgender Status in Single-Sex Restrooms and Facilities (H.B. 2, Part I)**

186. Section A of Count I is asserted by Plaintiffs Carcaño, McGarry, H.S., and ACLU of NC against Defendants Governor McCrory, Board of Governors, and Bissette.

187. Under the Equal Protection Clause of the Fourteenth Amendment, discrimination based on sex is presumptively unconstitutional and subject to heightened scrutiny.

188. H.B. 2 discriminates against transgender people on the basis of sex.

189. Discrimination based on sex includes, but is not limited to, discrimination based on gender nonconformity, gender identity, transgender status, and gender transition.

190. H.B. 2 facially classifies people based on sex, gender identity, and transgender status.

191. Under the Equal Protection Clause of the Fourteenth Amendment, discrimination based on transgender status is presumptively unconstitutional and subject to heightened scrutiny.

192. H.B. 2 treats transgender people differently than non-transgender people who are similarly situated.

193. Under H.B. 2, non-transgender people are able to access restrooms and other single-sex facilities consistent with their gender identity, but transgender people are banned from restrooms and other single-sex facilities consistent with their gender identity.

194. H.B. 2 discriminates against transgender people based on gender nonconformity. For example, although Mr. Carcaño and Mr. McGarry are men, are perceived as men in public, and have had medical treatment to bring their body into

alignment with their male gender identity, they have birth certificates with female gender markers that do not conform to H.B. 2's expectations for men. Furthermore, if transgender men such as Mr. Carcaño and Mr. McGarry had been assigned male at birth, they would not be banned by H.B. 2 from the restrooms and other single-sex facilities consistent with their gender identity. The same is true for H.S., who is a young woman, is perceived as a woman in public, and has had medical treatment to bring her body into alignment with her gender but has a birth certificate that classifies her as male and therefore does not conform to H.B. 2's expectations for women. Had H.S. been assigned female at birth, she would not be banned by H.B. 2 from restrooms and other single-sex facilities designated for women and girls.

195. No person has any control over the sex that person is assigned at birth. In fact, when a person is born with characteristics associated with both male and female infants, the appropriate course is to assign sex based on likely gender identity and to later re-assign sex based on gender identity once it is known if it conflicts with the original sex assignment.

196. H.B. 2's discrimination against transgender people based on sex or transgender status is not substantially related to any important government interest. Indeed, it is not even rationally related to any legitimate government interest.

197. H.B. 2 endangers the safety, privacy, security, and well-being of transgender individuals. For example, if a transgender young woman, like H.S., were to use the restroom designated for men and boys, she likely would be harassed and might be

assaulted by men or boys who believed that she should not be in that restroom. Similarly, if a transgender man were to use the women's restroom, he likely would be harassed and might be assaulted by women who believe he should not be in the women's restroom.

198. H.B. 2 does not promote the safety, privacy, security, or well-being of non-transgender people.

199. H.B. 2 deprives transgender people of their right to equal dignity, liberty, and autonomy by branding them as second-class citizens.

200. H.B. 2's discrimination against transgender people based on sex denies them the equal protection of the laws, in violation of the Equal Protection Clause of the Fourteenth Amendment.

**B. Discrimination Based on Sex, Transgender Status, and Sexual Orientation in Preemption of Local Non-Discrimination Protections (H.B. 2, Part II, Sections 2.2 & 2.3; H.B. 2, Part III)**

201. Section B of Count I is asserted by Plaintiffs Carcaño, McGarry, H.S., Gilmore, Trent, Newell, and ACLU of NC against Defendant Governor McCrory.

202. Under the Equal Protection Clause of the Fourteenth Amendment, discrimination based on sex, discrimination based on sexual orientation, and discrimination based on transgender status are presumptively unconstitutional and subject to heightened scrutiny.

203. H.B. 2 deprives LGBT people of protections against discrimination based on sexual orientation, gender identity, and gender expression.

204. H.B. 2 was motivated by an intent to treat LGBT people differently, and worse, than other people, including by stripping them of the protections afforded by the City of Charlotte's Ordinance and precluding any local government from taking action to protect LGBT people against discrimination.

205. H.B. 2 was enacted for the purpose of disadvantaging LGBT people and is based on animus against LGBT people. H.B. 2 was also enacted because of, and not in spite of, its adverse effects on LGBT people.

206. The justifications cited in H.B. 2 for its enactment, including a purported governmental interest in consistent statewide obligations, are pretext for discrimination and did not reflect the actual motivations for the bill. For example, proposals to add sexual orientation and gender identity and expression protections to the statewide public accommodations law were rejected.

207. By blocking anti-discrimination protections for LGBT people at the local level, H.B. 2 imposes a different and more burdensome political process on LGBT people than on non-LGBT people who have state protection against identity-based discrimination. H.B. 2 accordingly places a special burden on LGBT people within the governmental process with an intent to injure that minority group.

208. H.B. 2 deprives LGBT people of their right to equal dignity, liberty, and autonomy by branding them as second-class citizens.

209. H.B. 2's discrimination against LGBT people based on sex and sexual orientation denies them the equal protection of the laws, in violation of the Equal Protection Clause of the Fourteenth Amendment.

**C. Discrimination Based on Transgender Status Warrants Heightened Scrutiny.**

210. Transgender people have suffered a long history of extreme discrimination in North Carolina and across the country, and continue to suffer such discrimination to this day.

211. Transgender people are a discrete and insular group and lack the political power to protect their rights through the legislative process. Transgender people have largely been unable to secure explicit local, state, and federal protections to protect them against discrimination.

212. A person's gender identity or transgender status bears no relation to a person's ability to contribute to society.

213. Gender identity is a core, defining trait and is so fundamental to one's identity and conscience that a person cannot be required to abandon it as a condition of equal treatment.

214. Gender identity generally is fixed at an early age and highly resistant to change through intervention.

**D. Discrimination Based on Sexual Orientation Warrants Heightened Scrutiny.**

215. Lesbian, gay, and bisexual people have suffered a long history of extreme discrimination in North Carolina and across the country, and continue to suffer such discrimination to this day.

216. Lesbian, gay, and bisexual people are a discrete and insular group and lack the political power to protect their rights through the legislative process. Lesbian, gay, and bisexual people have largely been unable to secure explicit local, state, and federal protections to protect them against discrimination.

217. A person's sexual orientation bears no relation to a person's ability to contribute to society.

218. Sexual orientation is a core, defining trait and is so fundamental to one's identity and conscience that a person cannot be required to abandon it as a condition of equal treatment.

219. Sexual orientation generally is fixed at an early age and highly resistant to change through intervention.

\* \* \*

**COUNT II****Violation of Right to Privacy****U.S. Const. Amend. XIV****Plaintiffs Carcaño, McGarry, H.S., and ACLU of NC  
against Defendants Governor McCrory, Board of Governors, and Bissette**

220. Plaintiffs incorporate paragraphs 1 through 182 as though fully set forth herein.

221. The Due Process Clause of the Fourteenth Amendment places limitations on state action that deprives individuals of life, liberty, or property.

222. Substantive protections of the Due Process Clause include the right to avoid disclosure of sensitive, personal information.

223. There is a fundamental right of privacy in preventing the release of, and in deciding in what circumstances to release: (1) personal information of which the release could subject them to bodily harm; and (2) information of a highly personal and intimate nature.

224. H.B. 2 requires the disclosure of highly personal information regarding transgender people to each person who sees them using a restroom or other facility inconsistent with their gender identity or gender expression. This disclosure places them at risk of bodily harm.

225. There is no compelling state interest that is furthered by H.B. 2, nor is H.B. 2 narrowly tailored or the least restrictive alternative for promoting a state interest. H.B. 2 is not even rationally related to a legitimate state interest.

226. In addition, the privacy interests of transgender people that are invaded outweigh any purported interest the government could assert.

### **COUNT III**

#### **Violation of Liberty and Autonomy in the Right to Refuse Unwanted Medical Treatment**

#### **U.S. Const. Amend. XIV**

#### **Plaintiffs Carcaño, McGarry, H.S., and ACLU of NC against Defendants Governor McCrory, Board of Governors, and Bissette**

227. Plaintiffs incorporate paragraphs 1 through 182 as though fully set forth herein.

228. The Fourteenth Amendment's Due Process Clause protects individuals' substantive rights to be free to make certain private decisions without unjustified governmental intrusion.

229. The right to make certain private decisions without unjustified governmental intrusion includes the right to refuse unwanted medical treatment.

230. H.B. 2 forces transgender people to undergo medical procedures that may not be medically appropriate or available in order to access facilities consistent with their gender identity.

231. Not all transgender individuals undergo gender confirmation surgery. For some, the surgery is not medically necessary, while for others it is medically dangerous or impossible. For example, because medical treatment for gender dysphoria is individualized, hormone treatment may be sufficient to manage the distress associated

with gender dysphoria for some individuals. Surgery may be medically necessary for others who do not have health insurance coverage for it and cannot afford to pay for the surgery out-of-pocket.

232. Some states require proof of surgery before they will allow the gender marker on a birth certificate to be changed. For those born in North Carolina, state law requires proof of “sex reassignment surgery.” N.C. Gen. Stat. § 130A-11B.

233. For example, H.S. has not been able to amend her New Jersey birth certificate to accurately reflect her gender because surgery is not medically necessary for her and is generally not available to individuals under 18. Accordingly, H.B. 2 bans her from accessing restrooms and other facilities consistent with her gender identity.

234. There is no compelling state interest that is furthered by H.B. 2, nor is H.B. 2 narrowly tailored or the least restrictive alternative for promoting a state interest. H.B. 2 is not even rationally related to a legitimate state interest.

#### **COUNT IV**

##### **Violation of Title IX**

##### **20 U.S.C. § 1681, *et seq.***

##### **Plaintiffs Carcaño, McGarry, and H.S. against Defendant University of North Carolina**

235. Plaintiffs incorporate paragraphs 1 through 182 as though fully set forth herein.

236. Title IX provides that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to

discrimination under any education program or activity receiving Federal financial assistance.” 20 U.S.C. § 1681(a).

237. Under Title IX, discrimination “on the basis of sex” includes discrimination on the basis of gender nonconformity, gender identity, transgender status, and gender transition.

238. Defendant University of North Carolina is an education program receiving federal financial assistance.

239. Defendant University of North Carolina is an executive branch agency as defined by H.B. 2.

240. Pursuant to H.B. 2, Defendant University of North Carolina “shall require every multiple occupancy bathroom or changing facility to be designated for and only used by persons based on their biological sex.” As set forth in the UNC President’s memorandum dated April 5, 2016, Defendant University of North Carolina has implemented H.B. 2 by issuing guidance that “[u]niversity institutions must require every multiple-occupancy bathroom and changing facility to be designated for and used only by persons based on their biological sex.”

241. By requiring Mr. Carcaño—a transgender man—to use a restroom that is inconsistent with his gender identity, Defendant University of North Carolina excludes Mr. Carcaño from participation in, denies him the benefits of, and subjects him to discrimination in educational programs and activities at Defendant’s constituent campus,

UNC-Chapel Hill, “on the basis of sex,” which violates Mr. Carcaño’s rights under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, *et seq.*

242. By requiring Mr. McGarry—a transgender man—to use a restroom that is inconsistent with his gender identity, Defendant University of North Carolina excludes Mr. McGarry from participation in, denies him the benefits of, and subjects him to discrimination in educational programs and activities at Defendant’s constituent campus, UNC-Greensboro, “on the basis of sex,” which violates Mr. McGarry’s rights under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, *et seq.*

243. By requiring H.S.—a transgender young woman—to use a restroom that is inconsistent with her gender identity, Defendant University of North Carolina excludes H.S. from participation in, denies her the benefits of, and subjects her to discrimination in educational programs and activities at Defendant’s constituent campus, UNC-SA-HS, “on the basis of sex,” which violates H.S.’s rights under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, *et seq.*

\* \* \*

### PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment:

A. Declaring that the unlawful provisions of H.B. 2 discussed above and their enforcement by Defendants violate Plaintiffs' rights under the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution;

B. Declaring that the unlawful provisions of H.B. 2 discussed above and their enforcement by Defendants violate Plaintiffs' rights under Title IX;

C. Preliminarily and permanently enjoining enforcement by Defendants of the unlawful provisions of H.B. 2 discussed above;

D. Requiring Defendants in their official capacities to allow individuals, including transgender people, to use single-sex facilities in accordance with their gender identity in all public schools and universities, executive branch agencies, and public agencies; and requiring Defendants in their official capacities to allow local governments to enact and to continue to enforce anti-discrimination protections for LGBT people;

E. Awarding Plaintiffs their costs, expenses, and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 and other applicable laws; and

F. Granting such other and further relief as the Court deems just and proper.

G. The declaratory and injunctive relief requested in this action is sought against each Defendant; against each Defendant's officers, employees, and agents; and against all persons acting in active concert or participation with any Defendant, or under any Defendant's supervision, direction, or control.

Dated: April 21, 2016

Respectfully submitted,

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*Counsel for Plaintiffs*

\* Appearing by special appearance pursuant to L.R. 83.1(d).

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

JOAQUÍN CARCAÑO; PAYTON GREY  
MCGARRY; H.S., by her next friend and  
mother, KATHRYN SCHAFER; ANGELA  
GILMORE; KELLY TRENT; BEVERLY  
NEWELL; and AMERICAN CIVIL  
LIBERTIES UNION OF NORTH  
CAROLINA,

*Plaintiffs,*

v.

PATRICK MCCRORY, in his official capacity  
as Governor of North Carolina; UNIVERSITY  
OF NORTH CAROLINA; BOARD OF  
GOVERNORS OF THE UNIVERSITY OF  
NORTH CAROLINA; and W. LOUIS  
BISSETTE, JR., in his official capacity as  
Chairman of the Board of Governors of the  
University of North Carolina,

*Defendants.*

No. 1:16-cv-00236-TDS-JEP

**PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

NOW COME Plaintiffs Joaquín Carcaño; Payton Grey McGarry; H.S., by her next friend and mother, Kathryn Schafer; and American Civil Liberties Union of North Carolina (collectively, "Plaintiffs"), by and through their attorneys, and move the Court pursuant to Rule 65(a) of the Federal Rules of Civil Procedure and Local Rule 65.1(b) for a preliminary injunction against Patrick McCrory, in his official capacity as Governor of

North Carolina; the University of North Carolina; the Board of Governors of the University of North Carolina; and W. Louis Bissette, Jr., in his official capacity as Chairman of the Board of Governors of the University of North Carolina (collectively “Defendants”). In support thereof, Plaintiffs state as follows:

1. On April 21, 2016, Plaintiffs filed their First Amended Complaint for Declaratory and Injunctive Relief (D.E. 9), alleging that Plaintiffs are entitled to relief from this Court for violations of their rights under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, *et seq.*; and for violations of their rights under the Fourteenth Amendment to the U.S. Constitution, pursuant to 42 U.S.C. § 1983.

2. Plaintiffs seek a preliminary injunction enjoining Defendants, their officers, employees, and agents; all persons acting in active concert or participation with any Defendant, or under any Defendant’s supervision, direction, or control; and all other persons within the scope of Federal Rule of Civil Procedure 65, from enforcing Part I of House Bill 2.

3. Federal Rule of Civil Procedure 65 provides for the issuance of a preliminary injunction under circumstances such as those that exist in the present case.

4. In support of this motion, Plaintiffs submit a Memorandum of Law, addressing all necessary elements for the entry of a preliminary injunction; declarations from Plaintiffs Joaquín Carcaño, Payton Grey McGarry, and H.S.; a declaration of Sarah Preston on behalf of Plaintiff American Civil Liberties Union of North Carolina; expert declarations of Deanna Adkins, M.D., Randi Ettner, Ph.D, Jonathan Routh, M.D., and

Assistant Chief of University Police Aran C. Mull; and declarations of Monica Walker and Luke C. Platzer; and exhibits to these declarations.

5. Plaintiffs seek leave to present oral argument in support of this Motion pursuant to Local Civil Rule 65.1(b).

WHEREFORE, for the foregoing reasons, and for those set forth in Plaintiffs' supporting memorandum of law, Plaintiffs respectfully move that the Court enter a preliminary injunction enjoining Defendants, their officers, employees, and agents; all persons acting in active concert or participation with any Defendant, or under any Defendant's supervision, direction, or control; and all other persons within the scope of Federal Rule of Civil Procedure 65, from enforcing Part I of House Bill 2.

\* \* \*

Dated: May 16, 2016

Respectfully submitted,

/s/ Christopher A. Brook

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*Counsel for Plaintiffs*

\*Appearing by special appearance pursuant to L.R. 83.1(d).

**CERTIFICATE OF SERVICE**

I, Christopher A. Brook, hereby certify that on May 16, 2016, I electronically filed Plaintiffs' Motion for Preliminary Injunction, as well as the Memorandum of Law, declarations, and exhibits thereto in support, with the Clerk of the Court using the CM/ECF system, and have verified that such filing was sent electronically using the CM/ECF system to all parties who have appeared with an email address of record.

I also hereby certify that I caused the foregoing to be delivered via first-class and electronic mail to the following non CM/ECF participants:

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/s/ Christopher A. Brook

Christopher A. Brook

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

JOAQUÍN CARCAÑO ET AL.,

*Plaintiffs,*

v.

PATRICK MCCRORY ET AL.,

*Defendants.*

No. 1:16-cv-00236-TDS-JEP

**EXPERT DECLARATION OF DEANNA ADKINS, M.D.**

**PRELIMINARY STATEMENT**

1. I have been retained by counsel for Plaintiffs as an expert in connection with the above-captioned litigation. I have actual knowledge of the matters stated in this declaration. My professional background, experience, and publications are detailed in my curriculum vitae, a true and accurate copy which is attached as Exhibit A to this declaration. I received my medical degree from the Medical College of Georgia in 1997. I am currently the Fellowship Program Director of Pediatric Endocrinology at Duke University School of Medicine and the Director of the Duke Center for Child and Adolescent Gender Care.

2. I have been licensed to practice medicine in the state of North Carolina since 2001.

3. I have extensive experience working with children with endocrine disorders and I am an expert in the treatment of children with differences or disorders of sex development and gender dysphoria.

4. I am a member of the American Academy of Pediatrics, the North Carolina Pediatric Society, the Pediatric Endocrine Society, and The Endocrine Society. I am also a member of the World Professional Association for Transgender Health (“WPATH”), the leading association of medical and mental health professionals in the treatment of transgender individuals.

5. I am the founder of the Duke Center for Child and Adolescent Gender Care (“Gender Care Clinic”), which opened in 2015. I currently serve as the Director of the clinic. The Gender Care Clinic treats children, adolescents, and young adults between the ages of 7 and 22 who have gender dysphoria and/or differences or disorders of sex development. I have been caring for these individuals in my routine practice for many years prior to opening the clinic

6. I currently treat approximately 90 transgender and intersex young people from North Carolina and across the southeast at the Gender Care Clinic. I have treated approximately 150 transgender and intersex young people in my career.

7. As part of my practice, I stay familiar with the latest medical science and treatment protocols related to differences or disorders of sex development and gender dysphoria.

8. I am regularly called upon by colleagues to assist with the sex assignment of infants who cannot be classified as male or female at birth due to a range of variables in which sex-related characteristics are not completely aligned as male or female.

9. In preparing this declaration, I reviewed the materials listed in the attached Bibliography (Exhibit B). I may rely on those documents as additional support for my opinions. I have also relied on my years of experience in this field, as set out in my curriculum vitae (Exhibit A), and on the materials listed therein. The materials I have relied upon in preparing this declaration are the same types of materials that experts in my field of study regularly rely upon when forming opinions on the subject.

10. In the past four years, I have testified as an expert at trial or deposition in the following matter: *United States v. Oversby, Brandon R.*, SPC, U.S. Army, B Company (Second Judicial Circuit, Fort Bragg Oct. 15, 2014).

11. I am being compensated at an hourly rate for actual time devoted, at the rate of \$275 per hour. My compensation does not depend on the outcome of this litigation, the opinions I express, or the testimony I provide.

#### **WHAT DOES IT MEAN TO BE TRANSGENDER OR INTERSEX?**

12. A transgender individual is an individual who has a gender identity that differs from the person's birth-assigned sex.

13. Individuals who are intersex (also known as having "differences of sex development") have sex characteristics that are a mixture of those typically associated with both "male" and "female" sex designations.

14. At birth, infants are generally classified as male or female based on observation of their external genitalia. This classification becomes the person's birth-assigned sex but may not be the same as the person's gender identity.

15. A person's gender identity refers to a person's inner sense of belonging to a particular gender, such as male or female.

16. Gender identity is a deeply felt and core component of a person's identity.

17. Everyone has a gender identity.

18. Children usually become aware of their gender identity early in life.

19. Most people have a gender identity that aligns with the sex they were assigned at birth. However, for some people, their deeply felt, core identification and self-image as a particular gender does not align with the sex they were assigned at birth. This lack of alignment can create significant distress for individuals with this experience and can be felt in children as young as 2 years old.

20. Gender identity cannot be voluntarily altered including for individuals whose gender identity does not align with their birth-assigned sex.

21. Although research regarding the precise determinant of gender identity is still ongoing, evidence strongly suggests that gender identity is innate or fixed at a young age and that gender identity has a strong biological basis.

22. Both post-mortem and functional brain studies that have been done on the brains of individuals with gender dysphoria show that these individuals have brain structure, connectivity, and function that do not match their birth-assigned sex. Variations in these studies include overall brain size, intra- and inter-hemispheric connectivity (number of connections within each half of the brain and between halves of the brain). Differences have been shown in visuospatial and verbal fluency tasks and their activation patterns in the brain. Variations in cortical thickness in the sensory motor

areas, the white matter microstructure, and regional cerebral blood flow are also present in those with gender incongruence compared to those without.

### **HOW DO EXPERTS ASSIGN OR “DETERMINE” SEX?**

23. From a medical perspective, the appropriate determinant of sex is gender identity.

24. For many people, gender identity aligns with the sex assigned to the individual at birth, so assigning sex based on sex-characteristics such as external genitalia is a proxy for assigning sex based on one’s gender identity.

25. For transgender people and people with differences or disorders of sex development, however, there is not complete alignment among sex-related characteristics. Medicine and science require that where a more careful consideration of sex assignment is needed that it be based on gender identity rather than other sex characteristics.

26. In the past, when mental health and medical practitioners identified a disconnect between a person’s gender identity and assigned sex at birth, treatment often focused on efforts to bring the individual’s gender identity into alignment with the assigned sex. These practices were unsuccessful and incredibly harmful. Deep depression, psychosis, and suicide frequently resulted.

27. Medical science has since recognized that appropriate treatment for individuals who are transgender must focus on alleviating distress through supporting outward expressions of the person’s gender identity and bringing the body into alignment with that identity to the extent deemed medically appropriate based on assessments

between individual patients and their medical and mental health providers. These treatments have been very successful.

28. In infants with sex-characteristics associated with both males and females, if an assignment is made that later conflicts with gender identity, then the only appropriate medical course is to re-assign or re-classify the individual's sex to align with gender identity.

29. It is harmful to make sex assignments based on characteristics other than gender identity. For example, in cases where surgery was done prior to the ability of the child to understand and express their gender identity, there has been significant distress in these individuals who then have to endure further surgeries to reverse the earlier treatments. It has become standard practice to wait until the gender identity is clear to make permanent surgical changes in these patients unless the changes are required to maintain the life or health of the child.

30. A person's gender identity (regardless of whether that identity matches other sex-related characteristics) is fixed, cannot be changed by others, and is not undermined or altered by the existence of other sex-related characteristics that do not align with it.

31. Today, medical and mental health care providers who specialize in the treatment of these individuals with gender dysphoria recognize that being transgender is a normal developmental variation.

32. For individuals with gender dysphoria and individuals with differences of sex development, gender identity is the only medically supported determinant of sex when sex assignment as male or female is necessary. It would be unethical and

extremely harmful to, for example, force a man with congenital adrenal hyperplasia, discussed below, to be classified as a woman simply because he was classified as female at birth. Likewise it would be unethical and extremely harmful to force a man who has gender dysphoria to be classified as female simply because he was assigned female at birth.

33. The cost of not assigning sex based on gender identity is dire. It is counter to medical science to use chromosomes, hormones, internal reproductive organs, external genitalia, or secondary sex characteristics to override gender identity for purposes of classifying someone as male or female. Gender identity does and should control when there is a need to classify an individual as a particular sex.

34. With the exception of some serious childhood cancers, gender dysphoria is the most fatal condition that I treat because of the harms that flow from not properly recognizing gender identity. Attempted suicide rates in the transgender community are over 40%, which is a risk of death that far exceeds most other medical conditions. The only treatment to avoid this serious harm is to recognize the gender identity of patients with gender dysphoria and differences of sex development.

### **WHAT IS “BIOLOGICAL SEX”?**

35. Rather than assign sex based on gender identity, North Carolina, because of H.B. 2, now by law requires sex assignment in single-sex facilities within public buildings to be based on “biological sex,” defined as “the physical condition of being male or female, which is stated on a person’s birth certificate.” In addition to being

counter to medical science as explained above, this definition and conception of “biological sex” is inherently flawed.

36. Although we generally label infants as “male” or “female” based on observing their external genitalia at birth, external genitalia do not account for the full spectrum of sex-related characteristics nor do they “determine” one’s sex. Instead, sex-related characteristics include external genitalia, internal reproductive organs, gender identity, chromosomes, secondary sex characteristics and genes. These sex-related characteristics do not always align as completely male or completely female in a single individual. In fact, this occurs frequently enough that doctors use a scale called the Prader Scale to describe the genitalia on a spectrum from male to female.

37. Particularly for individuals with a difference or disorder of sex development, sex assignment at birth can involve the evaluation of the sex chromosomes, the external genitalia, the internal genitalia, hormonal levels, and sometimes, specific genes. There are also cases in which the appearance of the external genitalia can change at puberty as well as variations in the appearance of secondary sex characteristics that may signal that there is a difference in sex development in a person.

38. Many individuals, including individuals who have intersex traits or gender dysphoria, have biological, sex-related characteristics that are typically associated with both men and women. For example:

- a. Individuals with Complete Androgen Insensitivity have 46-XY chromosomes, which are typically associated with males, but do not have the tissue receptors that respond to testosterone or other androgens. The body, therefore, does not develop external genitalia or secondary sex

characteristics typically associated with males but does, generally, have testes. At birth, based on the appearance of the external genitalia, individuals with Complete Androgen Insensitivity are generally assigned female.

- b. Individuals with Klinefelter Syndrome have 47-XXY chromosomes and internal and external genitalia typically associated with males, however, the testicles in individuals diagnosed with Klinefelter Syndrome lose function over time. This may lead to breast development and infertility in addition to a number of other health issues.
- c. Individuals with Turner Syndrome have 45-XO chromosomes, which means they have one less chromosome than everyone else. In utero, these individuals form sex characteristics typically associated with females including all internal structures but the ovaries begin to die soon after birth and the individuals are unable to make estrogen. Without treatment, individuals with Turner Syndrome do not develop secondary sex characteristics typically associated with women.
- d. Individuals with Mosaic Turner Syndrome may have two different sets of chromosomes. They lose a sex chromosome in the early stages of embryonic development. The cells that are descendants of the cell that lost a chromosome will have Turner Syndrome features. The cells that are descendants of the cells that did not lose a sex chromosome will have features of the embryo's initial chromosomal sex. Sometimes this initial sex was XX and sometimes it is XY. When there are cells with XY

chromosomes present, the fetus produces testosterone and there is at least some testicular tissue. There may also be ovarian tissue. The external genitalia can then be a mixture of external genitalia typically associated with both males and females.

- e. Individuals with congenital adrenal hyperplasia (CAH) are individuals who have XX chromosomes and external genitalia typically associated with women but are born with extra androgens, including testosterone, and from early in gestation, their brains are exposed to high levels of androgen. Despite frequently being assigned female at birth because of external genitalia, many individuals with this condition have a male gender identity.
- f. Individuals with 5-alpha reductase are chromosomally XY but they have an enzyme deficiency that does not allow them to convert testosterone to dihydrotestosterone, the active form of testosterone. At birth, based on external genitalia, they are often assigned female, but their gender identity is almost always male as adults. Their external genitalia also changes at puberty because hormonal changes allow them to make more dihydrotestosterone which is needed for the physical changes that occur causing the development of external genitalia typically associated with males. During early development there is enough testosterone to affect the brain, which often results in a male gender identity.
- g. Individuals with cloacal exstrophy have external genitalia at birth that is often split in half and most of their internal pelvic organs are located on

the outside of their bodies. They are born with both XX and XY chromosomes. However, because of the severity of the changes in their external genitalia, most of the XY patients had sex reassignment in infancy and were raised as females. Follow-up studies of these patients as adults show that almost all of the XY patients have a gender identity of male, despite their female sex assignment. This is powerful evidence that one's core gender identity cannot be changed.

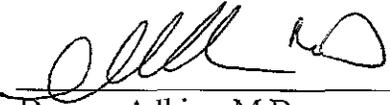
- h. A transgender person who transitioned at a young age and takes hormone blockers would not develop the secondary sex characteristics typically associated with their birth-assigned sex. This process suspends their pubertal development until the blockers are stopped or until gender affirming hormones are added.
- i. A woman who is transgender may have XY chromosomes, undergo hormone treatment and surgery, and have external genitalia and secondary sex characteristics typically associated with women.
- j. A man who is transgender may undergo hormone therapy, have hormone levels comparable to non-transgender men, and thus develop masculine secondary sex characteristics.

39. As the examples above underscore, "biological sex" as used in H.B. 2 is not an accurate or useful medical term with respect to individuals whose sex-related characteristics are not in alignment with each other. Rather, the medically appropriate determinant of sex is gender identity.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 5/13, 2016.

By:

  
Deanna Adkins, M.D.

**Expert Declaration of Deanna Adkins, M.D.**

**EXHIBIT A**

**JA118**

## CURRICULUM VITAE

**Name:** Deanna Wilson Adkins, MD

**Primary Academic Appointment:** Assistant Professor  
**Program Director** Pediatric Endocrinology  
**Director** Pediatric Diabetes and Endocrinology  
 Duke Children's Raleigh  
**Director** Duke Center for Child and Adolescent Gender Care

**Primary Academic Department:** Department of Pediatrics  
 Division of Endocrinology

**Present Academic Rank and Title :** Assistant Professor

**Date and Rank of First Duke Faculty Appointment:** July 1, 2004 Clinical Associate

**Medical Licensure:** North Carolina License #:200100207  
 Date of License: March 15, 2001

**Specialty Certification:** Pediatrics current  
 Pediatric Endocrine current

**Birth Place:** Albany, GA, USA

**Citizen of:** United States

<u>Education</u>	<u>Institution</u>	<u>Date</u>	<u>Degree</u>
High School	Tift County High School	1988	Diploma
College	Georgia Institute of Technology	1993	B.S. Molecular Bio. And Genetics
Graduate or Professional School	Medical College of Georgia	1997	MD

### Professional Training and Academic Career

<u>Institution</u>	<u>Position/Title</u>	<u>Dates</u>
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Name: Adkins, Deanna W

Date: July 1, 2015

University of North Carolina Hospitals, Chapel Hill, North Carolina	Pediatrics Resident	1997- 2000
University of North Carolina Hospitals, Chapel Hill, North Carolina	Pediatric Endocrine Fellow	2000- 2004
Duke University Medical Center, Durham, North Carolina	Clinical Associate/Medical Instructor	2004- 2008
Duke University Medical Center, Durham, North Carolina	Assistant Clinical Professor	2008- present
Duke University Medical Center, Durham, North Carolina	Fellowship Program Director Pediatric Endocrinology	2008- 2010
Duke University Medical Center, Durham, North Carolina	Associate Fellowship Program Director Pediatric Endocrinology	2010- 2014
Duke University Medical Center, Durham, North Carolina	Fellowship Program Director Pediatric Endocrinology	2014- present
Duke University Medical Center, Durham, North Carolina	Director Duke Center for Child and Adolescent Gender Care	2015- present

## Publications

### Refereed Journals:

1. **Zeger MD, Adkins D, Fordham LA, White KE, Schoenau E, Rauch F, Loechner KJ.** Hypophosphatemic rickets in opsismodysplasia. J Pediatr Endocrinol Metab. 2007 Jan;20(1):79-86. PMID: 17315533
2. **Gordon Worley MD<sup>1\*</sup>, Blythe Crissman MS CGC<sup>2</sup>, Emily Cadogan BS MSI<sup>4</sup>, Christie Milleson BA<sup>2</sup>, Deanna W. Adkins MD<sup>3</sup>, Priya Kishnani MD<sup>4</sup>.**  
DOWN SYNDROME DISINTEGRATIVE DISORDER: NEW-ONSET AUTISTIC REGRESSION, DEMENTIA, AND INSOMNIA IN OLDER CHILDREN AND ADOLESCENTS WITH DOWN SYNDROME

### Non-Refereed Publications:

#### b. Selected Abstracts

1. **Rohit Tejwani, Deanna Adkins, Brian J. Young, Muhammad H. Alkazemi, Steven Wolf, John S. Wiener, J. Todd Purves, and Jonathan C. Routh;** Contemporary Demographic and Treatment Patterns for Newborns Diagnosed with Disorders of Sex Development: Poster American Urological Association 2016
2. **Lydia Snyder, MD, Deanna Adkins, MD, Ali Calikoglu, MD;** Celiac Disease and Type 1 Diabetes: Evening of Scholarship UNC Chapel Hill 3/2015 poster
3. **Laura Page, MD; Benjamin Mouser, MD; Kelly Mason, MD; Richard L. Auten, MD; Deanna Adkins, MD** CHOLESTEROL SUPPLEMENTATION IN SMITH-LEMLI-OPITZ: A Case of Treatment During Neonatal Critical Illness; - poster 06/2014
4. **Kellee M. Miller<sup>1</sup>, David M. Maahs<sup>2</sup>, Deanna W. Adkins<sup>3</sup>, Sureka Bollepalli<sup>4</sup>, Larry A. Fox<sup>5</sup>, Joanne M. Hathway<sup>6</sup>, Andrea K. Steck<sup>2</sup>, Roy W. Beck<sup>1</sup> and**

Name: Adkins, Deanna W

Date: July 1, 2015

- Maria J. Redondo<sup>7</sup> for the T1D Exchange Clinic Network; Twins Concordant for Type 1 Diabetes in the T1D Exchange** -poster at ADA scientific sessions 6/2014
5. **Adkins, D.W. and Calikoglu, A.S.:** Delayed puberty due to isolated FSH deficiency in a male. Pediatric Research Suppl. 51: Abstract #690. page 118A
  6. **Zeger, M.P.D., Adkins, D.W., White, K., Loechner, K.L.:** Opsismodysplasia and Hypophosphatemic Rickets. Pediatric Research Suppl.-from PAS 2005

**c: Editorials, Position, and Background Papers**

1. **Reviewer Hormone Research, lancet, NC Medical journal**
2. **Reviewer AAP National meeting COCIT submissions**
3. **Review International Journal of Pediatric Endocrinology**
4. **Pediatric OnCall Reviewer Panel**
5. **Journal of Pediatrics Reviewer**

**Consultant Appointments:**

North Carolina Newborn Screening Committee

**Professional Awards and Special Recognitions:**

ESPE Fellows Summer School, 2001  
 NIH Loan Repayment Program Recipient  
 Lawson Wilkins AstraZeneca Research Fellow,  
 2003-2004

**Organizations and Participation:**

**American Academy of Pediatrics**

-Council on Information Technology  
 ---Reviewer AAP annual meeting presentations  
 -Section on Endocrinology

**NC Pediatric Society**

**The Endocrine Society**

WPATH-International transgender society

**Pediatric Endocrine Society**

--Education Committee  
 --web publication for pediatrician education

**American Pediatric Program Directors**

**Human Rights Campaign**

-pediatric and adolescent transgender advisory committee

**American Diabetes Association**

Name: Adkins, Deanna W

Date: July 1, 2015

1. Course Director: ADA Camp Carolina  
Trails rotation for fellows and residents
2. 2014 Walk Recruitment Committee and  
Team Captain

**Research:**

**Novo Nordisk Growth Hormone Registry-  
closed**

**Exubera inhaled insulin-trial ended**

**Type 1 Diabetes Exchange PI-ongoing**

**Celiac and Type 1 diabetes-collaboration with  
UNC Chapel Hill-complete publication in  
process**

**Metabolic Bone Disease in neonates**

**Service over education in residency and  
fellowship-start-up phase**

**EPA study for pediatric subspecialties-  
ongoing multicenter study pending  
publications**

**Oral Tolvaptan in hyponatremia clinical trial  
ongoing**

**Expert Declaration of Deanna Adkins, M.D.**

# **EXHIBIT B**

**JA123**

### Bibliography

- J. Arcelus, W.P. Bouman, W. Van Den Noortgate, L. Claes, G. Witcomb, F. Fernandez-Aranda; Systematic review and meta-analysis of prevalence studies in transsexualism a Nottingham Centre for Gender Dysphoria; *European Psychiatry* 30 (2015) 807–815
- Ai-Min Bao, Dick F. Swaab; Sexual differentiation of the human brain: Relation to gender identity, sexualorientation and neuropsychiatric disorders; *Frontiers in Neuroendocrinology* 32 (2011) 214–226
- Baudewijntje P.C. Kreukels & Antonio Guillamon; Neuroimaging studies in people with gender Incongruence; *Int'l Rev. of Psychiatry*, 2016 Vol. 28, No. 1, 120–128.
- Henriette A Delemarre-van de Waal and Peggy T Cohen-Kettenis; Clinical management of gender identity disorder in adolescents: a protocol on psychological and pediatric endocrinology Aspects; *European Journal of Endocrinology* (2006) 155 S131–S137.
- Dessens AB, Slijper FM, Drop SL. Gender dysphoria and gender change in chromosomal females with congenital adrenal hyperplasia. *Arch Sex Behav.* 2005 Aug; 34(4):389-97.
- Jennifer Gordetsky and David B. Joseph; Cloacal Exstrophy: A History of Gender Reassignment; *Urology*, Volume 86, Issue 6, December 2015, Pages 1087–1089
- Wylie C. Hembree et al.; Endocrine Treatment of Transsexual Persons: An Endocrine Society Clinical Practice Guideline; *J Clin Endocrinol Metab*, September 2009, 94 (9):3132–3154
- Melissa Hines; Prenatal endocrine influences on sexual orientation and on sexually differentiated childhood behavior; *Frontiers in Neuroendocrinology* 32 (2011) 170–182.
- Elseline Hoekzema, et al.; Regional volumes and spatial volumetric distribution of gray matter in the genderdysphoric *Psychoneuroendocrinology* (2015) 55, 59—71.
- Pasterski V, Zucker KJ, Hindmarsh PC, Hughes IA, Acerini C, Spencer D, Neufeld S, Hines M.; *Arch Sex Behav.* Increased Cross-Gender Identification Independent of Gender Role Behavior in Girls with Congenital Adrenal Hyperplasia: Results from a Standardized Assessment of 4- to 11-Year-Old Children. 2015 Jul; 44 (5):1363-75.
- Lee Pa, et al.; Global DSD Update Consortium; Global Disorders of Sex Development Update since 2006: Perceptions, Approach and Care. *Horm Res Paediatr.* 2016; 85(3):158-80.

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

JOAQUÍN CARCAÑO; PAYTON GREY  
MCGARRY; H.S., by her next friend and  
mother, KATHRYN SCHAFER; ANGELA  
GILMORE; KELLY TRENT; BEVERLY  
NEWELL; and AMERICAN CIVIL  
LIBERTIES UNION OF NORTH  
CAROLINA,

*Plaintiffs,*

v.

PATRICK MCCRORY, in his official capacity  
as Governor of North Carolina; UNIVERSITY  
OF NORTH CAROLINA; BOARD OF  
GOVERNORS OF THE UNIVERSITY OF  
NORTH CAROLINA; and W. LOUIS  
BISSETTE, JR., in his official capacity as  
Chairman of the Board of Governors of the  
University of North Carolina,

*Defendants.*

No. 1:16-cv-00236-TDS-JEP

**DECLARATION OF JOAQUÍN CARCAÑO**

I, Joaquín Carcaño, declare as follows:

1. My name is Joaquín Carcaño, and I am 27 years old.
2. I work for the University of North Carolina at Chapel Hill's ("UNC-Chapel Hill") Institute for Global Health and Infectious Disease as a Project Coordinator. My project provides medical education and services such as HIV testing to the Latino/a population.

3. I am a member of the ACLU of North Carolina.
4. Below is a current photograph of me.



5. I am a man.
6. I am transgender. The sex I was assigned at birth was female, which is what is reflected on my birth certificate, but my birth certificate does not match my gender identity or sex, which are male.
7. In public, I am recognized as a man, and prior to the passage of H.B. 2, I was treated like all other men at UNC-Chapel Hill.
8. I was born and raised in South Texas. Since I was very young, around 7 or 8 years old, I was aware that I did not feel like a girl, but I did not know how to express how I felt.
9. It was not until later in my adult life that I was ready to accept that I am male.

10. Since 2013, I have been in the continuous care of a licensed mental health clinician, who diagnosed me with gender dysphoria. I initially sought treatment for depression, which was caused in part by my gender dysphoria.

11. I began using Joaquín as my first name in January 2015. My friends, family, and coworkers recognize me as a man, and they refer to me using my male name and male pronouns.

12. As part of my treatment, my physician has recommended and prescribed hormone treatment, which I have been receiving since May 2015. The hormone treatment has deepened my voice, increased the growth of my facial hair, and given me a more masculine appearance.

13. The hormone treatment has helped alleviate the distress that I was experiencing due to the disconnect between the sex I was assigned at birth and my male identity, and it has made me feel more comfortable with who I am.

14. In addition, and as part my treatment for gender dysphoria, I also obtained chest surgery (bilateral mastectomy) in January 2016.

15. As part of my social transition, I began using the men's restroom at work and elsewhere in late 2015, which occurred without incident for the five months or so before H.B. 2's enactment. My therapist had specifically recommended that I only use the men's restroom, because she was concerned that use of the women's restroom would compromise my mental health, well-being, and safety. Her concern was valid. By late 2015, I had noticeable facial hair growth as a result of my hormone treatment and others would recognize me as a man based on my physical appearance.

16. Prior to the passage of H.B. 2, I just went to the multi-user men's restroom on my floor when I had to use the restroom like all other men in the office.

17. I am now comfortable with the status of my treatment related to my gender dysphoria and, aside from the distress now caused by the passage of H.B. 2, my distress has been managed through my treatment. I plan to continue my treatment under the supervision of medical professionals based on my medical needs.

18. The only restrooms on the floor where I work at UNC-Chapel Hill are multiple-occupancy and are designated either for men or for women. H.B. 2 thus excludes me from using the same restrooms that my coworkers typically use.

19. In the initial period after H.B. 2's passage, I generally used a single-occupancy gender-neutral restroom in another building on campus, which was approximately a 20-30 minute roundtrip walk away from my building.

20. I was told later by administrative staff in the building where I work that they had learned of a single-occupancy restroom based on building floor plans. It is accessible using a special service elevator, and the restroom is tucked away in a cubby down a hallway in a part of the building used for housekeeping.

21. I feel humiliated by being singled out and forced to use a separate restroom from all my coworkers. Because using the special service elevator several times a day would attract even greater attention to the fact that I am not able to use the same restrooms as my coworkers, I have generally resorted to leaving the building and using a restroom in another building on-campus. I now have to plan out my trips to the restroom as part of my schedule. For example, I cannot simply make a quick trip to the restroom

before a meeting is about to start, as my coworkers are able to do. All of this often causes me to delay or avoid going to the restroom, or to limit my fluid intake.

22. I am afraid for my safety because of the passage of H.B. 2. The idea of being forced into the women's restroom causes significant anxiety and emotional distress for me.

23. Apart from the building where I work at UNC-Chapel Hill, I also used men's restrooms elsewhere on campus without incident for approximately five months prior to H.B. 2's passage.

24. Using the women's restroom is not an option for me, just like it is not an option for non-transgender men on campus. Forcing me to use the women's restroom would create significant mental and emotional distress for me, and I worry it could lead to violence and harassment against me.

25. In addition to using the restrooms on campus at UNC-Chapel Hill, I have also visited North Carolina public agencies, such as the Division of Motor Vehicles to obtain my driver's license, and I will likely have to visit these locations again in the future. Because of H.B. 2, I will no longer be able to use the men's restroom when I go to such public agency locations.

26. As part of my job at UNC-Chapel Hill, I also have had to visit the offices North Carolina Department of Health and Human Services many times in the past, and I will continue to need to do so in the future. Prior to passage of H.B. 2, I used the men's restroom while at their offices, but I will be banned from doing so in the future under H.B. 2.

27. Similarly, I have visited state courthouses in Chapel Hill as part of the process to change my legal name, which includes a traditionally female first name, to Joaquín, the name I currently use. Because my name change process is ongoing, I will continue to visit state courthouses in the future, but I will be banned from using the men's restroom there under H.B. 2.

28. In traveling throughout the state, I have also used and will continue to use the North Carolina Rest Area system, which has public restrooms along highways and is operated by the North Carolina Department of Transportation. I often use restrooms provided by that system when I travel approximately once a month to visit my brother in Atlanta, and when I visit Washington, D.C. periodically. In addition, when traveling further out of state, I have also used and will continue to use the Raleigh-Durham International Airport, which also has restrooms. I will need to continue to use those restrooms in the future, but I will be banned from using the men's restroom under H.B.2.

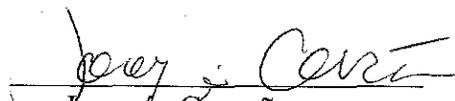
29. When out in public, such as at restaurants and stores, I use the men's restroom.

30. There have been no incidents or complaints that I am aware of, regarding my using the men's restroom.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on May 13<sup>th</sup>, 2016.

By:

  
Joaquín Carcaño

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

JOAQUÍN CARCAÑO ET AL.,

*Plaintiffs,*

v.

PATRICK MCCRORY ET AL.,

*Defendants.*

No. 1:16-cv-236-TDS-JEP

**EXPERT DECLARATION OF RANDI ETTNER, Ph.D**

**PRELIMINARY STATEMENT**

1. I have been retained by counsel for Plaintiffs as an expert in connection with the above-captioned litigation. I have actual knowledge of the matters stated in this declaration.

2. My professional background, experience, and publications are detailed in my curriculum vitae, a true and accurate copy which is attached as Exhibit A to this declaration. I received my doctorate in psychology from Northwestern University in 1979. I am the chief psychologist at the Chicago Gender Center, a position I have held since 2005.

3. I have expertise working with children, adolescents, and adults with gender dysphoria. I have been involved in the treatment of gender dysphoric individuals since 1977, when I was an intern at Cook County Hospital in Chicago, and in the course of my career, I have evaluated and/or treated between 2,500 to 3,000 individuals with gender dysphoria and mental health issues related to gender variance.

4. I have served as a consultant to multiple school districts in the state of Wisconsin as well as the Chicago public school system on issues related to gender identity. I was selected

as the named honoree of an externally-funded fellowship in recognition of my achievements in the field of transgender health—the University of Minnesota Randi and Fred Ettner Fellowship in Transgender Health—and have been an invited guest at the National Institute of Health to participate in developing a strategic plan to advance the health of sexual and gender minorities.

5. I have published four books, including the medical text entitled “Principles of Transgender Medicine and Surgery” (co-editors Monstrey & Eyler; Routledge, 2007) and its 2nd edition (co-editors Monstrey & Coleman, 2016). I have authored numerous articles in peer-reviewed journals regarding the provision of health care to this population. I have served as a member of the University of Chicago Gender Board and am a member of the editorial board for the *International Journal of Transgenderism*.

6. I am a member of the Board of Directors of the World Professional Association for Transgender Health (“WPATH”) (formerly the Harry Benjamin International Gender Dysphoria Association), and an author of the WPATH Standards of Care (7th version), published in 2011. The WPATH-promulgated Standards of Care are the internationally recognized guidelines for the treatment of persons with gender dysphoria and serve to inform medical treatment in the United States and throughout the world.

7. In preparing this declaration, I reviewed the materials listed in the attached Bibliography (Exhibit B). I may rely on those documents, in addition to the documents specifically cited as supportive examples in particular sections of this declaration, as additional support for my opinions. I have also relied on my years of experience in this field, as set out in my curriculum vitae (Exhibit A), and on the materials listed therein. The materials I have relied upon in preparing this declaration are the same types of materials that experts in my field of study regularly rely upon when forming opinions on the subject.

8. In the past four years, I have testified as an expert at trial or deposition in the following matters: *Kothmann v. Rosario*, Case No. 5:13-cv-28-Oc-22 PRL (M.D. Fla.); and *Doe v. Clenchy*, Case No. cv-09-201 (Me. Super. Ct.).

9. I am being compensated at an hourly rate for actual time devoted, at the rate of \$275 per hour for any clinical services, review of records, or preparation of reports or declarations; \$395 per hour for deposition and trial testimony; and \$900 per day for travel time spent out of the office. My compensation does not depend on the outcome of this litigation, the opinions I express, or the testimony I provide.

### **GENDER IDENTITY AND GENDER DYSPHORIA**

10. The term “gender identity” is a well-established concept in medicine, referring to one’s sense of oneself as belonging to a particular gender. All human beings develop this elemental internal view: the conviction of belonging to a particular gender, such as male or female. Gender identity is firmly established early in life.

11. Typically, people born with anatomical features associated with females (vagina, uterus, ovaries) identify as girls or women, and experience themselves as female. Conversely, those persons born with typically male characteristics ordinarily identify as males. However, for transgender individuals, this is not the case. For transgender individuals, the sense of one’s self—one’s gender identity—differs from the birth-assigned sex, giving rise to a sense of being “wrongly embodied.”

12. The medical diagnosis for that feeling of incongruence and accompanying distress is gender dysphoria, which is codified in the Diagnostic and Statistical Manual of Mental Disorders (DSM-V) (American Psychiatric Association) and the International Classification of Diseases-10 (World Health Organization). The condition is manifested by symptoms such as

preoccupation with ridding oneself of the primary and/or secondary sex characteristics associated with one's birth-assigned sex. Untreated gender dysphoria can result in significant clinical distress, debilitating depression, and often, suicidality.

13. The criteria for establishing a diagnosis of gender dysphoria in adolescents and adults are set forth in the DSM-V (302.85):

- A. A marked incongruence between one's experienced/expressed gender and assigned gender, of at least 6 months duration, as manifested by at least two of the following:
  - 1. A marked incongruence between one's experienced/expressed gender and primary and/or secondary sex characteristics (or in young adolescents, the anticipated sex characteristics).
  - 2. A strong desire to be rid of one's primary/and or secondary sex characteristics because of a marked incongruence with one's experienced/ expressed gender (or in young adolescents, a desire to prevent the development of the anticipated secondary sex characteristics).
  - 3. A strong desire for the primary and /or secondary sex characteristics of the other gender.
  - 4. A strong desire to be of the other gender (or some alternative gender different from one's assigned gender).
  - 5. A strong desire to be treated as the other gender (or some alternative gender different from one's assigned gender).
  - 6. A strong conviction that one has the typical feelings and reactions of the other gender (or some alternative gender different from one's assigned gender).
- B. The condition is associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning.

14. WPATH has established internationally accepted Standards of Care ("SOC") for the treatment of people with gender dysphoria. The SOC have been endorsed as the authoritative standards of care by leading medical and mental health organizations, including the American

Medical Association, the Endocrine Society, the American Psychiatric Association, and the American Psychological Association.

15. In accordance with the SOC, transgender individuals undergo medically-recommended transition in order to live in alignment with their gender identity.

16. The SOC identify the following evidence-based protocols for the treatment of individuals with gender dysphoria:

- Changes in gender expression and role, consistent with one's gender identity (also referred to as social role transition).
- Psychotherapy for purposes such as addressing the negative impact of stigma, alleviating internalized transphobia, enhancing social and peer support, improving body image, promoting resiliency, etc.
- Hormone therapy to feminize or masculinize the body.
- Surgery to alter primary and/or secondary sex characteristics.

17. Like protocols for the treatment of other medical conditions, once a diagnosis is established, a treatment plan is developed based on an individualized assessment of the medical needs of the patient. Some combination of social role transition, hormone therapy, psychotherapy, and surgery is used to help the individual patient with gender dysphoria live congruently with his or her gender and eliminate the clinically significant distress caused by the condition.

18. Changes in gender presentation and role to masculinize or feminize appearance—social role transition—are an important component of treatment. This requires dressing, grooming, and otherwise outwardly presenting oneself consistently through social signifiers that correspond to one's gender identity in every aspect of life—at home, work, school, and in the broader community. This is an appropriate prerequisite of identity consolidation.

19. Although children who are transgender feel “different” and may be confused about the suitability of their assigned sex, they often abide anxiety until they are older, and learn

that there is a name for their experience—“transgender”—and a diagnosis—gender dysphoria. For some, this happens in adolescence, or even adulthood. Then, a sequential internal and external process ensues: accepting and identifying as transgender, explaining to family and others about the necessity of transition, disidentifying with the assigned gender and seeking support for post-transition life. The final stage—identity consolidation—is attained when the transgender aspect of life becomes less important, and the individual refocuses on the normal challenges of life like making a living, forming relationships, etc. With identity consolidation, the shame of having lived as a “false self” and the grief of being born into the “wrong body” can be ameliorated. If any aspect of this social transition is impeded however, it destabilizes the patient and undermines the treatment goals.

20. As noted, in addition to social transition, many transgender individuals undergo medical transition including hormone therapy and surgery.

21. Even without surgery, hormone therapy has a profound effect on the physical appearance of an individual. In boys and men who are transgender (*i.e.*, those assigned female at birth), for example, hormone therapy has a profound virilizing effect on appearance. The voice deepens, there is growth of facial and body hair, body fat is redistributed, and muscle mass increases. For girls and women who are transgender (*i.e.*, those assigned male at birth), hormone therapy has a profound feminizing effect on appearance. Fat is redistributed to the hips and the breasts, skin is softened, and there is a loss of muscle mass, a reduction of body hair, cessation of male-pattern hair loss, and atrophy of the penis, prostate and testes.

22. Many transgender individuals never undergo surgery. For many transgender individuals, surgery is not medically necessary as dysphoria is alleviated through social role transition and hormone therapy. For others, surgery is cost prohibitive because it is excluded

from coverage under many insurance plans. Additionally, there are several medical contraindications that preclude surgical treatment. These include: severe decompensating cardiovascular disease, brittle diabetes, history of multiple pulmonary emboli, history of stroke, history of anesthetic hyperthermia, brain aneurism, ongoing chemotherapy, morbid obesity, hepato-cellular disease, severe renal insufficiency, severe pulmonary disease, severe hemoglobinopathy, and uncontrolled endocrinopathy.

23. The goal of all treatment is to eliminate the distress caused by gender dysphoria. Treatment does not make a patient more or less of a man or a woman but instead brings an individual patient's body and presentation in line with who they already are at their core.

#### **HARMFUL EFFECTS OF EXCLUSION FROM GENDER-APPROPRIATE FACILITIES**

24. Social transition remains a critical part of treatment for transgender individuals and it is important that the social transition occur in all aspects of the individual's life. For a gender dysphoric young person or adult to be considered male in one situation, for example, but not in another is inconsistent with evidence-based medical practice and detrimental to the health and well-being of the individual, regardless of age. The integration of a consolidated identity into the daily activities of life is the aim of treatment. Thus, it is critical that the social transition be complete and unqualified—including with respect to the use of restrooms and other spaces and activities separated by sex.

25. Access to the same restrooms and other facilities available to others is an undeniable necessity for transgender individuals. Restrooms and locker rooms, unlike other settings (*e.g.*, the library or kitchen), categorize people according to gender. When it comes to sex-specific public restrooms and locker rooms, there are generally two, and only two, such categories designated: male and female. To deny a transgender individual access to such a

facility consistent with that person's gender identity, or to insist that a transgender individual use a separate restroom, communicates that such a person is not a "real" man or woman; or that the person is some undifferentiated "other." Such segregation and identification of the individual as "other" interferes with the person's ability to consolidate identity and undermines the social-transition process.

26. Denial of restroom use in accordance with appearance and gender identity causes the use of such facilities to become a source of anxiety. Such anticipatory anxiety makes it difficult to concentrate at school or in the workplace. Transgender people go to great lengths to transition from their assigned birth gender. Expelling these individuals from spaces with peers can be deeply traumatic (particularly for adolescents), and exacerbates the depression, anxiety and isolation that many transgender people experience. Indeed, research shows that transgender individuals are at far greater risk for severe health consequences, and 41% have attempted suicide, a rate much higher than the baseline in North America.

27. Sending the message that a person is different from peers, and needs to be segregated, triggers shame. External attempts to negate a person's gender identity constitute identity threat. Developing and integrating a positive sense of self-identity formation is a developmental task for all human beings. For the transgender individual, the process is more complex, as the "self" violates society's norms and expectations. Attempts to negate a person's identity—such as excluding transgender people from gendered restrooms—challenges the legitimacy of identity, erodes resilience and poses health risks, including depression, posttraumatic stress disorder, hypertension and self-harm. In a study of transgender youth age 15 to 21, investigators found school to be the most traumatic aspect of growing up. Experiences of rejection and discrimination from teachers and school personnel led to feelings of shame and

unworthiness. The stigmatization to which they were routinely subjected led many to experience academic difficulties and to drop out of school.

28. For the majority of transgender people, social role transition allows for the social and legal recognition of their gender thereby conferring privacy—the right to maintain stewardship of personal and medical information—and allowing the individual to live safely and comfortably. Forcing a transgender individual into spaces designated for their birth-assigned sex and inconsistent with their gender identity can also lead to harassment and violence against the transgender individual.

29. A 2012 research study of discrimination and implications for health concluded: “living in states with discriminatory policies . . . was associated with a statistically significant increase in the number of psychiatric disorder diagnoses.”

30. Until recently, it was not fully understood that these experiences of shame and discrimination could have serious and enduring consequences. But it is now known that stigmatization and victimization are some of the most powerful predictors of current and future mental health problems, including the development of psychiatric disorders. The social problems that transgender teens face at school actually create the blueprint for future mental health, life satisfaction, and even physical health. A recent study of 245 gender-nonconforming adults found that stress and victimization at school was associated with a greater risk for post-traumatic stress disorder, depression, life dissatisfaction, anxiety, and suicidality in adulthood.

31. A wealth of research establishes that transgender people suffer from stigma and shame. The “minority stress model” explains that the negative impact of the stress attached to being stigmatized is socially based. The stress process can be both external, *i.e.*, actual experiences of rejection and discrimination (enacted stigma), and as a result of such experiences,

internal, *i.e.*, perceived rejection and the expectation of being rejected or discriminated against (felt stigma). A 2012 study of transgender adults found fear of discrimination increased risk of developing hypertension by 100%, owing to the intersectionality of shame and cardiovascular reactivity. A 2011 Institute of Medicine (IOM) report concurs: “the marginalization of transgender people from society is having a devastating effect on their physical and mental health.” The American Journal of Public Health recently reported that more than half of transgender women “struggle with depression from the stigma, shame and isolation caused by how others treat them.”

32. Privacy is essential in order to accomplish the therapeutic aims of treatment for gender dysphoria. Use of facilities that correspond to one’s lived experience and appearance is integral to social recognition of identity.

33. Privacy surrounding one’s gender dysphoria enables normal psychological functioning, the ability to have experiences that promote healthy personal growth and interpersonal relationships, and allows for control over the circumstances in which a person may disclose being transgender. It is the basis for the development of individuality and autonomy for transgender people.

34. Requiring transgender individuals to use facilities that do not match their gender identity may violate their privacy and release confidential medical information to others. The repetition of such negative experiences erodes resilience and coping mechanisms. The harms caused by House Bill 2 are predictable and dire, exacerbating symptoms of gender dysphoria and undermining clearly established treatment protocols in an already vulnerable population.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 5-12, 2016.

By: Randi Ettner Ph.D.  
Randi Ettner, Ph.D.

**Expert Declaration of Randi Ettner, Ph.D**

**EXHIBIT A**

**JA142**

**RANDI ETTNER, PHD**  
**1214 Lake Street**  
**Evanston, Illinois 60201**  
**Tel 847-328-3433 Fax 847-328-5890**  
**rettner@aol.com**

### **POSITIONS HELD**

Clinical Psychologist  
Forensic Psychologist  
Fellow and Diplomate in Clinical Evaluation, American Board of Psychological Specialties  
Fellow and Diplomate in Trauma/PTSD  
President, New Health Foundation Worldwide  
Board of Directors, World Professional Association of Transgender Health (WPATH)  
Chair, Committee for Incarcerated Persons, WPATH  
University of Minnesota Medical Foundation: Leadership Council  
Psychologist, Chicago Gender Center  
Adjunct Faculty, Prescott College  
Editorial Board, *International Journal of Transgenderism*  
Editorial Board, *Transgender Health*  
Television and radio guest (more than 100 national and international appearances)  
Internationally syndicated columnist  
Private practitioner  
Medical staff privileges attending psychologist; Advocate Lutheran General Hospital

### **EDUCATION**

PhD, 1979	Northwestern University (with honors) Evanston, Illinois
MA, 1976	Roosevelt University (with honors) Chicago, Illinois Major: Clinical Psychology
BA, 1969-72	Indiana University (cum laude) Bloomington, Indiana Major: psychology, Minor: sociology
1972	Moray College of Education Edinburgh, Scotland

## International Education Program

1970 Harvard University  
Cambridge, Massachusetts  
Social relation undergraduate summer program in  
group dynamics and processes

**CLINICAL AND PROFESSIONAL EXPERIENCE**

2016 Psychologist: Chicago Gender Center  
Consultant: Walgreens; Tawani Enterprises  
Private practitioner

2011 Instructor, Prescott College: Gender - A multidimensional  
approach

2000 Instructor, Illinois Professional School of Psychology

1995-present Supervision of clinicians in counseling gender non-conforming  
clients

1993 Post-doctoral continuing education with Dr. James Butcher in  
MMPI-2 interpretation University of Minnesota

1992 Continuing advanced tutorial with Dr. Leah Schaefer in  
psychotherapy

1983-1984 Staff psychologist, Women's Health Center, St. Francis  
Hospital, Evanston, Illinois

1981-1984 Instructor, Roosevelt University, Department of Psychology:  
Psychology of Women, Tests and Measurements, Clinical  
Psychology, Personal Growth, Personality Theories,  
Abnormal Psychology

1976-1978 Research Associate, Cook County Hospital, Chicago, Illinois  
Department of Psychiatry

1975-1977 Clinical Internship, Cook County Hospital, Chicago, Illinois,  
Department of Psychiatry

1971 Research Associate, Department of Psychology, Indiana  
University

1970-1972 Teaching Assistant in Experimental and Introductory  
Psychology Department of Psychology, Indiana University

1969-1971 Experimental Psychology Laboratory Assistant, Department of Psychology, Indiana University

### **LECTURES AND HOSPITAL GRAND ROUNDS PRESENTATIONS**

*Foundations in mental health; role of the mental health professional in legal and policy issues*, WPATH global education initiative, Chicago, 2015; Atlanta, 2016; *The transitioning client*, Springfield, MO, 2016

*Pre-operative evaluation in gender-affirming surgery*-American Society of Plastic Surgeons, 2015

*Gender affirming psychotherapy; Assessment and referrals for surgery- Standards of Care*- Fenway Health Clinic, Boston, 2015

*Gender reassignment surgery*- Midwestern Association of Plastic Surgeons, 2015

*Adult development and quality of life in transgender healthcare*- Eunice Kennedy Shriver National Institute of Child Health and Human Development, 2015

*Healthcare for transgender inmates*- American Academy of Psychiatry and the Law, 2014

*Supporting transgender students: best school practices for success*- American Civil Liberties Union of Illinois and Illinois Safe School Alliance, 2014

*Addressing the needs of transgender students on campus*- Prescott College, 2014

*The role of the behavioral psychologist in transgender healthcare* – Gay and Lesbian Medical Association, 2013

*Understanding transgender*- Nielsen Corporation, Chicago, Illinois, 2013;

*Role of the forensic psychologist in transgender care; Care of the aging transgender patient*- University of California San Francisco, Center for Excellence, 2013

*Evidence-based care of transgendered patients*- North Shore University Health Systems, University of Chicago, Illinois, 2011; Roosevelt-St. Vincent Hospital, New York; Columbia Presbyterian Hospital, Columbia University, New York, 2011

*Children of Transsexuals*-International Association of Sex Researchers, Ottawa, Canada, 2005; Chicago School of Professional Psychology, 2005

*Gender and the Law*- DePaul University College of Law, Chicago, Illinois, 2003; American Bar Association annual meeting, New York, 2000

*Gender Identity and Clinical Issues* –WPATH Symposium, Bangkok, Thailand, 2014; Argosy College, Chicago, Illinois, 2010; Cultural Impact Conference, Chicago, Illinois, 2005; Weiss Hospital, Department of Surgery, Chicago, Illinois, 2005; Resurrection Hospital Ethics Committee, Evanston, Illinois, 2005; Wisconsin Public Schools, Sheboygan, Wisconsin, 2004, 2006, 2009; Rush North Shore Hospital, Skokie, Illinois, 2004; Nine Circles Community Health Centre, University of Winnipeg, Winnipeg, Canada, 2003; James H. Quillen VA Medical Center, East Tennessee State University, Johnson City, Tennessee, 2002; Sixth European Federation of Sexology, Cyprus, 2002; Fifteenth World Congress of Sexology, Paris, France, 2001; Illinois School of Professional Psychology, Chicago, Illinois 2001; Lesbian Community Cancer Project, Chicago, Illinois 2000; Emory University Student Residence Hall, Atlanta, Georgia, 1999; Parents, Families and Friends of Lesbians and Gays National Convention, Chicago, Illinois, 1998; In the Family Psychotherapy Network National Convention, San Francisco, California, 1998; Evanston City Council, Evanston, Illinois 1997; Howard Brown Community Center, Chicago, Illinois, 1995; YWCA Women's Shelter, Evanston, Illinois, 1995; Center for Addictive Problems, Chicago, 1994

*Psychosocial Assessment of Risk and Intervention Strategies in Prenatal Patients*- St. Francis Hospital, Center for Women's Health, Evanston, Illinois, 1984; Purdue University School of Nursing, West Layette, Indiana, 1980

*Psychoneuroimmunology and Cancer Treatment*- St. Francis Hospital, Evanston, Illinois, 1984

*Psychosexual Factors in Women's Health*- St. Francis Hospital, Center for Women's Health, Evanston, Illinois, 1984

*Sexual Dysfunction in Medical Practice*- St. Francis Hospital, Dept. of OB/GYN, Evanston, Illinois, 1980

*Sleep Apnea* - St. Francis Hospital, Evanston, Illinois, 1996; Lincolnwood Public Library, Lincolnwood, Illinois, 1996

*The Role of Denial in Dialysis Patients* - Cook County Hospital, Department of Psychiatry, Chicago, Illinois, 1977

## **PUBLICATIONS**

Ettner, R. Pre-operative evaluation. In Schechter (ed) Surgical Management of the Transgender Patient. Elsevier, 2016.

Ettner, R. & Guillamon, A. Theories of the etiology of transgender identity. In Principles of Transgender Medicine and Surgery. Ettner, Monstrey & Coleman (Eds.), 2<sup>nd</sup> edition; Routledge, June, 2016.

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Bockting, W, Coleman, E., Deutsch, M., Guillamon, A., Meyer, I., Meyer, W., Reisner, S., Sevelius, J. & Ettner, R. Adult development and quality of life of transgender and gender nonconforming people. *Current Opinion in Endocrinology and Diabetes*, 2016.

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Coleman, E., Bockting, W., Botzer, M., Cohen-Kettenis, P., DeCuypere, G., Feldman, J., Fraser, L., Green, J., Knudson, G., Meyer, W., Monstrey, S., Adler, R., Brown, G., Devor, A., Ehrbar, R., Ettner, R., et.al. Standards of Care for the health of transsexual, transgender, and gender-nonconforming people. World Professional Association for Transgender Health (WPATH). 2012.

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- "Social and Psychological Issues of Aging in Transsexuals," proceedings, Harry Benjamin International Gender Dysphoria Association, Bologna, Italy, 2005.
- "The Role of Psychological Tests in Forensic Settings," *Chicago Daily Law Bulletin*, 1997.

Confessions of a Gender Defender: A Psychologist's Reflections on Life amongst the Transgendered. Chicago Spectrum Press. 1996.

"Post-traumatic Stress Disorder," *Chicago Daily Law Bulletin*, 1995.

"Compensation for Mental Injury," *Chicago Daily Law Bulletin*, 1994.

"Workshop Model for the Inclusion and Treatment of the Families of Transsexuals," Proceedings of the Harry Benjamin International Gender Dysphoria Symposium; Bavaria, Germany, 1995.

"Transsexualism- The Phenotypic Variable," Proceedings of the XV Harry Benjamin International Gender Dysphoria Association Symposium; Vancouver, Canada, 1997.

"The Work of Worrying: Emotional Preparation for Labor," Pregnancy as Healing. A Holistic Philosophy for Prenatal Care, Peterson, G. and Mehl, L. Vol. II. Chapter 13, Mindbody Press, 1985.

### **PROFESSIONAL AFFILIATIONS**

University of Minnesota Medical School –Leadership Council  
American College of Forensic Psychologists  
World Professional Association for Transgender Health  
World Health Organization (WHO) Global Access Practice Network  
TransNet national network for transgender research  
American Psychological Association  
American College of Forensic Examiners  
Society for the Scientific Study of Sexuality  
Screenwriters and Actors Guild  
Phi Beta Kappa

### **AWARDS AND HONORS**

*The Randi and Fred Ettner Transgender Health Fellowship*-Program in Human Sexuality, University of Minnesota, 2016

Phi Beta Kappa, 1971

Indiana University Women's Honor Society, 1969-1972

Indiana University Honors Program, 9-1972

Merit Scholarship Recipient, 1970-1972

Indiana University Department of Psychology Outstanding Undergraduate Award Recipient, 1970-1972

Representative, Student Governing Commission, Indiana University, 1970

### **LICENSE**

Clinical Psychologist, State of Illinois, 1980

**Expert Declaration of Randi Ettner, Ph.D**

**EXHIBIT B**

**JA150**

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**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

JOAQUÍN CARCAÑO; PAYTON GREY  
MCGARRY; H.S., by her next friend and  
mother, KATHRYN SCHAFER; ANGELA  
GILMORE; KELLY TRENT; BEVERLY  
NEWELL; and AMERICAN CIVIL  
LIBERTIES UNION OF NORTH  
CAROLINA,

*Plaintiffs,*

v.

PATRICK MCCRORY, in his official capacity  
as Governor of North Carolina; UNIVERSITY  
OF NORTH CAROLINA; BOARD OF  
GOVERNORS OF THE UNIVERSITY OF  
NORTH CAROLINA; and W. LOUIS  
BISSETTE, JR., in his official capacity as  
Chairman of the Board of Governors of the  
University of North Carolina,

*Defendants.*

No. 1:16-cv-00236-TDS-JEP

**DECLARATION OF H.S.**

I, H.S., declare as follows:

1. My name is H.S., and I am 17 years old.
2. I am a rising senior at the University of North Carolina School of the Arts High School (“UNC-SA-HS”).
3. Below is a current photograph of me.



4. I am the oldest of four children. I am close to my family and they love and support me.
5. I love art and visual studies, which I study at UNCSEA-HS.
6. I am a girl.
7. I am also transgender. I was assigned the sex of male at birth, as my birth certificate reflects, but that designation does not accurately reflect my gender identity or sex, which are female.
8. I have been diagnosed with gender dysphoria.
9. Until the passage of H.B. 2, I was recognized as a girl at school and when I was out in public.
10. I was born in New Jersey but moved to North Carolina when I was 11 years old. From as young as two or three years old, I wanted to have the clothes and toys

generally associated with girls. I always wanted to wear pink princess dresses at pre-school and to play with Barbie dolls, like many other girls.

11. When I finished pre-school, I worried about the reaction of others to my female identity, given that my sex assigned at birth was male. I tried to do things that I felt like I was supposed to do as a boy, but nothing felt right.

12. Starting in seventh grade, I again began to gravitate toward clothes and activities that were more traditionally feminine.

13. By eighth grade, I again began to express myself as a girl, and at times, I would wear make-up and high heel shoes at school. But my inability to live openly as a girl at all times, in accordance with my female identity, caused me significant distress and anxiety.

14. When I started entering puberty in ninth grade, I began to experience severe anxiety around the disconnect between my body and my identity. I finally went to my parents and told them how much I was suffering.

15. In ninth grade, I began therapy with an expert on treating transgender young people and was diagnosed with gender dysphoria.

16. In 2013, I started high school at Broughton High School in Raleigh. In the middle of my freshman year, I began taking hormone blockers to prevent the onset of male puberty and the development of secondary sex characteristics typically associated with men. This treatment delayed puberty while I continued to better understand and accept my female identity. The hormone blockers helped a great deal in reducing if not eliminating my suffering.

17. At the end of ninth grade, I felt fully comfortable embracing my identity as a girl at school, and I had the full support of my parents.

18. On the last day of my freshman year, I wore a skirt to school, which my mother bought me. It was an incredibly important moment for me, and it felt like a turning point in making me comfortable with my identity as a girl.

19. By my sophomore year, I was perceived as a girl and I began to use the girls' bathroom at school and in public. By then, people also used female pronouns, such as she, her, and hers, when referring to me.

20. During my sophomore year, I was elected to the Queen's Court at my school, which was an amazing experience. I was the first girl who is transgender to be honored on the Queen's Court in the seventy-five years of the tradition at my school.

21. Also during my sophomore year, and under the care of my doctor, I began to consider hormone replacement therapy. At the end of my sophomore year, in the spring of 2015, I began receiving estrogen therapy to continue my medical transition.

22. At the end of my sophomore year, I applied to UNCSEA-HS to study visual arts for my junior year and I was thrilled that I was accepted.

23. In the fall of 2015, I moved to Winston-Salem to attend UNCSEA-HS as a boarding student. At UNCSEA-HS, I study visual arts and hope to pursue a career in fashion.

24. During the school year, I live in the girls' dorm at UNCSEA-HS.

25. Until the passage of H.B. 2, I exclusively used the girls' restroom at school. I do not know of any incident or complaint about me using the girls' restroom.

26. When I am out in public, such as at restaurants and stores, I use the restrooms designated for women and girls. As with the restrooms at school, I do not know of any incident or complaint about me using these restrooms.

27. Outside of my dorm room, I am not aware of any single-user restrooms available for me to use at UNCSA-HS, and it would be very disruptive for me to have to avoid the use of the restroom, go back to my room, or locate a single-user restroom off campus every time I need to go to the restroom.

28. Forcing me to use different restrooms than the rest of my classmates, friends, and peers makes me feel different and as if the government is sending a message to me and others that I am inferior to other girls at my school or not a “real” girl.

29. Because I never went through puberty as a boy, my appearance is that of a typical girl and I am recognized as a girl in all aspects of my life.

30. Using the boys’ or men’s restroom is not an option for me, just like it is not an option for non-transgender women and girls on campus. Forcing me to use the restroom designated for men and boys would create significant mental and emotional distress for me, and it would force me to disclose the fact that I am transgender to others, which I fear could lead to violence and harassment.

31. I am afraid for my safety because of the passage of H.B. 2. The idea of being forced into the restroom designated for men and boys causes significant anxiety for me, both because of the emotional distress that I feel and because it would create discomfort for the men sharing the restroom with me.

32. Since H.B. 2 passed, I have limited or delayed use of the bathroom because of fear of getting in trouble if I use the restroom designated for women and girls, and I fear for my safety if I use the restroom designated for men and boys, as the law requires.

33. In addition to using the restrooms on campus at UNCSEA-HS, I have also visited North Carolina public agencies, such as the Division of Motor Vehicles to obtain my driver's license, and I will likely have to visit there again in the future. Because of H.B. 2, I will no longer be able to use the women's restroom when I go there.

34. In traveling throughout the state, I have also used and will continue to use the North Carolina Rest Area system, which has public restrooms along highways and is operated by the North Carolina Department of Transportation. When traveling out of state, I use the Raleigh-Durham International Airport, which also has restrooms. I will need to continue to use those restrooms in the future, but I will be banned from using the women's restroom under H.B. 2.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on May 15, 2016.

By: \_\_\_\_\_

H.S.  
H.S.

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

JOAQUÍN CARCAÑO; PAYTON GREY  
MCGARRY; H.S., by her next friend and  
mother, KATHRYN SCHAFER; ANGELA  
GILMORE; KELLY TRENT; BEVERLY  
NEWELL; and AMERICAN CIVIL  
LIBERTIES UNION OF NORTH  
CAROLINA,

*Plaintiffs,*

v.

PATRICK MCCRORY, in his official capacity  
as Governor of North Carolina; UNIVERSITY  
OF NORTH CAROLINA; BOARD OF  
GOVERNORS OF THE UNIVERSITY OF  
NORTH CAROLINA; and W. LOUIS  
BISSETTE, JR., in his official capacity as  
Chairman of the Board of Governors of the  
University of North Carolina,

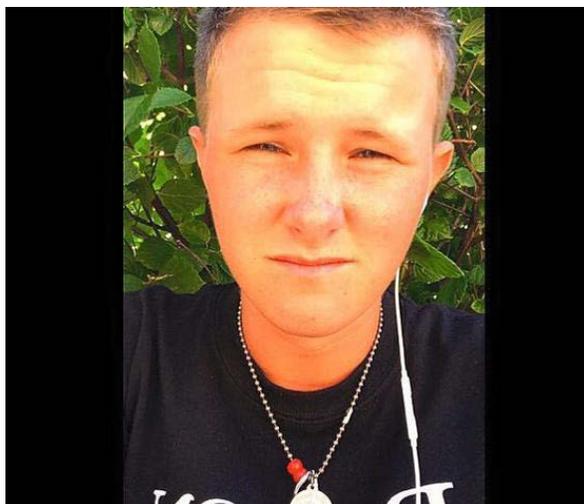
*Defendants.*

No. 1:16-cv-00236-TDS-JEP

**DECLARATION OF PAYTON GREY MCGARRY**

I, Payton Grey McGarry, declare as follows:

1. My name is Payton Grey McGarry, and I am 20 years old.
2. I am a full-time student at the University of North Carolina at Greensboro (“UNC-Greensboro”), where I double major in Business Administration and Accounting.
3. Below is a current photograph of me.



4. I love to play music and I have played trumpet in many ensembles at UNC-Greensboro. I also play the guitar, baritone, clarinet, and saxophone.

5. I am very close to my family and I have a younger brother who is also a member of the LGBT community. After earning my degree at UNC-Greensboro, I hope to go to law school and work to defend people's civil rights.

6. I am a man.

7. I am transgender. The sex I was assigned at birth was female, which is what is reflected on my birth certificate, but my birth certificate does not match my gender identity or sex, which are male.

8. I have been diagnosed with gender dysphoria.

9. I was born and raised in Wilson, North Carolina. Throughout my childhood, I felt like a boy and never really thought of myself as a girl. It was not until I started to go through puberty that I started to wrestle with the disconnect that I felt between my identity as a boy and the sex I was assigned at birth.

10. I first realized that I am transgender when I was in high school.

11. In October of 2013, during my senior year in high school, I began seeing a licensed clinical social worker who diagnosed me with gender dysphoria and recommended a course of treatment for me.

12. As part of my treatment, and consistent with my male identity, in the fall and winter of 2013, I explained to my friends and family that I am male and I began to use male pronouns.

13. In April of 2014, under the care of an endocrinologist, I began hormone therapy. The hormone therapy helped to alleviate the distress that I was experiencing due to the disconnect between the sex that I was assigned at birth and my male identity and it helped me to feel more comfortable with who I am.

14. By the time I graduated high school in June of 2014, I was using the name Payton and male pronouns in all aspects of my life. My family, friends, and peers all know me as Payton McGarry and use male pronouns to refer to me, even though I have not yet changed my legal first name.

15. In the fall of 2014, I enrolled as a freshman at UNC-Greensboro as Payton McGarry and as male.

16. Since arriving at UNC-Greensboro, I have identified myself and been known to others as male for all purposes.

17. I am a member of Phi Mu Alpha Sinfonia, a music fraternity, and I am the Vice President of the Iota Epsilon Chapter of my fraternity. My fraternity brothers know that I am transgender and they have had no concerns about me using the men's restroom or locker room.

18. Although I currently live off campus, I am on the UNC-Greensboro campus six or seven days per week, and I always used the restroom designated for men in on-campus buildings prior to the passage of H.B. 2.

19. I regularly use locker rooms at UNC-Greensboro and always used the facilities designated for men prior to the passage of H.B. 2.

20. For the past year-and-a-half since I enrolled at UNC-Greensboro, I have used the men's restrooms and locker rooms on-campus without any incident. I am not aware of any instance in which any person has complained about me using the men's restroom or locker room.

21. In addition to my course work, I also work part-time as a visual technician for marching bands at different high schools around the state. I regularly used the men's restroom when I visited schools as part of my work as a visual technician prior to the passage of H.B. 2. There were no incidents or complaints that I am aware of regarding my using the men's restroom.

22. When I am out in public, such as at restaurants and stores, I always use the men's restroom. There have never been any incidents or complaints that I am aware of regarding my use of these men's restrooms.

23. There are very few single-user restrooms on the UNC-Greensboro campus and, in many of the buildings in which I have class, there are no single-user restrooms.

24. Because H.B. 2 bans me from the men's restrooms at UNC-Greensboro, I have to search for single-user restrooms outside of the buildings where I have class every

time I have to use the restroom. This disrupts my ability to attend class and interferes with my education.

25. In addition, denying me the ability to use the multiple occupancy restrooms and locker rooms that are available to all of my male classmates, peers, and friends is very distressing. It makes me feel like I am singled out and marked as being less than other men on campus.

26. Since I started testosterone two years ago, my voice has deepened and my face and body have begun to look more traditionally masculine.

27. Using the women's restroom is not an option for me, just like it is not an option for non-transgender men on campus. Forcing me to use the women's restroom would create significant mental and emotional distress for me, and I am afraid it could lead to violence and harassment against me.

28. I have not used a women's restroom since I was 18 years old and had been on hormones for only two or three months, but I remember experiences in high school where I would walk into a women's restroom full of freshman and sophomore girls, and I would be screamed at, shoved, slapped, and told to get out. It became such a problem that I had to go speak with a counselor and get approved to use faculty bathrooms, which marked me as different from all other students.

29. I am afraid for my safety because of the passage of H.B. 2. The idea of being forced into the women's restroom causes significant anxiety and distress for me.

30. In addition to using the restrooms on campus at UNC-Greensboro, I have also visited North Carolina public agencies, such as the Division of Motor Vehicles to

obtain my driver's license, and I will likely have to visit there again in the future.

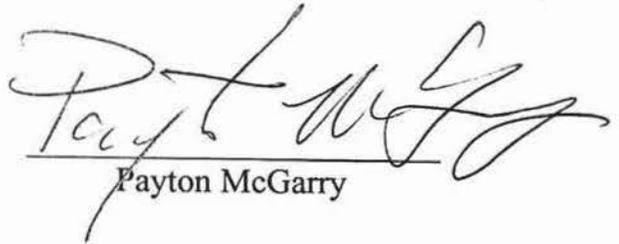
Because of H.B. 2, I will no longer be able to use the men's restroom when I go there.

31. In traveling throughout the state, I have also used and will continue to use the North Carolina Rest Area system, which has public restrooms along highways and is operated by the North Carolina Department of Transportation. When traveling out of state, I use the Raleigh-Durham International Airport, which also has restrooms. I will need to continue to use those restrooms in the future, but I will be banned from using the men's restroom under H.B. 2.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 5-14, 2016.

By:

  
Payton McGarry

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

JOAQUÍN CARCAÑO; PAYTON GREY  
MCGARRY; H.S., by her next friend and  
mother, KATHRYN SCHAFER; ANGELA  
GILMORE; KELLY TRENT; BEVERLY  
NEWELL; and AMERICAN CIVIL  
LIBERTIES UNION OF NORTH  
CAROLINA,

*Plaintiffs,*

v.

PATRICK MCCRORY, in his official capacity  
as Governor of North Carolina; UNIVERSITY  
OF NORTH CAROLINA; BOARD OF  
GOVERNORS OF THE UNIVERSITY OF  
NORTH CAROLINA; and W. LOUIS  
BISSETTE, JR., in his official capacity as  
Chairman of the Board of Governors of the  
University of North Carolina,

*Defendants.*

No. 1:16-cv-00236-TDS-JEP

**EXPERT DECLARATION OF ASSISTANT CHIEF OF UNIVERSITY  
POLICE ARAN C. MULL IN SUPPORT OF PLAINTIFFS'  
MOTION FOR PRELIMINARY INJUNCTION**

I, Aran C. Mull, declare as follows:

1. I have been retained by counsel for Plaintiffs as an expert in connection with the above-captioned litigation. This declaration is based on my personal specialized knowledge, informed by my more than 25 years of experience in law enforcement. My

background and experience are summarized in my curriculum vitae, appended to this declaration as Exhibit A. I have actual knowledge of the matters stated in this declaration, and could and would so testify if called as a witness.

2. I have been a member of the New York State University Police (“UPD”) since 1989, working in New York City, Long Island, and Albany. Since 1995, I have worked at the University at Albany, State University of New York. In that capacity, I have served as a Patrol Officer, Lieutenant, Captain, and Inspector. I currently serve as Assistant Chief of University Police for UPD. As Assistant Chief, I oversee all patrol and investigative functions of the UPD, which patrols a campus of more than 17,000 students each year.

3. Throughout my career, I have played a leading role in developing and overseeing UPD policy and instruction initiatives, programming, and security for major events. As chief firearms instructor, I developed and managed UPD’s transition from revolvers to Glock semi-automatic duty weapons. As a programming officer, I served as program manager and instructor for the University’s first RAD (women’s self-defense) course, developed the department’s Orientation Training for new students, and was active in the development and presentation of a sexual assault program for male students. The program was initially developed in the 1990s. Currently known as Men for Relationship Education and Change (“Men REACH”), the program educates students during orientation about the role men play in preventing sexual assault and assisting survivors of sexual assault.

4. In 2001, I began working on the development of a law enforcement records management software system that garnered an award from the International Association of Chiefs of Police. As part of that development I have seen all reports that move through the department and I am very familiar with what data is collected by police agencies in New York, and what data are forwarded to New York State and the Federal Bureau of Investigations in the compilation and comparison of statistics under the Uniform Crime Reporting and Incident Based Reporting System standards.

5. Since at least 2003, I have been the designated representative for our campus required by the federal Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act. In that capacity, I review all reports of crimes on campus, including sex offenses, and ensure that they are properly classified by geography and offense category. I am also the designated law enforcement representative for Title IX.

6. In my role as the department's "Safe Space" liaison with the LGBT community I have received training on LGBT-related issues and have consulted often with members of our LGBT community on issues related to law enforcement and LGBT community interests.

7. I was responsible for preparing the policy that governs UPD police officer interactions with transgender people. This policy dovetails with and helps effectuate the University at Albany's Equal Opportunity Statement, which provides that, "The University at Albany is committed to all persons having equal access to its programs,

facilities and employment without regard to . . . gender identity, gender expression . . .”

See [http://www.albany.edu/diversityandinclusion/Recruitment\\_and\\_Hiring.php](http://www.albany.edu/diversityandinclusion/Recruitment_and_Hiring.php).

8. In preparing to write this declaration, I reviewed Plaintiffs’ Complaint, and First Amended Complaint, for Declaratory and Injunctive Relief in this case; City of Charlotte Ordinance No. 7056; and House Bill 2. I also read *G.G. ex rel. Grimm v. Gloucester Cty. Sch. Bd.*, No. 15-2056, 2016 WL 1567467 (4th Cir. Apr. 19, 2016).

9. I also reviewed legislative testimony that has been submitted in various forums by Attorneys General, law enforcement officials, and civil rights agencies, on the specific issue of whether gender identity non-discrimination protections pose a threat to the public safety. Those testifying officials, and the year their respective jurisdictions adopted non-discrimination protections (where known or applicable) are as follows: Sheriff, Richland County, South Carolina (2011); California Deputy Attorney General (2005); New Jersey Assistant Attorney General (2007); District of Columbia Office of Human Rights (2005); State of Maryland Commission on Civil Rights (2014); Minneapolis Department of Civil Rights (1993); Washington Human Rights Commission (2006); Chief of Police, Amherst, MA (at least 2009); Police Commissioner for Boston Police Department (2002); Chief of Police, Brookline, MA; Police Commissioner, Cambridge, MA (1997); Chief of Police, Lynn, MA; Chief of Police, Medford, MA (2014); Chief of Police, Melrose, MA (2014); Chief of Police, Newton, MA (2014); Chief of Police, Northampton, MA (2005); Chief of Police, Salem, MA (2014); Chief of Police, Somerville, MA (2014); Chief of Police, Swampscott, MA; Chief of Police,

Worcester, MA (2014); Massachusetts Attorney General; District Attorney, Suffolk County, MA; and Massachusetts Chiefs of Police Association and Massachusetts Major City Chiefs. True and correct copies of these legislative materials are attached hereto as Exhibit C.

10. I also reviewed an open letter issued on April 21, 2016 by the National Task Force to End Sexual and Domestic Violence Against Women, which states that it was written to debunk “the myth that protecting transgender people’s access to restrooms and locker rooms endangers the safety or privacy of others.” The letter was signed by more than three dozen national organizations, as well as statewide sexual assault and domestic violence organizations from more than 40 states. A true and correct copy of this letter is attached hereto as Exhibit D.

11. The materials that I reviewed in preparing this declaration are listed in the attached Bibliography (Exhibit B). I may rely on those documents as additional support for my opinions, and I reserve the right to supplement the materials listed in the Bibliography. I have also relied on my years of experience in this field, as set out in my curriculum vitae (Exhibit A). The materials I have relied upon in preparing this declaration are the same types of materials that experts in this field regularly rely upon when forming opinions on the subjects addressed in this declaration.

12. I am being compensated at a flat rate of \$1,000.00 for preparation of all reports and declarations; \$350.00 per hour for time spent preparing for and giving deposition or trial testimony; and \$1,000.00 per day spent in North Carolina preparing for

or attending trial. My compensation does not depend on the outcome of this litigation, the opinions I express, or the testimony I provide.

**A. Non-discrimination Laws and Ordinances Do Not Pose a Threat to Public Safety.**

13. Over the course of my more than 25-year-long law enforcement career, I have had the opportunity to observe the effect that the adoption of non-discrimination ordinances has had on policing practices and complaints of criminal activity. The City of Albany adopted public accommodations protections in 2004, and statewide protections were adopted by executive order in 2015 and established under regulation in 2016. When both of these sources of law were adopted I observed no negative effect on policing or public safety, in the form of increased criminal activity, impact on the regular course of police business, or in the form of suspects attempting to use those protections as justification for criminal activity.

14. Nor am I aware of any negative effect on other New York jurisdictions covered by those protections. Had those laws caused any negative consequences, I believe I would have heard about them through my normal interaction with other New York law enforcement, the news media, or the multiple professional police organizations in which I am active, including the New York State Association of Chiefs of Police, the International Association of Chiefs of Police, the State University of New York Chiefs of Police Association, the International Association of Campus Law Enforcement Administrators, and the Northeast Colleges and Universities Security Association.

15. Legislative testimony submitted on this issue by other law enforcement officials confirms this experience. For example, Sheriff Leon Lott, from Richland County, South Carolina, offered written testimony on this issue to the South Carolina legislature last month. Richland County has protected individuals from gender identity discrimination since 2011. Sheriff Lott testified, “In the 41 years I have been in law enforcement in South Carolina, I have never heard of a transgender person attacking or otherwise bothering someone in a restroom. This is a non-issue.” Exhibit C at 1.

**B. In Jurisdictions with Non-Discrimination Protections, No Information Suggests That Either Transgender or Non-Transgender People Have Used Such Protections to Engage in or Justify Criminal Behavior.**

16. As District Attorney Daniel F. Conley for Suffolk County, Massachusetts recently advised the Massachusetts legislature:

In my fourteen years as District Attorney, there has not been a single case – not one – of a person who ‘pretended’ to adopt another gender identity in order to commit a crime. If anyone had done so, they would have been prosecuted. And rest assured that after this bill is passed, as I hope it will be, people will still not be allowed to use gender identity claims to break the law. Period.

Exhibit C at 8.

17. I am aware of no evidence or information to support the notion that individuals will use non-discrimination ordinances to engage in, or justify, predatory or criminal behavior. I have never personally observed, or heard any reports from subordinates or officers in other jurisdictions, of any individual citing a non-discrimination ordinance or law as an excuse to commit a crime.

18. I also derive my opinion from the experiences of sexual assault survivors that I have spoken to, and worked with, over the course of my career. I have served as a self-defense instructor for many years, and while teaching those courses, spent significant time talking with women who had experienced assaults or other crimes. None of those women ever described an experience with an assailant who tried to use non-discrimination protections as an excuse, or pathway of access, for the crime committed. That also is consistent with my years of experience in investigating criminal activity.

19. The attached statement by the National Task Force to End Sexual and Domestic Violence Against Women reports similar information based on those organizations' collective experience:

Those who are pushing these proposals [to eliminate non-discrimination protections for transgender people] have claimed that these proposals are necessary for public safety and to prevent sexual violence against women and children. As rape crisis centers, shelters, and other service providers who work each and every day to meet the needs of all survivors and reduce sexual assault and domestic violence throughout society, we speak from experience and expertise when we state that these claims are false.

Nondiscrimination laws protecting transgender people have existed for a long time. Over 200 municipalities and 18 states have nondiscrimination laws protecting transgender people's access to facilities consistent with the gender they live every day. . . . None of those jurisdictions have seen a rise in sexual violence or other public safety issues due to non-discrimination laws. Assaulting another person in a restroom or changing room remains against the law in every single state. We operate and advocate for rape crisis centers and shelters all over the country, including in cities and states with non-discrimination protections for transgender people. Those protections have not weakened public safety or criminal laws, nor have they compromised their enforcement.

*See Exhibit D.*

20. Moreover, crime statistics that I have regularly reviewed as part of my job have long shown that the majority of sexual assault crimes are committed by someone the victim knows, and only five to 10 percent are committed by strangers.

21. In fact, it is generally transgender people who face a greater risk of violence and harassment in public places, including when they cannot access sex-specific spaces that match their gender identity. As many trainings on LGBT cultural competency for law enforcement (which I also have reviewed as part of my job) emphasize, the LGBT community faces a higher level of harassment and violence generally, and that is particularly true of transgender people. The statistics relayed in those trainings are consistent with my own experience, which has included stakeholder meetings with members of the LGBT community and the criminal reports I have taken over the years involving violence targeted at LGBT people.

22. The legislative testimony appended to this declaration reinforces this point. As Massachusetts Attorney General Maura Healey testified in front of the state legislature, non-discrimination protections “improve and protect public safety,” because “what we do see, what is real, is that transgender people are harassed and attacked in restrooms, locker rooms, and many other places of public accommodation. They are also more likely to be the victims of violent crime.” Exhibit C at 6-7. Suffolk County District Attorney Daniel F. Foley reported to the Massachusetts legislature that there is “a wealth of evidence demonstrating that transgender citizens are routinely subjected to

discrimination and even violence for who they are. The level of violence and hatred is often severe, resulting in beatings and even death.” Exhibit C at 8.

**C. Law Enforcement Already Has Tools at its Disposal to Deal with Criminal Conduct; Non-Discrimination Laws Do Not Eliminate or Weaken Those Tools, and Instead Help Improve Community Well-Being and Safety.**

23. Eliminating protections for transgender people, and forcing them to use sex-specific facilities that match their birth certificate without regard to their gender identity, does not enhance or improve the tools that law enforcement has to combat crime. Rather, these tools, in the form of criminal laws, continue to exist in the jurisdictions that have adopted non-discrimination protections. In fact, every state and the District of Columbia prohibits sexual assault, and in the jurisdictions that have adopted non-discrimination protections, the criminal laws allow us to continue addressing crimes in the same way that we always have. Nothing about non-discrimination protections changes the elements of criminal assault, how we gather evidence, or how we prove those crimes in criminal proceedings. Nor am I aware of any information suggesting that non-discrimination protections have affected those criminal laws in any way.

24. Rather than hampering or eliminating our tools for fighting crime, non-discrimination protections can actually make those tools more effective. This concept is illustrated by a best practice widely known as “community policing,” which “emphasizes working with neighborhood residents to co-produce public safety.” Final Report of The President’s Task Force On 21st Century Policing at 3 (May 2015). Community policing

is a core part of the policing culture in which I have worked during my time with the UPD. It is a primary focus of our department's approach to law enforcement work and has been instrumental in our success.

25. Community policing teaches that if we as police officers are not engaging the community, we are not using our citizenry most effectively and helping the public to keep themselves safe. When the government marginalizes a particular group, including a vulnerable minority, we cause that group to be unlikely to want to assist the government, or to talk to the police.

26. Diminishing those channels of communication often increases the danger that group faces, affecting the likelihood that help is requested for everything from auto accidents and the need for related medical attention, to reporting victimization that one has experienced based on a group-based identity, such as transgender status.

27. We have seen this dynamic with other groups, such as the African-American community, and the concepts apply similarly to the transgender community. As the Massachusetts Chiefs of Police Association and Massachusetts Major City Chiefs wrote to the Massachusetts legislature, "transgender people are frequently the target of criminal conduct, particularly in public spaces," and in jurisdictions where gender identity discrimination is prohibited, "we have found that these instances are reduced as a result of such protections." Exhibit C at 10.

28. Additionally, alienating a minority group not only increases danger to that group, but also can increase the danger to the rest of the community as well. For a police

department to be effective, we need the community—and all elements of that community—contributing to our work to make our communities safer, by reporting crimes and cooperating with police.

29. A law like HB 2 can have a particularly detrimental effect on the relationship between law enforcement and the community. A lack of non-discrimination protections may already pose one barrier to trust and effective communication with the police, but affirmatively removing anti-discrimination protections—as I understand HB 2 has done by preventing Charlotte’s non-discrimination ordinance from taking effect, and by blocking protections under federal law—can be even more damaging.

30. Non-discrimination protections help improve community well-being and safety. Such protections help develop a better trained and educated police force, a more knowledgeable public, and improved relationships between transgender people and other segments of the community. The process of adopting non-discrimination protections, and educating the public and law enforcement, helps address the discomfort that often arises from a lack of knowledge and understanding of transgender people. In fact, efforts to address both explicit and implicit bias are viewed as central to best policing practices, and the education and training surrounding non-discrimination protections help achieve that goal.

**D. Other Law Enforcement Officials Report the Same Experience with Non-Discrimination Protections.**

31. In preparing this declaration, I also consulted with law enforcement officers from a diverse set of jurisdictions that have enacted local and statewide non-

discrimination protections requiring that people be permitted to access sex-specific facilities in accordance with their gender identity. Consulting with other law enforcement officers is a standard process that our police department and other police departments use when considering issues of policy or operating procedures, across a wide array of subject areas. For example, when we revamped our operating procedures over the course of several years, we consulted with a number of other police departments about their language and experience with their policies. Similarly, when I developed the procedure for the UPD's interactions with transgender people, I consulted with the jurisdiction in California that provided the model for our policy; and when the City of Albany Police Department developed their operating procedure for interaction with transgender people, they also called and consulted with us.

32. My consultation included:

- a. Retired Police Chief for the Boise Police Department in Idaho, Mike Masterson. Chief Masterson worked in law enforcement for nearly 40 years, including 28 years with the Madison Police Department in Wisconsin, and 10 years as Boise Police Chief. At least 12 municipalities in Idaho have adopted non-discrimination protections in public accommodations or city activities. If those protections had caused any public safety issues, Chief Masterson reports that he would have become aware in his capacity as Chief.
- b. Albany County, Wyoming Sheriff David O'Malley. Sheriff O'Malley's career in law enforcement began in 1974, and he served as the Chief of

Police in Laramie, Wyoming, before becoming Sheriff for Albany County. Sheriff O'Malley was the lead investigator for the death of Matthew Shepard. The City of Laramie adopted gender identity protections in public accommodations in 2015, and Sheriff O'Malley would be in a position to know of any related crimes because he reviews all reports by the Laramie Police Department and Sheriff's Office on a daily basis.

c. Sergeant of the Sex Offender Apprehension and Registration Unit for the Austin Police Department in Texas, Elizabeth M. Donegan. Sergeant Donegan has worked in law enforcement for 24 years. In 2002, Sergeant Donegan took over Austin Police Department Sex Crimes Unit, where she reviewed reports of approximately 1,100 sex-related crimes per year, before assuming her current position. Sergeant Donegan also previously served as an Investigator for child abuse-related crimes. Austin adopted non-discrimination protections based on gender identity in 2004.

d. Police Officer and LGBT Liaison for the Atlanta Police Department in Georgia, Eric King. Officer King has been with the Atlanta Police Department for seven years, and in his capacity as LGBT Liaison he receives reports of crimes involving LGBT people. He also performs weekly queries to find all related reports, including those containing the word "transgender." Officer King served as part of a steering committee that helped develop the Atlanta Police Department's Standard Operating Procedure ("SOP") for interactions with transgender people, and organized a town hall to

obtain feedback on the SOP from members of the transgender community. Atlanta adopted gender identity protections in public accommodations in 2000.

e. Patrolman and LGBTQ Liaison for the Boston Police Department, Javier Pagán. Patrolman Pagán has served with the Boston Police Department for nearly 21 years, and the City of Boston adopted protections against gender identity discrimination in public accommodations in 2002. Patrolman Pagán generally reviews all police reports involving an LGBT person each day that he reports for work in his capacity as the LGBTQ liaison.

f. Police Officer and LGBT Liaison for the Seattle Police Department (“SPD”), James Ritter. Officer Ritter has worked in law enforcement for 36 years. He worked for many years in the Capitol Hill precinct, which has the largest LGBT population in Seattle. He also worked for two years in the SPD Vice Section, which focuses on sex-related crimes. Officer Ritter also recently provided legislative testimony in Washington’s capitol on behalf of the Seattle Mayor, in response to proposed legislation that would have restricted restroom use by transgender people; the legislation was defeated. Seattle has had anti-discrimination protections based on gender identity since at least 2004, and Washington State has offered such protections since 2006.

g. Detective and LGBT Liaison for the Miami Beach Police Department in Florida, Juan Sanchez. Detective Sanchez has served with the Miami Beach Police Department for 29 years, and he is currently assigned to its Special Victims

Unit, where he also monitors the sex offender registry. Miami Beach has had gender identity protections in public accommodations since 2004.

33. All of the law enforcement officers that I consulted while preparing this declaration serve in jurisdictions that have adopted non-discrimination laws or ordinances. These officers have on average more than 26 years of law enforcement experience, and most were already working in law enforcement when those protections were adopted. These officers were thus in a position to observe how the adoption of those laws impacted the public safety and law enforcement processes in those jurisdictions. Those officers uniformly reported that none of them observed, or were aware of, the non-discrimination protections having any effect on the type or number of crimes being reported in those jurisdictions.

34. The officers with whom I consulted also reported no awareness of efforts by criminal suspects to invoke non-discrimination protections as justification for committing crimes: Chief Masterson (“This is an issue that is in the media spotlight [in Idaho]. If there were these incidents I and the public would have known.”); Detective Sanchez (“No. [Transgender people] don’t want to commit a crime. They just want to be comfortable.”); Officer King (“It is just not a tool criminals utilize.”); Sergeant Donegan (“No. Absolutely not. [I haven’t heard of it happening] in my career or at national training.”). This was true of the officers both in jurisdictions with relatively new protections, and in jurisdictions with longstanding protections, indicating that law

enforcement officials are not seeing such conduct either as a knee-jerk response to new protections or in communities with more settled non-discrimination ordinances.

35. The officers also agreed that non-discrimination protections do not affect or weaken already-existing tools for fighting crime. Officer Pagán said, “If someone files the complaint, we have the tools [to address it]. Reports get filed, and crimes are prosecuted accordingly. . . . [Our non-discrimination ordinance] just gave us one more tool to protect people.”

36. Officer Ritter agreed that non-discrimination rules have a positive effect on the work of law enforcement, observing that, “[The non-discrimination law] increased the tranquility of our city after the public was educated.” Retired Chief Masterson noted that after Laramie adopted non-discrimination protections, “It improved public safety through trust building. It had a positive benefit.”

37. In summary, there is no evidence that non-discrimination protections have caused any harm to the public safety in the 18 states, District of Columbia, or well over 200 municipalities that have adopted such protections. To the contrary, the experience of law enforcement indicates that such protections actually enhance the public safety. As District Attorney Daniel F. Conley testified, “[O]ver the years, every time we came to a new step we needed to take to make our Commonwealth more just, more tolerant and more fair, we have been met with dire predictions. Each time, we overcame those arguments with reason and by appealing to people’s inherent sense of decency and

fairness. And every time we did so, as a Commonwealth, as a society, and as citizens, we emerged better.” Exhibit C at 8.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on May, 14, 2016.

By:

  
Aran Mull

**Expert Declaration of Assistant Chief of University Police Aran C. Mull**

**EXHIBIT A**

**JA186**

New York State University Police  
University at Albany  
1400 Washington Avenue  
Albany, NY 12222

Phone: (518) 527-0412  
e-mail: [AMull@Albany.edu](mailto:AMull@Albany.edu)

# Aran C. Mull

## Experience

### **Assistant Chief of University Police (Deputy Chief of Operations)**

January 2014 - Present University at Albany (SUNY), Albany, NY

- ◆ Operations Commander – Oversees and directs department Patrol and Investigations functions.
- ◆ Responsible for review of department activity and analysis of crime and incident trend data.
- ◆ Management Representative to Labor – Serves as the management representative for disciplinary grievance, contract grievance, improper practice processes, and other Labor-Management issues. Serves as the department point-of-contact for the Governor's Office of Employee Relations, Human Resources, and University Counsel with respect to related issues.
- ◆ Co-chair of the University Emergency Preparedness Advisory Committee – Develops policy, training, and emergency management exercises in coordination with the co-chair (department of Environmental Health & Safety).
- ◆ University Police Public Information Officer (PIO)
- ◆ Regulatory Compliance Coordination – Responsible for coordinating, in conjunction with other campus partners, University compliance efforts and assisting with University compliance policy development, implementation and training.
- ◆ Department's Title IX representative.
- ◆ Department's Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act representative.
- ◆ Department's Safe Space liaison serving the University's LGBTQQAI community.
- ◆ Develops and promulgates department policy. Advises and assists with the development of University policy related to campus safety, and security.
- ◆ Serves on the University's Behavioral Risk Assessment Team.

### **University Police Inspector**

2007 - 2014 University at Albany (SUNY), Albany, NY

- ◆ Commander: Criminal Investigations Unit – Responsible for supervision of department Investigators, criminal case management, and incident classification.
- ◆ Special Events Coordination - Serves as the liaison with University and non-University stakeholders regarding safety and security concerns related to special

events. Responsible for managing intake, scheduling, planning, operations and billing (as appropriate) for special events involving UPD as well as supervision of UPD personnel working special events.

- ◆ Regulatory Compliance Coordination (Clery, Title IX, DCJS and others as identified and assigned) - Responsible for managing University Police compliance activities, coordinating UPD compliance activities with University-wide compliance efforts and assisting with University compliance policy development, implementation and training.
- ◆ University Police Public Information Officer (PIO) - Serve as the point of contact for media and Freedom of Information Act inquiries for the department. Responsible for managing and coordinating the release of information to the public and the media as appropriate.
- ◆ University Police Technology management - Serves as UPD's point of contact for issues surrounding access to and use of technology services including the department's records management system, the University Police web page, the use of video recording devices on campus, University email, PeopleSoft access, mobile computing, VPN access to University and State services, emergency voice and data communications, etc.
- ◆ Department's Safe Space liaison serving the University's LGBTQQAI community.
- ◆ Advise and assist with the University's emergency management planning, prevention, mitigation and recovery efforts.
- ◆ Advise and assist with the development of department and University policy related to the above areas.
- ◆ Serve on various committees including the University Senate's Committee on Academic Freedom, Freedom of Expression, & Community Responsibility and the University's Behavioral Risk Assessment Team.

### **University Police Officer II – Captain**

2006 - 2007                      University at Albany (SUNY), Albany, NY

- ◆ Department public information officer responsible for coordination with media outlets, maintenance of the department web site to keep the community aware of department activity (programming, patrol and investigatory), and to assist with requests for information in compliance with State and Federal freedom of information laws.
- ◆ Responsible for planning and managing major event details such as commencement exercises, Fountain Day and the New York Giants summer training camp.
- ◆ Responsible for planning and managing department programming outreach.
- ◆ Responsible for managing the department's reporting and records management activities as well as the ongoing development of the department's records

management capabilities. Ongoing developmental activities include implementation of mobile data terminals (MDTs), integration with the NYS Integrated Justice Portal web-based police information network, further development of the department's unique Incident Entry and Tracking System (IETS) reporting and records management software and the implementation of the Traffic and Crime reporting System software (TraCS).

- ◆ Department's Safe Space liaison serving the University's LGBTQQAI community.
- ◆ Member of University committees addressing the issues of sexual assault, emergency operations planning, event management and the implementation of the NY Alert system to communicate with community members during emergent situations.

### **University Police Officer II – Lieutenant**

2002 - 2006                      University at Albany (SUNY), Albany, NY

- ◆ Responsible for planning and coordinating major event details such as commencement exercises and the New York Giants summer training camp.
- ◆ Responsible for supervision of sworn and non-sworn members of the department including conduct review, scheduling, direction of daily activities, managing employee time and records, and review and approval of department paperwork.
- ◆ Initiated and assisted with the design and development of an International Association of Chiefs of Police award winning database application to consolidate department paperwork, allow full access and review of all data, and supply crime and incident data to state and federal agencies as well as to web sites designed to allow for review of individual incidents as well as statistical analysis of department activity as a whole.

### **University Police Officer I – Patrol Officer**

1995 - 2002                      University at Albany (SUNY), Albany, NY

1991 - 1995                      SUNY at Stony Brook, Stony Brook, NY

1989 - 1991                      SUNY Maritime College, Ft. Schuyler, Bronx, NY

- ◆ Assisted with the development and implementation of training for the state-wide transition from Peace Officer to Police Officer status.
- ◆ Lobbied and coordinated state-wide efforts leading to the successful passage of legislation granting full police status to sworn members of SUNY Public Safety.
- ◆ Developed and implemented the training program for the department-wide transition from revolvers to the Glock M22 semi-automatic pistol. Responsible for coordinating firearms and OC training of all sworn members of the department.
- ◆ Develop, schedule and present numerous programs to such groups as incoming

first-year students, foreign students, resident and fraternal groups, student government, and members of the University faculty and staff. Developed, scheduled, and implemented campus safety programs including the University's "Rape Aggression Defense" (R.A.D.) women's self-defense program, and the Men for Relationship Education and Change (Men REACH) program.

- ◆ Trained student security staff.
- ◆ Piloted a program that brought an officer into the residents' halls to facilitate better communication and cooperation between Residential Life and Public Safety.

### **Instructor-Counselor**

Oct. 1994-Feb. 1995 SUNY Public Safety Basic Training Academy, Albany, NY

- ◆ Responsible for overseeing the day-to-day operation of the Academy.
- ◆ Maintained discipline and initiated the necessary counseling, instruction, and physical training of the recruit class.
- ◆ Coordinated training and facilities use with instructors and New York State Police.

### **Education**

2014 University at Albany, State University of New York – Rockefeller College

- ◆ Master's Degree, Public Management and Public Policy Analysis  
Pi Alpha Alpha (GPA: 3.92)

2011 University of Virginia – National Academy, Federal Bureau of Investigation

- ◆ Certificate of Graduate Study in Criminal Justice Education  
Certificate completion date June 10, 2011-August 1990

2004 Excelsior College

- ◆ Major: Bachelor of Science in Liberal Arts (Engineering)  
Degree completion date July 16, 2004

1999 SUNY Campus Public Safety Officers' Basic Training Academy

- ◆ Graduated with highest academic average.

1984-1988 SUNY, Maritime College

- ◆ Major: Naval Architecture - 144 credits.

### **Accomplishments**

- ◆ *Award* – University Award for Excellence in Support Services – University at Albany.
- ◆ *Award* – Officer of the Year – 1999.

- ◆ *Award* – Lawrence E. Gall Award for Professional Police Service – 1997, 1998, 2001.
- ◆ *Award* – Chief’s Award for Professionalism and Excellence – 2003.
- ◆ *Award* – IACP iXP Leadership in Technology Award – 2004.
- ◆ *Certification* – Advanced Behavior-Based Investigative Strategies for Violent Crime – FBI.
- ◆ *Certification* – Law Enforcement Public Information Officer – IACP.
- ◆ *Certification* – Safe Space network – University at Albany.
- ◆ *Certification* – Responding to Intimate Partner Violence.
- ◆ *Certification* – SHARP – Sexual Harassment, Awareness, Responsibility & Prevention.
- ◆ *Certification* – Public Safety Critical Incident Management – NYS DPC.
- ◆ *Certification* – Incident Command System – NYS SEMO/USA DHS FEMA. IS-100, IS-200, IS-300, IS-400, IS-700, IS-800, P400, P402, P403, HSEEP
- ◆ *Certification* – WMD Protective Measures and LE Response – Instructor – USA DHS [COBRA].
- ◆ *Certification* – M.P.T.C. Basic Criminal Investigation.
- ◆ *Certification* – M.P.T.C. Course in Police Supervision.
- ◆ *Certification* – M.P.T.C. Instructor Evaluator.
- ◆ *Certification* – M.P.T.C. Police – Instructor.
- ◆ *Certification* – M.P.T.C. Firearms – Instructor.
- ◆ *Certification* – Patrol Rifle – Instructor.
- ◆ *Certification* – Response to Active Shooter Incidents – Instructor.
- ◆ *Certification* – Rape Aggression Defense – Instructor.
- ◆ *Certification* – Oleoresin Capsaicin (Pepper spray) – Instructor.
- ◆ *Member* – International Association of Chiefs of Police
- ◆ *Member* – New York State Association of Chiefs of Police
- ◆ *Member* – State University of New York Chiefs of Police Association
- ◆ *Member* – International Association of Campus Law Enforcement Administrators
- ◆ *Member* – Northeast Colleges and Universities Security Association

**Expert Declaration of Assistant Chief of University Police Aran C. Mull**

**EXHIBIT B**

## Bibliography

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*Unless otherwise specified, the year or date in parentheses reflects when the relevant law was amended to include gender identity.*

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Miami Beach, Fla., Code of Ordinances §§ 62-31, 62-32, 62-87 (2004; human rights ordinance re-written 2010).

Atlanta, Ga., Code of Ordinances § 94-68 (2000).

Boise, Idaho, City Code § 6-02-02, 6-02-03 (2012).

Bellevue, Idaho, Ordinance 2015-04 (Jun. 15, 2015), *codified at* Bellevue, Idaho, Mun. Code § 10.102, 10.103.

Brookline, Idaho, Town By-Laws §§ 3.14.1, 3.14.3 (2014).

Coeur d'Alene, Idaho, City Code §§ 9.56.020, 9.56.030 (2013).

Driggs, Idaho, Ordinance 354-14 (Jan. 6, 2015), *codified at* Driggs, Idaho, City Code §§ 5-5-02, 5-5-03.

Hailey, Idaho, City Code §§ 9.18.020, 9.18.030 (2015).

Ketchum, Idaho, City Code § 9.24.020, 9.24.030 (2013).

Lewiston, Idaho, City Code §§ 38-2, 38-4 (Oct. 27, 2014).

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Victor, Idaho, Municipal Code §§ 4-4-2, 4-4-3 (June 11, 2014).

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Boston, Mass., Municipal Code §§ 12-9.2, 12-9.7 (Oct. 30, 2002)

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Medford, Mass., Code of Ordinances § 50-69 (Dec. 16, 2014).

Melrose, Mass., Order 2015-72 (Dec. 17, 2014), *codified at* Melrose, Mass., Revised Ordinances ch. 15, § 15-50.

Newton, Mass., Revised Ordinances § 12-50 (Sep. 15, 2014).

Northampton, Mass., Code of Ordinances § 1-16; Northampton, Mass. Admin. Code part II, § 15.0 (Dec. 15, 2005).

Salem, Mass., Code of Ordinances § 2-2056 (Feb. 27, 2014).

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Brooklyn Lowery, *Swampscott Adds Gender Identity to Its Non-Discrimination Policy*, Swampscott (Mass.) Patch (published Feb. 20, 2015), <http://patch.com/massachusetts/swampscott/swampscott-adds-gender-identity-its-non-discrimination-policy-0> (Feb. 18, 2015).

Worcester, Mass., Amendment 44 (An Ordinance Relative to Gender Identity and Expression) (Sep. 16, 2014), *codified at* Worcester, Mass., Revised Ordinances of 2008 ch. 2, § 38.

Md. Code Ann., State Gov't § 20-304 (May 15, 2014).

Minneapolis, Minn., Code of Ordinances §§ 139.20, 139.40 (Aug. 5, 2011).

Minn. Stat. Ann. § 363A.03, § 363A.11 (Apr. 2, 1993).

2006 N.J. Sess. Law Serv. ch. 100 (West), *codified at* N.J. Rev. Stat. §§ 10:5-5, 10:5-12 (Dec. 19, 2006).

Albany, N.Y., Code §§ 48-25, 48-26 (Apr. 7, 2004).

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Columbia, S.C., Code of Ordinances § 11-503 (Mar. 5, 2008).

Richland County, S.C., Code of Ordinances §§ 16-67, 16-68 (June 7, 2011).

Austin, Tex., Code §§ 5-2-2, 5-2-3, 5-2-4 (Jun. 10, 2004).

Seattle, Wash., Mun. Code § 14.06.030 (1999).

Seattle, Wash., Ordinance 124829 (Aug. 11, 2015).

2006 Wash. Legis. Serv. ch. 4 (West), *codified at* Wash. Rev. Code §§ 49.60.030, 49.60.040, 49.60.175, 49.60.175, 49.60.180 (June 8, 2006).

Laramie, Wyo., Enrolled Ordinance 1681 (May 13, 2015), *codified at* Laramie, Wyo., Mun. Code §§ 9.23.020, 9.23.030, 9.23.040, 9.23.050.

### **Legislative Materials**

Documents submitted in support of or regarding Massachusetts House Bill 1577, An Act Relative to Gender Identity and Nondiscrimination, and Senate Bill 735, An Act Relative to Transgender Anti-Discrimination:

Letter from Chief William G. Brooks III, 2nd Vice President, Massachusetts Chiefs of Police Association, and Chief Brian A. Kyes, Massachusetts Major City Chiefs, to Senator William N. Brownsberger, Joint Committee on the Judiciary, and Representative John V. Fernandes, Joint Committee on the Judiciary (Oct. 1, 2015).

Letter from Deputy Attorney General Robert S. Sumner, State of California Department of Justice, Office of Legislative Affairs, to Assistant Attorney General Benjamin J. Meshoulam, Office of the Attorney General of Massachusetts (Sep. 18, 2015).

Letter from Assistant Attorney General B. Stephen Finkel, State of New Jersey, Office of the Attorney General, Department of Law and Public Safety, to Assistant Attorney General Benjamin J. Meshoulam, Policy and Government Division, Office of the Attorney General of Massachusetts (Sep. 11, 2015).

Letter from Elliot Imse, Director of Policy and Communications, District of Columbia Office of Human Rights, to Assistant Attorney General Rachel Culley, Civil Rights Division, Office of the Attorney General of Massachusetts (Oct. 1, 2015).

Letter from Executive Director Alvin O. Gillard, State of Maryland Commission on Civil Rights, to Assistant Attorney General Rachel Culley, Civil Rights Division, Office of the Attorney General of Massachusetts (Sep. 30, 2015).

Letter from Director Velma J. Korbel, City of Minneapolis Department of Civil Rights, to Assistant Attorney General Benjamin J. Meshoulam, Policy and Government Division, Office of the Attorney General of Massachusetts (Sep. 18, 2015).

Letter from Laura Lindstrand, Policy Analyst, State of Washington Human Rights Commission, to Assistant Attorney General Benjamin J. Meshoulam, Office of the Attorney General of Massachusetts (Oct. 15, 2015).

Letter from Chief of Police Scott P. Livingstone, Town of Amherst Police Department (Amherst, Massachusetts), to Hon. William Brownsberger, Joint Committee on the Judiciary, and Hon. John Fernandes, Joint Committee on the Judiciary (Sep. 24, 2015).

Letter from Police Commissioner William B. Evans, Boston Police, to Hon. William Brownsberger, Joint Committee on the Judiciary, and Hon. John Fernandes, Joint Committee on the Judiciary (Oct. 2, 2015).

Letter from Chief of Police Daniel C. O'Leary, Brookline Police Department (Brookline, Massachusetts), to Hon. William Brownsberger, Joint Committee on the Judiciary, and Hon. John Fernandes, Joint Committee on the Judiciary (Oct. 2, 2015).

Letter from Police Commissioner Robert C. Haas, City of Cambridge Police Department (Cambridge, Massachusetts), to Hon. William Brownsberger, Joint Committee on the Judiciary, and Hon. John Fernandes, Joint Committee on the Judiciary (Sep. 28, 2015).

Letter from Chief of Police Kevin F. Coppinger, City of Lynn Police Department (Lynn, Massachusetts), to Hon. William Brownsberger, Joint Committee on the Judiciary, and Hon. John Fernandes, Joint Committee on the Judiciary (Oct. 2, 2015).

Letter from Chief of Police Leo A. Sacco, Jr., Medford Police (Medford, Massachusetts), to Hon. William Brownsberger, Joint Committee on the Judiciary, and Hon. John Fernandes, Joint Committee on the Judiciary (Sep. 30, 2015).

Letter from Chief of Police Michael L. Lyle, City of Melrose Police Department (Melrose, Massachusetts), to Hon. William Brownsberger, Joint Committee on the Judiciary, and Hon. John Fernandes, Joint Committee on the Judiciary (Sep. 24, 2015).

Letter from Chief of Police Howard L. Mintz, City of Newton Police Department (Newton, Massachusetts), to Hon. William Brownsberger, Joint Committee on the

Judiciary, and Hon. John Fernandes, Joint Committee on the Judiciary (Sep. 30, 2015).

Letter from Chief of Police Jody D. Kasper, Northampton Police Department (Northampton, Massachusetts), to Hon. William Brownsberger, Joint Committee on the Judiciary (Sep. 18, 2015).

Letter from Chief of Police Mary E. Butler, City of Salem Police Department (Salem, Massachusetts), to Hon. William Brownsberger, Joint Committee on the Judiciary, and Hon. John Fernandes, Joint Committee on the Judiciary (Sep. 22, 2015).

Letter from Chief of Police David Fallon, City of Somerville Police Department (Somerville, Massachusetts), to Hon. William Brownsberger, Joint Committee on the Judiciary, and Hon. John Fernandes, Joint Committee on the Judiciary (Sep. 30, 2015).

Letter from Chief of Police Ronald J. Madigan, Town of Swampscott (Swampscott, Massachusetts), to Hon. William Brownsberger, Joint Committee on the Judiciary, and Hon. John Fernandes, Joint Committee on the Judiciary (Sep. 24, 2015).

Letter from Chief of Police Gary J. Gemme, Department of Police, City of Worcester, Massachusetts, to Hon. William Brownsberger, Joint Committee on the Judiciary, and Hon. John Fernandes, Joint Committee on the Judiciary (Sep. 24, 2015).

Documents reflecting or regarding testimony at *Protected Classes, Privacy, and Data Collection Legislation: Hearing Before the Joint Committee on the Judiciary*, 189th Massachusetts General Court (2015):

Press Release, Suffolk County District Attorney Office (Suffolk County, Massachusetts), Testimony of Suffolk County District Attorney Daniel F. Conley in Support of Bills H. 1577 and S. 735 (Oct. 6, 2015).

Attorney General Maura Healey, Commonwealth of Massachusetts, Testimony before the Joint Committee on the Judiciary (Oct. 6, 2015).

Letter from Attorney General Maura Healey, Commonwealth of Massachusetts, to Hon. William Brownsberger, Joint Committee on the Judiciary, and Hon. John Fernandes, Joint Committee on the Judiciary (Oct. 21, 2015) (written comments following testimony).

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Property Shall be Designated For and Only Used By a Person Based on His Biological Sex . . . . :

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**Expert Declaration of Assistant Chief of University Police Aran C. Mull**

**EXHIBIT C**



## Richland County Sheriff's Department

**LEON LOTT**  
Sheriff

April 12, 2016

### VIA HAND DELIVERY

The Honorable Kevin L. Bryant  
Chairman, Senate General Subcommittee on S.1203  
303 Gressette Building  
Columbia, South Carolina 29201

Dear Senator Bryant:

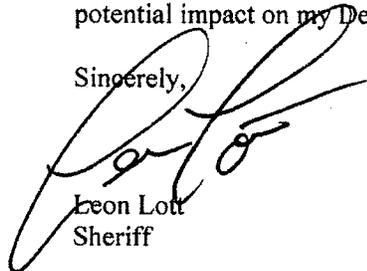
As Sheriff of Richland County, I am writing to you today to oppose the passage of S.1203. First and foremost, this bill is unnecessary. In the 41 years I have been in law enforcement in South Carolina, I have never heard of a transgender person attacking or otherwise bothering someone in a restroom. This is a non-issue.

Additionally, if this bill passes, it would put a huge burden on an already overloaded law enforcement team. As I understand the bill, to be enforced, a law enforcement officer would have to determine the sex of every person entering a restroom in our state. Obviously, DNA testing is cost-prohibitive. Asking my deputy sheriffs to check a person's genitalia invades the subject's dignity and privacy. There are also due process issues and Fourth Amendment issues. Such enforcement efforts could also expose my Department to costly litigation.

Given the very real law enforcement challenges this state faces like criminal domestic violence – South Carolina ranks No. 1 for deadly violence against women – and gang activity, I cannot endorse a bill which is unnecessary and unenforceable.

I'm sorry that I am unable to attend the subcommittee hearing tomorrow because of pressing Department business, but I do ask that the subcommittee and committee take my opinion into consideration. It is rare that I weigh in on matters at the Statehouse, but given this S.1203's potential impact on my Department, I felt compelled to communicate with you.

Sincerely,

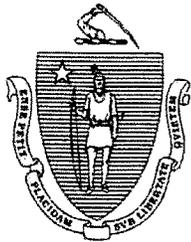


Leon Lott  
Sheriff

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MAURA HEALEY  
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TEL: (617) 727-2200  
www.mass.gov/ago

October 21, 2015

The Honorable William Brownsberger  
Senate Chair, Joint Committee on the Judiciary  
State House, Room 504  
Boston, MA 02133

The Honorable John Fernandes  
House Chair, Joint Committee on the Judiciary  
State House, Room 136  
Boston, MA 02133

Re: S.735, *An Act relative to transgender anti-discrimination* and H.1577, *An Act relative to gender identity and nondiscrimination*

Dear Chairmen Brownsberger and Fernandes:

Thank you for the opportunity to testify at the hearing on S.735, *An Act relative to transgender anti-discrimination*, filed by Senator Sonia Chang-Diaz, and H.1577, *An Act relative to gender identity and nondiscrimination*, filed by Assistant Majority Leader Byron Rushing and Representative Denise Provost. This legislation is critical to protect the rights of transgender people in Massachusetts and fight discrimination, and I urge the Committee to move quickly with a favorable report. I would like to take this opportunity to provide further information to the Committee on three issues that were raised at the hearing.

*First*, some asserted that our existing laws adequately protect transgender people from discrimination in places of public accommodation. They do not. Though we encourage victims to report incidents to our office, the Massachusetts Commission Against Discrimination (MCAD), or the police (where appropriate), the remedies currently available are significantly limited. For example, when a victim files a complaint with our office's Civil Rights Division, we may be able to mediate a mutually agreeable resolution between the parties. However, our bargaining power is limited, because liability is not explicit under *any* case, court decision, statute or regulation.

With respect to the MCAD, members of the Committee are likely familiar with two probable cause findings that were recently circulated among your colleagues. These findings did



October 21, 2015

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*not* conclude that gender identity-based discrimination is prohibited under current Massachusetts law. Rather, these were early-stage findings that simply allowed the matters to go forward to hearing and adjudication. Both complaints, however, were resolved through voluntary settlements without further findings or adjudication. *No court* in Massachusetts has held a place of public accommodation liable for discriminating against a customer because of her gender identity. Additionally, some federal courts have concluded that a theory of sex-based discrimination cannot be used by a transgender person to recover damages under analogous federal anti-discrimination laws. *See, e.g., Etsitty v. Utah Transit Auth.*, 502 F.3d 1215, 1221 (10th Cir. 2007) (“discrimination against a transsexual based on the person’s status as a transsexual is not discrimination because of sex under Title VII”).

The view that existing law adequately protects transgender people is belied by the prevalence of discrimination against the group. Our office and non-profit organizations in Massachusetts like Gay & Lesbian Advocates & Defenders (GLAD) have received numerous complaints from transgender people, who are routinely discriminated against, particularly in places of public accommodation. As I said at the hearing, our failure to provide these protections under our current law sends the message that we, as a state, do not welcome transgender people or consider them deserving of equal treatment. I think we can all agree that is the wrong message.

*Second*, some have expressed concern that this legislation would require businesses to undertake expensive renovations, such as building gender-neutral locker rooms and bathrooms. That concern is unfounded and without merit. Under this bill, businesses or places of public accommodation do not need to change any existing practices, except allow visitors to use those facilities that correspond to their *actual* gender identity. Since these places already have to do that for their employees under current law, there is no hardship in extending such protections to customers and members of the public. This bill does not impose *any* construction or renovation requirements, and our office will enforce the law, if enacted, consistent with such interpretation. As far as we know, no other jurisdiction that has these protections in place for transgender people has required new construction or renovation. Moreover, since 2012, our anti-discrimination laws have protected transgender employees from discrimination at their places of work, including in gender-segregated spaces. No employer has been required to build new facilities or renovate existing facilities in order to comply with that law.

Numerous Massachusetts businesses and trade organizations, including the Greater Boston Chamber of Commerce, have endorsed the bill, because they recognize the value in ensuring that all of their customers feel welcome in their stores and facilities and are treated with respect. Companies such as Biogen, Blue Cross/Blue Shield of Massachusetts, Eastern Bank, EMC, Facebook, Google, Harvard Pilgrim Health Care, State Street, and many more understand that this bill is good for business, are not concerned about implementation, and believe it is important to stand with transgender people. This broad base of private sector support demonstrates that the “business case” against the bill is without basis.

October 21, 2015

Page 3

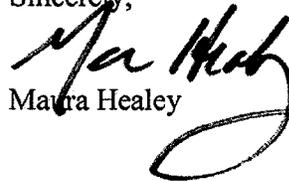
*Third*, at the hearing, various arguments were offered against the use of gender-segregated facilities by transgender people. Some said that these protections would be used as cover for people to enter into bathrooms or locker rooms for improper reasons. Experience shows that this does not occur. Seventeen other states and the District of Columbia, as well as 225 cities and towns across the country (including 13 in Massachusetts), prohibit gender identity-based discrimination in places of public accommodation. We are unaware of a single instance, in Massachusetts or anywhere else in the country, where an individual has used gender identity protections as a defense to improper or illegal conduct. Nor would they be able to – this is a classic red herring.

Finally, some have invoked the privacy rights of other patrons as a “competing” consideration. Fundamentally, I believe these purported privacy concerns are simply reflective of a certain discomfort with transgender people. Discomfort is not a reason to perpetuate discrimination or prejudice borne by lack of understanding or familiarity with transgender people.

The reality is that transgender people are too often the victims of harassment and violent crime, and this bill will enhance public safety. Many of my colleagues in law enforcement share this view, as you heard in the testimony of Suffolk County District Attorney Daniel Conley as well as Boston Police Commissioner William Evans, and as you see reflected in the letters submitted in support of the bill by the Massachusetts Chiefs of Police Association, the Massachusetts Major City Chiefs, and the individual chiefs of police in the 13 municipalities across this state that already have these protections in place.

Thank you for your work on this important issue. We hope that by clarifying some issues raised at the hearing, we can work with you on the quick passage of this legislation. If you have any questions, please do not hesitate to contact Benjamin Meshoulam, Senior Policy Advisor, at (617) 963-2601.

Sincerely,



Maura Healey

cc: The Honorable Sonia Chang-Diaz  
The Honorable Byron Rushing  
The Honorable Denise Provost



**Joint Committee on the Judiciary**

**October 6, 2015**

**Testimony of Attorney General Maura Healey**

---

**As prepared for delivery**

I'm here today to testify in support of legislation to protect transgender people in places of public accommodation.

Four years ago, you all took the important step of extending protections to transgender individuals in employment, education, housing and credit.

However, right now, in Massachusetts, when transgender people visit our stores or parks or medical offices, they have to do so with the fear that if they encounter discrimination – if they are turned away or harassed or denied service – the law will afford them no protection.

Right now, to me it does not make sense that in Massachusetts, a restaurant can't refuse to hire a transgender person, but it can refuse to serve that same person. Nor does it make sense that a school can't discriminate against a student, but that student can be kicked off of public transportation on the way to class.

I want to take advantage of this time before the Committee to directly speak to three questions I've heard about this issue.

*First, is there really a problem?*

Yes, there's a problem, and it's very real. It's happening here in our state.

Transgender people regularly face discrimination in places of public accommodation.

GLAD fielded 42 complaints of public accommodations discrimination from transgender people in Massachusetts in the past year.

My office, since January, has received seven complaints from transgender individuals – against businesses, health care facilities, and governmental entities.

And you know, it's actually remarkable that we've received any complaints at all. Because the law doesn't explicitly prohibit this kind of discrimination right now. It's hard for people to call and complain about something when the law doesn't protect them.

At the Attorney General's Office, we also know the issue is real from spending time listening to transgender people and their families.

An individual seeking health care at an emergency room, who was subjected to public ridicule by the admitting staff. A person refused service by a cashier when attempting to buy groceries. An individual barred from entering a restaurant with her friends.

I do not believe that anyone in Massachusetts should be subjected to that kind of treatment.

*Here's the second question I want to address: won't this bill give protection to those who try to enter a restroom or locker room for improper reasons?*

The answer is no.

This bill allows people to use those facilities – including bathrooms and locker rooms – that correspond to their *actual* gender identity.

But it doesn't allow men to dress up like women so they can walk into the women's room.

My office isn't aware of a *single* instance – in Massachusetts or elsewhere – in which an individual attempted to use gender identity protections as a defense to criminal conduct.

I'm submitting letters from other states that have had these laws on the books for years, and from the police chiefs in all 13 of the Massachusetts cities and towns that have their own transgender protections.

These letters make clear that these protections are not used as a pretext to engage in unlawful conduct.

In fact, what the police chiefs' letters confirm – as does the wonderful joint letter submitted in support of the bill by the Massachusetts Chiefs of Police Association and the Massachusetts Major City Chiefs – is these ordinances improve and protect public safety.

Because what we do see, what is real, is that transgender people are harassed and attacked in restrooms, locker rooms, and many other places of public accommodation. They are also more likely to be the victims of violent crime.

*The third question I've heard is: won't this bill create a burden on businesses?*

Not at all.

Businesses have already done much of the necessary work by updating their employment anti-discrimination policies to provide protections for transgender employees, which is already required by existing law.

And this bill doesn't require businesses to build new facilities or alter their physical plants at all. They don't need to build new bathrooms.

I'm speaking from experience. Our office recently adopted a transgender non-discrimination policy. It was straightforward to put in place, and we made no alterations to our office or facilities.

In fact, many companies recognize that this change will be *good* for business.

Creating open, inclusive and welcoming environments is critical for attracting and retaining employees and customers.

That's why you're seeing resounding support for this bill from businesses like Google, Harvard Pilgrim, EMC, Blue Cross Blue Shield, Eastern Bank, Legal Seafood, and leaders in the business community like the Greater Boston Chamber of Commerce.

You will hear from many of these businesses later today.

If we don't grant these protections to transgender people, we're sending a message that we, as a state, don't fully accept them. That we don't welcome them.

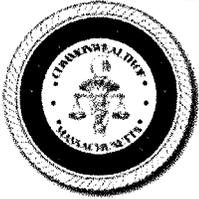
That's the wrong message.

It's time for us to join the 17 other states and 225 cities and towns across the country – including the 13 in Massachusetts – that already have this law in place.

So that every person who walks down the block to the grocery store, every child who takes the bus to school, will be protected from discrimination.

I ask you to give these bills a favorable recommendation.

SUFFOLK COUNTY  
DISTRICT ATTORNEY  
MASSACHUSETTS



## DANIEL F. CONLEY



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[Suffolk County District Attorney's Office](#) > [Press Office](#) > [Press Releases](#) > [Press Releases 2015](#) > [Testimony of Suffolk County District Attorney Daniel F. Conley in Support of Bills H. 1577 and S. 735](#)  
[Testimony of Suffolk County District Attorney Daniel F. Conley in Support of Bills H. 1577 and S. 735](#)

BOSTON, Oct. 6, 2015—Suffolk County District Attorney Daniel F. Conley today delivered the following testimony to the Joint Committee on the Judiciary in support of House Bill 1577, *An Act Relative to Gender Identity and Nondiscrimination*, and Senate Bill 735, *An Act Relative to Transgender Anti-Discrimination*:

“Good afternoon Chairman Brownsberger, Chairman Fernandes, and all the members of the committee.

“I am going to be very brief. I will not repeat the points made by the Attorney General. I support House bill 1577 and Senate bill 735 for all of the reasons she stated. Public accommodation, without discrimination, and with the full protection of the law, is a matter of basic human dignity and respect.

“I’ve been advocating for the fair and equal treatment of people regardless of their sexual orientation for my entire public career. And over the years, every time we came to a new step we needed to take to make our Commonwealth more just, more tolerant and more fair, we have been met with dire predictions. Each time, we overcame those arguments with reason and by appealing to people’s inherent sense of decency and fairness. And every time we did so, as a Commonwealth, as a society, and as citizens, we emerged better.

“The arguments we have heard for several years now in opposition to these bills are based on unfounded claims and fear-mongering. That is not a political statement, but a fact that I report to you as the District Attorney for Suffolk County.

“I represent the most diverse population in Massachusetts and all of New England. In my fourteen years as District Attorney, there has not been a single case – not one – of a person who ‘pretended’ to adopt another gender identity in order to commit a crime. If anyone had done so, they would have been prosecuted. And rest assured that after this bill is passed, as I hope it will be, people will still not be allowed to use gender identity claims to break the law. Period.

“So there is no factual basis for the claim that people have used or will use gender identity as a defense to shield or minimize illegal behavior. There is, however, a wealth of evidence demonstrating that transgender citizens are routinely subjected to discrimination and even violence for who they are. The level of violence and hatred is often severe, resulting in beatings and even death.

“Our laws need to reflect that discrimination for any reason, including gender identity, is wrong and start honoring the differences that make our community stronger.

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**JA207**

“It is the duty of government to protect all its citizens, but government has a special obligation to protect and support marginalized people. Transgender individuals are subject to hate, fear, ridicule, violence, and discrimination.

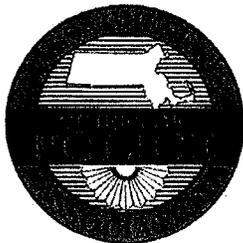
“Rita Hester was neither the first, nor the last, transgender individual to suffer this kind of hate. But her murder in her home in Boston in 1998, which remains unsolved, was one of the unconscionable acts that inspired the community to declare: ‘Enough.’ Her death began the Transgender Day of Remembrance, celebrated each year on November 20th. But it’s not enough to light candles and remember and hope. We need to act, and passing of this bill into law is the action we need.”

–30–

Suffolk County District Attorney's Office  
DA Daniel F. Conley  
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Senator William N. Brownsberger  
Joint Committee on the Judiciary  
Room 504, State House  
Boston, MA 02133

Representative John V. Fernandes  
Joint Committee on the Judiciary  
Room 136, State House  
Boston, MA 02133

October 1, 2015

**RE: Protecting Transgender Individuals in Places of Public Accommodation**

Dear Chairman Brownsberger and Chairman Fernandes:

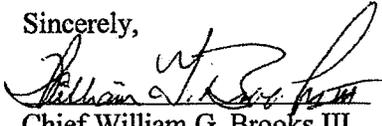
On behalf of the Massachusetts Chiefs of Police Association and the Massachusetts Major City Chiefs, we write this letter in support of S. 735, *An Act relative to transgender anti-discrimination* and H. 1577, *An Act relative to gender identity and nondiscrimination*. The proposed legislation would add gender identity as a protected category under our state's public accommodation anti-discrimination provisions.

We believe that the proposed legislation will improve public safety in Massachusetts. Unfortunately, transgender people are frequently the target of criminal conduct, particularly in public spaces. In the jurisdictions where gender identity discrimination is prohibited in places of public accommodation, we have found that these incidents are reduced as a result of such protections.

There is no reason to believe that individuals – whether transgender or otherwise – will use these protections as cover to enter into the restroom or locker room of the opposite sex and engage in criminal misconduct. We are aware of no such incidents that have occurred in Massachusetts communities that already have such protections in place.

Finally, based on the experience of our members who work in localities that already protect transgender individuals in places of public accommodation, implementation will be straightforward and uncomplicated.

We respectfully request that the Committee favorably report the bills out of committee. Should you need any further information, please do not hesitate to contact us.

Sincerely,  
  
Chief William G. Brooks III  
Massachusetts Chiefs of Police Association

  
Chief Brian A. Kyes  
Massachusetts Major City Chiefs

**KAMALA D. HARRIS**  
**Attorney General**

**State of California**  
**DEPARTMENT OF JUSTICE**



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September 18, 2015

Benjamin J. Meshoulam  
Senior Policy Advisor & Assistant Attorney General  
Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108

Dear Mr. Meshoulam:

I write in response to your inquiry regarding California statutes preventing discrimination based on gender identity and whether these provisions have been misused for illicit purposes.

California has a number of laws ensuring universal access to public accommodations. Specifically, the Unruh Civil Rights Act provides that all individuals within the state are "entitled to the full and equal accommodations, advantages, facilities, privileges, or services" regardless of status, including sex, gender identity, and gender expression.<sup>1</sup> Compliance with these protections is monitored and enforced by the Attorney General's Civil Rights Enforcement Section. Additionally, the California Department of Justice's Public Inquiry Unit routinely reviews complaints of criminal activity or individual misconduct from members of the public.

To the extent of this office's knowledge, there have been no cases in which an individual has exploited the state's antidiscrimination laws in order to illegitimately access a bathroom or other gender-segregated public accommodation for purposes of committing a criminal offense therein.

If you have any additional questions, please do not hesitate to reach out.

Sincerely,

A handwritten signature in black ink, appearing to read "RS", with a long horizontal flourish extending to the right.

ROBERT S. SUMNER  
Deputy Attorney General  
Office of Legislative Affairs

<sup>1</sup> Cal. Civ. Code, § 51



State of New Jersey

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DEPARTMENT OF LAW AND PUBLIC SAFETY  
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TRENTON, NJ 08625-0080

CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

JOHN J. HOFFMAN  
*Acting Attorney General*

September 11, 2015

Benjamin J. Meshoulam  
Senior Policy Advisor & Assistant Attorney General  
Policy & Government Division  
Office of the Attorney General of Massachusetts  
One Ashburton Place  
Boston, Massachusetts 02108

Dear AAG Meshoulam:

In response to your recent inquiry, New Jersey's "Law Against Discrimination" was amended in 2006 to prohibit unlawful discrimination, including discrimination by any place of public accommodation, on account of "gender identity or expression." See N.J.S.A. 10:5-12(f)(1); see also P.L.2006, c.100. The New Jersey Division on Civil Rights has not received any complaints or investigated any incidents where it was determined that an individual relied upon or asserted the anti-discrimination protections of the Law Against Discrimination based on gender identity or expression as a pretext to gain improper access to gender-segregated areas such as bathrooms or locker rooms.

Thank you for your interest in New Jersey's Law Against Discrimination. Please contact us if you have additional questions.

Very truly yours,

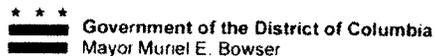
B. Stephan Finkel  
Assistant Attorney General



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October 1, 2015

Assistant Attorney General Rachel Culley, Civil Rights Division  
Office of the Attorney General of Massachusetts  
One Ashburton Place  
Boston, Massachusetts 02108

RE: Gender Identity Protections in Public Accommodations

Dear Assistant Attorney General Culley,

The District of Columbia Human Rights Act (HRA) was amended in 2005 to prohibit discrimination based on gender identity or expression in the areas of employment, housing, educational institutions, and public accommodations. HRA defines "gender identity or expression" as a "gender-related identity, appearance, expression, or behavior of an individual, regardless of the individual's assigned sex at birth." It defines public accommodations broadly to include nearly all places of business, government facilities and land, hospitals and doctors, and transportation such as taxicabs.

Conversations with advocates and others reveal HRA's protections have been vital to the full participation of transgender people in the District, and public accommodations protections in particular are critical to ensuring equal opportunity and equal access for this often times marginalized population. Inclusion of transgender people has furthered the District's reputation for fairness and justice, attracting talented individuals who seek out jurisdictions with full protections. More importantly, this prohibition makes it illegal for a District restaurant, store or other business to refuse service to a group of people because of who they are – an action our nation's history shows is morally reprehensible and destructive to the character of its people.

Our agency, the District of Columbia Office of Human Rights (OHR), remains unaware of any incident or complaint where an individual inappropriately asserted the anti-discrimination protections of HRA based on gender identity or expression as a method for securing improper access to gender-segregated areas such as bathrooms or locker rooms. In fact, we have only seen increased community support for such protections in the 10 years since gender identity or expression was added to HRA.

Please feel free to contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Elliot Imse", with a long horizontal line extending to the right.

Elliot Imse  
Director of Policy & Communications  
District of Columbia Office of Human Rights  
[elliott.imse@dc.gov](mailto:elliott.imse@dc.gov) | 202.481.3773

September 30, 2015

Ms. Rachel Culley  
Assistant Attorney General  
Civil Rights Division  
Office of the Attorney General of Massachusetts  
One Ashburton Place  
Boston, Massachusetts 02108

RE: Transgender Discrimination in Public Accommodations

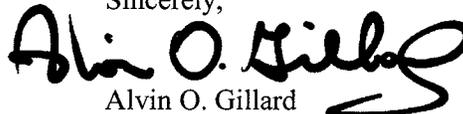
Dear AAG Culley:

In response to your recent inquiry, Maryland amended its anti-discrimination laws in 2014 to make it illegal to discriminate in employment, housing, and public accommodations on the basis of gender identity. To date, the Maryland Commission on Civil Rights (MCCR) has not received any complaints or investigated any incidents where it was determined that an individual relied upon or asserted the anti-discrimination protections based on gender identity or expression as a pretext to gain improper access to gender-segregated areas such as bathrooms or locker rooms. Our partners in law enforcement have similarly not reported any such assertions when carrying out their duties.

Since this law went into effect, MCCR's Education & Outreach Unit partnered with Salisbury University to offer "Safe Spaces", a workshop designed to help people reduce the often unwelcoming and even hostile environments in which Lesbian, Gay, Bisexual, Transgender, Queer/Questioning, Transgender, Intersex, and Asexual/Ally (LGBTQIA) people navigate in their daily lives. "Safe Spaces" is consistently in high demand by both employers and housing providers. We have also piloted a limited number of open-to-the-public "Safe Spaces" workshops which draw crowds in excess of the venue capacity.

It is my hope that this information is helpful to you. If you have any questions or wish to discuss this further, please do not hesitate to contact me at your earliest convenience.

Sincerely,

  
Alvin O. Gillard  
Executive Director



**Department of Civil Rights**

Velma J. Korbel

Director

350 South 5th Street - Room 239  
Minneapolis MN 55415-1369

Office 612 673-3012

Fax 612 673-2599

TTY 612 673-2157

September 18, 2015

Benjamin J. Meshoulam  
Senior Policy Advisor & Assistant Attorney General  
Policy & Government Division  
Office of the Attorney General of Massachusetts  
One Ashburton Place  
Boston, Massachusetts 02108

Dear AAG Meshoulam:

In response to your recent inquiry, the Minneapolis Civil Rights Ordinance was amended in 2011 to make it illegal to discriminate in employment, labor union membership, housing accommodations, property rights, education, public accommodations and public services on the basis of gender identity. (See Minneapolis, Minn., Code of Ordinances § 139.10; 139.20).

The Minneapolis Civil Rights Ordinance defines gender identity as: "A person's actual or perceived self-image or identity as expressed through dress, appearance, behavior, speech or similar characteristics, whether or not traditionally associated with the person's physical anatomy, chromosomal sex, or sex at birth."

The Minneapolis Department of Civil Rights has not received any complaints or investigated any incidents where it was determined that an individual relied upon or asserted the anti-discrimination protections of the Civil Rights Ordinance based on gender identity or expression as a pretext to gain improper access to gender-segregated areas such as bathrooms or locker rooms.

Thank you for your interest in Minneapolis' Civil Rights Ordinance. Please contact me if you have additional questions.

Yours truly,

A handwritten signature in black ink, appearing to read "Velma Korbel".

Velma Korbel

/fj



[www.minneapolismn.gov](http://www.minneapolismn.gov)

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**JA214**



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October 15, 2015

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Benjamin Meshoulam  
Senior Policy Advisor/Assistant Attorney General  
Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108

Dear Mr. Meshoulam:

I am writing in response to your inquiry regarding the Washington Law Against Discrimination (WLAD, RCW 49.60) and its prohibition on discrimination based on gender identity. Specifically, you were interested in whether the statute has been misused to commit behavior that is illegal or inappropriate.

The WLAD requires equal treatment of persons regardless of their gender identity. The law has been interpreted as requiring places of public accommodation to allow the use of gender segregated facilities (such as restrooms and locker rooms) by persons according to the gender with which they identify. In other words, a person who is male at birth, but who identifies as female is able to use the women's facilities, and a person who is female at birth, but identifies as male, is able to use the men's facilities.

This agency enforces the WLAD, and investigates complaints by persons who believe that they were discriminated against based on their gender identity. This has included a number of complaints related to the use of gender segregated facilities. In addition, this agency receives questions from businesses and places of public accommodation related to their obligations under the law when a transgender individual wishes to use a particular gender segregated facility. We have encountered no situations in which an individual has used the state's antidiscrimination laws in order to access a single sex facility for illegal, illicit, or improper purposes.

If you have further questions, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Laura Lindstrand".

Laura Lindstrand  
Policy Analyst



Town of



AMHERST

Massachusetts

Amherst Police Department  
111 Main Street  
Amherst, Massachusetts  
01002

Scott P. Livingstone  
Chief of Police  
Business (413) 259-3000  
Chief (413) 259-3014  
Records (413) 259-3016  
Fax (413) 259-2408  
police@amherstma.gov

September 24, 2015

The Honorable William Brownsberger  
House Chair, Joint Committee on the Judiciary  
State House, Rm 504  
Boston, MA 02133

The Honorable John Fernandes  
House Chair, Joint Committee on the Judiciary  
State House, Rm 136  
Boston, MA 02133

RE: Transgender Discrimination in Public Accommodations

Dear Chairman Brownsberger, Chairman Fernandes, and members of the Committee:

I submit this letter in support of S.735, *An Act relative to transgender anti-discrimination* and H.1577, *An Act relative to gender identity and nondiscrimination*. This legislation would explicitly include gender identity in Massachusetts' public accommodations anti-discrimination laws.

Amherst is one of the thirteen municipalities in Massachusetts that has already enacted a local bylaw to provide protection to transgender individuals in places of public accommodation, such as restaurants, retail establishments, and hospitals. Our policy prohibits the same discriminatory conduct as the proposed legislation.

As Amherst's Chief of Police, I can personally attest that implementing the change to our bylaws has been straightforward and uncomplicated. Additionally, to my knowledge, we have had no safety concerns related to transgender individuals using sex-segregated spaces. In contrast, our community is safer because transgender individuals have equal protections.

Thank you and the members of the Joint Committee for considering these comments while reviewing S.735 and H.1577. If you have any questions, please do not hesitate to contact me at (413) 259-3014.

Sincerely,

Scott P. Livingstone  
Chief of Police

# Boston Police

Office of the Police Commissioner

1 Schroeder Plaza, Boston, MA 02120-2014

October 2, 2015

The Honorable William Brownsberger  
House Chair, Joint Committee on the Judiciary  
State House, Rm 504  
Boston, MA 02133

The Honorable John Fernandes  
House Chair, Joint Committee on the Judiciary  
State House, Rm 136  
Boston, MA 02133

RE: Transgender Discrimination in Public Accommodations

Dear Chairman Brownsberger and Chairman Fernandes:

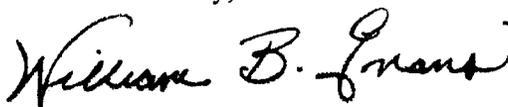
I submit this letter in support of S.735, *An Act relative to transgender anti-discrimination* and H.1577, *An Act relative to gender identity and nondiscrimination*. This legislation would explicitly include gender identity in Massachusetts' public accommodations anti-discrimination laws.

Boston is one of the thirteen municipalities in Massachusetts that has already enacted a local ordinance to provide protection to transgender individuals in places of public accommodation, such as restaurants, retail establishments, and hospitals. Our ordinance prohibits the same discriminatory conduct as the proposed legislation.

To my knowledge as Police Commissioner for the City of Boston, we have had no safety concerns related to transgender individuals using sex-segregated spaces, including restrooms, and implementation of our ordinance has been straightforward.

Thank you and the members of the Joint Committee for considering these comments while reviewing S.735 and H.1577. If you have any questions, please do not hesitate to contact me at (617) 343-4500.

Sincerely,



William B. Evans  
Police Commissioner



DANIEL C. O'LEARY  
CHIEF OF POLICE

## BROOKLINE POLICE DEPARTMENT

*Brookline Massachusetts*

October 2, 2015

The Honorable William Brownsberger  
House Chair, Joint Committee on the Judiciary  
State House, Rm 504  
Boston, MA 02133

The Honorable John Fernandes  
House Chair, Joint Committee on the Judiciary  
State House, Rm 136  
Boston, MA 02133

RE: Transgender Discrimination in Public Accommodations

Dear Chairman Brownsberger and Chairman Fernandes:

I submit this letter in support of S.735, *An Act relative to transgender anti-discrimination* and H.1577, *An Act relative to gender identity and nondiscrimination*. This legislation would explicitly include gender identity in Massachusetts' public accommodations anti-discrimination laws.

Brookline is one of the thirteen municipalities in Massachusetts that has already enacted a local ordinance to provide protection to transgender individuals in places of public accommodation, such as restaurants, retail establishments, and hospitals. Our ordinance prohibits the same discriminatory conduct as the proposed legislation.

As Brookline's Chief of Police, I can personally attest that implementing our ordinance has been straightforward and uncomplicated. Additionally, to my knowledge, we have had no safety concerns related to transgender individuals using sex-segregated spaces. In contrast, our community is safer because transgender individuals have equal protections.

Thank you and the members of the Joint Committee for considering these comments while reviewing S.735 and H.1577. If you have any questions, please do not hesitate to contact me at (617) 730-2249.

Sincerely,

Daniel C. O'Leary  
Chief of Police



19



**Robert C. Haas**  
*Police Commissioner*

*City of Cambridge*  
*Police Department*

TELEPHONE  
(617) 349-3300

FAX  
(617) 349-3320

WEB  
[www.cambridgepolice.org](http://www.cambridgepolice.org)

**Richard C. Rossi**  
*City Manager*

September 28, 2015

The Honorable William Brownsberger  
House Chair, Joint Committee on the Judiciary  
State House, Rm 504  
Boston, MA 02133

The Honorable John Fernandes  
House Chair, Joint Committee on the Judiciary  
State House, Rm 136  
Boston, MA 02133

RE: Transgender Discrimination in Public Accommodations

Dear Chairman Brownsberger and Chairman Fernandes:

I submit this letter in support of S.735, *An Act relative to transgender anti-discrimination and H.1577, An Act relative to gender identity and nondiscrimination*. This legislation would explicitly include gender identity in Massachusetts' public accommodations anti-discrimination laws.

Cambridge is one of the thirteen municipalities in Massachusetts that has already enacted a local ordinance to provide protection to transgender individuals in places of public accommodation, such as restaurants, retail establishments, and hospitals. Our ordinance prohibits the same discriminatory conduct as the proposed legislation.

As Police Commissioner for the City of Cambridge Police Department, I can personally attest that implementing our ordinance has been straightforward and uncomplicated. Additionally, to my knowledge, we have had no safety concerns related to transgender individuals using sex-segregated spaces, including restrooms. In contrast, our community is safer because transgender individuals have equal protections.

Thank you and the members of the Joint Committee for considering these comments while reviewing S.735 and H.1577. If you have any questions, please do not hesitate to contact me at (617) 349-9397.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Haas".

Robert C. Haas  
Police Commissioner

ADDRESS ALL COMMUNICATIONS TO  
125 SIXTH STREET, CAMBRIDGE, MASSACHUSETTS 02142

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**JA219**



## City of Lynn Police Department

300 Washington Street, Lynn, Massachusetts 01902-4718 (781) 595-2000 Fax (781) 477-7069

Leonard E. Desmarais  
Deputy Chief of Police

Elizabeth A. Polonsky  
Confidential Assistant



Kevin F. Coppinger  
Chief of Police

Michael A. Mageary  
Deputy Chief of Police

October 2, 2015

The Honorable William Brownsberger  
House Chair, Joint Committee on the Judiciary  
State House, Rm 504  
Boston, MA 02133

The Honorable John Fernandes  
House Chair, Joint Committee on the Judiciary  
State House, Rm 136  
Boston, MA 02133

RE: Transgender Discrimination in Public Accommodations

Dear Chairman Brownsberger and Chairman Fernandes:

I submit this letter in support of S.735, *An Act relative to transgender anti-discrimination* and H.1577, *An Act relative to gender identity and nondiscrimination*. This legislation would explicitly include gender identity in Massachusetts' public accommodations anti-discrimination laws.

Lynn is one of the thirteen municipalities in Massachusetts that has already enacted a local ordinance to provide protection to transgender individuals in places of public accommodation, such as restaurants, retail establishments, and hospitals. Our ordinance prohibits the same discriminatory conduct as the proposed legislation.

Although our ordinance was passed just recently, I can attest as Chief of the Lynn Police Department that I have no concerns about implementing it. I am hopeful that as the public becomes better educated in this regard, the acceptance of all people, including transgender individuals, will become more widespread. I expect our community will be safer because transgender individuals now have equal protections under local ordinance. The passing of S.735 and H.1577 will likewise bring these protections state-wide.

Thank you and the members of the Joint Committee for considering these comments while reviewing S.735 and H.1577. If you have any questions, please do not hesitate to contact me at (781) 599-7035.

Sincerely,



Kevin Coppinger  
Chief of Police



LEO A. SACCO, JR.  
CHIEF OF POLICE

# MEDFORD POLICE

100 MAIN STREET  
MEDFORD, MASSACHUSETTS 02155  
EMERGENCY: 911  
(781) 395-1212  
GENERAL INFO.: (781) 391-6404  
FAX: (781) 395-5177

September 30, 2015

The Honorable William Brownsberger  
House Chair, Joint Committee on the Judiciary  
State House, Room 504  
Boston, MA 02133

The Honorable John Fernandes  
House Chair, Joint Committee on the Judiciary  
State House, Room 136  
Boston, MA 02133

Re: Transgender Discrimination in Public Accommodations

Dear Chairman Brownsberger, Chairman Fernandes and Members of the Committee

I submit this letter in support of S.735, *An Act relative to transgender anti-discrimination* and H.1577, *An Act relative to gender identity and non-discrimination*. This legislation would explicitly include gender identity in Massachusetts' public accommodations anti-discrimination laws.

Medford is one of the thirteen municipalities in Massachusetts that has already enacted a local ordinance to provide protection to transgender individuals in places of public accommodation, such as restaurants, retail establishments and hospitals. Our ordinance prohibits the same discriminatory conduct as the proposed legislation.

As Medford's Chief of Police, I can personally attest that implementing our ordinance has been straightforward and uncomplicated. Additionally, to my knowledge, we have had no safety concerns related to transgender individuals using sex-segregated spaces. In contrast, our community is safer because transgender individuals have equal protection.

Thank you and the members of the Joint Committee for considering these comments while reviewing S.735 and H.1577. If you have any questions, please do not hesitate to contact me at (781) 391-6408.

Sincerely,

A handwritten signature in black ink that reads "Leo A. Sacco Jr." in a cursive script.

Leo A. Sacco, Jr.  
Chief of Police

LAS/ae

**CITY OF MELROSE****POLICE DEPARTMENT****MICHAEL L. LYLE***Chief*

**Office of the Chief  
56 West Foster Street  
Melrose, Massachusetts 02176  
Telephone - (781) 979-4461  
Facsimile - (781) 979-8051**

September 24, 2015

The Honorable William Brownsberger  
House Chair, Joint Committee on the Judiciary  
State House, Rm 504  
Boston, MA 02133

The Honorable John Fernandes  
House Chair, Joint Committee on the Judiciary  
State House, Rm 136  
Boston, MA 02133

Re: Transgender Discrimination in Public Accommodations

Dear Chairman Brownsberger and Chairman Fernandes:

I submit this letter in support of S.735, An Act relative to transgender anti-discrimination and H.1577, An Act relative to gender identity and nondiscrimination. This legislation would explicitly include gender identity in Massachusetts' public accommodations anti-discrimination laws.

Melrose is one of the thirteen municipalities in Massachusetts that has already enacted a local ordinance to provide protection to transgender individuals in places of public accommodation, such as restaurants, retail establishments, and hospitals. Our ordinance prohibits the same discriminatory conduct as the proposed legislation.

As Melrose's Chief of Police, I can personally attest that implementing our ordinance has been straightforward and uncomplicated. Additionally, to my knowledge we have had no safety concerns

*Quality Policing Through Teamwork*

*www.melrosepolice.com*

**24****JA223**

related to transgender individuals using sex-segregated spaces. In contrast, our community is safer because transgender individuals have equal protections.

Thank you and the members of the Joint Committee for considering these comments while reviewing S.735 and H.1577. If you have any questions, please do not hesitate to contact me at (781)979-4461.

Sincerely,

Michael L. Lyle  
Chief of Police

Cc: Rachel A. Culley, Asst. Attorney General

*Quality Policing Through Teamwork*

*www.melrosepolice.com*

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**JA224**

Sep. 30. 2015 4:17PM

No. 1727 P. 2



# City of Newton Police Department



TELEPHONE  
(617) 796-2101  
FAX # (617) 796-3679

*Office of the Chief of Police*

HEADQUARTERS  
1321 WASHINGTON STREET  
NEWTON, MASSACHUSETTS 02465

HOWARD L. MINTZ  
CHIEF OF POLICE

September 30, 2015

The Honorable William Brownsberger  
House Chair, Joint Committee on the Judiciary  
State House, Rm 504  
Boston, MA 02133

The Honorable John Fernandes  
House Chair, Joint Committee on the Judiciary  
State House, Rm 136  
Boston, MA 02133

RE: Transgender Discrimination in Public Accommodations

Dear Chairman Brownsberger and Chairman Fernandes:

I submit this letter in support of S.735, *An Act relative to transgender anti-discrimination* and H.1577, *An Act relative to gender identity and nondiscrimination*. This legislation would explicitly include gender identity in Massachusetts' public accommodations anti-discrimination laws.

Newton is one of the thirteen municipalities in Massachusetts that has already enacted a local ordinance to provide protection to transgender individuals in places of public accommodation, such as restaurants, retail establishments, and hospitals. Our ordinance prohibits the same discriminatory conduct as the proposed legislation.

As Newton's Chief of Police, I can personally attest that implementing our ordinance has been straightforward and uncomplicated. Additionally, to my knowledge, we have had no safety concerns related to transgender individuals using sex-segregated spaces, including restrooms. In contrast, our community is safer because transgender individuals have equal protections.

Thank you and the members of the Joint Committee for considering these comments while reviewing S.735 and H.1577. If you have any questions, please do not hesitate to contact me at (617) 796-2101.

Sincerely,

Chief Howard L. Mintz

FIRST ACCREDITED CITY POLICE DEPARTMENT IN MASSACHUSETTS



26

JA225

**NORTHAMPTON POLICE DEPARTMENT**

Jody D. Kasper  
CHIEF OF POLICE



29 CENTER STREET, NORTHAMPTON, MA 01060-3090 (413) 587-1100 FAX (413) 587-1137

September 18, 2015

The Honorable William Brownsberger  
House Chair, Joint Committee on the Judiciary  
State House, Rm 504  
Boston, MA 02133

RE: Transgender Discrimination in Public Accommodations

Dear Chairman Brownsberger:

I submit this letter in support of S.735, *An Act relative to transgender anti-discrimination* and H.1577, *An Act relative to gender identity and nondiscrimination*. This legislation would explicitly include gender identity in Massachusetts' public accommodations anti-discrimination laws.

Northampton is one of the thirteen municipalities in Massachusetts that has already enacted a local ordinance to provide protection to transgender individuals in places of public accommodation, such as restaurants, retail establishments, and hospitals. Our ordinance prohibits the same discriminatory conduct as the proposed legislation.

As Northampton's Chief of Police, I can personally attest that implementing our ordinance has been straightforward and uncomplicated. Additionally, to my knowledge, we have had no safety concerns related to transgender individuals using sex-segregated spaces, including restrooms. In contrast, our community is safer because transgender individuals have equal protections.

Thank you and the members of the Joint Committee for considering these comments while reviewing S.735 and H.1577. If you have any questions, please do not hesitate to contact me at (413) 587-1100.

Sincerely,

A handwritten signature in black ink that reads "Chief Jody Kasper". The signature is written in a cursive style.

Chief Jody Kasper



# City of Salem, Massachusetts

## Police Department Headquarters

CHIEF OF POLICE  
MARY E. BUTLER

September 22, 2015

The Honorable William Brownsberger  
House Chair, Joint Committee on the Judiciary  
State House, Rm 504  
Boston, MA 02133

The Honorable John Fernandes  
House Chair, Joint Committee on the Judiciary  
State House, Rm 136  
Boston, MA 02133

RE: Transgender Discrimination in Public Accommodations

Dear Chairman Brownsberger and Chairman Fernandes:

I submit this letter in support of S.735, *An Act relative to transgender anti-discrimination* and H.1577, *An Act relative to gender identity and nondiscrimination*. This legislation would explicitly include gender identity in Massachusetts' public accommodations anti-discrimination laws.

Salem is one of the thirteen municipalities in Massachusetts that has already enacted a local ordinance to provide protection to transgender individuals in places of public accommodation, such as restaurants, retail establishments, and hospitals. Our ordinance prohibits the same discriminatory conduct as the proposed legislation.

As Salem's Chief of Police, I can personally attest that implementing our ordinance has been straightforward and uncomplicated. Additionally, to my knowledge, we have had no safety concerns related to transgender individuals using sex-segregated spaces. In contrast, our community is safer because transgender individuals have equal protections.

Thank you and the members of the Joint Committee for considering these comments while reviewing S.735 and H.1577. If you have any questions, please do not hesitate to contact me at (978) 744-2204.

Very truly,

A handwritten signature in black ink that reads "Mary E. Butler".

Mary Butler  
Chief of Police

SALEM POLICE DEPARTMENT • 95 MARGIN STREET • SALEM, MASSACHUSETTS 01970 • 978/744-2204 <sup>28</sup>

JA227



**David Fallon**  
Chief of Police

**City of Somerville**  
**Police Department**

220 Washington Street  
Somerville, MA 02143-1307  
(617) 625-1600  
[www.somervillepolice.org](http://www.somervillepolice.org)



September 30, 2015

The Honorable William Brownsberger  
House Chair, Joint Committee on the Judiciary  
State House, Rm 504  
Boston, MA 02133

The Honorable John Fernandes  
House Chair, Joint Committee on the Judiciary  
State House, Rm 136  
Boston, MA 02133

RE: Transgender Discrimination in Public Accommodations

Dear Chairman Brownsberger and Chairman Fernandes:

I submit this letter in support of S.735, *An Act relative to transgender anti-discrimination* and H.1577, *An Act relative to gender identity and nondiscrimination*. This legislation would explicitly include gender identity in Massachusetts' public accommodations anti-discrimination laws.

Somerville is one of the thirteen municipalities in Massachusetts that has already enacted a local ordinance to provide protection to transgender individuals in places of public accommodation, such as restaurants, retail establishments, and hospitals. Our ordinance prohibits the same discriminatory conduct as the proposed legislation.

As Chief of the Somerville Police Department, I can personally attest that implementing our ordinance has been straightforward and uncomplicated. Additionally, to my knowledge, we have had no safety concerns related to transgender individuals using sex-segregated spaces, including restrooms. In contrast, our community is safer because transgender individuals have equal protections.

Thank you and the members of the Joint Committee for considering these comments while reviewing S.735 and H.1577. If you have any questions, please do not hesitate to contact me at (617) 625-1600.

Sincerely,

A handwritten signature in black ink, appearing to read "David Fallon".

Chief David Fallon

TOWN OF SWAMPSCOTT

**Police Department**531 Humphrey Street  
Swampscott, Mass. 01907Tel: (781) 595-1111  
Fax: (781) 592-7472

September 24, 2015

RONALD J. MADIGAN  
CHIEF OF POLICEPAULA A. BENNETT  
ADMINISTRATIVE ASSISTANT

The Honorable William Brownsberger  
House Chair, Joint Committee on the Judiciary  
State House, Rm 504  
Boston, MA 02133

The Honorable John Fernandes  
House Chair, Joint Committee on the Judiciary  
State House, Rm 136  
Boston, MA 02133

RE: Transgender Discrimination in Public Accommodations

Dear Chairman Brownsberger and Chairman Fernandes:

I submit this letter in support of S.735, *An Act relative to transgender anti-discrimination* and H.1577, *An Act relative to gender identity and nondiscrimination*. This legislation would explicitly include gender identity in Massachusetts' public accommodations anti-discrimination laws.

Swampscott is one of the thirteen municipalities in Massachusetts that has already enacted a local policy to provide protection to transgender individuals in places of public accommodation, such as restaurants, retail establishments, and hospitals.

As Swampscott's Chief of Police, I can personally attest that this policy is in keeping with the mission of our police department to provide equal service and protection to all of our citizens without regard to race, color, religion, national origin, sexual orientation, gender, gender identity, or disability. Implementing our policy has been straightforward and uncomplicated. Additionally, to my knowledge, we have had no safety concerns related to transgender individuals using sex-segregated spaces, including restrooms. In contrast, our community is safer because transgender individuals have equal protections.

Thank you and the members of the Joint Committee for considering these comments while reviewing S.735 and H.1577. If you have any questions, please do not hesitate to contact me at (781) 595-1111.

Sincerely,

Ronald J. Madigan  
Chief of Police

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JA229



DEPARTMENT OF POLICE  
CITY OF WORCESTER  
MASSACHUSETTS 01608-1172  
(508) 799-8600



GARY J. GEMME  
CHIEF OF POLICE

September 24, 2015

The Honorable William Brownsberger  
House Chair, Joint Committee on the Judiciary  
State House, Rm 504  
Boston, MA 02133

The Honorable John Fernandes  
House Chair, Joint Committee on the Judiciary  
State House, Rm 136  
Boston, MA 02133

RE: Transgender Discrimination in Public Accommodations

Dear Chairman Brownsberger and Chairman Fernandes:

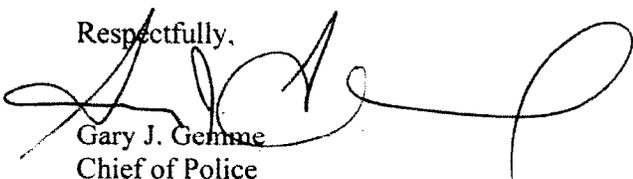
I submit this letter in support of S.735, *An Act relative to transgender anti-discrimination* and H.1577, *An Act relative to gender identity and nondiscrimination*. This legislation would explicitly include gender identity in Massachusetts' public accommodations anti-discrimination laws.

Worcester is one of the thirteen municipalities in Massachusetts that has already enacted a local ordinance to provide protection to transgender individuals in places of public accommodation, such as restaurants, retail establishments, and hospitals. Our ordinance prohibits the same discriminatory conduct as the proposed legislation.

As Worcester's Chief of Police, I can personally attest that implementing our ordinance has been straightforward and uncomplicated. Additionally, to my knowledge, we have had no safety concerns related to transgender individuals using sex-segregated spaces, including restrooms. In contrast, our community is safer because transgender individuals have equal protections.

Thank you and the members of the Joint Committee for considering these comments while reviewing S.735 and H.1577. If you have any questions, please do not hesitate to contact me at (508) 799-8611.

Respectfully,

  
Gary J. Gemme  
Chief of Police



JA230

**Expert Declaration of Assistant Chief of University Police Aran C. Mull**

**EXHIBIT D**

**JA231**



National Task Force  
to End Sexual and  
Domestic Violence Against Women

April 21, 2016

National Consensus Statement of Anti-Sexual Assault and Domestic Violence Organizations  
in Support of Full and Equal Access for the Transgender Community

We, the undersigned sexual assault and domestic violence organizations, oppose anti-transgender initiatives. These initiatives utilize and perpetuate the myth that protecting transgender people's access to restrooms and locker rooms endangers the safety or privacy of others. As organizations that care about reducing assault and violence, we favor laws and policies that protect transgender people from discrimination, including in accessing facilities that match the gender they live every day.

States across the country have introduced harmful legislation or initiatives that seek to repeal non-discrimination protections or restrict transgender people's access to gender-specific facilities like restrooms. Those who are pushing these proposals have claimed that these proposals are necessary for public safety and to prevent sexual violence against women and children. As rape crisis centers, shelters, and other service providers who work each and every day to meet the needs of all survivors and reduce sexual assault and domestic violence throughout society, we speak from experience and expertise when we state that these claims are false.

Nondiscrimination laws protecting transgender people have existed for a long time. Over 200 municipalities and 18 states have nondiscrimination laws protecting transgender people's access to facilities consistent with the gender they live every day. In some cases, these protections have been in place for decades. These laws have protected people from discrimination without creating harm. None of those jurisdictions have seen a rise in sexual violence or other public safety issues due to nondiscrimination laws. Assaulting another person in a restroom or changing room remains against the law in every single state. We operate and advocate for rape crisis centers and shelters all over the country, including in cities and states with non-discrimination protections for transgender people. Those protections have not weakened public safety or criminal laws, nor have they compromised their enforcement.

Nondiscrimination laws do not allow men to go into women's restrooms—period. The claim that allowing transgender people to use the facilities that match the gender they live every day allows men into women's bathrooms or women into men's is based either on a flawed understanding of what it means to be transgender or a misrepresentation of the law.

It may be hard to understand the experiences of transgender people, especially if you have never met a transgender person. We believe in respecting the identities of transgender people. Transgender people live in a society that often discriminates against them and

makes it much harder for them to participate in the routines of daily life.

The efforts to ban transgender people from using public restrooms obscures the fact that all of us, including transgender people, are deeply concerned about safety and privacy in restrooms. Transgender people already experience unconscionably high rates of sexual assault—and forcing them out of facilities consistent with the gender they live every day makes them vulnerable to assault. As advocates committed to ending sexual assault and domestic violence of every kind, we will never support any law or policy that could put anyone at greater risk for assault or harassment. That is why we are able to strongly support transgender-inclusive nondiscrimination protections—and why we oppose any law that would jeopardize the safety of transgender people by forcing them into restrooms that do not align with the gender they live every day.

It is natural to be concerned about safety and privacy. As advocates and survivors, we know the threat of sexual assault is real and pervasive. Every time we hear of someone who speaks of their assault or abuse, we feel their pain. The safety fears that many have, especially those who are survivors, are not baseless or irrational, nor should they be dismissed. However, discriminating against transgender people does nothing to decrease the risk of sexual assault.

Discriminating against transgender people does not give anyone more control over their body or security. Those who perpetuate falsehoods about transgender people and nondiscrimination laws are putting transgender people in harm's way and making no one safer. We cannot stand by while the needs of survivors, both those who are transgender and those who are not, are obscured in order to push a political agenda that does nothing to serve and protect victims and potential victims. We will only accomplish our goal of ending sexual violence by treating all people, including those who are transgender, with fairness and respect.

### **National Organizations:**

Alliance for Strong Families and Communities  
American Association of University Women  
American Dance Therapy Association  
Asian Pacific Institute on Gender Based Violence  
Battered Women's Justice Project  
Break the Cycle  
Center for Women Policy Studies  
FaithTrust Institute  
Futures Without Violence  
Hollaback!  
Just Detention International

Know Your IX  
 Legal Momentum  
 Men As Peacemakers  
 Men's Story Project  
 National Alliance for Partnerships in Equity (NAPE)  
 National Alliance to End Sexual Violence  
 National Center for Victims of Crime  
 National Center on Domestic and Sexual Violence  
 National Coalition Against Domestic Violence  
 National Council of Jewish Women  
 National Domestic Violence Hotline  
 National Housing Law Project  
 National Indigenous Women's Resource Center  
 National Latina@ Network: Casa de Esperanza  
 National Network to End Domestic Violence  
 National Organization for Men Against Sexism  
 National Organization for Women  
 National Organization of Asian Pacific Islanders Ending Sexual Violence  
 National Organization of Sisters of Color Ending Sexual Assault  
 National Organization for Victim Assistance  
 National Resource Center on Domestic Violence  
 National Women's Law Center  
 Praxis International  
 Resource Sharing Project  
 Stop It Now!  
 Support Network of Advocates for Protective Parents  
 YWCA

### **State/Territorial and Local Organizations**

#### **Alabama**

##### **State**

Alabama Coalition Against Domestic Violence  
 AshaKiran, Inc.

Montgomery  
 Huntsville

**JA234**

**Alaska****State**

YWCA Alaska

Anchorage

**Local**

Sitkans Against Family Violence

Sitka

**Arizona****State**

Arizona Coalition to End Sexual and Domestic Violence

Phoenix

Chrysalis

Phoenix

**Local**

Apache Behavioral Health Services, Inc.

Whiteriver

**California****State**

California Coalition Against Sexual Assault

Sacramento

California Partnership to End Domestic Violence

Sacramento

Coalition for Family Harmony

Oxnard

**Local**

A.M.E. Counseling Services

Los Angeles

Alliance for Community Transformations

Mariposa

Asian Women's Shelter

San Francisco

Building Futures with Women and Children

San Leandro

Center for Community Solutions

San Diego

Family Service Agency of Burbank

Burbank

Jewish Family Service of Los Angeles

Los Angeles

Lassen Family Services, Inc.

Susanville

Los Angeles Center for Law and Justice

Los Angeles

Rural Human Services: Harrington House

Crescent City

San Francisco Domestic Violence Consortium

San Francisco

Shepherd's Door Domestic Violence Resource Center

Pasadena

STAND! For Families Free of Violence

Concord

Strength United

Van Nuys

Strong Hearted Native Women's Coalition, Inc.

Valley Center

Walnut Avenue Family &amp; Women's Center

Santa Cruz

**Colorado****State****JA235**

Alliance Against Domestic Abuse	Salida
Alternatives to Violence	Loveland
Colorado Coalition Against Domestic Violence	Denver
Deaf Overcoming Violence through Empowerment	Denver
Domestic Violence Initiative	Denver
<b>Local</b>	
Advocate Safehouse Project	Glenwood Springs
Advocates for Victims of Assault	Dillon
Estes Valley Crisis Advocates	Estes Park
Project Safeguard	Denver
RESPONSE	Aspen
SafeHouse Denver	Denver
Safehouse Progressive Alliance for Nonviolence	Boulder

### Connecticut

#### State

Connecticut Alliance to End Sexual Violence	East Hartford
---------------------------------------------	---------------

#### Local

Chrysalis	Meriden
-----------	---------

### Delaware

#### State

Delaware Coalition Against Domestic Violence	Wilmington
----------------------------------------------	------------

### District of Columbia

DC Coalition Against Domestic Violence	Washington, DC
DC Rape Crisis Center	Washington, DC

### Florida

#### State

Florida Council Against Sexual Violence	Tallahassee
-----------------------------------------	-------------

Florida NOW	Indialantic
-------------	-------------

#### Local

Brevard NOW	Satellite Beach
-------------	-----------------

Greater Orlando NOW	Orlando
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Women's Center of Jacksonville	Jacksonville
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### Georgia

#### State

**JA236**

Georgia Coalition Against Domestic Violence

Decatur

**Local**

Northwest Georgia Family Crisis Center

Dalton

Columbus Alliance for Battered Women, Inc. d/b/a Hope Harbour

Columbus

**Guam**

Guam Coalition Against Sexual Assault & Family Violence

Hagatna

**Hawaii**

**State**

The Sex Abuse Treatment Center

Honolulu

**Idaho**

**State**

Idaho Coalition Against Sexual & Domestic Violence

Boise

**Illinois**

**State**

Illinois Coalition Against Domestic Violence

Springfield

Illinois National Organization for Women

Springfield

**Local**

Chicago Metropolitan Battered Women's Network

Chicago

Connections for Abused Women and their Children

Chicago

HOPE of Ogle County

Rochelle

Mano a Mano Family Resource Center

Round Lake Park

Mujeres Latinas en Accion

Chicago

Rape Advocacy Counseling and Education Services

Urbana

Rape Victim Advocates

Chicago

Rockford Sexual Assault Counseling Inc.

Rockford

**Indiana**

**State**

Indiana Coalition Against Domestic Violence, Inc.

Indianapolis

**Local**

Alternatives Incorporated

Anderson

Coburn Place Safe Haven

Indianapolis

Council on Domestic Abuse, Inc.

Terre Haute

Crisis Connection, Inc.

Jasper

**JA237**

Domestic Violence Network	Indianapolis
Middle Way House	Bloomington
Rush County Victims Assistance, Inc.	Rushville
Turning Point Domestic Violence Services	Columbus

### **Iowa**

#### **State**

Iowa Coalition Against Domestic Violence	Des Moines
Iowa Coalition Against Sexual Assault	Des Moines
Monsoon United Asian Women of Iowa	Des Moines

#### **Local**

Crisis Intervention Services	Oskaloosa
Domestic Violence Intervention Program	Iowa City

### **Kansas**

#### **State**

Kansas Coalition Against Sexual and Domestic Violence	Topeka
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### **Louisiana**

#### **State**

Louisiana Coalition Against Domestic Violence	Baton Rouge
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#### **Local**

Faith House	Lafayette
Metropolitan Center for Women and Children	Jefferson
SAFE (Southeast Advocates for Family Empowerment)	Hammond

### **Maine**

#### **State**

Maine Coalition Against Sexual Assault	Augusta
Maine Coalition to End Domestic Violence	Augusta
Wabanaki Women's Coalition	Lincolnville

#### **Local**

New Hope for Women	Rockland, ME
Safe Voices	Lewiston
Sexual Assault Prevention and Response Services	Lewiston
Sexual Assault Services of Midcoast Maine	Brunswick

### **Maryland**

#### **State**

**JA238**

Maryland Coalition Against Sexual Assault (MCASA)	Silver Spring
Maryland NOW	Silver Spring
Maryland Network Against Domestic Violence	Lanham
<b>Local</b>	
HopeWorks of Howard County	Columbia
Jewish Coalition Against Domestic Abuse	Rockville

### Massachusetts

#### State

Asian Task Force Against Domestic Violence	Boston
Jane Doe Inc., the MA Coalition Against Sexual Assault and Domestic Violence	Boston

#### Local

A Safe Place, Inc.	Nantucket
Alternative House	Lowell
Casa Myrna Vazquez	Boston
DOVE, Inc.	Quincy
Jewish Family & Children's Service	Waltham
New Hope, Inc.	Attleboro
REACH Beyond Domestic Violence	Waltham
Transition House	Cambridge

### Minnesota

#### State

Sacred Hoop Coalition	Duluth
Minnesota Coalition for Battered Women	St. Paul

#### Local

Bluff Country Family Resources	Hokah
Minnesota Indian Women's Resource Center	Minneapolis
Tubman	Twin Cities

### Missouri

#### State

Missouri Coalition Against Domestic and Sexual Violence	Jefferson City
Missouri NOW	Columbia

### Montana

#### State

**JA239**

Adapt Montana  
Montana Coalition Against Domestic and Sexual Violence

Missoula  
Helena

### **Nebraska**

#### **State**

Nebraska Coalition to End Sexual and Domestic Violence

Lincoln

#### **Local**

Crisis Center

Grand Island

Project Response, INC

Auburn

### **Nevada**

#### **State**

Nevada Network Against Domestic Violence

Reno

#### **Local**

S.A.F.E. House

Henderson

Safe Nest

Las Vegas

Tahoe SAFE Alliance

Incline Village

### **New Hampshire**

#### **State**

NH Coalition Against Domestic and Sexual Violence

Concord

Turning Points Network

Claremont

YWCA NH

Manchester

#### **Local**

New Beginnings - Without Violence & Abuse

Laconia

### **New Jersey**

#### **State**

New Jersey Coalition Against Sexual Assault

Lawrenceville

#### **Local**

YWCA Union County

Elizabeth

### **New Mexico**

#### **State**

New Mexico Coalition Against Domestic Violence (NMCADV)

Santa Fe

#### **Local**

Community Against Violence, Inc. (CAV)

Taos

### **New York**

**JA240**

**State**

Day ONE	New York City
New York State Coalition Against Domestic Violence	Albany
New York State Coalition Against Sexual Assault	Albany
<b>Local</b>	
Advocacy Center of Tompkins County	Ithaca
CONNECT	New York City
Crime Victim and Sexual Violence Center	Albany
Delaware Opportunities Safe Against Violence	Hamden
Erie County Coalition Against Family Violence	Buffalo
First Step Victim Services at Catholic Charities of Chemung/Schuyler Counties	Watkins Glen
Hope's Door	Pleasantville
My Sisters' Place	White Plains
Safe Homes of Orange County	Newburgh
Safe Horizon	New York City
Suicide Prevention and Crisis Service, Inc. (Crisis Services)	Buffalo
The Family Counseling Center	Gloversville
The Safe Center LI, Inc.	Bethpage
Vera House, Inc.	Syracuse
VIBS	Islandia
Victims Assistance Center of Jefferson County	Watertown
Violence Intervention Program, Inc.	New York
Willow Domestic Violence Center	Rochester
YWCA of the Niagara Frontier	Lockport, Niagara Falls and North Tonawanda

**North Carolina****State**

North Carolina Coalition Against Domestic Violence	Durham
North Carolina Coalition Against Sexual Assault	Raleigh
North Carolina Women United	Raleigh
<b>Local</b>	
Families First Inc.	Whiteville
Family Services of Davidson County	Lexington
Help, Incorporated: Center Against Violence	Reidsville

**JA241**

**Ohio****State**

ACTION OHIO Coalition For Battered Women	Columbus
Ohio Alliance to End Sexual Violence	Cleveland

**Local**

Domestic Violence & Child Advocacy Center	Cleveland
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**Oklahoma****State**

Native Alliance Against Violence	Norman
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**Local**

Ponca Tribe Domestic Violence Program	Ponca City
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**Oregon****State**

Oregon Coalition Against Domestic and Sexual Violence	Portland
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**Local**

Bradley Angle	Portland
Lake County Crisis Center	Lakeview
Safe Harbors	Enterprise
Sexual Assault Resource Center	Beaverton
Southern Oregon University Women's Resource Center	Ashland

**Pennsylvania****State**

Pennsylvania Coalition Against Domestic Violence	Harrisburg
Pennsylvania Coalition Against Rape	Enola

**Local**

Abuse & Rape Crisis Center	Towanda
Alle-Kiski Area HOPE Center, Inc.	Tarentum
Berks Women in Crisis	Reading
Blackburn Center Against Domestic & Sexual Violence	Greensburg
Clinton County Women's Center	Lock Haven
Congreso de Latinos Unidos, Inc.	Philadelphia
Crime Victims Council of the Lehigh Valley, Inc.	Allentown
Crisis Center North	Pittsburgh
HAVIN (Helping All Victims in Need)	Kittanning

**JA242**

SafeNet	Erie
Schuylkill Women in Crisis	Pottsville
SWPA National Organization For Women (NOW)	Beaver
The Abuse Network, Inc.	Lewistown
The Women's Center, Inc. of Columbia/Montour Counties	Bloomsburg
Transitions of PA	Lewisburg
Turning Point of Lehigh Valley, Inc.	Allentown
Victim Outreach Intervention Center (VOICE)	Butler
Victims' Intervention Program	Honesdale
Women In Transition	Philadelphia
Women's Resource Center	Scranton
Women's Resources of Monroe County, Inc.	Delaware Water Gap
Women's Services, Inc.	Meadville
YWCA Lancaster	Lancaster
YWCA Northcentral PA	Williamsport

### Rhode Island

#### State

Day One	Providence
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### South Carolina

#### State

National Assn. of Social Workers, SC Chapter	Columbia
South Carolina Coalition Against Domestic Violence and Sexual Assault	Columbia

#### Local

Family Justice Center of Georgetown and Horry Counties	Georgetown
People Against Rape	Charleston
Pickens County Advocacy Center	Easley
SAFE Homes-Rape Crisis Coalition	Spartanburg

### Texas

#### State

The Texas Council on Family Violence	Austin
Texas Association Against Sexual Assault	Austin

#### Local

Cross Timbers Family Services	Stephenville
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**JA243**

Freedom House	Weatherford
Houston Area Women's Center	Houston
The Crisis Center	Odessa
The Family Place	Dallas

### U.S. Virgin Islands

Women's Coalition of St. Croix	St. Croix
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### Vermont

#### State

Vermont Network Against Domestic and Sexual Violence	Montpelier
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#### Local

AWARE, Inc.	Hardwick
CVOEO/Voices Against Violence	St. Albans
Project Against Violent Encounters	Bennington
Sexual Assault Crisis Team	Barre
Women Helping Battered Women	Burlington
WomenSafe	Middlebury, VT

### Virginia

#### State

True Help Organization	Reston
Virginia Sexual and Domestic Violence Action Alliance	Richmond

#### Local

Empowerhouse	Fredericksburg
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### Washington

#### State

API Chaya	Seattle
Crisis Support Network	Raymond
Legal Voice	Seattle
Washington Coalition of Sexual Assault Programs	Olympia
Washington State Coalition Against Domestic Violence (WSCADV)	Seattle
Washington State NOW	Olympia

#### Local

Alternatives to Violence of the Palouse, Inc.	Pullman
Asian Counseling and Referral Service	Seattle
Coalition Ending Gender-Based Violence	Seattle

**JA244**

DAWN	Kent
Domestic Violence Services of Snohomish County	Everett
Emergency Support Shelter	Longview
Forks Abuse Program	Forks
Jewish Family Service	Seattle
Seattle NOW	Brier
New Beginnings	Seattle
Programs for Peaceful Living	Bingen
SafePlace	Olympia
The DoVE Project	Vashon
YWCA Clark County	Vancouver
YWCA Olympia	Olympia
YWCA Pierce County	Tacoma
YWCA Seattle King Snohomish	Seattle
YWCA Yakima	Yakima

### **West Virginia**

#### **State**

West Virginia Coalition Against Domestic Violence	Elkview
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### **Wisconsin**

#### **State**

End Domestic Abuse Wisconsin	Madison
Wisconsin Coalition Against Sexual Assault (WCASA)	Madison

#### **Local**

People Against Domestic & Sexual Abuse	Jefferson
Rainbow House Domestic Abuse Services, Inc.	Marinette
The Bridge to Hope	Menomonie

### **Wyoming**

#### **State**

Wyoming Coalition Against Domestic Violence and Sexual Assault	Laramie
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**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

JOAQUÍN CARCAÑO, et al.,

*Plaintiffs,*

v.

PATRICK MCCRORY, et al.,

*Defendants.*

No. 1:16-cv-00236-TDS-JEP

**DECLARATION OF SARAH PRESTON**

1. I am the Acting Executive Director of the American Civil Liberties Union of North Carolina (“ACLU-NC”).
2. The ACLU-NC is the North Carolina state affiliate of the American Civil Liberties Union. Our affiliate was founded in 1965 and, though it is based in Raleigh, works throughout the state of North Carolina.
3. The ACLU-NC is a nonprofit, nonpartisan membership organization, heavily reliant on our members for financial support. At present, our affiliate has approximately 9,000 members throughout the state of North Carolina.
4. The ACLU-NC’s mission is to preserve and defend the guarantees of individual liberties found in the North Carolina Constitution and the United States Constitution.

5. The work of the ACLU-NC is overseen by our Board of Directors. Every five years the Board of Directors establishes our affiliate's priorities through a strategic plan. Our current strategic plan prioritizes work in the following subject matter areas: privacy rights, women's rights, racial justice/immigrant rights, and LGBT (lesbian, gay, bisexual, and transgender) rights.
6. The ACLU-NC strives to realize its mission and strategic priorities through public education and public policy advocacy. The ACLU-NC Legal Foundation (ACLU-NCLF) is the 501(c)(3) arm of ACLU-NC that coordinates and carries out our legal work, including litigation.
7. To aid in those efforts, the ACLU-NC encourages its members and North Carolina residents to contact our office if they feel their civil liberties or civil rights have been violated. ACLU-NC often receives telephonic intake. Our website also features a prominent link at the top of the page entitled "Ask for Legal Help." Clicking on that link takes a website visitor to a webpage further explaining our work as well as providing links to complaint forms. Website visitors are then asked to provide further information about themselves, the purpose of their request, the incident that led them to seek assistance, and whether they already have legal representation. Telephonic and website intake is directed first to ACLU-NCLF and, based on its content, referred from there to the appropriate department within the affiliate.

8. Given our mission and current strategic plan, the ACLU-NC supported and advocated for Charlotte, North Carolina to adopt a local non-discrimination ordinance inclusive of the LGBT community.
9. Given our mission and current strategic plan, the ACLU-NC opposed the adoption of the so-called "Public Facilities Privacy and Security Act" ("H.B. 2"). These efforts included public education regarding its negative impacts on the LGBT community, working with our members to lobby members of the North Carolina General Assembly to oppose this legislation during the March 23, 2016 emergency legislative session, and sending Governor Patrick McCrory a letter asking him to veto H.B. 2. We also asked Governor McCrory to meet with transgender students and youth, including ACLU-NC members, before signing H.B. 2. After Governor McCrory signed the legislation, we have engaged and will continue to engage in public education work relating to H.B. 2 and its negative impacts on the LGBT community. ACLU-NCLF has also partnered with allied organizations to challenge the constitutionality and legality of H.B. 2 in *Carcaño, et al. v. McCrory, et al.*
10. In the days preceding, during, and subsequent to the emergency March 23, 2016 legislative session, our affiliate received dozens of intakes via telephone as well as our website from LGBT North Carolinians or the parents of LGBT youth living in North Carolina concerned about and/or harmed by H.B. 2. Our affiliate received intakes from LGBT North Carolinians and the parents of LGBT youth living in North Carolina who are members of ACLU-NC as well as from LGBT North

Carolínians and the parents of LGBT youth living in North Carolina who are not members of ACLU-NC.

11. Many of the individuals who contacted our office during this time period did not wish to publicly share how H.B. 2 had harmed them or their children out of fear that, as a result, they or their children would suffer harassment or discrimination. This group included the parents of students in the K-12 public school system in North Carolina.
12. Below are three stories of harm caused by H.B. 2. These stories help to exemplify the harms associated with H.B. 2 that North Carolínians and the parents of North Carolínians have reported to our office.
13. Stephen Clark and his daughter, I.C., live in the small town of Highlands, North Carolina, which is located in Macon County. Mr. Clark and I.C. are both members of the ACLU-NC.
14. I.C. is a 10-year old transgender girl. Her sex assigned at birth was male. She has since transitioned from male to female. She has been diagnosed with gender dysphoria and is currently receiving treatment at the Duke Center for Child and Adolescent Gender Care. As part of her transition, I.C. identifies and lives as a girl. She has changed the name on her birth certificate to reflect the traditionally feminine first name she chose. She dresses in a more traditionally feminine fashion. She is perceived as a girl based on her physical appearance.
15. However, I.C.'s North Carolina birth certificate lists her gender as "male" because, as a minor, she cannot fulfill the onerous surgical requirements to change

- the gender listed on her birth certificate. Accordingly, H.B. 2 requires that she use the male restroom in public buildings.
16. I.C. attended Highlands School, a small K-12 public school with approximately 270 students in Macon County, until 2015. She is now home-schooled by her parents due, in part, to the bullying she suffered at the hands of classmates because she is transgender.
  17. Much of the bullying I.C. suffered revolved around her use of the restroom at the school. Boys would confront I.C. when she used the boys' restroom at school, asking "what are you doing in here?"
  18. On one occasion, a teacher chastised I.C. for going into the girls' restroom. Later that day the assistant principal pulled her out of class in front of the other students to talk about the incident. This humiliated I.C.
  19. Highlands School required that I.C. use the teachers' restroom at her school. This made her stand out from her classmates and was a reminder to her that she is "different." For example, classmates would make bullying comments to her when she used the teachers' restroom. As a result, she would often go all day without using the restroom at school.
  20. Mr. Clark does not know if I.C. will ever return to Highlands School as it was a stressful environment for her. Much of this stress centered on her use, or lack thereof, of restroom facilities.
  21. Prior to the passage of H.B. 2, I.C. used the women's restroom exclusively in any public facility or business, without causing any disruption.

22. I.C. is aware of H.B. 2 and its implications for the transgender community. H.B. 2 has heightened her sensitivity surrounding using the restroom in public. When I.C. is outside the house, she will attempt to avoid using the restroom even when it is necessary for her to use it. This is especially the case if her mother is not there to go into the restroom with her. Restroom access is something she and her family have to deal with on a daily basis.
23. H.B. 2 is another reminder to I.C. that she is “different,” placing the fact that she is transgender at the forefront of her mind day in and day out. She is worn down by all of the attention it has received.
24. Charlie Wright is a 20-year old rising senior at the University of North Carolina-Greensboro (“UNC-G”). He lives in Greensboro during the school year and with his family in Asheville during the summer when he is not taking classes. Mr. Wright is a member of the ACLU-NC.
25. Mr. Wright’s sex assigned at birth was female. He has since transitioned from female to male. Mr. Wright fully identifies as a young man. Prior to the passage of H.B. 2, he lived as a young man in all aspects of his life. This included going by the more traditionally masculine name of Charlie and dressing and styling his hair in a traditionally masculine fashion. In addition, prior to the passage of H.B. 2, Charlie exclusively utilized male restrooms on campus, in public facilities off campus, and in private businesses, without causing any disruption.
26. However, Mr. Wright’s North Carolina birth certificate lists his sex as “female” given that he has not fulfilled the onerous surgical requirements to change his

gender marker. Accordingly, H.B. 2 requires that he use the female restroom on the campus of UNC-G and in other public buildings.

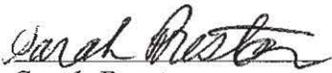
27. Mr. Wright attempts not to use the restroom when he is on campus and instead waits until he is back at his dorm room. In cases of emergency, Mr. Wright will use the women's room on campus. Although this is what H.B. 2 mandates he do, he will only utilize the women's room when accompanied by a non-transgender female friend as he fears he might be challenged utilizing this restroom given his gender identity and expression.
28. The adoption of H.B. 2 makes Mr. Wright concerned about his safety. Further, the fact that the UNC system is abiding by the dictates of H.B. 2 has made him feel it does not care about his safety and the safety of other transgender students.
29. Lisa Lawson is a 65-year old transgender woman living in Elon, North Carolina. Ms. Lawson is a veteran of the Vietnam War and currently works as a database developer for a small company in Burlington, North Carolina. Ms. Lawson is a member of the ACLU-NC.
30. Ms. Lawson has undergone hormone therapy at Duke University Medical Center since 1999. She has lived openly as a woman since 2000. This includes changing her name to Lisa on her birth certificate and only utilizing women's restrooms when in public. She had no problems utilizing the women's room in public until the passage of H.B. 2.
31. Ms. Lawson is also currently taking steps to undergo gender confirmation surgery. Her understanding is that she cannot have the gender marker on her Virginia birth

certificate changed to reflect her gender identity until she undergoes that surgery.

Accordingly, H.B. 2 requires her to use the men's room or break the law.

32. Ms. Lawson generally utilizes restrooms in public facilities two to three times a week. Since the passage of H.B. 2, this has become an exceptionally stressful process for Ms. Lawson. Given her female gender identity and expression, she feels she cannot use the men's room and is afraid to do so. She knows she is breaking the law by using the women's room in public facilities, however. She will accordingly observe any public restroom very carefully before utilizing it. In particular, if she sees a law enforcement officer in the vicinity then she will forego using the restroom and seek out another women's room that she could utilize.
33. ACLU-NC brought this lawsuit because of H.B. 2's significant infringement on the dignity, liberty, and privacy of its transgender members and on the LGBT community generally, equities central to our mission and current strategic plan. I have worked at ACLU-NC for more than 9 years. H.B. 2 has resulted in more intake contacts from and reported harm to North Carolinians than any other piece of legislation adopted in the state during my tenure with ACLU-NC.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on 15 of May, 2016.

  
Sarah Preston

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

JOAQUÍN CARCAÑO ET AL.,

*Plaintiffs,*

v.

PATRICK MCCRORY ET AL.,

*Defendants.*

No. 1:16-cv-236-TDS-JEP

**EXPERT DECLARATION OF JONATHAN ROUTH, M.D.**

**PRELIMINARY STATEMENT**

1. I have been retained by counsel for Plaintiffs as an expert in connection with the above-captioned litigation. I have actual knowledge of the matters stated in this declaration.

2. My professional background, experience, and publications are detailed in my curriculum vitae, a true and accurate copy which is attached as Exhibit A to this declaration. I received my medical degree from the University of North Carolina at Chapel Hill in 2002 and my Master's in Public Health from the Harvard School of Public Health in 2010. I am currently an Associate Professor of Surgery (Urology) and Pediatrics at the Duke University School of Medicine. I am providing this declaration in my individual capacity, and not as a representative of Duke University, Duke University Health System, or the Private Diagnostic Clinic, PLLC. Accordingly, the opinions expressed herein are attributable to me as an individual practitioner, and not to those entities.

3. I have been licensed to practice medicine since 2003 and licensed in the state of North Carolina since 2011.

**JA254**

4. I have extensive experience working with children and adults with urological conditions and disorders, as well as children with disorders of sex development and gender dysphoria.

5. I helped found the Duke Center for Child and Adolescent Gender Care (“Gender Care Clinic”), which opened in 2015. I currently serve as the Surgical Director for the Gender Care Clinic. The Gender Care Clinic treats children and adolescents with gender dysphoria and disorders of sex development (“DSD”).

6. I have published over 90 scientific articles in peer-reviewed journals on topics related to urology and pediatrics.

7. I have served as a reviewer and editor for over twenty scholarly journals dealing with urology and pediatrics.

8. In my career I have treated over 90 transgender patients, in addition to several hundred patients with a disorder of sex development or related congenital anomalies of the genital and/or urinary tract (such as bladder exstrophy, cloacal anomaly, severe hypospadias, chordee, and/or diphalia).

9. My research focuses on health services utilization for, and effectiveness in the care of, pediatric urology conditions, including disorders of sex development, urolithiasis, vesicoureteral reflux, and urologic cancers such as rhabdomyosarcoma and Wilms tumor.

10. In preparing this declaration, I reviewed the materials listed in the attached Bibliography (Exhibit B). I may rely on those documents as additional support for my opinions. I have also relied on my years of experience in this field, as set out in my curriculum vitae (Exhibit A), and on the materials listed therein. The materials I have relied upon in preparing

this declaration are the same types of materials that experts in my field of study regularly rely upon when forming opinions on the subject.

11. In the past four years, I have testified as an expert at trial or deposition in the following matters: Harrison et al. v. Pickens et al., Docket No. 3-335-15 (Knox County Circuit, 2014).

12. I am being compensated at an hourly rate for actual time devoted, at the rate of \$275 per hour. My compensation does not depend on the outcome of this litigation, the opinions I express, or the testimony I provide.

### **HARMFUL UROLOGICAL EFFECTS OF EXCLUSION FROM BATHROOMS**

13. Through my position at the Gender Care Clinic at Duke and in my regular practice, I frequently treat young transgender and intersex patients who avoid going to the restroom at school and in other public places, because they lack assured access to restrooms that match their gender identity.

14. Laws and policies that restrict access to restrooms that accord with a transgender person's gender identity heighten the anxiety and distress experienced by the person when having to use a restroom. The more discrimination and isolation transgender people experience with respect to the restroom, the more likely they are to avoid going to the restroom altogether.

15. Avoidance of the restrooms can and does lead to serious medical consequences, including recurrent urinary tract infections ("UTIs") and constipation. Among the transgender patients that I see at the Gender Care Clinic, a large number have been treated for UTIs and constipation due to "holding it," rather than going to the restroom when they need to do so.

16. In addition to the more common UTIs and constipation, avoidance of the restroom can lead to other serious medical consequences. For example, in some cases, chronic urinary

retention has been reported to lead to conditions such as hematuria (blood in one's urine), chronic kidney disease and/or renal insufficiency, urolithiasis (stones in the kidney, bladder, and/or urethra), infertility, and bladder cancer.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on May 13, 2016.

By:



Jonathan Routh, M.D.

**JA257**

**Expert Declaration of Jonathan Routh, M.D.**

**EXHIBIT A**

**JA258**

**Jonathan C. Routh, M.D., M.P.H.**

Duke University Medical Center

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Office 919.684.6994

Mobile 919.884.6622

FAX 919.681.5507

jonathan.routh@duke.edu

jon.routh@gmail.com

**EMPLOYMENT**

	Duke University Medical Center
2011-2015	Assistant Professor of Surgery (Urology) and Pediatrics
2015-Present	Associate Professor of Surgery (Urology) and Pediatrics

**EDUCATION**

1993-1998	North Carolina State University, Raleigh, NC Bachelor of Science, Biochemistry Bachelor of Arts, Chemistry Bachelor of Arts, French Language and Literature
1998-2002	University of North Carolina at Chapel Hill, Chapel Hill, NC Doctor of Medicine
2008-2010	Harvard School of Public Health, Boston, MA Master of Public Health, Concentration in Clinical Effectiveness

**POSTDOCTORAL TRAINING**

2002-2008	Mayo Clinic Graduate School of Medicine, Rochester, MN Resident, Urology
2008-2010	Harvard Medical School, Boston, MA Fellow, Pediatric Health Services Research
2008-2011	Children's Hospital Boston, Boston, MA Fellow, Pediatric Urology

**LICENSURE AND CERTIFICATION**

2003-2008	Minnesota
2008-2011	Massachusetts (training license)
2011- Present	North Carolina
2013	Urology Certification, American Board of Urology
2014	Pediatric Urology Certification, American Board of Urology

**HONORS AND AWARDS**

1993-1994	North Carolina State University Merit Scholarship (partial tuition merit award)
1993-1998	North Carolina State University Caldwell Leadership Fellows' Program
1995-1996	Phi Delta Theta Educational Foundation Scholarship (partial tuition merit award)
1996	The Phi Beta Kappa Society, Member
1996	The Honor Society of Phi Kappa Phi, Member
1996	Sigma Xi Research Honor Society, Member
1998	North Carolina State University, <i>summa cum laude</i> graduate
1998-1999	Phi Delta Theta Educational Foundation Graduate Fellowship (partial tuition merit award)
1998-2002	UNC Medical Alumni Loyalty Fund Scholarship (full tuition merit award)
1999-2000	Holderness Foundation Medical Research Fellowship
2008	Joseph W. Segura, M.D., Resident Essay Contest, 2 <sup>nd</sup> place
2009	Clinical Research Prize Finalist, American Academy of Pediatrics Section on Urology

2009-2013 National Institutes of Health Loan Repayment Program Awardee (renewed in 2011)  
 2010 American Urological Association Volunteer Recognition  
 2012 Best Reviewer Award (given to 4-5 reviewers annually), *Journal of Urology*  
 2012 Invited Participant, American Urological Association Inaugural New Investigators Workshop  
 2013 Duke Research Leadership Development (LEADER) Program Participant  
 2014 Clinical Research Prize Finalist, Society for Pediatric Urology Annual Meeting  
 2014 Lee B. Lusted Prize Finalist, Society for Medical Decision Making Annual Meeting  
 2014 Winner, Best Antenatal Case Presentation, Society for Fetal Urology Biannual Meeting  
 2014 Outstanding Reviewer Award (given to the top "Best Reviewer" annually), *Journal of Urology*  
 2015 Invited Participant, American Urological Association Early Career Investigators Workshop  
 2015 Lee B. Lusted Prize Finalist, Society for Medical Decision Making Annual Meeting  
 2016 Fellow, Duke Clinical Leadership Program  
 2016 National Institutes of Health Early Career Reviewer Program

### **PROFESSIONAL SOCIETIES**

2002-Present American Urological Association  
 2011-Present Children's Oncology Group  
 2012-Present Society for Pediatric Urology  
 2013-Present Society for Fetal Urology  
 2013-Present Southeastern Section AUA  
 2014-Present Society for Medical Decision Making

2002-2008 North Central Section AUA  
 2008-2011 New England Section AUA  
 2002-2010 American Medical Association  
 2009-2012 American Academy of Pediatrics, Section on Urology

### **PROFESSIONAL LEADERSHIP**

#### *Mayo Clinic*

2004-2008 Urology Education Committee, Resident Representative (selected by peers to 4-year term)  
 2004-2008 Urology Resident Affairs Committee (selected by peers to 4-year term)

#### *Duke University Medical Center*

2011-Present DUMC Robotic Committee  
 2015-Present Duke University Institutional Review Board  
 2013-Present Division of Urology, Co-Director, Urology Resident & Fellow Research Course  
 2012-2015 Division of Urology, Core Research Committee  
 2012-2015 Division of Urology, Director of Database and Outcomes Research

#### *American Urologic Association*

Residents' Committee  
 2007-2009 American Medical Association Representative  
 2009-2010 Chair  
 2010-2012 Immediate Past Chair  
 Section Secretaries/Membership Council  
 2009-2010 Resident Representative (Chair, Residents' Committee)

#### *Society for Pediatric Urology*

2009-2011 Fellow Representative to the SPU/AAP Section on Urology Combined Executive Committee  
 2014-2015 Orchiopexy Outcomes Group, Lead for Parent/Patient-Reported Outcomes Group  
 2012-Present Research Advisory Council  
 2013-Present Pediatric Urologic Oncology Working Group, Executive Committee

#### *Children's Oncology Group*

2014-Present Surgery Committee

2014-Present Soft Tissue Sarcoma Committee  
 2015-Present Urinary Tract Complications Task Force  
 2016-Present Endocrine Task Force (Testicular Silo)

### **EDITORIAL & REVIEW RESPONSIBILITIES**

2005-Present *International Brazilian Journal of Urology*, ad hoc reviewer  
 2006-Present *European Urology*, ad hoc reviewer  
 2006-Present *Journal of Urology*, ad hoc reviewer  
 2008-Present *Pediatrics*, ad hoc reviewer  
 2009-Present *Journal of Pediatric Surgery*, ad hoc reviewer  
 2009-Present *Urology*, ad hoc reviewer  
 2010-Present *Advances in Urology*, ad hoc reviewer  
 2010-Present *International Journal of Urology*, ad hoc reviewer  
 2010-Present *American Journal of Perinatology*, ad hoc reviewer  
 2011-Present *Nature Reviews Urology*, ad hoc reviewer  
 2011-Present *Journal of Pediatric Urology*, ad hoc reviewer  
 2011-Present *Journal of Sexual Medicine*, ad hoc reviewer  
 2011-Present *Early Human Development*, ad hoc reviewer  
 2012-Present *Prostate Cancer and Prostatic Diseases*, ad hoc reviewer  
 2012-Present *World Journal of Urology*, ad hoc reviewer  
 2013-Present *Canadian Urology Association Journal*, ad hoc reviewer  
 2014-Present *Pediatric Nephrology*, ad hoc reviewer  
 2014-Present *Transplant International*, ad hoc reviewer  
 2014-Present *Journal of Pediatrics*, ad hoc reviewer  
 2015-Present *Urolithiasis*, ad hoc reviewer  
 2015-Present *BJU International*, ad hoc reviewer  
 2016-Present *PLOS One*, ad hoc reviewer

#### *Abstract Reviews*

2011-Present American Urological Association Annual Meeting  
 2012-Present Southeastern Section of the AUA Annual Meeting

#### *Miscellaneous Reviews*

2013-Present Great Ormond Street Hospital Children's Charity, ad hoc grant reviewer  
 2013 Eisenberg Center for Clinical Decisions and Communications Science at Baylor College of Medicine, ad hoc reviewer

### **TEACHING RESPONSIBILITIES**

#### *Formal Teaching of Students in Courses*

2006-2008 Mayo Graduate School of Medical Education, Rochester, MN  
 Lecturer, Tutorial Leader, Advanced Cardiovascular Life Support Course  
 2009-2010 Harvard Medical School, Boston, MA  
 Tutorial Leader, Clinical Epidemiology and Population Health Course  
 2011-Present Duke University Medical Center  
 Co-Director, Urology Resident & Fellow Research Seminar  
 Attending Faculty, Campbell's Conference  
 Attending Faculty, AUA Update Conference  
 Invited Judge, Duke School of Medicine Alpha Omega Alpha Research Day

#### *Formal Mentoring of Students & Trainees:*

2011-2012 Shannon Spano, UNC MS4 Medical Student; Research Mentor  
 2012-2013 Jessica C. Lloyd, MD, Duke Urology Resident; PGY3 Research Year Mentor  
 2013-2014 Hsin-Hsiao S. Wang, MD, MPH, Duke Urology Resident; PGY3 Research Year Mentor  
 2013-2014 Nermaie Velasquez, Duke Medical Student

2013-2015 Daniel Zapata Vargas, MD, Post-Doctoral Research Fellow; Primary Mentor  
 2014-2016 Rohit Tejwani, Duke Medical Student; MS3 Research Mentor  
 2015 Stewart S. Dalton, University of Florida Medical Student; MS1 Summer Research Mentor  
 2015-2016 Brian J. Young, MD, Duke Urology Resident; PGY3 Research Year Mentor

Informal Mentoring of Students & Trainees:

2011-2012 Erin R. McNamara, MD, Duke Urology Resident  
 2012-2013 David I. Chu, MD, Duke Urology Resident  
 2012-2013 Zarine Balsara, MD, PhD, Duke Urology Resident  
 2013-2014 Ramiro J. Madden-Fuentes, MD, Duke Urology Resident  
 2013-2015 Rand N. Wilcox Vanden Berg, BS, Duke Medical Student  
 2013-2014 Jacqueline Zillioux, BS, Duke Medical Student  
 2013-2014 Haijing "JJ" Zhang, BS, Duke Medical Student

Continuing Medical Education:

Moderator, Vesicoureteral Reflux & Urinary Tract Infection Podium Session, American Urological Association Annual Meeting, San Diego, CA, May 2013  
 Moderator, Pediatric Urology Podium Session, Southeastern Section of the American Urological Association Annual Meeting, Hollywood, FL, March 2014  
 Moderator, Pediatric Sub-Plenary Session & Difficult Case Discussion Section, Southeastern Section of the American Urological Association Annual Meeting, Nashville, TN, March 2016  
 Moderator, Prize Abstract Session, Society for Pediatric Urology Annual Meeting, San Diego, CA, May 2016

**CONSULTANT APPOINTMENTS**

2012-2014 Member, Working Group for the Development of a Urological/Renal Protocol for the Newborn/Young Child, National Center on Birth Defects and Developmental Disabilities, Centers for Disease Control and Prevention, Atlanta, GA.  
 2014-Present Chair, Steering Committee, Urological/Renal Protocol for the Newborn/Young Child, National Center on Birth Defects and Developmental Disabilities, Centers for Disease Control and Prevention, Atlanta, GA.  
 2014-Present Member, Committee for Science and Publication Guidelines, National Spina Bifida Patient Registry, National Center on Birth Defects and Developmental Disabilities, Centers for Disease Control and Prevention, Atlanta, GA.

**RESEARCH FUNDING**

2009-2011 Children's Hospital Boston Program for Patient Safety and Quality  
 "Influence of Parental Preferences on Treatment Choice and Satisfaction in Ureteropelvic Junction Obstruction"  
 Role: Principal Investigator  
 2013-2014 National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK)  
 "Duke KURe Program"  
 NIDDK K12-DK100024  
 Role: Scholar/Mentee  
 2013-2016 Dendreon Corporation  
 "Predicting Metastatic Disease Among Non-Metastatic Castrate-Resistant Prostate Cancer Patients"  
 Role: Principal Investigator  
 2014-2019 National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK)  
 "Comparative Effectiveness of Pediatric Vesicoureteral Reflux Treatments"  
 NIDDK K08-DK100534  
 Role: Principal Investigator  
 2014-2019 Centers for Disease Control and Prevention (CDC)  
 "National Spina Bifida Patient Registry, Component C - Urologic Management to Preserve Renal Function Protocol – Duke Project"  
 CDC U01-DD001087  
 Role: Co-Investigator  
 2016-2017 Duke University Department of Surgery

“B7-H1 Blockade in Children with Wilms Tumor”

Clarence Gardner, MD, Award

Role: Principal Investigator

## **BIBLIOGRAPHY**

### **Original articles:**

1. Aris RM, **Routh JC**, LiPuma JJ, Heath DG, Gilligan PH. Lung Transplantation for Cystic Fibrosis Patients with Burkholderia Cepacia Complex: Survival Linked to Genomovar Type. *American Journal of Respiratory & Critical Care Medicine*. 164(11):2102-6, 2001.
2. Heath DG, Hohneker K, Carriker C, Smith K, **Routh J**, LiPuma JJ, Aris RM, Weber D, Gilligan PH. Six-Year Molecular Analysis of Burkholderia Cepacia Complex Isolates Among Cystic Fibrosis Patients at a Referral Center for Lung Transplantation. *Journal of Clinical Microbiology*. 40(4):1188-93, 2002.
3. Tleyjeh IM, **Routh J**, Qutub MO, Lischer G, Liang KV, Baddour LM. Lactobacillus gasseri Causing Fournier's Gangrene. *Scandinavian Journal of Infectious Diseases*. 36(6-7):501-3, 2004.
4. **Routh JC**, Leibovich BC. Adenocarcinoma of the Prostate: Epidemiological Trends, Screening, Diagnosis, and Surgical Management of Localized Disease. *Mayo Clinic Proceedings*. 80(7):899-907, 2005.
5. **Routh JC**, Lischer GH, Leibovich BC. Epididymo-Orchitis and Testicular Abscess due to Nocardia asteroides Complex. *Urology*. 65(3):591, 2005.
6. **Routh JC**, Vandersteen DR, Pfefferle H, Wolpert JJ, Reinberg Y. Single-Center Experience with Endoscopic Management of Vesicoureteral Reflux in Children. *Journal of Urology*. 175(5 Pt 2):1889-93, 2006.
7. **Routh JC**, Wolpert JJ, and Reinberg Y. Tunneled Tunica Vaginalis Flap is an Effective Technique for Recurrent Urethrocutaneous Fistula Following Tubularized Incised Plate Urethroplasty. *Journal of Urology*. 176(4):1578-81, 2006.
8. Vandersteen DR, **Routh JC**, Kirsch AJ, Scherz HC, Ritchey ML, Shapiro E, Wolpert JJ, Pfefferle H, Reinberg Y. Post-Operative Ureteral Obstruction after Subureteric Injection of Dextranomer/ Hyaluronic Acid Copolymer. *Journal of Urology*. 176(4):1593-5, 2006.
9. **Routh JC**, Crimmins CR, Leibovich BC, Elliott DS. Impact of Parkinson's Disease on Voiding Function Following Radical Retropubic Prostatectomy. *Urology*. 68(3):575-7, 2006.
10. Ashley RA, Inman BA, **Routh JC**, Rohlinger AL, Leibovich BC, Husmann DA, Kramer SA. Urachal Anomalies: A Longitudinal Study of Urachal Remnants in Children and Adults. *Journal of Urology*. 178(4 Pt 2):1615-8, 2007.
11. Tollefson MK, Ashley RA, **Routh JC**, Husmann DA. Traumatic Obliterative Urethral Strictures in Pediatric Patients: Long-Term Follow-up of the 'Cut-To-Light' Technique. *Journal of Urology*. 178(4 Pt 2):1656-8, 2007.
12. **Routh JC**, Reinberg Y, Ashley RA, Inman BA, Wolpert JJ, Vandersteen DR, Husmann DA, Kramer SA. Multivariate Comparison of the Efficacy of Intraureteral versus Subtrigonal Techniques of Dextranomer/Hyaluronic Acid Injection. *Journal of Urology*. 178(4 Pt 2):1702-6, 2007.
13. **Routh JC**, Ashley RA, Sebo TJ, Slezak J, Vandersteen DR, Reinberg Y. Histologic Changes Associated with the Use of Subureteric Dextranomer/Hyaluronic Acid. *Journal of Urology*. 178(4 Pt 2):1707-10, 2007.
14. **Routh JC**, Husmann DA. Long-Term Continence Outcomes after Immediate Repair of Pediatric Bladder Neck Lacerations Extending into the Urethra. *Journal of Urology*. 178(4 Pt 2):1816-8, 2007.
15. Ashley RA, Inman BA, **Routh JC**, Krambeck AE, Siddiqui SA, Mynderse LA, Gettman MT, Blute ML. Preventing Pain During Office Biopsy of the Prostate: A Single Center, Prospective, Double-Blind, Three-Arm, Parallel Group, Randomized Clinical Trial. *Cancer*. 110(8):1708-14, 2007.
16. **Routh JC**, Kramer SA, Ashley RA, Inman BA, Wolpert JJ, Vandersteen DR, Husmann DA, Reinberg Y. Utility of Dextranomer/Hyaluronic Acid Injection in the Setting of Bladder and Ureteral Anomalies. *Urology*. 71(3):435-8, 2008.
17. **Routh JC**, Ashley RA, Sebo TJ, Lohse CM, Husmann DA, Kramer SA, Kwon ED. Utility of B7-H1 Expression for Wilms' Tumor: Correlation with Tumor Biology and Disease Recurrence. *Journal of Urology*. 179(5):1954-60, 2008.
18. Ashley RA, Inman BA, **Routh JC**, Wilson TM, Mynderse LA, Myers RP, Gettman MT, Blute ML. Reassessing the Diagnostic Yield of Saturation Biopsy of the Prostate. *European Urology*. 53(5):976-83, 2008.
19. **Routh JC**, Bacon DR, Leibovich BC, Zincke H, Blute ML, Frank I. How Long Is Too Long? The Effect of Anesthesia Duration on the Incidence of Non-Urologic Postoperative Complications. *British Journal of Urology International (BJUI)*. 102(2):301-4, 2008.

20. **Routh JC**, Inman BA, Ashley RA, Vandersteen DR, Reinberg Y, Wolpert JJ, Kramer SA, Husmann DA. Unilateral Vesicoureteral Reflux: Does Endoscopic Injection Based on the Cystoscopic Appearance of the Ureteral Orifice Decrease the Incidence of De Novo Contralateral Reflux? *Journal of Pediatric Urology*. 4(4):260-4, 2008.
21. Alt AL, **Routh JC**, Ashley RA, Boyce TM, Kramer SA. Superficial Genitourinary Abscesses in Children: Emergence of Methicillin-Resistant Staphylococcus aureus. *Journal of Urology*. 180(4):1472-5, 2008.
22. **Routh JC**, Wolpert JJ, Reinberg Y. Tunneled Tunica Vaginalis Flap for Recurrent Urethrocutaneous Fistulae. *Advances in Urology*. 2008: e615928.
23. **Routh JC**, Tollefson MK, Ashley RA, Husmann DA. Iatrogenic Ureteral Injury: Can Adult Repair Techniques Be Used on Children? *Journal of Pediatric Urology*. 5(1):53-5, 2009.
24. McGee SM, **Routh JC**, Roth TJ, Hollatz P, Vandersteen DR, Reinberg Y. Sacral Neuromodulation in Children with Dysfunctional Elimination Syndrome: Description of an Incisionless First-Stage and Second-Stage without Fluoroscopy. *Urology*. 73(3): 641-4, 2009.
25. **Routh JC**, Alt AL, Ashley RA, Kramer SA, Boyce TG. Increasing Prevalence and Associated Risk Factors for Methicillin-Resistant Staphylococcus aureus Bacteriuria. *Journal of Urology*. 181(4):1694-8, 2009.
26. McGee SM, **Routh JC**, Pereira CW, Gettman MT. Minimal Contamination of the Human Peritoneum after Transvesical Incision. *Journal of Endourology*. 23(4):659-63, 2009.
27. **Routh JC**, Gong EM, Nelson CP. Pediatric Urology and the Internet: Does an Uncommon Topic Decrease Content Quality? *Journal of Urology*. 182(4):1569-74, 2009.
28. Umbreit EC, **Routh JC**, Husmann DA. Nonoperative Management of Nonvascular Grade IV Blunt Renal Trauma in Children: Meta-analysis and Systematic Review. *Urology*. 74(3):579-82, 2009.
29. Ashley RA, Palmer BW, Schultz AD, Woodson BW, Roth CC, **Routh JC**, Fung KM, Frimberger D, Lin HK, Kropp BP. Leukocyte Inflammatory Response in a Rat Urinary Bladder Regeneration Model Using Porcine Small Intestinal Submucosa Scaffold. *Tissue Engineering Part A*. 15(11):3241-6, 2009.
30. **Routh JC**, Reinberg Y. Predicting Success in the Endoscopic Management of Pediatric Vesicoureteral Reflux. *Urology*. 76(1):195-8, 2010.
31. **Routh JC**, Nelson CP, Graham DA, Lieu TA. Variation in Surgical Management of Vesicoureteral Reflux: Influence of Hospital and Patient Factors. *Pediatrics*. 125(3):e446-e451, 2010.
32. **Routh JC**, Gong EM, Cannon GM Jr, Yu RN, Gargollo PC, Nelson CP. Variation Among Internet-Based Calculators in Predicting Spontaneous Resolution of Vesico-Ureteral Reflux. *Journal of Urology*. 183(4): 1568-1573, 2010.
33. **Routh JC\***, Inman BA\*, Reinberg Y. Efficacy of Dextranomer/Hyaluronic Acid for Pediatric Vesicoureteral Reflux: Systematic Review and Meta-Analysis. *Pediatrics*. 125(5): 1010-1019, 2010.
34. Ashley RA, Palmer BW, Schultz AD, Woodson BW, Roth CC, **Routh JC**, Fung KM, Frimberger D, Lin HK, Kropp BP. Regional Variations in Small Intestinal Submucosa Evoke Differences in Inflammation with Subsequent Impact on Tissue Regeneration in the Rat Bladder Augmentation Model. *British Journal of Urology International*. 105(10): 1462-8, 2010.
35. **Routh JC**, Graham DA, Nelson CP. Ketorolac is Underutilized after Ureteral Reimplantation despite Reduced Hospital Cost and Reduced Length of Stay. *Urology*. 76(1): 9-14, 2010.
36. **Routh JC**, Huang L, Retik AB, Nelson CP. Contemporary Epidemiology and Characterization of Newborn Males with Prune Belly Syndrome. *Urology*. 76(1): 44-8, 2010.
37. **Routh JC**, Graham DA, Nelson CP. Epidemiological Trends in Pediatric Urolithiasis at Free-Standing U.S. Children's Hospitals. *Journal of Urology*. 184(3): 1100-5, 2010.
38. **Routh JC**, Graham DA, Nelson CP. Trends in Imaging and Surgical Management of Pediatric Urolithiasis at American Children's Hospitals. *Journal of Urology*. 184(4 Suppl): 1816-22, 2010.
39. **Routh JC\***, McGee SM\*, Ashley RA, Reinberg Y, Vandersteen DR. Predicting Renal Outcomes in Children with Anterior Urethral Valves: A Systematic Review. *Journal of Urology* 184(4 Suppl): 1615-9, 2010.
40. Kokorowski PJ, **Routh JC**, Graham DA, Nelson CP. Variations in Timing of Surgery among Boys Undergoing Orchidopexy for Cryptorchidism. *Pediatrics*. 126(3): e576-82, 2010.
41. **Routh JC**, Laufer MR, Cannon GM Jr, Diamond DA, Gargollo PC. Management Strategies for Mayer-Rokitansky-Kuster-Hauser-Related Vaginal Agenesis: a Cost-Effectiveness Analysis. *Journal of Urology*. 184(5):2116-2122, 2010.
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44. Husmann DA, **Routh JC**, Hagerty JA, Cannon GM, Gomez P, Cheng EY, Skoog S. Evaluation of the United States pediatric urology workforce and fellowships: A series of surveys performed in 2006-2010. *Journal of Pediatric Urology*. 7(4):446-53, 2011.
45. **Routh JC**, Graham DA, Estrada CR, Nelson CP. Contemporary Use of Nephron-Sparing Surgery for Children with Malignant Renal Tumors at Freestanding Children's Hospitals. *Urology*. 78(2):422-6, 2011.
46. Kokorowski PJ, **Routh JC**, Borer JG, Estrada CR, Bauer SB, Nelson CP. Screening for Malignancy After Augmentation Cystoplasty in Children with Spina Bifida: A Decision Analysis. *Journal of Urology*. 186(4):1437-43, 2011.
47. Wang HH, Huang L, **Routh JC**, Kokorowski P, Cilento BG Jr, Nelson CP. Use of Ureteral Access Sheath During Ureteroscopy in Children. *Journal of Urology*. 186(4 pt 2):1728-33, 2011.
48. **Routh JC**, Gong EM, Cannon GM Jr, Nelson CP. Does a Controversial Topic Affect the Quality of Urologic Information on the Internet? *Urology*. 78(5):1051-6, 2011.
49. **Routh JC**, Pennison M, Rosoklija I, Dobbins S, Kokorowski PJ, Hubert KC, Huang L, Nelson CP. Racial Variation In Timing Of Pyeloplasty: Prenatal Versus Postnatal Diagnosis. *Journal of Urology*. 186(6):2386-91, 2011.
50. Fox JA, McGee SM, **Routh JC**, Granberg CF, Ashley RA, Hutcheson JC, Vandersteen DR, Kramer SA, Reinberg YE. Vesicoureteral Reflux in Children with Urachal Anomalies. *Journal of Pediatric Urology*. 7(6):632-5, 2011.
51. **Routh JC**, Grant FD, Kokorowski PJ, Nelson CP, Fahey FD, Treves ST, Lee RS. Economic and Radiation Costs of Initial Imaging Regimens After a Child's First Febrile Urinary Tract Infection. *Clinical Pediatrics*. 51(1):23-30, 2012.
52. **Routh JC**, Bogaert GA, Kaefer M, Manzoni G, Park JM, Retik AB, Rushton HG, Snodgrass WT, Wilcox DT. Vesicoureteral Reflux: Current Trends in Diagnosis, Screening, and Treatment. *European Urology*. 61(4):773-82, 2012.
53. Wang HH, Huang L, **Routh JC**, Nelson CP. Shock Wave Lithotripsy Versus Ureteroscopy: Variation in Surgical Management of Pediatric Urolithiasis at U.S. Children's Hospitals. *Journal of Urology*. 187(4):1402-7, 2012.
54. Kokorowski PJ, Chow JS, Strauss K, Pennison M, **Routh JC**, Nelson CP. Prospective Measurement of Patient Exposure to Radiation During Pediatric Ureteroscopy. *Journal of Urology*. 187(4):1408-15, 2012.
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56. Kokorowski PJ, **Routh JC**, Hubert KC, Graham DA, Nelson CP. Association of Urolithiasis With Systemic Conditions Among Pediatric Patients at Children's Hospitals. *Journal of Urology*. 188(4 pt 2):1618-22, 2012.
57. Lloyd JC, Spano SM, Wiener JS, Ross SS, **Routh JC**. How Dry is Dry? A Review of Definitions of Continence in the Contemporary Exstrophy Literature. *Journal of Urology*. 188(5):1900-4, 2012.
58. Madden-Fuentes R, Wiener JS, Ross SS, **Routh JC**. Partial Orchiectomy for Bilateral Synchronous Testicular Masses in a Prepubescent Boy: a Case Report. *Urology*. 80(5):1144-6, 2012.
59. Chu DI, Balsara ZR, **Routh JC**, Ross SS, Wiener JS. Experience with Glycerin for Antegrade Continence Enema in Neurogenic Bowel Management. *Journal of Urology*. 189(2):690-3, 2013.
60. Kokorowski PJ\*, **Routh JC\***, Nelson CP. Quality Assessment of Economic Analyses in Pediatric Urology. *Urology*. 81(2):263-7, 2013.
61. **Routh JC\***, Yu RN\*, Kozinn SI, Nguyen HT, Borer JG. Urologic Complications and Postoperative Vesicoureteral Reflux Following Pediatric Kidney Transplantation. *Journal of Urology*. 189(3):1071-6, 2013.
62. **Routh JC**, Grundy PE, Anderson JR, Retik AB, Kurek KC. B7-H1 as a Biomarker for Therapy Failure in Favorable Histology Wilms Tumor. *Journal of Urology*. 189(4):1487-92, 2013.
63. Kokorowski PJ, **Routh JC**, Graham DA, Nelson CP. Trends in Revision Circumcision at Pediatric Hospitals. *Clinical Pediatrics*. 52(8): 699-706, 2013.
64. Madden-Fuentes RJ, McNamara ER, Lloyd JC, Wiener JS, **Routh JC**, Seed PC, Ross SS. Variation in Definitions of Urinary Tract Infections in Spina Bifida Patients: a Systematic Review. *Pediatrics*. 132(1):132-9, 2013.
65. Lloyd JC, Nseyo U, Madden-Fuentes RJ, Ross SS, Wiener JS, **Routh JC**. Reviewing Definitions of Urinary Continence in the Contemporary Spina Bifida Literature: a Call for Clarity. *Journal of Pediatric Urology*. 9(5): 567-74, 2013.

66. Ross SS, Masko EM, Abern MR, Allott EH, **Routh JC**, Wiener JS, Preminger GM, Freedland SJ, Lipkin ME. The Effect of Dietary Sodium and Fructose Intake on Urine and Serum Parameters of Stone Formation in a Pediatric Mouse Model: a Pilot Study. *Journal of Urology*. 190(4 Suppl): 1484-9, 2013.
67. Lloyd JC, Wiener JS, Gargollo PC, Inman BA, Ross SS, **Routh JC**. Contemporary Epidemiology of Complex Genitourinary Defects. *Journal of Urology*. 190(4 Suppl): 1590-5, 2013.
68. Lloyd JC, Madden-Fuentes R, Kokorowski PJ, Nelson CP, Kutikov A, and **Routh JC**. The Publication Ranking Score for Pediatric Urology: Quantifying Thought Leadership within the Subspecialty. *Journal of Pediatric Urology*, 9(6):1108-13, December 2013.
69. Balsara Z, Martin A, **Routh JC**, Wiener JS, Ross SS. Congenital Spigelian Hernia and Ipsilateral Cryptorchidism: Raising Awareness among Urologists. *Urology*, 83(2):457-9, February 2014.
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71. McNamara ER, Madden-Fuentes RJ, **Routh JC**, Rouse D, Madden JF, Wiener JS, Rushton HG Jr, Ross SS. Evaluation of cold ischemia for preservation of testicular function during partial orchiectomy in the rat model. *Journal of Pediatric Urology*, 10(4):593-7, August 2014.
72. Chu DI, Lloyd JC, Balsara ZR, Wiener JS, Ross SS, **Routh JC**. Variation in Use of Nephron-Sparing Surgery among Children with Renal Tumors. *Journal of Pediatric Urology*, 10(4):724-9, August 2014.
73. Madden-Fuentes RJ, McNamara ER, Nseyo U, Wiener JS, **Routh JC**, Ross SS. Resolution Rate of Isolated Low Grade Hydronephrosis Diagnosed Within the First Year of Life. *Journal of Pediatric Urology*. 10(4):639-44, August 2014.
74. Wang HH, Wiener JS, Ross SS, **Routh JC**. Use of Nephron-Sparing Surgery and Impact on Patient Survival in Pediatric Wilms Tumor: a SEER Analysis. *Journal of Urology*, 192(4):1196-1202, October 2014.
75. Lloyd JC, Yen T, Pietrobon R, Wiener JS, Ross SS, Kokorowski PJ, Nelson CP, **Routh JC**. Estimating Utility Values for Vesicoureteral Reflux in the General Public using an Online Tool. *Journal of Pediatric Urology*. 10(6):1026-31, December 2014.
76. Wang HH, Wiener JS, Ross SS, **Routh JC**. Emergency Department Care Patterns in Spina Bifida Patients: a Case-Control Study. *Journal of Urology*. 193(1):268-73, January 2015.
77. Wang HH, Gbadegesin RA, Foreman JA, Nagaraj SK, Wigfall DR, Wiener JS, **Routh JC**. Efficacy of Antibiotic Prophylaxis in Children with Vesicoureteral Reflux: Systematic Review and Meta-Analysis. *Journal of Urology*, 193(3):963-9, March 2015.
78. Wang HH, Wiener JS, Ferrandino MN, Lipkin ME, **Routh JC**. Complications in Surgical Management of Upper Tract Calculi in Spina Bifida Patients: Analysis of Nationwide Data. *Journal of Urology*, 193(4):1270-4, April 2015.
79. Wang HH, Lipkin ME, Scales CD Jr, Wiener JS, **Routh JC**. Estimating the Nationwide Hospital-Based Economic Impact of Pediatric Urolithiasis. *Journal of Urology*, 193(5 Suppl):1855-9, May 2015.
80. Rialon KL, Gulack BC, Englum BR, **Routh JC**, Rice HE. Factors Impacting Survival in Children with Renal Cell Carcinoma. *Journal of Pediatric Surgery*. 50(6):1014-8, June 2015.
81. Wang HH, Tejwani R, Zhang H, Wiener JS, **Routh JC**. Hospital Surgical Volume and Associated Post-Operative Complications of Pediatric Urologic Surgery in the United States. *Journal of Urology*, 194(2):506-11, August 2015.
82. Nelson CP, **Routh JC**, Logveninko T, Rosoklija I, Prosser LA, Kokorowski PJ, Schuster M. Utility scores for vesicoureteral reflux and anti-reflux surgery. *Journal of Pediatric Urology*. 11(4):177-82, August 2015.
83. Rice HE, Englum BR, Gulack BC, Adibe OO, Tracy ET, Kreissman SG, **Routh JC**. Use of patient registries and administrative datasets for the study of pediatric cancer. *Pediatric Blood and Cancer*. 62(9):1495-500, September 2015.
84. Velasquez NM, Zapata D, Wang HH, Ross SS, Wiener JS, Lipkin ME, **Routh JC**. Medical Expulsive Therapy for Pediatric Urolithiasis: Systematic Review and Meta-Analysis. *Journal of Pediatric Urology*. 11(6):321-7, December 2015.
85. Wilcox Vanden Berg RN, Bierman EN, Van Noord M, Rice HE, **Routh JC**. Nephron-Sparing Surgery for Wilms Tumor: a Systematic Review. *Urologic Oncology*. 34(1):24-32, January 2016.
86. Elahi S, Homstad A, Vaidya H, Stout J, Hall G, Wu G, Conlon P Jr, **Routh JC**, Wiener JS, Ross SS, Nagaraj S, Wigfall D, Foreman J, Adeyemo A, Gupta IR, Brophy PD, Rabinovich CE, Gbadegesin RA. Rare Variants In Tenascin Genes In a Cohort of Children With Primary Vesicoureteric Reflux. *Pediatric Nephrology*. 31(2):247-53, February 2016.

87. Wang HS, Herbst KW, Rothman JA, Shah NK, Wiener JS, **Routh JC**. Trends in Sickle-Cell-Disease-Related Priapism in U.S. Children's Hospitals. *Urology*. 89(3):118-122, March 2016.
88. Wang HH, Lloyd JC, Wiener JS, **Routh JC**. Nationwide Trends and Variations in Urologic Surgical Interventions and Renal Outcome for Spina Bifida patients. *Journal of Urology*. 185(4):1189-95, April 2016.
89. Tejwani R, Wang HS, Wolf S, Wiener JS, **Routh JC**. Outcomes of Shockwave Lithotripsy and Ureterscopy for Pediatric Urolithiasis. *Journal of Urology*. ePub ahead of print, March 2016.
90. Lloyd JC, Hornik CP, Benjamin DK, Clark RH, **Routh JC**, Smith PB. Incidence of Breakthrough Urinary Tract Infection in Hospitalized Infants Receiving Antimicrobial Prophylaxis. *Clinical Pediatrics*. ePub ahead of print, March 2016.
91. Wang HH, Tejwani R, Cannon GM Jr, Gargollo PC, Wiener JS, **Routh JC**. Open versus Minimally-Invasive Ureteroneocystostomy: a Population-Level Analysis. *Journal of Pediatric Urology*. In Press.

#### Invited Articles:

1. **Routh JC**, Leibovich BC. Adenocarcinoma of the Prostate: PSA screening tests. *Mayo Clinic Communiqué*. 31(4):1-10, 2006.
2. **Routh JC**. Alphabet Soup of Organized Urology: The Logic (or Lack Thereof) Behind the Letters. *AUANews*. 13(8):6, 2008.
3. **Routh JC**. Health Policy and the Obama Administration: Implications for Urology. *AUANews*. 14(4):28-9, 2009.
4. **Routh JC**. AUA Resident Forum in Review. *AUANews*. 15(8):18-9, 2010.
5. Kokorowski PJ, **Routh JC**. Metabolic and Malignant Consequences of Intestinal Augmentation of the Urinary Tract in Children. *Current Medical Literature: Urology*. 17(2): 29-38, 2011.
6. **Routh JC**. AUA 2012 Take-Home Messages: Outcomes Analysis and Evidence-Based Medicine. *AUANews*. 17(7):17-8, 2012.
7. **Routh JC**. Changing Epidemiology of Pediatric Nephrolithiasis. *AUANews*. 19(3):33, 2014.
8. Lloyd JC, Wiener JS, **Routh JC**. High-Volume Urinary Retention in a Two Month Old Boy: An Unexpected Sequela of a Large Urachal Remnant. *Dialogues in Pediatric Urology*, 35(6):4, October 2014.
9. **Routh JC**, Retik AB. Cross-Fire Debate: No Deflux for Reflux. *AUANews*. 20(9):18-19, 2015.

#### Book Chapters:

1. **Routh JC**, Gettman MT. Renal Tumors, Children. In: Leslie SW, ed., *Pearls of Wisdom: Urology Board Review*, 3rd Edition. New York: McGraw-Hill; p353-60, 2009.
2. Lloyd JC, **Routh JC**. Renal Tumors, Children. In: Leslie SW, ed., *Pearls of Wisdom: Urology Board Review*, 4th Edition. New York, NY: McGraw-Hill; p405-414, 2013.
3. Wang HH, **Routh JC**, Lee RS. Renal Tumors. In: Wilcox D, Godbole P, Cooper C, eds., *Pediatric Urology Book*. Sheffield, UK: GBC Productions, 2014. <http://www.pediatricurologybook.com>.
4. Cost NG, **Routh JC**, Kieran K. Genitourinary Rhabdomyosarcoma. In: Wilcox D, Godbole P, Cooper C, eds. *Pediatric Urology Book*. Sheffield, UK: GBC Productions, 2014. <http://www.pediatricurologybook.com>.
5. **Routh JC**. Pediatric Meatotomy and Distal Reconstruction. In: Smith JA, Howards SS, Preminger GM, Dmochowski RR, eds. *Hinman's Atlas of Urologic Surgery*, 4<sup>th</sup> Edition. Philadelphia, PA: Elsevier Publishing Co. In Press, August 2015.

#### Editorials:

1. **Routh JC**. Editorial comment on: Filho *et al*, Spontaneous Resolution Rates of Vesicoureteral Reflux in Brazilian Children: A 30-Year Experience. *International Brazilian Journal of Urology*. 33(2):215, 2007.
2. **Routh JC**, Reinberg Y. Editorial comment on: Menezes and Puri, The Role of Endoscopic Treatment in the Management of Grade V Primary Vesicoureteral Reflux. *European Urology*. 52(5):1509, 2007.
3. **Routh JC**, Reinberg Y. Editorial Comment on: Gupta *et al*, Multivariate Analysis of Intraorifice Versus Hydrodistention Implantation Technique in Dextranomer/ Hyaluronic Acid Injection for Vesicoureteral Reflux. *Journal of Urology*. 180(4 Pt 2):1592-3, 2008.
4. **Routh JC**. Editorial comment on: Dave *et al*, Learning from the Learning Curve: Multivariable Analysis of Injected Volume and Other Factors Associated with Successful Endoscopic Correction of Vesico-Ureteric Reflux Using Dextranomer/Hyaluronic Acid Copolymer. *Journal of Urology*. 180(4 Pt 2):1599, 2008.
5. **Routh JC**. Editorial comment on: Chertin *et al*, Unilateral Vesicoureteral Reflux and History of Contralateral VUR Warrants Routine Bilateral Endoscopic Correction. *Journal of Urology*. 180(4 Pt 2):1604, 2008.
6. **Routh JC**. Editorial comment on: Chertin *et al*, Renal Scarring and UTI Following Successful Endoscopic

Correction of Vesicoureteral Reflux. *Journal of Urology*. 182 (4 Pt 2):1706-7, 2009.

7. **Routh JC**. Editorial comment on: Ormaechea *et al*, New Tissue Bulking Substance (VANTRIS®) for Eliminating Vesicoureteral Reflux: Preliminary Results of its Use in Children. *Journal of Urology*. 183(2):718, 2010.
8. **Routh JC**, Reinberg Y. Editorial comment on: Lordelo *et al*, Transcutaneous Electrical Nerve Stimulation in Children With Overactive Bladder: A Randomized Clinical Trial. *Journal of Urology*. 184(2):689, 2010.
9. **Routh JC**, Nelson CP. Editorial comment on: Schaeffer *et al*, Medical Comorbidities Associated with Pediatric Kidney Stone Disease. *Urology*. 77(1): 199, 2011.
10. **Routh JC**. Editorial comment on: Kogan and Feustel, What Can We Learn From Pediatric Urology Certification Logs? *Urology*. 78(1):152-3, 2011.
11. **Routh JC**. Commentary to: Cerwinka *et al*, Selective Endoscopic Treatment of the Non-Refluxing Contralateral Ureter Prevents New Contralateral Vesicoureteral Reflux. *Journal of Pediatric Urology*. 9(1):55-6, 2013.
12. **Routh JC**. Editorial comment on: Franken *et al*, p53 Immunohistochemistry is a Prognostic Tool in the Detection of Tumor Aggressiveness in Wilms Tumor. *Journal of Urology*. 189(2):669-70, 2013.
13. **Routh JC**. Editorial comment on: Wilms' tumor: a Retrospective Study of 32 Patients Using Videolaparoscopic and Open Approaches. *Urology*. 84(1):195-6, July 2014.
14. **Routh JC**. Commentary to: Schlomer BJ, Copp HL. Cumulative Incidence of Outcomes and Urologic Procedures after Augmentation Cystoplasty. *Journal of Pediatric Urology*. 10(6):1050, December 2014.
15. **Routh JC**. Commentary to: Suson KD, Wolfe-Christensen C, Elder JS, Lakshmanan Y. National Practice Patterns and Outcomes of Pediatric Nephrectomy: Comparison Between Urology and General Surgery. *Journal of Urology*. 193(5 Suppl):1741-2, May 2015.

#### Letters to the Editor:

1. **Routh JC**, Leibovich BC, Zincke H, Blute ML. Nephron-Sparing Surgery and Renal Cell Carcinoma. *JAMA*. 292(14): 1684, 2005.
2. **Routh JC**, Inman BA, Reinberg Y. Re: Endoscopic Treatment of Vesicoureteral Reflux Associated with Paraureteral Diverticula in Children. *Journal of Urology*. 179(3):1205, 2008.
3. **Routh JC**, Nelson CP. Re: Evidence-Based Medicine in Urology: Hope and Peril. *Journal of Urology*. 182(3):1528-9, 2009.
4. **Routh JC**, Lee RS, Chow JS. Radiation Dose and Screening for Vesicoureteral Reflux. *AJR: American Journal of Roentgenology*. 194(2):W243, 2010.
5. Tasian GE, **Routh JC**. Failure to Reject Does Not Equal Acceptance of the Null Hypothesis: Implications for Assessing Safety of ESWL in Children. *Journal of Urology*. 190(3):1140-1, 2013.
6. Alfonso CA, Gray B, Adkins D, **Routh J**, Dude C, Meyer WS, Zucker N, Annas AH, Keicher K, Belch J, St. Clair J, Weinfurt KP, Meglin, D, Rittgers S, Siska R. Medical Professionals Condemn House Bill 2. *Charlotte Observer*. <http://www.charlotteobserver.com/opinion/op-ed/article69268482.html>, March 2016.

#### Invited lectures:

1. **Routh JC**. To STING or Not To STING: A Brief Review of Endoscopic Management of Pediatric Vesicoureteral Reflux. Invited Lecture, Minnesota Urological Society, Minneapolis, MN, January 2008.
2. **Routh JC**. Contemporary Endoscopic Management of Pediatric Vesicoureteral Reflux. Invited Lecture, Upper Midwest Chapter of the Society of Urologic Nurses and Associates, Rochester, MN, April 2008.
3. **Routh JC**. Screening for Vesicoureteral Reflux: Costs, Cancers, and Other Considerations. Invited Lecture, Beth Israel Deaconess Medical Center Newborn Epidemiology and Clinical Research Seminar Series, Boston, MA, October 2010.
4. **Routh JC**. Screening & Diagnosis for Vesicoureteral Reflux: a Systems-Level Approach. Invited Lecture, Duke Division of Urology Grand Rounds, Durham, NC, August 2011.
5. **Routh JC**. Urologic Potpourri: Circumcision, Voiding Dysfunction, & Surgical Management of VUR. Invited Lecture, Goldsboro Pediatric Grand Rounds, Goldsboro, NC, December 2011.
6. **Routh JC**. User's Guide to the Urological Literature. Invited Lecture, 44<sup>th</sup> Annual Duke Urologic Assembly, Phoenix, AZ, February 2012.
7. **Routh JC**. Update on Vesicoureteral Reflux and Urinary Tract Infection Guidelines. Invited Lecture, 44<sup>th</sup> Annual Duke Urologic Assembly, Phoenix, AZ, February 2012.
8. **Routh JC**. Advanced Robotic Surgery in Pediatric Urology. Invited Lecture, Duke Department of Pediatrics Grand Rounds, Durham, NC, May 2012.

9. **Routh JC.** Take-Home Messages: Outcomes Analysis. Plenary Presentation, American Urological Association Annual Meeting, Atlanta, GA, May 2012.
10. **Routh JC.** Robotic and Minimally-Invasive Surgery in Pediatric Urology. Invited Lecture, North Carolina Pediatric Society Annual Meeting, Plenary Session, Wilmington, NC, September 2012.
11. **Routh JC.** Common Biostatistical Errors: How to Avoid Them. Invited Lecture, Measuring Quality in Pediatric Urology Session, American Academy of Pediatrics Annual Meeting, New Orleans, LA, October 2012.
12. **Routh JC.** A Pediatric Urologist's Perspective on Vesicoureteral Reflux and Urinary Tract Infection. Invited Lecture, North Carolina chapter of the National Association of Pediatric Nurse Practitioners, Durham, NC, March 2013.
13. **Routh JC.** Common Urologic Issues in Young Men and Women. Invited Lecture, NC State University Student Health Center Grand Rounds, March 2013.
14. **Routh JC.** Contemporary Management of Pediatric Renal Tumors. Invited Lecture, Moses Cone Pediatric Grand Rounds, July 2013.
15. **Routh JC.** Hydronephrosis Made Simple. Invited Lecture, WakeMed Pediatric Grand Rounds, August 2013.
16. **Routh JC.** UTIs, Bedwetting, & Robots, Oh my! A Potpourri of Pediatric Urology. Invited Lecture, Rex Hospital Pediatric Grand Rounds, August 2013.
17. **Routh JC.** Hypospadias Reporting: How to Write the Discussion Section. Invited Lecture and Panelist, International Pediatric Urology Task Force on Hypospadias, Las Vegas, NV, September 2013.
18. **Routh JC.** UTI Made Easy: A Urologist's Guide to Thinking about UTI. Invited Lecture, National Association of Pediatric Nurse Practitioners State Conference, Chapel Hill, NC, October 2013.
19. **Routh JC.** Nocturnal Enuresis and Priapism. Invited Lecture, Duke-UNC Joint Conference on Engaging Providers and Families to Improve Care for Individuals with Sickle Cell, Durham, NC, November 2013.
20. **Routh JC.** Cost-Utility & Comparative-Effectiveness Research for Vesicoureteral Reflux. Invited Lecture, NIDDK Urology Program Director's Meeting, Bethesda, MD, December 2013.
21. **Routh JC.** Contemporary Management of Vesicoureteral Reflux. Invited Lecture, 46<sup>th</sup> Annual Duke Urologic Assembly and Duke Urologic Cancer Symposium, Pinehurst, NC, March 2014.
22. **Routh JC.** Epidemiology of Pediatric Stone Disease. Invited Lecture, Research on Calculus Kinetics (ROCK) Society Annual Meeting, Orlando, FL, May 2014.
23. **Routh JC.** The Future of Clinical Research in Pediatric Urology. Invited Lecture, Society for Pediatric Urology Semi-Annual Fellows Luncheon, Orlando, FL, May 2014.
24. **Routh JC.** Complex Medical Management of Children: Priapism. Invited Lecture, Duke-UNC Joint Conference on Sickle Cell, Durham, NC, September 2014.
25. **Routh JC.** Cryptorchidism and Hypogonadotrophic Hypogonadism. Invited Lecture, Duke Division of Pediatric Endocrinology Grand Rounds, Durham, NC, October 2014.
26. **Routh JC.** Contemporary Surgical Management of Wilms Tumor. Invited Lecture, Mayo Clinic Advances In Pediatric Urology Conference, Rochester, MN, December 2014.
27. **Routh JC.** Adult and Pediatric Genitourinary Trauma. Invited Lecture, 25<sup>th</sup> Annual Duke Trauma Conference, Durham, NC, March 2015.
28. **Routh JC.** Current Controversies in the Urologic Management of Klinefelter Syndrome. Invited Lecture, Annual Meeting of the Southeastern Section of the American Urological Association, Savannah, GA, March 2015.
29. **Routh JC.** No Deflux for Reflux. Invited Debate Participant, Crossfire: Controversies in Urology Plenary Session. American Urological Association Annual Meeting, New Orleans, LA, May 2015.
30. **Routh JC.** Contemporary Pediatric Cancer Care for Genitourinary Malignancies. Invited Lecture, Cape Fear Valley Medical Center Pediatric Grand Rounds, June 2015.
31. **Routh JC.** Update on Pediatric Genitourinary Oncology. Invited Lecture, WakeMed Pediatric Grand Rounds, June 2015.
32. **Routh JC.** Recent Changes in the Epidemiology and Management of Pediatric Stone Disease. Invited Lecture, Northwestern University Department of Urology Grand Rounds, July 2015.
33. **Routh JC.** UTI: What is Actually Considered a UTI & When to Treat. Invited Lecture, Person Memorial Hospital Grand Rounds, Roxboro, NC, August 2015.
34. **Routh JC.** Pediatric Urology Potpourri for Primary Care. Invited Lecture, Duke/SR Area Health Education Conference Family Medicine Residency Program Conference, Fayetteville, NC, February 2016.

**Scientific Presentations:**

1. **Routh JC**, Aris RM, LiPuma JJ, Heath DG, Gilligan PH. Impact of *Burkholderia cepacia* Genomovar Type on Survival in Cystic Fibrosis Patients Undergoing Lung Transplantation. Moderated Poster Presentation, American Society of Microbiology, Los Angeles, CA, May 2000.
2. **Routh JC**, Crimmins CR, Elliott DS. Does Idiopathic Parkinson Disease Increase the Risk of Incontinence After Prostatectomy? Podium Presentation, North Central Section of the American Urological Association, Miami, FL, October 2004.
3. **Routh JC**, Vandersteen DR, Pfefferle H, Wolpert JJ, Reinberg Y. Single-Center Experience with Endoscopic Management of Vesicoureteral Reflux in Children. Podium Presentation, North Central Section of the American Urological Association, Chicago, IL, September 2005.
4. **Routh JC**, Vandersteen DR, Pfefferle H, Wolpert JJ, Reinberg Y. Single-Center Experience with Endoscopic Management of Vesicoureteral Reflux in Children. Podium Presentation, American Academy of Pediatrics, Washington, DC, October 2005.
5. **Routh JC**, Lohse CM, Frank I, Cheville JC, Blute ML, Kwon ED, Leibovich BC. Cancer-Specific Mortality is Increased by Erythrocyte Transfusion in Patients Undergoing Surgery for Clear Cell Renal Cell Carcinoma. Poster Presentation, Society of Urologic Oncology, Bethesda, MD, December 2005.
6. **Routh JC**, Lohse CM, Frank I, Cheville JC, Blute ML, Kwon ED, Leibovich BC. Cancer-Specific Mortality is Increased by Erythrocyte Transfusion in Patients Undergoing Surgery for Clear Cell Renal Cell Carcinoma. Discussed Poster Presentation, American Urological Association, Atlanta, GA, May 2006.
7. **Routh JC**, Crimmins CR, Leibovich BC, Elliott DS. Impact of Idiopathic Parkinson Disease on Continence Status after Prostatectomy. Discussed Poster Presentation, American Urological Association, Atlanta, GA, May 2006.
8. **Routh JC**, Slezak J, Frank I, Blute ML, Kwon ED, Leibovich BC. Cancer-Specific Mortality is Increased by Multiple Erythrocyte Transfusions in Patients Undergoing Radical Retropubic Prostatectomy. Discussed Poster Presentation, American Urological Association, Atlanta, GA, May 2006.
9. **Routh JC**, Reinberg Y, Ashley RA, Inman BA, Wolpert JJ, Vandersteen DR, Husmann DA, Kramer SA. Multivariate Analysis of Intraureteral Versus Subtrigonal Techniques of Deflux Injection: Is Surgeon More Important than Technique? Podium Presentation, North Central Section of the American Urological Association, San Diego, CA, September 2006.
10. **Routh JC**, Ashley RA, Sebo TJ, Slezak J, Reinberg Y. Histologic Changes Associated with the Use of Subureteric Dextranomer/Hyaluronic Acid. Podium Presentation, North Central Section of the American Urological Association, San Diego, CA, September 2006.
11. **Routh JC**, Husmann DA. Long-Term Outcome of Immediate Repair of Longitudinal Bladder Neck Lacerations Extending into the Urethra in Children. Podium Presentation, North Central Section of the American Urological Association, San Diego, CA, September 2006.
12. **Routh JC**, Ashley RA, Slezak J, Blute ML, Frank I. Primary Gleason Score Does Not Affect Outcomes in Patients with Gleason 8 Prostate Cancer. Podium Presentation, North Central Section of the American Urological Association, San Diego, CA, September 2006.
13. Ashley RA, **Routh JC**, Siddiqui SA, Inman BA, Kramer SA, Husmann DA, Sebo TJ, Kwon ED. Pediatric Renal Cell Carcinoma: An Aggressive Tumor Distinct from its Adult Counterpart. Podium Presentation, North Central Section of the American Urological Association, San Diego, CA, September 2006.
14. Ashley RA, Inman BA, **Routh JC**, Rohlinger AL, Leibovich BC, Husmann DA, Kramer SA. Urachal Anomalies: When Should One Be Concerned? A Longitudinal Study of Urachal Remnants in Children and Adults. Podium Presentation, North Central Section of the American Urological Association, San Diego, CA, September 2006.
15. Ashley RA, **Routh JC**, Krambeck AE, Siddiqui SA, Slezak JS, Mynderse LA, Gettman MT, Blute ML. What Factors Influence Pain During Prostate Biopsy in the Office: Results from a Single Blind, Randomized, Prospective Trial. Podium Presentation, North Central Section of the American Urological Association, San Diego, CA, September 2006.
16. Ashley RA, **Routh JC**, Krambeck AE, Siddiqui SA, Slezak JS, Mynderse LA, Gettman MT, Blute ML. Pain Control for Office Biopsy of the Prostate: Results from a Single Blind, Randomized, Prospective Trial. Podium Presentation, North Central Section of the American Urological Association, San Diego, CA, September 2006.
17. Tollefson MK, **Routh JC**, Ashley RA, Husmann DA. Management of Iatrogenic Pediatric Ureteral Injuries. Podium Presentation, North Central Section of the American Urological Association, San Diego, CA, September 2006.

18. Inman BA, Ashley RA, **Routh JC**, Mynderse LA, Wilson TM, Myers RP, Gettman MT, Blute ML. Saturation Biopsy: Does it Really Detect More Cancer? Podium Presentation, North Central Section of the American Urological Association, San Diego, CA, September 2006.
19. Ashley RA, **Routh JC**, Inman BA, Rohlinger AL, Leibovich BC, Husmann DA, Kramer SA. Urachal Anomalies: When Should One Be Concerned? A Longitudinal Study of Urachal Remnants in Children and Adults. Podium Presentation, American Academy of Pediatrics, Atlanta, GA, October 2006.
20. **Routh JC**, Reinberg Y, Ashley RA, Inman BA, Wolpert JJ, Vandersteen DR, Husmann DA, Kramer SA. Multivariate Analysis of Intraureteral Versus Subtrigonal Techniques of Deflux Injection: Is Surgeon More Important than Technique? Podium Presentation, American Academy of Pediatrics, Atlanta, GA, October 2006.
21. **Routh JC**, Ashley RA, Sebo TJ, Slezak J, Reinberg Y. Histologic Changes Associated with the Use of Subureteric Dextranomer/Hyaluronic Acid. Podium Presentation, American Academy of Pediatrics, Atlanta, GA, October 2006.
22. **Routh JC**, Husmann DA. Long-Term Outcome of Immediate Repair of Longitudinal Bladder Neck Lacerations Extending into the Urethra in Children. Unmoderated Poster Presentation, American Academy of Pediatrics, Atlanta, GA, October 2006.
23. Inman BA, Ashley RA, **Routh JC**, Mynderse LA, Wilson TM, Myers RP, Gettman MT, Blute ML. Saturation Biopsy: Does it Really Detect More Cancer? Poster Presentation, American Society of Clinical Oncology, Orlando, FL, February 2007.
24. **Routh JC**, Ashley RA, Sebo TJ, Lohse CM, Husmann DA, Kramer SA, Kwon ED. B7-H1 Expression Predicts Tumor Recurrence in Patients with Favorable Histology Wilms' Tumor. Moderated Poster Presentation, American Urological Association, Anaheim, CA, May 2007.
25. **Routh JC**, Kramer SA, Ashley RA, Inman BA, Wolpert JJ, Vandersteen DR, Husmann DA, Reinberg Y. Bladder and Ureteral Anomalies do not Reduce the Efficacy of Dextranomer/Hyaluronic Acid for Vesicoureteral Reflux. Moderated Poster Presentation, American Urological Association, Anaheim, CA, May 2007.
26. **Routh JC**, Vandersteen DR, Ashley RA, Inman BA, Reinberg Y, Wolpert JJ, Kramer SA, Husmann DA. Routine Contralateral Deflux Injection in Patients with Unilateral Reflux: Increased Cost Without Increased Efficacy? Moderated Poster Presentation, American Urological Association, Anaheim, CA, May 2007.
27. Ashley RA, **Routh JC**, Krambeck AE, Siddiqui SA, Slezak JM, Mynderse LA, Gettman MT, Blute ML. Assessing Local Anesthesia for Prostate Biospy in the Office Setting: A Randomized, Prospective Clinical Trial. Moderated Poster Presentation, American Urological Association, Anaheim, CA, May 2007.
28. Ashley RA, **Routh JC**, Siddiqui SA, Inman BA, Sebo TJ, Husmann DA, Kramer SA, Kwon ED. Pediatric Renal Cell Carcinoma: An Aggressive Tumor with Biologic Features Distinct from its Adult Counterpart. Moderated Podium Presentation, American Urological Association, Anaheim, CA, May 2007.
29. Inman BA, Ashley RA, **Routh JC**, Wilson TM, Mynderse LA, Myers RP, Gettman MT, Blute ML. Saturation Biopsy: Does it Really Detect More Cancer? Moderated Poster Presentation, American Urological Association, Anaheim, CA, May 2007.
30. **Routh JC**, McGee SM, Roth TJ, Hollatz P, Vandersteen DR, Reinberg Y. Incisionless Sacral Nerve Stimulation in Children: Video Description of Technique and Interim Results. Video Presentation, Société Internationale d'Urologie, Paris, France, September 2007.
31. **Routh JC**, Inman BA, Reinberg Y. The Efficacy of Dextranomer/ Hyaluronic Acid for Treating Pediatric Vesico-Ureteral Reflux: Systematic Review and Meta-Analysis. Podium Presentation, American Academy of Pediatrics, San Francisco, CA, October 2007.
32. **Routh JC**, Tollefson MK, Ashley RA, Husmann DA. Iatrogenic Ureteral Injury: Can Adult Repair Techniques Be Used for Pediatric Patients? Moderated Poster Presentation, American Urologic Association, Orlando, FL, May 2008.
33. **Routh JC**, Alt AL, Ashley RA, Boyce TM, Kramer SA. Methicillin-Resistant Staphylococcus aureus Causing Genitourinary Abscess in Children: An Emerging Issue. Podium Presentation, American Urologic Association, Orlando, FL, May 2008.
34. **Routh JC**, Nicholson CA. Alphabet Soup of Organized Urology: The Logic (Or Lack Thereof) Behind the Letters. Invited Lecture, American Urologic Association Resident Committee Forum, Orlando, FL, May 2008.
35. McGee SM, **Routh JC**, Roth TJ, Hollatz P, Vandersteen DR, Reinberg Y. Incisionless Sacral Nerve Stimulation in Children: Video Description of Technique and Interim Results. Video presentation, American Urologic Association, Orlando, FL, May 2008.

36. Umbreit EC, **Routh JC**, Husmann DA. Non-Operative Management of Grade IV Blunt Renal Trauma in Children: Meta-Analysis & Review. Moderated Poster Presentation, American Urologic Association, Orlando, FL, May 2008.
37. McGee SM, **Routh JC**, Inman BA, Reinberg Y, Kramer SA, Vandersteen DR. Congenital Anterior Urethral Valves and Diverticuli: A Systematic Review of 300 Reported Cases From 1930 to 2007. Moderated Poster, North Central Section of the American Urological Association, Chicago, IL, September 2008.
38. **Routh JC**, Graham DA, Nelson CP. Utilization of Nephron-Sparing Surgery Among Children with Solid Renal Tumors: Variation by Surgical Specialty. Podium Presentation, American Urologic Association, Chicago, IL, April 2009.
39. Alt AL, **Routh JC**, Ashley RA, Kramer SA, Boyce TG. Increasing Prevalence and Associated Risk Factors for Methicillin-Resistant Staphylococcus aureus Bacteriuria. Moderated Poster Presentation, American Urologic Association, Chicago, IL, April 2009.
40. Higuchi TT, **Routh JC**, Granberg CF, Ashley RA, Inman BA, Husmann DA, Kramer SA, Vandersteen DR, Wolpert JJ, Reinberg Y. Success Rates of Repeat Endoscopic Injections are not Different than First Injections. Podium Presentation, American Urologic Association, Chicago, IL, April 2009.
41. McGee SM, **Routh JC**, Pereira CW, Gettman MT. Minimal Contamination of the Human Peritoneum after Transvesical Incision. Moderated Poster Presentation, American Urologic Association, Chicago, IL, April 2009.
42. **Routh JC**, Nelson CP, Graham DA, Lieu TA. Adoption of Endoscopic Injection for Vesicoureteral Reflux: Variation by Patient and Hospital Factors. Poster Presentation, Pediatric Academic Societies, Baltimore, MD, May 2009.
43. **Routh JC**, Nelson CP, Graham DA, Lieu TA. Adoption of Endoscopic Injection for Vesicoureteral Reflux: Variation by Patient and Hospital Factors. Poster Presentation, Children's Hospital Boston Dr. M. Judah Folkman Research Day, Boston, MA, May 2009.
44. **Routh JC**, Nelson CP, Graham DA, Lieu TA. Variation in Surgical Management of Vesicoureteral Reflux: Influence of Hospital and Patient Factors. Podium Presentation, National Research Service Award Trainees Research Conference, Chicago, IL, June 2009.
45. **Routh JC**, Grant FD, Nelson CP, Fahey FD, Treves ST, Lee RS. Economic and Radiation Costs of Screening Regimens for Vesico-Ureteral Reflux: a Decision Analysis. Podium Presentation, New England Section of the American Urological Association, Washington, DC, September 2009.
46. **Routh JC**, Grant FD, Nelson CP, Fahey FD, Treves ST, Lee RS. Economic and Radiation Costs of Screening Regimens for Vesico-Ureteral Reflux: a Decision Analysis. Podium Presentation, American Academy of Pediatrics, Washington, DC, October 2009.
47. **Routh JC**, Lee RS, Grant FD, Fahey FD, Treves ST, Nelson CP. Costs and Consequences of Screening Asymptomatic Siblings for Vesico-Ureteral Reflux: a Decision Analysis. Podium Presentation, American Academy of Pediatrics, Washington, DC, October 2009.
48. **Routh JC**, McGee SM, Ashley RA, Reinberg Y, Vandersteen DR. Predicting Renal Outcome in Children with Anterior Urethral Valves: Systematic Review and Meta-Analysis. Podium Presentation, American Academy of Pediatrics, Washington, DC, October 2009.
49. **Routh JC**, Graham DA, Nelson CP. Increased Intervention for Pediatric Urolithiasis over the Past Decade. Podium Presentation, American Academy of Pediatrics, Washington, DC, October 2009.
50. **Routh JC**, Graham DA, Nelson CP. Ketorolac is Underutilized after Ureteral Reimplantation Despite Being Associated with Reduced Length of Stay and Cost. Unmoderated Poster Presentation, American Academy of Pediatrics, Washington, DC, October 2009.
51. **Routh JC**, Nelson CP, Pennison M, Dobbins S, Rosoklija I, Ward VL, Nguyen HT. Influence Of Patient Factors And Parental Preferences On Treatment Choice In Uretero-Pelvic Junction Obstruction. Moderated Poster, Program for Patient Safety and Quality Grant Presentations, Children's Hospital Boston, Boston, MA, March 2010.
52. **Routh JC**. What You Need to Know about Pediatric Vesicoureteral Reflux Screening. Invited Lecture, Office of Fellowship Training Clinical Discussion Session Series, Children's Hospital Boston, Boston, MA, March 2010.
53. **Routh JC**, Gong EM, Cannon GM Jr, Yu RN, Gargollo PC, Nelson CP. Variation among Internet-Based Calculators in Predicting Spontaneous Resolution of Vesico-Ureteral Reflux. Poster Presentation, Children's Hospital Boston Dr. M. Judah Folkman Research Day, Boston, MA, April 2010.
54. Kokorowski P, **Routh JC**, Graham DA, Nelson CP. Variability in Age at Orchidopexy among U.S. Children with Cryptorchidism. Poster Presentation, Children's Hospital Boston Dr. M. Judah Folkman Research Day, Boston, MA, April 2010.

55. **Routh JC**, Cannon GM Jr, Laufer MR, Diamond DA, Gargollo PC. Management Strategies for MRKH-Related Vaginal Agenesis: a Cost-Effectiveness Analysis. Podium Presentation, World Congress of Pediatric Urology, San Francisco, CA, May 2010.
56. **Routh JC**, Gong EM, Cannon GM Jr, Yu RN, Gargollo PC, Nelson CP. Variation among Internet-Based Calculators in Predicting Spontaneous Resolution of Vesico-Ureteral Reflux. Display Poster, World Congress of Pediatric Urology, San Francisco, CA, May 2010.
57. **Routh JC**, Kokorowski P, Graham DA, Nelson CP. Variability in Age at Orchidopexy among U.S. Children with Cryptorchidism. Display Poster, World Congress of Pediatric Urology, San Francisco, CA, May 2010.
58. **Routh JC**, Lee RS, Grant FD, Fahey FD, Treves ST, Nelson CP. Costs and Consequences of Screening Asymptomatic Siblings for Vesicoureteral Reflux. Podium Presentation, National Research Service Award Trainees Research Conference, Boston, MA, June 2010.
59. **Routh JC**, Pennison M, Rosoklija I, Dobbins S, Kokorowski PJ, Huang L, Nelson CP. Racial Variation In Timing Of Pyeloplasty: The Essential Role Of Prenatal Versus Postnatal Diagnosis. Podium Presentation, American Academy of Pediatrics, San Francisco, CA, October 2010.
60. Kokorowski PJ, **Routh JC**, Estrada CR, Bauer SB, Borer JG, Retik AB, Nelson CP. Screening for Malignancy after Augmentation Cystoplasty: A Decision Analysis. Podium Presentation, American Academy of Pediatrics, San Francisco, CA, October 2010.
61. Ashley RA, **Routh JC**, Bani-Hani AH, Barthold JS, Figueroa TE. Urologic Impact of Intrathecal Baclofen Therapy. Unmoderated Poster Presentation, American Academy of Pediatrics, San Francisco, CA, October 2010.
62. Wang HH, Huang L, **Routh JC**, Kokorowski PJ, Nelson CP. Use of Ureteral Access Sheath During Ureterscopy in Children. Moderated Poster Presentation, American Academy of Pediatrics, San Francisco, CA, October 2010.
63. **Routh JC**, Estrada CR, Graham DA, Nelson CP. Utilization of Nephron-Sparing Surgery among Children with Malignant Renal Tumors. Poster Presentation, International Society of Pediatric Oncology (SIOP), Boston, MA, October 2010.
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**Expert Declaration of Jonathan Routh, M.D.**

**EXHIBIT B**

**JA279**

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**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

JOAQUÍN CARCAÑO; PAYTON GREY  
MCGARRY; H.S., by her next friend and  
mother, KATHRYN SCHAFER; ANGELA  
GILMORE; KELLY TRENT; BEVERLY  
NEWELL; and AMERICAN CIVIL  
LIBERTIES UNION OF NORTH  
CAROLINA,

Plaintiffs,

v.

PATRICK MCCRORY, in his official capacity  
as Governor of North Carolina; UNIVERSITY  
OF NORTH CAROLINA; BOARD OF  
GOVERNORS OF THE UNIVERSITY OF  
NORTH CAROLINA; and W. LOUIS  
BISSETTE, JR., in his official capacity as  
Chairman of the Board of Governors of the  
University of North Carolina,

Defendants.

No. 1:16-cv-236-TDS-JEP

**DECLARATION OF MONICA WALKER**

1. I provide this declaration for Plaintiffs in connection with the above-captioned litigation. I have actual knowledge of the matters stated in this declaration.

2. I am currently the Diversity Officer for the Guilford County Schools (“GCS”), the public school district for Guilford County, North Carolina. I am providing this declaration based on my experience as the Diversity Officer for the District—a position I have held for 10 years—with the support of the GCS Superintendents and the Guilford County Board of Education. I am not being compensated for providing this declaration.

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3. GCS is the third largest school district in North Carolina, with over 72,000 students on 127 school campuses, which house 69 elementary schools, 22 middle schools, 27 high school schools, and 10 alternative schools. The district is divided into four regions, each of which has its own superintendent and administration. The district also has a central office, located in Greensboro, North Carolina, with departments that serve the entire district. The Diversity Office is one of these departments.

4. Before I was hired as the Diversity Officer for GCS, I taught Justice and Policy Studies at Guilford College in Greensboro, North Carolina for three years, and prior to that, I worked in various leadership roles at St. Paul Community Baptist Church Ministry in Brooklyn, New York for almost fifteen years. I have also worked for over twenty years as an independent consultant, doing trainings around the country on critical race theory and understanding how race impacts systems and structures.

5. The mission of the Diversity Office is to create an educational organization where a variety of persons and perspectives are welcome, as well as to provide an environment where students and staff from all cultures and backgrounds may succeed. I am the head of the Diversity Office, and I supervise a full-time staff of five.

6. The Diversity Office fields requests from GCS schools about equity and inclusion for many types of students, including transgender students. I or my staff also provide all new staff, faculty, and personnel in the district—500 to 800 people per year—with cultural and diversity training, including training on the protocol I have developed for transgender students. Our office also offers diversity workshops for teachers and staff year round, on topics like: “What is Culture and How is it Experienced in the Classroom?” and “Poverty, Culture and Education,” and “Implicit Bias and Working with Other People’s Children.”

7. The assistance that the Diversity Office provides GCS schools is sometimes reactive (to a situation that arises) and sometimes proactive (to try prevent situations from arising). An example of a reactive request is that I have been called into schools to help them accommodate refugee students who are not English-language proficient. An example of proactive work is that I have done extensive training with a number of GCS schools to help them with their students from low-income families. 62% of students at GCS qualify for the national school lunch program (the federal program providing free school lunches to students from low-income families), and these students need different kinds of school supports than other students. My goal in all the cases I work on is to help GCS schools create safe and inclusive environments free from harassment, bullying and discrimination for all our students.

8. With respect to transgender students, I have developed a protocol based in the state law requirement of the School Violence Prevention Act, General Statutes Section 115C-407.15, that public school districts must prevent bullying, harassment, and discrimination based on many characteristics, including sexual orientation and gender identity. This protocol—which aims to help schools plan for the needs of transgender students—is the kind of thing I develop for working with a myriad of diverse students needs.

9. The first time I worked with a GCS school on a student gender transition issue was approximately five years ago. The transgender student involved was assigned the sex of male at birth, but between kindergarten and first grade, the student socially transitioned from male to female. The student's mother reached out to the school to plan for the student starting first grade as a girl, and the school then reached out to me. Based on my experience of working with this school to accommodate the needs of the transgender student and her mother, I started developing a protocol for supporting transgender students in the district.

10. Since then, I have worked with three other GCS schools to support two transgender students (one student transferred schools). In both cases, the students were also in elementary school when they transitioned—the first and second grades—and one was transitioning from male to female and the other was transitioning from female to male. In all three cases of transgender students at GCS schools, a parent of the student contacted school administrators to talk about how to support their child's gender transition.

11. The protocol that I have followed for working with GCS schools to accommodate their transgender students involves the following steps:

- a. I first try to bring together all the people who have a need to know about a student's gender transition—the student's parent or parents, the school principal, and key teachers and administrators—in a meeting.
- b. At the meeting, I emphasize that it is important to create a plan that will work for that particular student and their family tailored to their needs.
- c. The next thing I bring up at the meeting is confidentiality. How open is the student and their family to talking about the student's gender transition? The three transgender students whose cases I have worked on stayed in the same school after their transition (though one later transferred to another school), so their gender transitions were known to at least some people in those schools. But the degree to which the transgender students' parents felt comfortable about school's teachers and administrators being told about their children's gender transition has been very different. Some parents have been comfortable with being very open to all about their child's gender transition, and some parents are

insistent that knowledge of their child's gender transition be limited to as few teachers and administrators as possible.

- d. We next talk about the student's preferred name and gender pronouns—the names and pronouns that accord with the student's gender identity. None of the transgender students whose cases I have worked on had changed their legal name or gender. What this means is that the student's name and gender cannot be currently changed in our student PowerSchool database, and so every printout of student names (for class rosters, etc.) has the student's legal name and some printouts also reflect gender. I instruct the school administrators to put a note in the student's file that teachers and other staff should change the student's name/gender on the printouts.
  - e. We also talk about the student's use of restrooms. In my experience, this part of the conversation is the least complex: the student uses the restroom that accords with the student's gender identity. Although locker rooms have not come up in the three transgender student cases I have worked on, they will come up, and the same principle will apply in that context: the transgender student would use the locker room that accords with their gender identity.
  - f. Finally, we talk about how to handle questions about the student's gender transition from other students, teachers and administrators, and parents.
12. With the first transgender student whose case I worked on, it took some time to work out the details of the student's gender transition, and the student unfortunately was bullied on a school bus. After I developed the protocol for GCS schools and transgender students, the

transitions of the other two transgender students at their GCS schools have been seamless. All three transgender students are now thriving in their GCS schools.

13. There have been no complaints about student misbehavior by transgender students using the restrooms in GCS schools that accord with their gender identity. There also have not been any complaints about students who are not transgender misbehaving in restrooms because they use the restroom with a transgender student.

14. There is no question of student nudity in restrooms in GCS schools. All GCS school restrooms are either single-user (in pre-kindergarten and kindergarten, where a single restroom is in each classroom) or multi-user with stalls (in first through twelfth grade).

15. All GCS schools also have single-user restrooms, typically reserved for teachers and staff. I encourage GCS schools to offer access to these restrooms to any student who has a privacy concern with sharing the multi-user restrooms with other students, whether transgender or not. To my knowledge, no student has requested to use a single-user restroom for privacy-related reasons.

16. I am also confident that any student's privacy-related concerns about changing in a locker room could be accommodated. I am aware that students are sometimes uncomfortable changing in front of each other in locker rooms—maybe because the student is overweight, or unpopular with the others students, or just shy. To my knowledge, students have not asked for a privacy accommodation to address this discomfort, but if a student asked, I would be prepared to work with a school to accommodate that request.

17. Enforcing the restroom and locker room mandate of H.B. 2 in GCS schools would harm GCS students. Because of their age, GCS transgender students will not be able to change their birth certificates, as they will not have had "sex reassignment surgery," which I understand

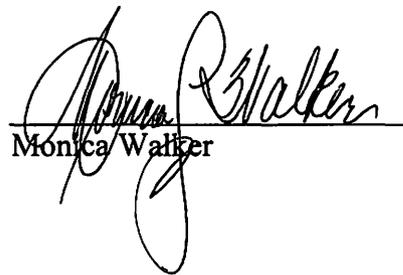
is required under North Carolina law to make such a change. As a result, they will not be able to meet the definition in H.B. 2 of having a “biological sex” that is consistent with their gender identity, their gender presentation, and the gender that others know them to be.

18. I understand my job at GCS to be to protect students and keep them safe. To protect our transgender students and keep them safe from bullying and harassment, they must be able to use the restrooms and locker rooms that accord with their gender identity.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on May 13, 2016.

By:

  
\_\_\_\_\_  
Monica Walker

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

JOAQUÍN CARCAÑO, et al.,

*Plaintiffs,*

v.

PATRICK MCCRORY, et al.,

*Defendants.*

No. 1:16-cv-00236-TDS-JEP

**DECLARATION OF LUKE C. PLATZER**

1. I am a member of the bar of the State of New York and of the District of Columbia and have been specially admitted to this Court pursuant to L.R. 83.1(d). I am a partner in the law firm Jenner & Block LLP, counsel for Plaintiffs in this action. I make this declaration on personal knowledge, in support of Plaintiffs' Motion for a Preliminary Injunction.

2. Attached as Exhibit A to this declaration is a true and correct copy of N.C. House Bill 2, 2d Extra Sess. (2016) (Sess. Law 2016-3), *available at* <http://www.ncleg.net/Sessions/2015E2/Bills/House/PDF/H2v4.pdf>.

3. Attached as Exhibit B to this declaration is a true and correct copy of Charlotte Ordinance No. 7056, Ordinance Book 59, Page 743 (Feb. 22, 2016), *available at* [https://www2.municode.com/library/nc/charlotte/codes/code\\_of\\_ordinances](https://www2.municode.com/library/nc/charlotte/codes/code_of_ordinances).

4. Attached as Exhibit C to this declaration is a true and correct copy of Memorandum from City Attorney Robert E. Hagemann, City of Charlotte, to Mayor and City Council (Feb. 3, 2016), *available at*

<http://charlottenc.legistar.com/gateway.aspx?M=F&ID=3f33c901-4c64-4011-9355-6fda5ee4e240.pdf>.

5. Attached as Exhibit D to this declaration is a true and correct copy of Charlotte City Council Meeting Minutes (Feb. 22, 2016), *available at*

<http://charmeck.org/city/charlotte/CityClerk/Minutes/February%2022,%202016.pdf>.

6. Attached as Exhibit E to this declaration is a true and correct copy of Steve Harrison, *Charlotte City Council Approves LGBT Protections in 7-4 Vote*, Charlotte Observer (Feb. 22, 2016), <http://www.charlotteobserver.com/news/politics-government/article61786967.html>.

7. Attached as Exhibit F to this declaration is a true and correct copy of Steve Harrison, *McCrory: If Charlotte Approves LGBT Protection, 'Immediate' State Response Likely*, Charlotte Observer (Feb. 22, 2016),

<http://www.charlotteobserver.com/news/politics-government/article61307857.html>.

8. Attached as Exhibit G to this declaration is a true and correct copy of Adam Lawson, *Local Legislators Vow to Reverse Charlotte LGBT Ordinance*, Lincoln Times-News (Feb. 23, 2016) <http://www.lincolntimesnews.com/2016/02/23/local-legislators-vow-to-reverse-charlotte-lgbt-ordinance/>.

9. Attached as Exhibit H to this declaration is a true and correct copy of Colleen Jenkins, *N.C. City's Vote To Expand Transgender Rights Draws State*

*Opposition*, Reuters (Feb. 23, 2016), <http://www.reuters.com/article/us-north-carolina-transgender-idUSKCN0VW295>.

10. Attached as Exhibit I to this declaration is a true and correct copy of Jim Morrill, *NC House Speaker Weighs Special Session on Charlotte LGBT Ordinance*, News & Observer (Feb. 25, 2016), <http://www.newsobserver.com/news/politics-government/state-politics/article62475792.html>.

11. Attached as Exhibit J to this declaration is a transcript, prepared at my direction, of Ben Brown, Video Interview, *Speaker Tim Moore on Transgender Bathrooms*, News & Observer (Feb. 25, 2016), <http://www.newsobserver.com/news/politics-government/state-politics/article62503082.html>.

12. Attached as Exhibit K to this declaration is a true and correct copy of Amy Elliott, *Group Rallies Against Proposed Special Session on Non-Discrimination Ordinance*, Time Warner Cable News (Central N.C.) (Mar. 17, 2016), <http://www.twcnews.com/nc/triangle-sandhills/news/2016/03/17/group-rallies-against-proposed-special-session-on-charlotte-s-non-discrimination-ordinance.html>.

13. Attached as Exhibit L to this declaration is a true and correct copy of Joe Killian, *General Assembly May Hold Special Session to Block New Charlotte LGBT Protections*, Greensboro News & Record (Feb. 25, 2016), [http://www.greensboro.com/news/general-assembly-may-hold-special-session-to-block-new-charlotte/article\\_e22def62-350c-51d5-b558-223520146afc.html](http://www.greensboro.com/news/general-assembly-may-hold-special-session-to-block-new-charlotte/article_e22def62-350c-51d5-b558-223520146afc.html).

14. Attached as Exhibit M to this declaration is a true and correct copy of Jim Morrill, *Republican Lawmakers Blast Charlotte's LGBT Protections*, News & Observer (Mar. 3, 2016), <http://www.newsobserver.com/news/politics-government/politics-columns-blogs/under-the-dome/article63893592.html>.

15. Attached as Exhibit N to this declaration is a true and correct copy of *Quotes of the Week*, Salisbury Post (Mar. 25, 2016), <http://www.salisburypost.com/2016/03/25/quotes-of-the-week-142/>.

16. Attached as Exhibit O to this declaration is a true and correct copy of Carolyn Steeves, *Legislature Trumps Charlotte; Overrules Non-Discrimination Ordinance*, Monroe Enquirer Journal (Mar. 24, 2016), [http://www.enquirerjournal.com/news/legislature-trumps-charlotte-overrules-non-discrimination-ordinance/article\\_0d8957a8-f1f9-11e5-a391-f7d5aaa51078.html](http://www.enquirerjournal.com/news/legislature-trumps-charlotte-overrules-non-discrimination-ordinance/article_0d8957a8-f1f9-11e5-a391-f7d5aaa51078.html).

17. Attached as Exhibit P to this declaration is a true and correct copy of Mark Binker, *McCrorry Opposes Charlotte Bathroom Law But Doesn't Want a Special Session*, WRAL (Feb. 29, 2016), <http://www.wral.com/mccrorry-opposes-charlotte-bathroom-law-but-doesn-t-want-a-special-session/15450101/>.

18. Attached as Exhibit Q to this declaration is a true and correct copy of N.C. House Speaker Tim Moore (@NCHouseSpeaker), *I have received...*, Twitter (Mar. 3, 2016, 12:35 PM), <https://twitter.com/nchousespeaker/status/705491809762480128>.

19. Attached as Exhibit R to this declaration is a true and correct copy of Colin Campbell, *Leaders Aren't Releasing Bill for Wednesday's NC Special Session on*

*Bathroom*, Charlotte Observer (Mar. 22, 2016),

<http://www.charlotteobserver.com/news/politics-government/article67566492.html>.

20. Attached as Exhibit S to this declaration is a transcript, prepared at my direction, of Proceedings of the N.C. House of Representatives, 2d Extra Sess., 1st Legis. Day at 0:10:00-0:11:09 (Mar. 23, 2016), *available at*

<http://www.ncleg.net/DocumentSites/HouseDocuments/2015-2016%20Session/Audio%20Archives/2016/03-23-2016.mp3>.

21. Attached as Exhibit T to this declaration is a true and correct copy of Henry Gargan, *Triangle Governments Scramble to Decipher Law's Impact*, News & Observer (Mar. 24, 2016), <http://www.newsobserver.com/news/politics-government/article68123457.html>.

22. Attached as Exhibit U to this declaration is a true and correct copy of Steve Harrison, *NC Gov Pat McCrory Signs into Law Bill Restricting LGBT Protections*, Charlotte Observer (Mar. 23, 2016), <http://www.charlotteobserver.com/news/local/article67845317.html>.

23. Attached as Exhibit V to this declaration is a true and correct copy of Associated Press, *McCrory Signs Bill Blocking LGBT Protections*, Cateret County News-Times (Mar. 23, 2016), [http://www.carolinacoastonline.com/news\\_times/article\\_fc962d82-f16b-11e5-ba84-cf764fa25188.html](http://www.carolinacoastonline.com/news_times/article_fc962d82-f16b-11e5-ba84-cf764fa25188.html).

24. Attached as Exhibit W to this declaration is a true and correct copy of Camila Domonoske, *North Carolina Passes Law Blocking Measures to Protect LGBT*

*People*, NPR (Mar. 24, 2016), <http://www.npr.org/sections/thetwo-way/2016/03/24/471700323/north-carolina-passes-law-blocking-measures-to-protect-lgbt-people>.

25. Attached as Exhibit X to this declaration is a true and correct copy of N.C. Exec. Order 93 (Apr. 12, 2016), *available at* [https://ncgovernor.s3.amazonaws.com/s3fs-public/documents/files/McCrory%20EO%2093\\_0.pdf](https://ncgovernor.s3.amazonaws.com/s3fs-public/documents/files/McCrory%20EO%2093_0.pdf).

26. Attached as Exhibit Y to this declaration is a true and correct copy of Colin Campbell, *McCrory Distances Himself from Sexual Predator Claims Backing House Bill 2*, News & Observer (Apr. 29, 2016), <http://www.newsobserver.com/news/politics-government/politics-columns-blogs/under-the-dome/article74648442.html>.

27. Attached as Exhibit Z to this declaration is a true and correct copy of Fox News Sunday, *Manafort on Trump's Fight To Rally GOP, Defeat Democrats; Governor McCrory on Showdown over NC's Transgender Bathroom Law*, Fox News (May 8, 2016), <http://www.foxnews.com/transcript/2016/05/08/manafort-on-trump-fight-to-rally-gop-defeat-democrats-gov-mccrory-on-showdown/>.

28. Attached as Exhibit AA to this declaration is a true and correct copy of Letter from Margaret Spellings, President, UNC, to Vanita Gupta, Principal Dep. Asst. Att'y Gen., U.S. Dep't of Justice (May 9, 2016), *available at* [http://www.northcarolina.edu/sites/default/files/05\\_09\\_16\\_letter\\_to\\_doj.pdf](http://www.northcarolina.edu/sites/default/files/05_09_16_letter_to_doj.pdf).

29. Attached as Exhibit AB to this declaration is a true and correct copy of Press Release, UNC, *Statements Following Special Meeting of the UNC Board of Governors* (May 10, 2016), available at [http://www.northcarolina.edu/sites/default/files/statements\\_following\\_special\\_meeting\\_of\\_the\\_unc\\_board\\_of\\_governors.pdf](http://www.northcarolina.edu/sites/default/files/statements_following_special_meeting_of_the_unc_board_of_governors.pdf).

30. Attached as Exhibit AC to this declaration is a true and correct copy of Letter from James A. Ferg-Cadima, U.S. Dep't of Educ. Office of Civil Rights (Jan. 7, 2015), *exhibit B to Statement of Interest of the United States* (D.E. 28, 28-2), *G.G. v. Gloucester County Sch. Bd.*, No. 4:15-cv-00054 (E.D. Va. filed June 29, 2015), available at <https://www.justice.gov/sites/default/files/crt/legacy/2015/07/09/gloucestersoi.pdf>.

31. Attached as Exhibit AD to this declaration is a true and correct copy of Letter from Catherine E. Lhamon, Asst. Sec. for Civil Rights, U.S. Dep't of Educ, and Vanita Gupta, Principal Dep. Asst. Att'y Gen. for Civil Rights, U.S. Dep't of Justice (May 13, 2016), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>.

32. Attached as Exhibit AE to this declaration is a true and correct copy of N.C. Governor Patrick McCrory (@PatMcCroryNC), *Ordinance defied common...*, Twitter (Mar. 23, 2016, 7:16 PM), <https://twitter.com/PatMcCroryNC/status/712825502772269056>.

33. Attached as Exhibit AF to this declaration is a true and correct copy of Michael Gordon, *Critics Say New Law Targets LGBT and Undermines Workplace*

*Protections*, Charlotte Observer (Mar. 24, 2016),

<http://www.charlotteobserver.com/news/politics-government/article68103427.html>.

34. Attached as Exhibit AG to this declaration is a true and correct copy of Memorandum from U.S. Att’y Gen. to U.S. Attorneys (Dec. 15, 2014), *available at* <https://www.justice.gov/file/188671/download>.

35. Attached as Exhibit AH to this declaration is a true and correct copy of *Sommerville v. Hobby Lobby Stores*, Charge Nos. 2011CN2993/2011CP2994 (Ill. Hum. Rts. Comm’n May 15, 2015).

36. Attached as Exhibit AI to this declaration is a true and correct copy of Brad Sears et al., *Documenting Discrimination on the Basis of Sexual Orientation and Gender Identity in State Employment*, Executive Summary, Williams Institute (2009), *available at* <http://williamsinstitute.law.ucla.edu/wp-content/uploads/ExecutiveSummary1.pdf>.

37. Attached as Exhibit AJ to this declaration is a true and correct copy of Jaime M. Grant et al., *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, Executive Summary, National Center for Transgender Equality and National Gay and Lesbian Task Force (2011), *available at* [http://www.thetaskforce.org/static\\_html/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf).

38. Attached as Exhibit AK to this declaration is a true and correct copy of Gary J. Gates, *How many people are lesbian, gay, bisexual, and transgender?* Williams Institute (Apr. 2011), *available at* <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-How-Many-People-LGBT-Apr-2011.pdf>.

39. Attached as Exhibit AL to this declaration is a true and correct copy of Erin Fitzgerald, *A Comprehensive Guide to the Debunked "Bathroom Predator" Myth*, Media Matters for America (May 5, 2016)

<http://www.mediamatters.org/research/2016/05/05/comprehensive-guide-debunked-bathroom-predator-myth/210200>.

40. Attached as Exhibit AM to this declaration is a true and correct copy of U.S. Dep't of Educ., Office of Elementary and Secondary Educ., Office of Safe and Healthy Students, *Examples of Policies and Emerging Practices for Supporting Transgender Students* (May 2016), available at

<http://www2.ed.gov/about/offices/list/oese/oshs/emergingpractices.pdf>.

41. Attached as Exhibit AN to this declaration is a true and correct copy of Minn. Dep't of Health, *Document Requirements to Amend a Birth Record*

<http://www.health.state.mn.us/divs/chs/osr/reqdocs.html>.

42. Attached as Exhibit AO to this declaration is a true and correct copy of Letter from Guy Warner, Director, N.Y. State Dep't of Health, Bureau of Vital Records (Sept. 28, 2015), available at

<http://www.transequality.org/sites/default/files/docs/id/Instruction%20sheet%2005-23-14.docx#overlay-context=documents/state/new-york>.

43. Attached as Exhibit AP to this declaration is a true and correct copy of Wash. State Dep't of Health, *Gender Change on a Birth Certificate*,

<http://www.doh.wa.gov/LicensesPermitsandCertificates/BirthDeathMarriageandDivorce/GenderChange>.

44. Attached as Exhibit AQ to this declaration is a true and correct copy of Press Release, Office of N.C. Gov. Patrick McCrory, *Governor McCrory Takes Action to Protect Privacy and Equality* (Apr. 12, 2016), available at <http://governor.nc.gov/press-release/governor-mccrory-takes-action-protect-privacy-and-equality>.

45. Attached as Exhibit AR to this declaration is a true and correct copy of *Dep't of Fair Emp't and Hous. v. Am. Pac. Corp.*, No. 34-2013-00151153 (Cal. Super. Ct. Mar. 13, 2014).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 16th day of May, 2016.



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Luke C. Platzer

**Declaration of Luke C. Platzer**

**EXHIBIT A**

**JA298**

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SECOND EXTRA SESSION 2016**

**SESSION LAW 2016-3  
HOUSE BILL 2**

1 AN ACT TO PROVIDE FOR SINGLE-SEX MULTIPLE OCCUPANCY BATHROOM AND  
2 CHANGING FACILITIES IN SCHOOLS AND PUBLIC AGENCIES AND TO CREATE  
3 STATEWIDE CONSISTENCY IN REGULATION OF EMPLOYMENT AND PUBLIC  
4 ACCOMMODATIONS.

5 Whereas, the North Carolina Constitution directs the General Assembly to provide for  
6 the organization and government of all cities and counties and to give cities and counties such  
7 powers and duties as the General Assembly deems advisable in Section 1 of Article VII of the  
8 North Carolina Constitution; and

9 Whereas, the North Carolina Constitution reflects the importance of statewide laws  
10 related to commerce by prohibiting the General Assembly from enacting local acts regulating  
11 labor, trade, mining, or manufacturing in Section 24 of Article II of the North Carolina  
12 Constitution; and

13 Whereas, the General Assembly finds that laws and obligations consistent statewide for  
14 all businesses, organizations, and employers doing business in the State will improve intrastate  
15 commerce; and

16 Whereas, the General Assembly finds that laws and obligations consistent statewide for  
17 all businesses, organizations, and employers doing business in the State benefit the businesses,  
18 organizations, and employers seeking to do business in the State and attracts new businesses,  
19 organizations, and employers to the State; Now, therefore,

20  
21 The General Assembly of North Carolina enacts:  
22  
23

24 **PART I. SINGLE-SEX MULTIPLE OCCUPANCY BATHROOM AND CHANGING**  
25 **FACILITIES**

26 **SECTION 1.1.** G.S. 115C-47 is amended by adding a new subdivision to read:

27 "(63) To Establish Single-Sex Multiple Occupancy Bathroom and Changing  
28 Facilities. – Local boards of education shall establish single-sex multiple  
29 occupancy bathroom and changing facilities as provided in G.S. 115C-521.2."

30 **SECTION 1.2.** Article 37 of Chapter 115C of the General Statutes is amended by  
31 adding a new section to read:

32 **"§ 115C-521.2. Single-sex multiple occupancy bathroom and changing facilities.**

33 (a) Definitions. – The following definitions apply in this section:

34 (1) Biological sex. – The physical condition of being male or female, which is  
35 stated on a person's birth certificate.

36 (2) Multiple occupancy bathroom or changing facility. – A facility designed or  
37 designated to be used by more than one person at a time where students may be  
38 in various states of undress in the presence of other persons. A multiple  
39 occupancy bathroom or changing facility may include, but is not limited to, a  
40 school restroom, locker room, changing room, or shower room.

41 (3) Single occupancy bathroom or changing facility. – A facility designed or  
42 designated to be used by only one person at a time where students may be in  
43 various states of undress. A single occupancy bathroom or changing facility  
44 may include, but is not limited to, a single stall restroom designated as unisex  
45 or for use based on biological sex.

46 (b) Single-Sex Multiple Occupancy Bathroom and Changing Facilities. – Local boards of  
47 education shall require every multiple occupancy bathroom or changing facility that is designated  
48 for student use to be designated for and used only by students based on their biological sex.



1 (c) Accommodations Permitted. – Nothing in this section shall prohibit local boards of  
2 education from providing accommodations such as single occupancy bathroom or changing  
3 facilities or controlled use of faculty facilities upon a request due to special circumstances, but in  
4 no event shall that accommodation result in the local boards of education allowing a student to use  
5 a multiple occupancy bathroom or changing facility designated under subsection (b) of this section  
6 for a sex other than the student's biological sex.

7 (d) Exceptions. – This section does not apply to persons entering a multiple occupancy  
8 bathroom or changing facility designated for use by the opposite sex:

9 (1) For custodial purposes.

10 (2) For maintenance or inspection purposes.

11 (3) To render medical assistance.

12 (4) To accompany a student needing assistance when the assisting individual is an  
13 employee or authorized volunteer of the local board of education or the  
14 student's parent or authorized caregiver.

15 (5) To receive assistance in using the facility.

16 (6) To accompany a person other than a student needing assistance.

17 (7) That has been temporarily designated for use by that person's biological sex."

18 **SECTION 1.3.** Chapter 143 of the General Statutes is amended by adding a new  
19 Article to read:

20 "Article 81.

21 "Single-Sex Multiple Occupancy Bathroom and Changing Facilities.

22 **"§ 143-760. Single-sex multiple occupancy bathroom and changing facilities.**

23 (a) Definitions. – The following definitions apply in this section:

24 (1) Biological sex. – The physical condition of being male or female, which is  
25 stated on a person's birth certificate.

26 (2) Executive branch agency. – Agencies, boards, offices, departments, and  
27 institutions of the executive branch, including The University of North Carolina  
28 and the North Carolina Community College System.

29 (3) Multiple occupancy bathroom or changing facility. – A facility designed or  
30 designated to be used by more than one person at a time where persons may be  
31 in various states of undress in the presence of other persons. A multiple  
32 occupancy bathroom or changing facility may include, but is not limited to, a  
33 restroom, locker room, changing room, or shower room.

34 (4) Public agency. – Includes any of the following:

35 a. Executive branch agencies.

36 b. All agencies, boards, offices, and departments under the direction and  
37 control of a member of the Council of State.

38 c. "Unit" as defined in G.S. 159-7(b)(15).

39 d. "Public authority" as defined in G.S. 159-7(b)(10).

40 e. A local board of education.

41 f. The judicial branch.

42 g. The legislative branch.

43 h. Any other political subdivision of the State.

44 (5) Single occupancy bathroom or changing facility. – A facility designed or  
45 designated to be used by only one person at a time where persons may be in  
46 various states of undress. A single occupancy bathroom or changing facility  
47 may include, but is not limited to, a single stall restroom designated as unisex  
48 or for use based on biological sex.

49 (b) Single-Sex Multiple Occupancy Bathroom and Changing Facilities. – Public agencies  
50 shall require every multiple occupancy bathroom or changing facility to be designated for and only  
51 used by persons based on their biological sex.

52 (c) Accommodations Permitted. – Nothing in this section shall prohibit public agencies  
53 from providing accommodations such as single occupancy bathroom or changing facilities upon a  
54 person's request due to special circumstances, but in no event shall that accommodation result in  
55 the public agency allowing a person to use a multiple occupancy bathroom or changing facility  
56 designated under subsection (b) of this section for a sex other than the person's biological sex.

57 (d) Exceptions. – This section does not apply to persons entering a multiple occupancy  
58 bathroom or changing facility designated for use by the opposite sex:

59 (1) For custodial purposes.

- 1           (2) For maintenance or inspection purposes.  
 2           (3) To render medical assistance.  
 3           (4) To accompany a person needing assistance.  
 4           (4a) For a minor under the age of seven who accompanies a person caring for that  
 5               minor.  
 6           (5) That has been temporarily designated for use by that person's biological sex."  
 7

8 **PART II. STATEWIDE CONSISTENCY IN LAWS RELATED TO EMPLOYMENT AND**  
 9 **CONTRACTING**

10 **SECTION 2.1.** G.S. 95-25.1 reads as rewritten:

11 "**§ 95-25.1. Short title and legislative purpose; local governments preempted.**

12       (a) This Article shall be known and may be cited as the "Wage and Hour Act."  
 13       (b) The public policy of this State is declared as follows: The wage levels of employees,  
 14 hours of labor, payment of earned wages, and the well-being of minors are subjects of concern  
 15 requiring legislation to promote the general welfare of the people of the State without jeopardizing  
 16 the competitive position of North Carolina business and industry. The General Assembly declares  
 17 that the general welfare of the State requires the enactment of this law under the police power of  
 18 the State.

19       (c) The provisions of this Article supersede and preempt any ordinance, regulation,  
 20 resolution, or policy adopted or imposed by a unit of local government or other political  
 21 subdivision of the State that regulates or imposes any requirement upon an employer pertaining to  
 22 compensation of employees, such as the wage levels of employees, hours of labor, payment of  
 23 earned wages, benefits, leave, or well-being of minors in the workforce. This subsection shall not  
 24 apply to any of the following:

- 25           (1) A local government regulating, compensating, or controlling its own  
 26 employees.  
 27           (2) Economic development incentives awarded under Chapter 143B of the General  
 28 Statutes.  
 29           (3) Economic development incentives awarded under Article 1 of Chapter 158 of  
 30 the General Statutes.  
 31           (4) A requirement of federal community development block grants.  
 32           (5) Programs established under G.S. 153A-376 or G.S. 160A-456."

33 **SECTION 2.2.** G.S. 153A-449(a) reads as rewritten:

34       (a) Authority. – A county may contract with and appropriate money to any person,  
 35 association, or corporation, in order to carry out any public purpose that the county is authorized  
 36 by law to engage in. A county may not require a private contractor under this section to abide by  
 37 ~~any restriction that the county could not impose on all employers in the county, such as paying~~  
 38 ~~minimum wage or providing paid sick leave to its employees, regulations or controls on the~~  
 39 ~~contractor's employment practices or mandate or prohibit the provision of goods, services, or~~  
 40 ~~accommodations to any member of the public as a condition of bidding on a contract or a~~  
 41 ~~qualification-based selection, except as otherwise required or allowed by State law."~~

42 **SECTION 2.3.** G.S. 160A-20.1(a) reads as rewritten:

43       (a) Authority. – A city may contract with and appropriate money to any person,  
 44 association, or corporation, in order to carry out any public purpose that the city is authorized by  
 45 law to engage in. A city may not require a private contractor under this section to abide by ~~any~~  
 46 ~~restriction that the city could not impose on all employers in the city, such as paying minimum~~  
 47 ~~wage or providing paid sick leave to its employees, regulations or controls on the contractor's~~  
 48 ~~employment practices or mandate or prohibit the provision of goods, services, or accommodations~~  
 49 ~~to any member of the public as a condition of bidding on a contract or a~~  
 50 ~~qualification-based selection, except as otherwise required or allowed by State law."~~

51  
 52 **PART III. PROTECTION OF RIGHTS IN EMPLOYMENT AND PUBLIC**  
 53 **ACCOMMODATIONS**

54 **SECTION 3.1.** G.S. 143-422.2 reads as rewritten:

55 "**§ 143-422.2. Legislative declaration.**

56       (a) It is the public policy of this State to protect and safeguard the right and opportunity of  
 57 all persons to seek, obtain and hold employment without discrimination or abridgement on  
 58 account of race, religion, color, national origin, age, biological sex or handicap by employers  
 59 which regularly employ 15 or more employees.

1 (b) It is recognized that the practice of denying employment opportunity and  
2 discriminating in the terms of employment foments domestic strife and unrest, deprives the State  
3 of the fullest utilization of its capacities for advancement and development, and substantially and  
4 adversely affects the interests of employees, employers, and the public in general.

5 (c) The General Assembly declares that the regulation of discriminatory practices in  
6 employment is properly an issue of general, statewide concern, such that this Article and other  
7 applicable provisions of the General Statutes supersede and preempt any ordinance, regulation,  
8 resolution, or policy adopted or imposed by a unit of local government or other political  
9 subdivision of the State that regulates or imposes any requirement upon an employer pertaining to  
10 the regulation of discriminatory practices in employment, except such regulations applicable to  
11 personnel employed by that body that are not otherwise in conflict with State law."

12 **SECTION 3.2.** G.S. 143-422.3 reads as rewritten:

13 **"§ 143-422.3. Investigations; conciliations.**

14 The Human Relations Commission in the Department of Administration shall have the  
15 authority to receive charges of discrimination from the Equal Employment Opportunity  
16 Commission pursuant to an agreement under Section 709(b) of Public Law 88-352, as amended by  
17 Public Law 92-261, and investigate and conciliate charges of discrimination. Throughout this  
18 process, the agency shall use its good offices to effect an amicable resolution of the charges of  
19 discrimination. This Article does not create, and shall not be construed to create or support, a  
20 statutory or common law private right of action, and no person may bring any civil action based  
21 upon the public policy expressed herein."

22 **SECTION 3.3.** Chapter 143 of the General Statutes is amended by adding a new  
23 Article to read:

24 "Article 49B.

25 "Equal Access to Public Accommodations.

26 **"§ 143-422.10. Short title.**

27 This Article shall be known and may be cited as the Equal Access to Public Accommodations  
28 Act.

29 **"§ 143-422.11. Legislative declaration.**

30 (a) It is the public policy of this State to protect and safeguard the right and opportunity of  
31 all individuals within the State to enjoy fully and equally the goods, services, facilities, privileges,  
32 advantages, and accommodations of places of public accommodation free of discrimination  
33 because of race, religion, color, national origin, or biological sex, provided that designating  
34 multiple or single occupancy bathrooms or changing facilities according to biological sex, as  
35 defined in G.S. 143-760(a)(1), (3), and (5), shall not be deemed to constitute discrimination.

36 (b) The General Assembly declares that the regulation of discriminatory practices in places  
37 of public accommodation is properly an issue of general, statewide concern, such that this Article  
38 and other applicable provisions of the General Statutes supersede and preempt any ordinance,  
39 regulation, resolution, or policy adopted or imposed by a unit of local government or other  
40 political subdivision of the State that regulates or imposes any requirement pertaining to the  
41 regulation of discriminatory practices in places of public accommodation.

42 **"§ 143-422.12. Places of public accommodation – defined.**

43 For purposes of this Article, places of public accommodation has the same meaning as defined  
44 in G.S. 168A-3(8), but shall exclude any private club or other establishment not, in fact, open to  
45 the public.

46 **"§ 143-422.13. Investigations; conciliations.**

47 The Human Relations Commission in the Department of Administration shall have the  
48 authority to receive, investigate, and conciliate complaints of discrimination in public  
49 accommodations. Throughout this process, the Human Relations Commission shall use its good  
50 offices to effect an amicable resolution of the complaints of discrimination. This Article does not  
51 create, and shall not be construed to create or support, a statutory or common law private right of  
52 action, and no person may bring any civil action based upon the public policy expressed herein."

53  
54 **PART IV. SEVERABILITY**

55 **SECTION 4.** If any provision of this act or its application is held invalid, the  
56 invalidity does not affect other provisions or applications of this act that can be given effect  
57 without the invalid provisions or application, and to this end the provisions of this act are  
58 severable. If any provision of this act is temporarily or permanently restrained or enjoined by  
59 judicial order, this act shall be enforced as though such restrained or enjoined provisions had not

1 been adopted, provided that whenever such temporary or permanent restraining order or injunction  
2 is stayed, dissolved, or otherwise ceases to have effect, such provisions shall have full force and  
3 effect.

4  
5 **PART V. EFFECTIVE DATE**

6 **SECTION 5.** This act is effective when it becomes law and applies to any action  
7 taken on or after that date, to any ordinance, resolution, regulation, or policy adopted or amended  
8 on or after that date, and to any contract entered into on or after that date. The provisions of  
9 Sections 2.1, 2.2, 2.3, 3.1, 3.2, and 3.3 of this act supersede and preempt any ordinance, resolution,  
10 regulation, or policy adopted prior to the effective date of this act that purports to regulate a  
11 subject matter preempted by this act or that violates or is not consistent with this act, and such  
12 ordinances, resolutions, regulations, or policies shall be null and void as of the effective date of  
13 this act.

14 In the General Assembly read three times and ratified this the 23<sup>rd</sup> day of March, 2016.

15  
16  
17 s/ Daniel J. Forest  
18 President of the Senate

19  
20  
21 s/ Tim Moore  
22 Speaker of the House of Representatives

23  
24  
25 s/ Pat McCrory  
26 Governor

27  
28  
29 Approved 9:57 p.m. this 23<sup>rd</sup> day of March, 2016

**Declaration of Luke C. Platzer**

**EXHIBIT B**

**JA304**

February 22, 2016

Ordinance Book 59, Page 743

ORDINANCE NUMBER: 7056 AMENDING CHAPTERS 2, 12, and 22

**AN ORDINANCE AMENDING CHAPTER 2 OF THE CHARLOTTE CITY CODE ENTITLED "ADMINISTRATION", CHAPTER 12 ENTITLED "HUMAN RELATIONS", AND CHAPTER 22 ENTITLED "VEHICLES FOR HIRE"**

**BE IT ORDAINED** by the City Council of the City of Charlotte, North Carolina, that:

Section 1. Article V of Chapter 2 of the Charlotte City Code is amended as follows:

"Sec. 2-151. - Policy statement.

It is the policy of the city not to enter into a contract with any business firm that has discriminated in the solicitation, selection, hiring or treatment of vendors, suppliers, subcontractors or commercial customers on the basis of race, gender, religion, national origin, ethnicity, age, marital status, familial status, sexual orientation, gender identity, gender expression, or disability, or on the basis of any otherwise unlawful use of characteristics regarding such vendor's, supplier's, or commercial customer's employees or owners in connection with a city contract or solicitation; provided that nothing in this commercial non-discrimination policy shall prohibit or limit otherwise lawful efforts to remedy the effects of discrimination that has occurred or is occurring in the marketplace.

Sec. 2-152. - Purpose and intent.

It is the intent of the city to avoid becoming a passive participant in private sector commercial discrimination by refusing to procure goods and services from business firms that discriminate in the solicitation, selection, hiring, or treatment of vendors, suppliers, subcontractors, or commercial customers on the basis of race, gender, religion, national origin, ethnicity, age, marital status, familial status, sexual orientation, gender identity, gender expression, or disability in connection with city contracts or solicitations by providing a procedure for receiving, investigating, and resolving complaints of discrimination involving city contracts or solicitations.

Sec. 2-153. - Definitions.

For purposes of this article, the following terms have the meanings indicated unless the context clearly requires a different meaning.

... *Discrimination* means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or treatment of a vendor, supplier, subcontractor or commercial customer on the basis of race, gender, religion, national origin, ethnicity, age, marital status, familial status, sexual orientation, gender identity, gender expression, or disability, or on the basis of any otherwise unlawful use of characteristics regarding such vendor's, supplier's, or commercial customer's employees or owners in connection with a city contract or solicitation;

provided that nothing in this definition or article shall prohibit or limit otherwise lawful efforts to remedy the effects of discrimination that has occurred or is occurring in the marketplace.

...

Sec. 2-166. - Mandatory nondiscrimination contract clause.

Every contract and subcontract shall contain a nondiscrimination clause that reads substantially as follows:

As a condition of entering into this agreement, the company represents and warrants that it will fully comply with the city's commercial non-discrimination policy, as described in section 2, article V of the City Code, and consents to be bound by the award of any arbitration conducted thereunder. As part of such compliance, the company shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, age, marital status, familial status, sexual orientation, gender identity, gender expression, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, suppliers, or commercial customers in connection with a city contract or contract solicitation process, nor shall the company retaliate against any person or entity for reporting instances of such discrimination. The company shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its subcontracting and supply opportunities on city contracts, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace. The company understands and agrees that a violation of this clause shall be considered a material breach of this agreement and may result in termination of this agreement, disqualification of the company from participating in city contracts or other sanctions.

Sec. 2-167. - Contractor bid requirements.

All requests for bids or proposals issued for city contracts shall include a certification to be completed by the bidder or proposer in substantially the following form:

The undersigned bidder or proposer hereby certifies and agrees that the following information is correct:

1. In preparing ~~it's~~ its enclosed bid or proposal, the bidder or proposer has considered all bids and proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in discrimination as defined in section 2.
2. For purposes of this section, discrimination means discrimination in the solicitation, selection, or treatment of any subcontractor, vendor, supplier or commercial customer on the basis of race, ethnicity, gender, age, religion, national origin, marital status, familial status, sexual orientation, gender identity, gender expression, disability or any otherwise unlawful form of discrimination. Without limiting the foregoing, discrimination also includes retaliating against any person or other entity for reporting any incident of discrimination.

3. Without limiting any other remedies that the city may have for a false certification, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the city to reject the bid or proposal submitted with this certification, and terminate any contract awarded based on such bid or proposal. It shall also constitute a violation of the city's commercial non-discrimination ordinance and shall subject the bidder or proposer to any remedies allowed thereunder, including possible disqualification from participating in city contracts or bid processes for up to two years.
4. As a condition of contracting with the city, the bidder or proposer agrees to promptly provide to the city all information and documentation that may be requested by the city from time to time regarding the solicitation and selection of suppliers and subcontractors in connection with this solicitation process. Failure to maintain or failure to provide such information shall constitute grounds for the city to reject the bid or proposal and to any contract awarded on such bid or proposal. It shall also constitute a violation of the city's commercial non-discrimination ordinance, and shall subject the bidder or proposer to any remedies that are allowed thereunder.
5. As part of its bid or proposal, the bidder or proposer shall provide to the city a list of all instances within the past ten years where a complaint was filed or pending against bidder or proposer in a legal or administrative proceeding alleging that bidder or proposer discriminated against its subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that complaint, including any remedial action taken.
6. As a condition of submitting a bid or proposal to the city the bidder or proposer agrees to comply with the city's commercial non-discrimination policy as described in section 2, article V of the city code, and consents to be bound by the award of any arbitration conducted thereunder."

Section 2. Article II of Chapter 12 of the Charlotte City Code is amended as follows:

"Sec. 12-27. - Powers.

Within the limitations provided by law, the community relations committee created under this article has the power to:

...

- (9) Render at least annually a written report to the mayor and to the city council and to the chairman and the board of county commissioners. The report may contain recommendations of the committee for legislation or other actions to eliminate or reduce discrimination with respect to race, color, religion, sex, marital status, familial status, sexual orientation, gender identity, gender expression, or national origin.

...

Sec. 12-29. - Powers of conciliation division.

Within the limitations provided by law, the conciliation division of the community relations committee created by this article has the power to:

- ...
- (3) Approve or disapprove plans to eliminate or reduce discrimination with respect to race, color, religion, sex, marital status, familial status, sexual orientation, gender identity, gender expression, or national origin;
- ..."

Section 3. Article III of Chapter 12 of the Charlotte City Code is amended as follows:

"Sec. 12-58. - Prohibited acts.

(a) It shall be unlawful to deny any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation because of race, color, religion, sex, marital status, familial status, sexual orientation, gender identity, gender expression, or national origin.

(b) It shall be unlawful to make, print, circulate, post, mail or otherwise cause to be published a statement, advertisement, or sign which indicates that the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation will be refused, withheld from, or denied any person because of race, color, religion, sex, marital status, familial status, sexual orientation, gender identity, gender expression, or national origin, or that any person's patronage of or presence at a place of public accommodation is objectionable, unwelcome, unacceptable, or undesirable because of race, color, religion, sex, marital status, familial status, sexual orientation, gender identity, gender expression, or national origin; provided, however, this section does not apply to a private club or other establishment not, in fact, open to the public.

~~Sec. 12-59. - Prohibited sex discrimination.~~

~~(a) It shall be unlawful to deny a person, because of sex, the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a restaurant, hotel, or motel.~~

~~(b) This section shall not apply to the following:~~

- ~~(1) Restrooms, shower rooms, bathhouses and similar facilities which are in their nature distinctly private.~~
- ~~(2) YMCA, YWCA and similar types of dormitory lodging facilities.~~
- ~~(3) A private club or other establishment not, in fact, open to the public."~~

February 22, 2016

Ordinance Book 59, Page 747

Ordinance No. 7056

Section 4. Article II of Chapter 22 of the Charlotte City Code is amended as follows:

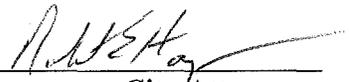
“Sec. 22-31. - Conduct of certificate holders, permit holders, drivers.

...

(i) No company operating certificate holder, vehicle operating permit holder, or driver shall refuse or neglect to transport any person on the basis of race, color, religion, sex, marital status, familial status, sexual orientation, gender identity, gender expression, or national origin. In addition, no company operating certificate holder, vehicle operating permit holder, or driver shall refuse or neglect to transport any person on the basis of disability when such service can be provided to a person with a disability with reasonable accommodation.”

Section 5. This ordinance shall be effective April 1, 2016.

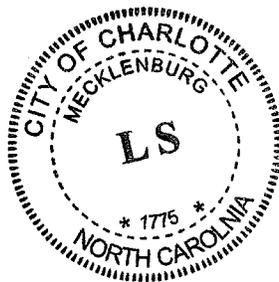
Approved as to form

  
\_\_\_\_\_  
City Attorney

**CERTIFICATION**

I, Emily A. Kunze, Deputy City Clerk of the City of Charlotte, North Carolina, DO HEREBY CERTIFY that the foregoing is a true and exact copy of an Ordinance adopted by the City Council of the City of Charlotte, North Carolina, in regular session convened on the 22nd day of February 2016 the reference having been made in Minute Book 140, and recorded in full in Ordinance Book 59, Page(s)743-747.

WITNESS my hand and the corporate seal of the City of Charlotte, North Carolina, the 22nd day of February, 2016.



  
\_\_\_\_\_  
Emily A. Kunze, Deputy City Clerk

**Declaration of Luke C. Platzer**

**EXHIBIT C**

**JA310**

**CITY OF CHARLOTTE  
OFFICE OF THE CITY ATTORNEY  
Memorandum**

TO: Mayor and City Council

FROM: Robert E. Hagemann, City Attorney *REH*

DATE: February 3, 2016

RE: Non-Discrimination

---

In November 24, 2014, the Human Rights Campaign made a presentation to the City Council requesting that marital status, familial status, sexual orientation, gender identity, and gender expression be added to the list of protected characteristics in several City non-discrimination ordinances.

On March 2, 2015, a motion to approve an ordinance adding this list of characteristics failed by a vote of 5-6. Prior to that vote, the proposed ordinance was amended to add the following to the non-discrimination in public accommodations ordinance: "(c) Notwithstanding the forgoing, this section shall not, with regard to sex, sexual orientation, gender identity, and gender expression, apply to rest rooms, locker rooms, showers, and changing facilities."

Recently Mayor Roberts asked that this matter be placed on your February 8, 2016 Dinner Meeting agenda. The following is the same background I provided the Mayor and Council last year.

History of Protected Characteristics

The Civil Rights Act of 1964 provided, among other things, broad federal protections against discrimination in public accommodations based on race, color, religion, and national origin (Title II) and in employment based on race, color, religion, sex, and national origin (Title VII). Protections against employment discrimination based on age (1967) and disability (1990) were subsequently enacted.

There are no federal laws that expressly prohibit discrimination based on sexual orientation, gender expression, or gender identity. However beginning with an ordinance adopted by the City of Minneapolis in 1975, seventeen states (North Carolina is not one of them), the District of Columbia, and more than 225 cities and counties have passed laws or ordinances prohibiting discrimination in public accommodations based on sexual orientation and gender identity.

**JA311**

## City Ordinances

### 1. Public Accommodations

In 1968 the Charlotte City Council adopted an ordinance prohibiting discrimination in public accommodations. Like the 1964 federal law, the ordinance covered race, color, religion, and national origin. In 1972, the Council amended the ordinance to include sex.

As part of the 1985 recodification of the entire City Code, the public accommodations ordinance was modified to treat sex differently than race, color, religion, and national origin, establishing protections only in restaurants, hotels, and motels, and even then carving out restrooms, bathhouses and similar facilities which are in their nature distinctly private, as well as dormitory lodging facilities such as the YMCA and YWCA.

While we have been unable to find any documentation that clearly states the reasons for this change in approach, the City Attorney at the time believes it was recommended by the contractor for the recodification likely due to lingering concerns stemming from the debate over the Equal Rights Amendment which some argued would do away with single sex restrooms.

The public accommodations ordinance does not specify an enforcement mechanism, but pursuant to state law, a violation of the ordinance is enforceable as a misdemeanor (fine up to \$500, no active time unless three previous violations) or through equitable relief (*i.e.*, a court order directing a cessation of the violation). In practice, the Community Relations Committee typically seeks voluntary compliance through a conciliation process.

### 2. Community Relations Committee

At the same time the 1968 public accommodations ordinance was adopted, Council established the Community Relations Committee. Among the Committee's duties is a charge to provide an annual report that may include "recommendations of the committee for legislation or other actions to eliminate or reduce discrimination with respect to [the protected characteristics]". In addition, through the conciliation process, the Committee is authorized to "[a]pprove or disapprove plans to eliminate or reduce discrimination with respect to [the protected characteristics]".

### 3. Passenger Vehicles for Hire

The passenger vehicles for hire ordinance provides that "[n]o company operating certificate holder, vehicle operating permit holder, or driver shall refuse or neglect to transport any person on the basis of race, color, religion, sex or national origin". The ordinance is enforced through civil penalties and revocation of operating certificates and permits.

#### 4. Commercial Non-Discrimination

The commercial non-discrimination ordinance was adopted in 2003 as part of the Council's response to the dismantling of the woman and minority business development program after the City was sued in federal court. The ordinance prohibits businesses that seek to contract with the City from "discriminating in the solicitation, selection, hiring or treatment of vendors,, suppliers, subcontractors or commercial customers on the basis of race, gender, religion, national origin, ethnicity, age, or disability." The ordinance provides for enforcement through the rescission, suspension or termination of a current contract, and the disqualification from bidding and contract awards for a period of not more than two years.

##### Description of Proposed Amendments

The proposed amendments, which are identical to those presented to Council last year, would simply add "marital status, familial status, sexual orientation, gender identity, and gender expression" to the list of protected characteristics in the passenger vehicles for hire and commercial non-discrimination ordinances as well as the list of protected characteristics that the Community Relations Committee is authorized to make recommendations for legislation or other actions to eliminate or reduce discrimination and to approve or disapprove plans to eliminate discrimination through the conciliation process.

With regards to the public accommodations ordinance, the proposed amendments would not only add these five characteristics to the general prohibition of discrimination, but would also add "sex" to the general prohibition and delete the separate section dealing with sex. This would bring the City's ordinance in line with the trend across the country of not carving out "sex" in an attempt to preserve the right of businesses to provide separate restroom facilities (*i.e.*, it is not discriminatory to provide separate men's and women's restroom facilities).

**Declaration of Luke C. Platzer**

**EXHIBIT D**

February 22, 2016  
Business Meeting  
Minute Book 140, Page 58

This City Council of the City of Charlotte, North Carolina convened for a Dinner Briefing on Monday, February 22, 2016, at 5:12 p.m. in CH-14 of the Charlotte Mecklenburg Government Center with Mayor Jennifer Roberts presiding. Councilmembers present were Al Austin, John Autry, Ed Driggs, Claire Fallon, Patsy Kinsey, Vi Lyles, LaWana Mayfield, James, Mitchell, Greg Phipps.

**ABSENT UNTIL NOTED:** Councilmembers Julie Eiselt and Kenny Smith

\* \* \* \* \*

**ITEM NO. 1: MAYOR AND COUNCIL CONSENT ITEM QUESTIONS**

Mayor Roberts asked do we not have any consent item questions before we go into closed session.

Councilmember Kinsey said I am going to pull item number 17 just to make a statement, but I support it.

Councilmember Driggs said I want to pull 15.

\* \* \* \* \*

**ITEM NO. 2: CLOSED SESSION**

Motion was made by Councilmember Driggs, seconded by Councilmember Mayfield, and carried unanimously to go into closed session pursuant to North Carolina General Statute 143-318.11(a)(4) to discuss matters relating to the location or expansion of industries or other businesses in the City of Charlotte, including potential economic development incentives that may be offered in negotiations.

The meeting was recessed at 5:14 p.m. for the closed session. The open session was reconvened at 5:24 p.m. There was discussion regarding the format for the business meeting. The Dinner Briefing was recessed at 5:45 p.m. to move to the Council Chamber for the regularly scheduled Business Meeting.

\* \* \* \* \*

**BUSINESS MEETING**

The City Council of the City of Charlotte, North Carolina reconvened for the Business Meeting on Monday, February 22, 2016 6:03 p.m. in the Meeting Chamber of the Charlotte Mecklenburg Government Center with Mayor Jennifer Roberts presiding. Councilmembers present were, Al Austin, John Autry, Ed Driggs, Claire Fallon, Patsy Kinsey, Vi Lyles, LaWana Mayfield, James Mitchell, Greg Phipps.

**ABSENT UNTIL NOTED:** Councilmembers Julie Eiselt and Kenny Smith

Mayor Roberts said I want to take a minute to send out thoughts and prayers to Councilmember Kenny Smith. His father passed last night. Mr. Smith is going to try to come in the meeting later, but we certainly want him to be with his family. Mr. Smith we send our thoughts and prayers to you and your family on the passing of your father, Ken Smith. All of our thoughts are with you. We are so sorry for your loss. We are also absent Councilmember Julie Eiselt who may be joining us later in the evening.

\* \* \* \* \*

**INVOCATION AND PLEDGE**

Councilmember Mayfield gave the Invocation followed by the Pledge of Allegiance.

\* \* \* \* \*

February 22, 2016  
 Business Meeting  
 Minute Book 140, Page 59

#### AWARDS AND RECOGNITION

##### ITEM NO. 4: RECOGNITION OF CIAA BASKETBALL WEEK IN CHARLOTTE

**WHEREAS**, the Central Intercollegiate Athletic Association (CIAA) will celebrate its 71<sup>st</sup> Men's Basketball Tournament and the 42<sup>nd</sup> Women's Basketball Tournament; and

**WHEREAS**, the CIAA has secured over \$20 million in scholarship dollars for its member institutions over the past 13 years, averaging \$1.5 million annually; and

**WHEREAS**, the City of Charlotte will host the CIAA for the eleventh year with 22 games and tens of thousands of fans and guests expected to attend over a five day period; and

**WHEREAS**, this tournament provides an opportunity for the CIAA family to come to Charlotte to reunite with classmates, alumni, and friends in the vibrant atmosphere of Uptown Charlotte; and

**WHEREAS**, Charlotte is proud to be the CIAA Tournament Host City to showcase our world-class customer service and southern hospitality; and

**WHEREAS**, the CIAA tournament provides a positive impact for the City of Charlotte through economic benefits to hotels, restaurants, rental companies, services, entertainment venues and temporary employment:

**NOW, THEREFORE**, I, Jennifer Watson Roberts, Mayor of Charlotte, do hereby proclaim February 22 – February 27, 2016 as

#### **“CIAA WEEK”**

in Charlotte and commend its observance to all citizens.

**Jacquie McWilliams, CIAA** said we are 104 years old. We have 12 member institutions. We have over 3,500 student athletes, 24 teams that are here in the city right now, 22 games that will start tomorrow, but two champions that we will crown on Saturday. This city has been an amazing opportunity for us to grow academically and also athletically. So, we appreciate all of the support that you have given us since we have even arrived here as now, Charlotteans. Our conference office now is here since August. So, thank you so much for the support, financial support, and just believing in the CIAA. We are going to turn this city out in a great way this week, and we hope that everyone can participate.

**President Dr. Ronald L Carter, CIAA** said thank you for making a dream come to fruition. A dream that I have had for a long time, one that we would extend the contract to host the CIAA here in Charlotte, and second, getting the head offices of the CIAA here to Charlotte. There is madness to all of this. My goal, my dream is that it will be here permanently because we in Charlotte know how to lift the CIAA up high. It is an opportunity of a win-win-win. Win for our fabulous students as they live and learn at their growing age. Win for the universities that demonstrate their brand and win for the city as we continue to have a strong impact on the economy. So, thank you all for making this happen.

**Tom Murray, Charlotte Regional Visitors Authority** said I join the City Council and Mayor in welcoming you here. We worked hard to make it happen. We worked harder this year to get ready for this event, but we are so proud to be the host here of this event. It is the largest event we have on an annual basis. Like Dr. Carter, I have a dream that we will always have it here. It is so great to have the Commissioner, Jacqui McWilliams here in our community because she has already become part of our community, not just about the CIAA, but about Charlotte. That is really what she committed to do when she moved the headquarters here. We are so happy to have them as our fellow citizens as well. So, thank you very much as honoring us tonight.

\* \* \* \* \*

February 22, 2016  
Business Meeting  
Minute Book 140, Page 60

## CITIZENS' FORUM

### Charlotte Motor Speedway

**Fred Mauney, 401 West 24<sup>th</sup> Street** said I had to put something down about the Speedway, but it is involving quite a few issues. One of them has been brought back up with some of the citizens is this \$15 million on the Eastland deal. Then also, two years later you all show up \$15 million short on the budget. I am a little bit concerned about what happened there. There are some flags showing up as well as some scuttlebutt going on that the city is in that the deal is to pay Bruton Smith the \$80 million he had in the highway out there. No one is knowing it. So everybody is wanting to know if that is going to show up as a \$80 million shortfall in the budget in another year or two? Furthermore, it seems to be a minor law suit between Barak Obama and you all back in 2011, which we had a rush of KGB News blackout of it, and there was a lot of corruption and fraud involved there which the city has come out and violated a number of laws that are on statute regarding business factors because of all its lies and fraud it did to present to the DNC to get the commission to come here. Also, because it wanted to get the \$50 million that comes with the grant. This was the fraudulent application to the federal government. So, a whistle blower law suit is being put together to sue the city, that it not only has to give the \$50 million back but also has triple damages which makes it \$150 million. I imagine the city tax payers are going to be really good to hear that they got to have their taxes raised when this comes about, but furthermore, this brings the US Attorney's Office in, which brings in a Grand Jury, and they will all be paraded down, as was past City Councilmembers, and who knows what kind of indictments might insure it you all and other legal stuff.

Furthermore, during this time it has come up under the statutes of willful failing to discharge duties, it seems like you all have been into a conspiracy to retaliate me out of the storage unit that I have at Penny Pinchers. So, as I was being retaliated by the manager, I knew something was going on and just had to do my investigation to find out what. Well, this manager went out and zoned industrial and no one lives there but she fixed up where her office is at and she closed in a couple of the storage units and made her like an efficiency apartment. I came down and talked to Charles Hogan to look up the property of the code office and it wasn't zoned the way it was and could not have it, and no one has ever applied to have a living space there from the management or anything. So, he sent an email and they sent me to see a Michael Hogan, North East Coordinator. He doesn't do anything. Then I end up meeting with a Mark Dowler out there, a supervisor, and they don't do anything. It seems to be a fraudulent thing going on, that there is a cover up, because since I am going to be evicted, and I have been there for six years that I would go down there and maybe be upset and all of that. This woman has a pistol, planning on shooting me down. There's another time that you guys have been in a conspiracy to murder in the first degree, and otherwise now it has gone through the process of theft by deception. A million dollars of my intellectual property or more out of that, so I came down to the County Manager's Office and said you guys have something going on with your city code people. They are not investigating a defendant misconduct going on. I needed that so I could go to the police department to site what else was going on.

### Bicyclists' Exposure to Automobile Traffic

**Maarten Pennink, 1712 Garden Terrace** said the following is a proposal giving bicyclists a more favorable status in the Charlotte-Mecklenburg area. As an extension, this presentation seems to fit well together with the arterial project as presented to you on February 8<sup>th</sup>, 2016. To make Charlotte truly a bicycle friendly city, automobile drivers need to give bicyclist the right away as is the case in Amsterdam, The Netherlands. Which in their bicycle friendly city in a period of six weeks and daily participating as a bicyclist, I have not seen a single accident and observed that drivers are extremely careful taking turns and making other maneuvers. There, the drive in the majority of cases will be liable when a collision occurs with a bicyclist. Now, knowing that cycling is healthy, and very environmentally friendly, and knowing that cyclist are very vulnerable in traffic, I propose that you as leaders will implement the following rule, in principal an automobile driver in the Charlotte-Mecklenburg region will be liable when said driver has an accident with a bicyclist. When implemented this will change the general attitude towards cyclists and will encourage people to use bicycles for more than recreational purposes. Current laws and regulations: one, bicycles are required to give cars generally the right of way. This rule gives automobile drivers immunity, virtually from prosecution. I didn't see him. I didn't see her, is enough of a reason to dismiss the case and consequently drivers have no

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incentive to be cautious or careful. Two, bicyclist can currently are seen on the road and on the sidewalk. Bicyclist belong on the road, sidewalks are for pedestrians. So, bicycles and cars need to share the road, both driving in the same direction. Three, North Carolina along with 43 other states require bicyclist to ride as far to the right as practicable. Now, this has bicyclists being squeezed off the road and may cause accidents. Bicyclists are far more vulnerable and need special protection. Bicyclists should be allowed to take an entire lane, unless there is a designated bike lane. Now, again, I propose that you as leaders implement the following rule to repeat. In principal, an automobile driver in the Charlotte-Mecklenburg region will be liable when said driver has an accident with a bicyclist. When implemented, this will change the general attitude towards bicyclist and encourage more people to use bicycles for more than recreational purposes.

#### **Mold Conditions in the Mecklenburg Public Housing**

**Tigress Sydney, 2217 Matthews Township Parkway** said you may have noticed my persistent cough. I have allergic asthma, and before I continue I will preface that with the following. I have a Bachelor's degree in Agricultural education and Environmental science with a specialization in Swine Husbandry and Wetland Bioremediation. I have a Master's degree in Agricultural Economics and Rural Development, and again with a specialization in Wetland Bioremediation. I am a PHD candidate in Energy and Environmental Systems with a specialization in Economics, and again in Wetland Bioremediation, which in tales Biochemistry and Microbiology. To my surprise, this persistent cough is the result of the occurrence and recurrence of mold in my apartment. I am going to address this enumeratively. As a mom, number one, indoor air quality is of great importance to me. My son has been diagnosed with Eosinophilic Esophagitis. You may not know what that is, but basically he has an unknown allergen that is keeping his food from going down his digestive track and going into digestion. So, living in a home where there are issues like mold, or conditions that are conducive to mold, is a huge issue. As a scientist, this is one of my big platforms as it relates directly to city government; you should not merely take on the advice of mere consultants. Most consultants only have training, at best simple training, in my field. You have heard me expound upon my degrees so you can imagine the training that goes into that. It is very important that you speak with scientist instead of mere consultants, when considering legislation concerning mold. My apartment complex told me to just clean it with bleach. In my field, as I have already expounded upon, it looks like I might be an expert in my field and as it relates to microbiology, and mold, and spores, and microbial life. Bleach is not a remediation tactic. Lastly, as much as I would like the opportunity to speak more about this, but I think that your staff is well aware from your emails that I will be lobbying for the ordinance to change. I was told earlier today that City Council has no power to enforce any legislation to change the city ordinance. What appears to me then, is that this entire meeting is a facade. As I understand it, you are a legislative body.

**Councilmember Mayfield** said I have a couple of questions because one, I did not know what complex you are referring to, because the address that we have listed down for you is not an address within Charlotte-Mecklenburg. So, it would be helpful to know at least the complex, or if you have spoken directly to your district representative so that we can gets information regarding the complex that you are referencing. So, you do not have to give that information now, but that information would be helpful, and/or if you called code enforcement. Then there are some things that we can do, but the information that is in front of me right now does not provide me with the information to let me know exactly where you are located.

Ms. Sydney said I do not know what information you have. It has defiantly got to be outdated because I am a law abiding citizen, and my address has been updated when I moved here. John Autry is very familiar with this. I think that he would be the best person to speak about that. I have actually included you all, with the exception of the new mayor, in every email that I have sent now, that also has the EPA, and the Chief of the EPA as well.

#### **Code Enforcement Officer Complaint**

**James Boulter, 3015 Walter Street** said I am a Charlottean and I have been here 65 years. I have watched West Boulevard grow from dirt to concrete. My problem was my vehicles. My neighbor called and told me that my vehicle had been tagged for junk. I hurried home and found out that the truck I had just driven and parked in my driveway had a tag on it for junk. So, I immediately called the code enforcement, and I said ma'am, I do not understand, why would you tag a vehicle

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that I have just driven home and parked? She said well, it was just my opinion that it was junk because it was parked beside the rest of them, right beside my Jaguar, my Cadillac, and my van. So, I went straight to the office, and I said this is the vehicle that you tagged, and I left the tag on it; I said now, is this junk? I cranked it up and said, do you want to hear the radio playing? I played the radio for her, and she said well, I assumed. I said hold up, please give me some understanding. You are putting a burden on me because I have ten days to fix the problem, or move the problem or the tow man will come to get it. This is not junk. So, her supervisor, Mr. Greene called me and said that they would resolve this misunderstanding Mr. Boulter. I said that I would appreciate it. I do not know if there is anyone else in the city that had a problem like this, but I could not rest because it was an unjust. When you find an unjust, that means that there is a threat on justice everywhere. My brother told me to go down and speak and let your heart be free. I would appreciate it if someone would take the time when these code enforcement officers come out to at least knock on the door and say what the situation with the particular vehicle. None of my cars had flat tires; the windows were intact, nothing out of the ordinary. I am just a hard working individual trying to make it in this world, and I would appreciate it. I thank you for your time. The only thing that I can say is I do not have a master's degree or a PHD, but I do have common sense to even know to ask someone in the home, or find out before you put your tag on a car because if you have only ten days, they are going to come take it and you will have another bill to pay when you need to pay your light bill. So, thank you and I appreciate it.

#### **Discrimination in Charlotte**

**Tamara Strong, 14932 Statesville Road** said I am here today because my rights are being violated. I have been under a eugenic program, and I am getting assaulted. I have contacted congress and sent letters and all of those who I have been in contact with have ignored my letters, and the situation has not gotten better. I feel that my life, my liberty, my justice, and everything the Constitution had to offer, my rights are being violated, and my life also. I am sick and tired of going through what I am going through. I do not appreciate my rights, liberty and my life being at stake when others come here, and they pretty much get what they want. I have been here all of my life, and I have had to suffer. I am here for justice. I am here that I will be heard. I am here that I am more than just an adopted person, but I am somebody. I am a Child of God. I am here because I feel that I am a targeted individual. Maybe I complained about the fluoride too much, I called and said something. I do not know what it was. I have always had to struggle all of my life because of the adoption and being taken, but I have been a woman of God, and I have tried to be a great person of servitude to the other people in our society. However, I am being injured. I think that I am being assaulted by radio frequency, and I am getting severely burned through whatever type of help, I do not know if I was entered into some type of research, but I do not consent to it. I have asked that whatever Social Security program I signed up for that entered me into this, whatever institutions have violated my liberties, I have sent off letters for these people to cut all contracts and relieve me of anything that they have put me in that have violated my liberties. I have contacted the state and pretty much, phones have hung up in my face. People are not responding; however, I am wanting things to get better as I respond and say that I do not consent. I am expecting things to get better. I had no choice but to try to come here today, for I feel that my life is at stake. I just want to be heard. I think that I am somebody. The State of North Carolina, I feel has ignored my rights, and I am being treated like nobody. I am just here today because I am somebody.

#### **My Brother's Keeper Foundation**

**Omari Jibri Brunson, 11015 Carmel Crossing Road** said let this mandate be reflected on all records, by the record, and let the record reflect, I am here on my proper persona, and my noble title is Emperor Omari Jibri El Ra Bey. I have accepted the honorable present of Barak Obamas [inaudible] insuring a list of objectives to be able to execute for the administration based upon the My Brother's Keeper program. I am the head tribal leader of this organization in North Carolina, City of Charlotte, and Mecklenburg County. This is really a call to action and collaboration from my office to yours, with the full cooperation of the board that took oaths of office to protect and serve. The indigenous people will restore and reform the indigenous tribal government here in North Carolina, the nation state, City of Charlotte, Mecklenburg County, which we declared our independence since 1776 and are also reflected in the United Nations Proclamations with the aborigine indigenous people in Articles 1-50. On common law grounds, that we stand for as our legal terms and we are self-independent and self-government. Let it reflect on all records that states do not have rights. Only individuals have certain rights granted

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to them through treaty law, nationality, social, or political statuses, so by the authority vested in me, I Emperor Omari Jabri El Ra Bey have enforced Article 1, section 10 in the corporate constitution that declares that no state shall have anything but gold and silver as legal tender as payment of debt. So, now here comes the alternative currency that I want to introduce to the second biggest in banking in the country, Charlotte, North Carolina is the issue by the international business trust with one gram of 24 karat, 999.9% gold bullion with the London Bullion Market Association having a purchasing power of 150 in exchanging Federal Reserve Notes or United States dollars in all trading platforms is priced by goods and services by the United States dollars of FRNs. Example, you can now go to the store and give a gold, one gram card for a cup of coffee in exchange is debt back and that is how we are going to exchange and reform the debt crisis that we are in right now. The royal office of the international business trust is based on treaty currency and exchange that is capable and willing to engage in private currency exchange for back indigenous dollars that would be free traded with the trans-pacific partnership and domestic trade without discrimination or limitation. Our office is able and willing to increase the state's budget and purchasing power by converting Federal Reserve notes into our gold cards for a medium of exchange. We ask for the full cooperation of the board.

#### **Crime Prevention and Public Safety in Charlotte**

**Carrie Taylor, 1522 Downs Avenue**, said I am here to express my full support for the hiring of the additional CMPD officers that Chief Putney has requested. When the additional 125 officers came on board in 2008, we saw a consistent decrease in our crime rate for the six years following their addition according to Chief Putney. Former Mayor Pro Tem, Michael Barns who spearheaded the push for those additional officers ten years ago shared that there was a considerable decrease. However, in the last several months, we have seen a 10% increase in overall crime, and a 36% in homicides as our city has continued to grow. That is staggering and unacceptable; as I am sure you would agree. I have been a member of the Charlotte community since March of 2000. I believe it is incumbent upon me and my fellow Charlotteans to hold our leaders accountable to do the work for which they were elected or hired. So, that is what I will do. I do not need to remind you that crime has a direct correlation with economic development and population growth. If crime continues to increase, and Chief Putney does not receive the tools he needs and the officers that he is requesting, the growth that Charlotte now enjoys will quickly dry up. We need strong, visible leadership by those of you who say that you want to be a champion of public safety and crime prevention. With the deaths of both of my parents within the last four months, I have learned the importance of time and making the most of the opportunities that we are given. Words without action are empty and meaningless. If we lose site, do not take action when the opportunity is before us, are not strong, visible, and deliberate advocates, we could be left with regret. You have the power now to do the right thing. Councilmembers Phipps and Driggs, I urge you to give Chief Putney's request thoughtful consideration. I want to thank you for your leadership during last year's budget process, and now I trust that you will provide Chief Putney with all of the tools and resources he needs to keep our community safe and to continue to move Charlotte forward. Chief Putney, CMPD, and our city deserve it.

#### **U.S. Constitution**

**Allen Hoyle, 319 Poplar, Lincolnton** said I want to address to you about the Constitution of the United States and also the Constitution of North Carolina. As a Marine, for 23 years and retired, I swore on oath to protect the Constitution, and every person who takes the office of a public job and swears to the Constitution as well. Number 1 Article 1 Section 1 says that all legislative Powers herein granted shall be vested in a Congress. Congress has been given the duty for many things, but number 1 Section 8 says that to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof. So, it is the Congress that makes laws. I will remind you. Article 3 Section 2 says the judicial power shall extend to all cases in law and equality arising under this Constitution. I will remind you the word is under not over. Section 3 says that treason against the United States shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. So, the Constitution of North Carolina says that marriage is between a man and a woman. So, I warn you that anyone who takes their oath lightly, and they seek to destroy the constitution of the United States, which is declared to be the supreme law of the land of the United States, is a treason and a traitor to this country. So, no judge has the authority nor power to come to the sovereign state of

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North Carolina and say that marriage is between any other sex than a man and a woman, thus declared by the people of the sovereign state of North Carolina. I warn each one of you, you better be thinking of the oath that you took because all of the people of the military swore this oath to protect the Constitution and anyone who does that is doing prudery when they go against the Constitution, and they are making themselves treasonous to the laws of this country and also to this state of North Carolina.

#### City Surplus Auctions

Phil Fortuna, 56 Franklin Street, Northport, NJ said I was waiting for the old Mayor to give me a call, but I guess he isn't calling me back because he is gone. I never got a call from Chief Putney. So, here I am. I flew in from New York to speak. As you know, a while back I started questioning the processes of the auction that the city holds every year, twice a year, and there were some discrepancies that I questioned. The people in that department were very helpful in giving me all of the documentation that I requested, very helpful and polite; however, as I looked through the paperwork, I find that there were a lot of issues as far as the city got billed for. One in particular was batteries. Every auction the city is getting a bill for several thousand dollars for batteries. So, I requested to see an itemized list of all of the vehicles in question that the batteries were replaced, only to find out, when given the list, that I just happened to take a look at my list of the vehicles I bought. I bought approximately 12 vehicles, and out of the 12, 5 of them were on the list, which means that the vehicles I bought had the batteries replaced. I am a mechanic by trade with 35 years in the business. I opened the hoods of the vehicles and it is my professional opinion that the batteries were never changed. So, the city is getting billed several thousands of dollars for batteries, and I question whether the other car's batteries were change. I do not know because I did not buy the cars. The cars I bought defiantly, the batteries were not changed. So, that was one issue. The second issue I had is that I was told there was money allocated in the city budget to buy lunch for the auction workers the day of the auction, and when I read the contract, which I foiled, and you gave me the copy of the contract between you and the auctioneers. It clearly states that the auctioneer is supposed to be paying for the lunch. It should not be coming out of the city budget, and it is. That is another problem I guess. Lastly, I would just like to applaud you Mayor Roberts for taking the first small step towards changing leadership of the Police Department by changing the councilperson that was in charge of public safety. So, I applaud you for that.

#### Public Safety

Karen Jensen, 311 Baldwin Avenue said I think that there are some people here in the audience tonight who care about civil rights. I do not know about up here. I know what you say you care about. I know what many of you say you care about, but I am astounded to be here again in front of this council and this mayor on the topic of civil rights which I have spoken about before. Last month I spoke about police abuse and retaliation for reporting misconduct by a police officer. I spoke about perjury by a police, covering up and violating internal affairs policies of this city, talked about police officers preventing criminal charges for violent acts because they are lying to magistrates and judges about things that you have seen on audio and video, things which have garnered many convictions in court, but which the city is still lying about and saying it never happened. The response at the end of that was for Mayor Roberts to say, well if we felt that that might need a response we will have staff follow up. I guess deaths threats and, perjury, and police abuse are not something that you feel need a response. Is that the case? I am guessing no one is going to respond to me right now, but no one has responded for an extended period of time. We are talking about assaults, rape threats, death threats, again on video, on audio that you continue to lie about. When I ask for my records and I ask for a change in this, what I get from the city is a legal threat to arrest me and sue me. This is not news to you; this is not new information. This is all documented. When I came to speak last month, just before my talk here, I got a call from you police captain at the behest of your police chief reminding me of your illegal threat to throw me in jail. So, I am here again. I am asking for my records again. I am asking for a correction to the things that I have mentioned in which you are aware of in detail, and I am asking for a stop to the crimes committed by the people who live next door to me and the other people that you are aware of including in the police department and other government officials. I have a little time left. So, I think that I will just say that this stonewall, the manager and the city attorney won't look at me, and I think that is because they are fully aware, as are all of you, of the false information given by city attorneys' as well as by people who are sitting up there on the dais. I would really like a response. I do not know how you wanted to talk about bathrooms and

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showers and demand civil rights for people. I do not know if I need to wear a men's hat to get a response. I feel that rape, and violence, and beatings, and death threats to shoot me should illicit a strong response as well. If you do not believe me, ask the judges who convicted.

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**CONSENT AGENDA**

A motion was made by Council Member Mitchell, seconded by Council Member Austin, and carried unanimously to approve the Consent Agenda as presented with the exception of Item Nos. 14, 15, 17, which were pulled for comment and Item Nos. 16 and 22 which were pulled by staff.

The following items were approved:

**Item No. 18: Airport Construction Management Software**

(A) Approve a five year contract with e-Builder to provide a cloud-based construction project management software, (B) Authorize the City Manager to approve price adjustments and amend the contract consistent with the City's business needs and the purpose for which the contract was awarded.

**Item No. 19: Airport Project Construction Inspection Services**

(A) Approve a professional services contract with Talbert, Bright & Ellington Inc. for general project construction inspection services for a term of three years, (B) Authorize the City Manager to renew the contract for up to two additional, one year extensions with possible price adjustments and to amend the contract consistent with the City's business needs and the purpose for which the contract was approved, and (C) Adopt Budget Ordinance No. 7057-X appropriating \$3,640,570 from the Aviation Discretionary Fund to the Aviation Community Investment Plan Fund.

The ordinance is recorded in full in Ordinance Book 59, at Page 748.

**Item No. 20: Airport Parking Lot Lighting**

(A) Approve a contract with Duke Energy not to exceed \$750,000 to install LED street lights in a parking lot, and (B) Adopt Budget Ordinance No. 7058-X appropriating \$750,000 from the Aviation Discretionary Fund to the Aviation Community Investment Plan Fund.

The ordinance is recorded in full in Ordinance Book 59, at Page 749.

**Item No. 21: Airport PSA Hangar Addition**

(A) Award a contract in the amount of \$1,255,650 to the lowest responsive bidder Encompass Building Group, Inc. for the construction of PSA Hangar Addition, (B) Approve a lease amendment with American Airlines for additional costs associated with construction of the PSA maintenance hangar, and (C) Adopt Budget Ordinance No. 7059-X appropriating \$1,255,650 from the Aviation Discretionary Fund to the Aviation Community Investment Plan Fund.

**Summary of Bids**

EVS Construction & Development, Inc.*	\$1,147,300.00
Encompass Building Group, Inc.	\$1,255,650.00
Edison Foard Construction Services, Inc.	\$1,266,100.00
Cadet Construction Company	\$1,268,000.00
W.C. Construction Company, LLC	\$1,275,155.00
Heartland Contracting, LLC	\$1,320,000.00

\*The apparent low bidder, EVS Construction & Development, Inc. did not meet the established SBE and MBE utilization goals; EVS did not meet the minimum required Good Faith Efforts.

The ordinance is recorded in full in Ordinance Book 59, at Page 750.

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**Item No. 23: Airport Mid-Sized Truck Acquisition**

(A) Award a unit price contract to the lowest responsive bidder Hendrick Toyota Concord for the purchase of Toyota Tacomas for the term of three years, and (B) Authorize the City Manager to renew the contract for up to two, one-year renewal terms with possible price adjustments and to amend the contract consistent with the City's business needs and the purpose for which the contract was approved.

**Summary of Bids**

Hendrick Toyota Concord	\$58,898.00
Town and Country Toyota	\$62,168.80

**Item No. 24: Duke Hangar License**

Approve a two-year license with Duke Business Services for storage of helicopters in Group Hangar B-3 at Wilson Air Center.

**Item No. 25: Piedmont Advantage Credit Union Lease**

Approve a month-to-month lease with Piedmont Advantage Credit Union for rental space in the Terminal.

**Item No. 26: NC Clean Water State Revolving Fund Application**

(A) Adopt a resolution authorizing Charlotte Water to apply for a Clean Water State Revolving Fund loan in an amount not to exceed \$21,000,000, and (B) Authorize City staff to take necessary actions to complete the financing, including making application to the State of North Carolina Department of Environment and Natural Resources and obtaining Local Government Commission approval.

The resolution is recorded in full in Resolution Book 47, at Pages 228-229.

**Item No. 27: Mallard Creek Wastewater Treatment Plant Polychlorinated Biphenyl Decontamination Services**

(A) Approve a contract with Synagro Central, LLC for decontamination services for a term of 395 days, (B) Authorize the City Manager to extend the contract with Synagro Central, LLC for a term of 395 days with possible price adjustments as authorized by the terms of the contract, and (C) Approve a Budget Ordinance 7060-X appropriating \$10,785,000 from the Charlotte Water Fund Balance to the Charlotte Water Operating Fund. The Budget Ordinance will accommodate expenses related to PCB decontamination efforts.

The ordinance is recorded in full in Ordinance Book 59, at Page 751.

**Item No. 28: McAlpine Creek Wastewater Treatment Plant Combined Heat and Power Improvements**

Award a contract in the amount of \$3,066,000 to the lowest responsive bidder State Utility Contractors, Inc. for the Combined Heat and Power Improvements at the McAlpine Creek Wastewater Treatment Plant.

**Summary of Bids**

State Utility	\$3,066,000.00
Crowder Construction	\$3,095,000.00
M.B. Kahn	\$3,147,201.00
Wharton-Smith	\$3,612,800.00

**Item No. 29: Wilgrove Elevated Water Storage Tank Reconditioning and Construction Administration and Inspection Services**

(A) Award a contract in the amount of \$1,059,289.00 to the lowest responsive bidder Utility Service Co., Inc. for the Wilgrove Elevated Water Storage Tank Rehabilitation project, and (B) Approve a contract with DiCon Consulting, P.C. in the amount of \$230,000 for construction administration and inspection services.

**Summary of Bids**

Utility Service Co., Inc.	\$1,059,289.00
D&M Painting Corporation	\$1,339,742.80

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**Item No. 30: Septic Hauling Services for Wastewater Treatment Plants**

(A) Approve a contract with Terry Enterprises, Inc. for septic hauling services for wastewater treatment plants for an initial term of one year, and (B) Authorize the City Manager to renew the contract for up to two additional, one year terms with possible price adjustments and to amend the contract consistent with the City's business needs and the purpose for which the contract was approved.

**Item No. 31: LYNX Blue Line Extension - Sugar Creek Pedestrian Bridge Railroad Agreement**

Authorize the City Manager to negotiate and execute a bridge agreement with the North Carolina Railroad Company and Norfolk Southern Railway for maintenance and repair obligations covering the LYNX Blue Line Extension infrastructure in the North Carolina Railroad right-of-way.

**Item No. 32: LYNX Blue Line Extension - Construction Materials Testing and Special Inspection Services Contract Amendment**

Approve contract amendment #6 in an amount up to \$1,000,000 to the LYNX Blue Line Extension contract with Kleinfelder Southeast, Inc. for construction materials testing and special inspection services.

**Item No. 33: CATS Retired Buses Donation**

(A) Approve the donation of one retired CATS bus to Olympic High School, and (B) Approve the donation of one retired CATS bus to the Town of Matthews Fire Department.

**Item No. 34: CATS Bus Towing Contract Amendment**

Approve contract amendment #1 in the amount of \$45,000 to the CATS Bus Towing Services contract with Southern Star of Charlotte, Inc.

**Item No. 35: CATS Amenities Bus Stop Benches**

(A) Approve the purchase of transit bus stop benches, as authorized by the sole source exemption of G.S. 143-129 (e)(6), (B) Approve a unit price contract with Simme, LLC for the purchase of transit bus stop benches for a term of two years, and (C) Authorize the City Manager to renew the contract for up to three additional, one-year terms with possible price adjustments and to amend the contract consistent with the City's business needs and the purpose for which the contract was approved.

**Item No. 36: Refund of Property Taxes**

Adopt a resolution authorizing the refund of property taxes assessed through clerical or assessor error in the amount of \$48,686.38.

The resolution is recorded in full in Resolution Book 47, at Pages 230-231.

**Item No. 37: Resolution of Intent to Abandon an Unopened Portion of E. Worthington Avenue**

(A) Adopt a Resolution of Intent to abandon an unopened portion of E. Worthington Avenue, and (B) Set a public hearing for March 28, 2016.

The resolution is recorded in full in Resolution Book 47, at Pages 232-234.

**Item No. 38: Meeting Minutes**

Approve the titles, motions, and votes reflected in the Clerk's record as the minutes of: January 19, 2016, Zoning Meeting

**Item No. 39: Land Purchase for Tree Canopy Preservation Program**

(A) Approve the purchase of four contiguous parcels of approximately 71 acres located near Robinson Church Road and Plott Road in Charlotte (parcel identification numbers 108-112-03, 108-112-04, 108-071-13, and 108-042-10A) for \$884,295 from three property owners, and (B) Authorize the City Manager to negotiate and grant a Conservation Easement to the Catawba Lands Conservancy.

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**PROPERTY TRANSACTIONS**

**Item No. 40: Property Transactions Mt. Holly-Huntersville 11810 Road Sanitary Sewer, Parcel #5**

Resolution of condemnation of 7,358 sq. ft. (.169 ac.) in Sanitary Sewer Easement, plus 4,196 sq. ft. (.096 ac.) in Temporary Construction Easement at 11725 Mt. Holly-Huntersville Road from Elpiniki Karagiannis and Stantoula K. Drosinis for \$775 for Mt. Holly-Huntersville 11810 Road Sanitary Sewer, Parcel #5.

The resolution is recorded in full in Resolution Book 47, at Page 235.

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**ITEM NO. 14: POLICE UNIFORMS, RELATED EQUIPMENT AND SERVICES**

Mayor Roberts said a speaker signed up to speak on this item.

Councilmember Lyles said she is declining to speak Mayor.

Motion was made by Councilmember Lyles, seconded by Councilmember Austin, and carried unanimously to (A) Award unit price contracts to the lowest responsive bidders (Galls, Inc. and Lawmen’s Distribution, LLC) for the purchase of Police uniforms, related equipment and services for the term of three years, and (B) Authorize the City Manager to renew the contract for up to two additional, one year terms with possible price adjustments and to amend the contract consistent with the City’s business needs and the purpose for which the contract was approved.

**Summary of Bids**

Forum Direct	\$ 406.64
Lawmen’s Distribution, LLC	\$43,182.42
Galls, Inc.	\$733,282.55

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**ITEM NO. 15: TIME WARNER CABLE ARENA UPGRADES-CONSTRUCTION MANAGER AT RISK**

Councilmember Driggs said I thought that in part I should pull this because my colleagues, Councilmember Smith could not be here tonight, and I think that he would want to pull it. So, Kenny we are thinking of you buddy. I want to point out, as I have in the past, that I think our relationship with the team as it pertains to the arena is very one sided and therefor I express my unhappiness about that relationship, and even though I recognize that this is within an amount that has been appropriated and pursuant to a contract under which we have obligations, I will not support it.

Motion was made by Councilmember Austin and seconded by Councilmember Mayfield to approve a contract with Rodgers Builders, Inc. in an amount not to exceed \$18,000,000 for construction management at risk services for the Time Warner Cable Arena Upgrades to be performed between years 2016-2019.

The vote was taken on the motion and recorded as follows:

YEAS: Councilmembers Austin, Autry, Fallon, Kinsey, Lyles, Mayfield, Mitchell, and Phipps.

NAYS: Councilmember Driggs.

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**ITEM NO. 17: SOUTHEAST CORRIDOR INFRASTRUCTURE PLANNING AND DESIGN SERVICES**

Councilmember Kinsey said I just wanted to pull it to let constituents know what is going on. There is some concern, including my own concern about the Coliseum Drive Extension, which is Commonwealth Avenue to the existing terminus Coliseum Drive terminus at the Claremont Apartments, and also the Waterman/Eastway Frontage Road. Those two items are in this particular consent item for planning only, not for design. I just want to make that very clear that nothing is going ahead except some planning services for those two items. For that I will move its approval.

Motion was made by Councilmember Kinsey, seconded by Councilmember Mayfield, and carried unanimously to approve a contract in the amount of \$2,300,000 with American Engineering Associates - Southeast, P.A. for Southeast Corridor Infrastructure.

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**PUBLIC HEARING**

City Manager Ron Carlee said the three public hearings that are scheduled; Item Nos. 6, 7, and 8 were advertised for 7 p.m. which was the original time that this meeting was scheduled to start. We would ask that you pass over these items until the end of the agenda so that when you open and close the agenda they would be within the advertised time.

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**BUSINESS**

**ITEM NO. 9: APPOINTMENTS TO THE PRIVATIZATION/COMPETITION ADVISORY COMMITTEE**

The following nominees were considered for one appointment for a two-year term beginning March 2, 2016, and ending March 1, 2018.

- William Lilly, Jr nominated by Councilmembers Fallon, Kinsey, and Mayfield
- James Marascio nominated by Councilmembers Driggs, Eiselt, and Phipps
- Matt McDonald nominated by Councilmembers Driggs, Eiselt, and Fallon
- Warren Neff nominated by Councilmember Phipps
- Emmanuel Reid nominated by Councilmembers Austin, Autry, and Lyles

Results of the first ballot were recorded as follows:

- William Lilly, Jr., 2 votes – Councilmembers Kinsey and Mayfield.
- James Marascio, 4 votes – Councilmembers Driggs, Fallon, Mitchell and Phipps.
- Emmanuel Reid, 3 votes – Councilmembers Austin, Autry, and Lyles.

Results of the second ballot were recorded as follows:

- James Marascio, 3 votes – Councilmembers Driggs, Fallon, and Phipps.
- Emmanuel Reid, 4 votes – Councilmembers Austin, Autry, Lyles and Mayfield.

Motion was made by Councilmember Lyles, seconded by Councilmember Mayfield, and carried unanimously that the vote for this appointment between James Marascio and Emmanuel Reid be placed on the next agenda.

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**ITEM NO. 10: APPOINTMENT TO THE ZONING BOARD OF ADJUSTMENT**

The following nominees were considered for one appointment for a thrcce-year term of service beginning immediately, and ending January 30, 2019.

- Nichelle Bonaparte, nominated by Councilmembers Austin, Autry, Mayfield, Mitchell, and Phipps
- Scott Compagna, nominated by Councilmember Smith
- Jessica J. Meyer, nominated by Councilmember Kinsey
- Irving M. Schwebel, nominated by Councilmembers Driggs, Eislet, and Fallon

Results of the ballot were recorded as follows:

- Nichelle Bonaparte, 5 votes - Councilmembers Austin, Autry, Lyles, Mayfield, and Mitchell.
- Jessica J. Meyers, 1 vote - Councilmember Kinsey.
- Irving M. Schwebel, 3 votes - Councilmembers Driggs, Fallon and Phipps.

Results of the second ballot were recorded as follows:

Motion was made by Councilmember Phipps, and seconded by Councilmember Fallon to defer this appointment to the next business meeting.

The vote taken on the motion was recorded as follows:

YEAS: Councilmembers Driggs, Fallon, Kinsey, Lyles, Mitchell, and Phipps.

NAYS: Councilmembers Austin, Autry, and Mayfield.

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**POLICY**

**ITEM NO. 11: CITY MANAGER’S REPORT**

City Manager Ron Carlee said out of respect for all of the people here to speak on other items, I have no report tonight.

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**ITEM NO. 12: NON-DISCRIMINATION ORDINANCE**

Mayor Roberts said we have had conversations on this item starting last year, for more than a year. We had a presentation and a vote last year. We had a presentation on February 8<sup>th</sup> of this year. We have materials on hand; Councilmembers ask questions after that presentation. I want to take just a minute to thank our city staff, our manager, and our attorney. They compiled research information in this folder right here. I have read all of the information in here which talks about other cities and many other questions that the Council asked at the February 8<sup>th</sup> meeting, and I really appreciate the time and detail that our staff has taken for that. We appreciate everyone’s input and we know that opinions are strong and emotions are high. Those of you who have registered to speak will be given one minutes; this was announced several times.

We are here to listen. We cannot respond to individual speakers; it is not a dialog between you and us, but we are here and are listening.

Sheryl Chandler, 4803 Crownvista Drive said I have been a Charlotte resident for 30 years. In December, New York City passed similar legislation using the identical gender expression language that is in Charlotte’s ordinance. It is now a crime, punishable by quarter million dollar fines to cisgender someone by calling them a pronoun that they do not prefer. LGBT leaders claim upwards to 85 varieties of genders, and it is ever evolving. Nano, a 20 year old from Norway feels she was born into the wrong species. She believes she is a cat and her psychologist agrees. Mr. Richards, a 57 year old from England has hundreds of colorful feather tattoos on his body, face, and eyeballs. He has had both ears surgically removed all because he believes he is a

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parrot. I submit to you that soon Council you will be forcing business owners to install litter boxes and newspapers in bathrooms to accommodate this new trans species psychosis. Laugh if you will, but a few short years ago you would have also laughed at the idea of a man showering in a locker room with your daughter.

**Jeanette Wilson, 9216 Stonegate Drive** said this momma bear is back, and I am still angry. You have prostituted yourselves during your campaigns, and someone wants to get what they paid for. This ordinance is exactly what they paid for and you are going to push it down our throats. Real discrimination happened at a lunch counter in Greensboro in 1960. Discrimination based on genetics, not personal choices. Discrimination wide spread, and recorded, here nothing except your bias survey. How come their antidotes are evidence, but ours is only fear mongering? White woman identifies as black; 52 year old man identifies as a six year old girl; sighted woman identifies as blind; man identifies as woman. If we are going to throw out science and DNA who cares? I care. I want my children protected. Mayor, your community forum was a sham. You and other Councilmembers do not care to hear what we have to say. If this went for a public vote, it would be soundly defeated, and you know it, and that makes you the real bullies. This ordinance is fad for Charlotte.

**Nate Atwood, 2027 Emerywood Drive** said I am pastor of St. Charles Presbyterian Church here in Charlotte. I am the moderator of the 29<sup>th</sup> General Assembly of the Evangelical Presbyterian Church of America. As such, I have had the responsibility for 150,000 human souls. The first rule of leading is that you do not waste your leadership capital. Today we learn from Governor McCrory that the state legislature will almost certainly overturn this ordinance if you pass it tonight. In other words, once again this City Council and you Mrs. Mayor, have divided the city, raised the passions and anger of many on both sides, and pitted the good people of this region against one another. After all of that, it appears that you will accomplish nothing. I agree whole heartedly with those who oppose this ordinance on principal, but I choose to speak to your failed leadership as a Council. Had I and both of the churches I have lead and produced nothing, the people I have serves would have had my scalp and deservedly so. Your stewardship of your trust is abysmal; save what little leadership capital you have left and vote no before those in Raleigh appropriately take you to the woodshed.

**Janice Covington, 1810 Furgerson Court** said I have come here today to present these letters from the Carolina Panthers, from the Charlotte Motor Speedway, and from the Charlotte Knights. After corresponding with them, they told me that they have no problem with me going there and using the facilities of my gender presentation and also the same with other transgender people. Since our Governor had the audacity to threaten our civil rights in the Council of my city, from governing in a fair and inclusive way, I must say that his personal bigotry and prejudice and jealousy is out of line. Pat McCrory is the worst Governor this state has ever had. He has stolen the rights of women and wants them back in the kitchen. He has allowed our grant water to be poisoned by allowing fracking.

**Jamie Smith, 11812 Creek Turn Drive** said what you will hear today is a bunch of comparison to civil rights and Jim Crow Laws. They will tell you it is just like how black people were discriminated against in the South, but as a black man raised in the South, that is a lie. Think about this, how many transgender people are being told to use the bathroom that is only for them where the facilities are broken, rusted, rundown, and almost unusable? How many transgender people are being told to receive their food from the back of the restaurant when other people can sit down because it is a straight person only restaurant? None, what they are being told is that they can use the restroom like every other Charlottean in this room, where if you are a male you use the male restroom, and if you are born a female you use the female restroom. For everyone who thinks this ordinance is a good thing, ask yourself this, do you want a man my size, 6'1, 250 pounds in the bathroom with a wig on with your little four year old girl that looks like this? I do not think so.

**Matt Hirschy, 3123 N. Davidson Street** said I am the Director for Advancement for Equality North Carolina. In my role with Equality North Carolina, my job is to work with the business community to increase statewide workplace protection policies. North Carolina is one of 29 states where it is legal to fire someone simply for who they love or who they are. This ordinance does not affect employment, right? It does go a small step in order to protect our citizens here in Charlotte. Many Fortune 500 companies already have these types of policies, and it is really important that city government keep up with those companies simply because we have to make

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sure that those employees are protected the second that they walk down onto the street and that their families share those same protections. So, as a lifelong resident of Charlotte and somebody who grew up here and has really seen a lot of great things happen in growth for the city, I urge you to please support this ordinance and pass these protections to make sure that Charlotte is up to date with the rest of the country.

**Crystal Richardson, 2437 Reid Oaks Drive** said I am a local attorney and also the Director of Advocacy for Equality North Carolina. Charlotte City Councilmembers please vote yes for this ordinance. The summary of the 140 LGBT individuals reporting discrimination is a clear indication of what happens when some Charlotteans are left up to their own evil devices. There are a number of LGBT Charlotteans, particularly LGBT people of color, who have experience discrimination and violence with absolutely no way of reporting these issues or tracking the results of wrong doings. I know because I work with these people every day. If you do not pass the non-discrimination ordinance, you have left hard working, tax paying, and people with no mechanism of tracking discrimination. Where does this leave people that have experienced this type of discrimination? The opposition believes these protections are not necessary only because they do not experience it. We are all created divinely, and we are all worthy of respect and dignity. Council, I know that we can't change people's attitudes, but we can change laws to make things fair and equal. Please vote yes for this ordinance.

**Christian Canoa, 2437 Reid Oaks Drive** said tonight I would like to challenge all of our family, friends, and neighbors to put on your common sense hats for a while. I hope that this would allow us to separate the politics of pandering from our Governor and his political establishment on this issue. So, that way we can address real attacks on real religious freedoms. I challenge our neighbors to look to the past political hates, like my family went through in Texas, where signs like this were put up in front of bathrooms that say no dogs, no Negroes, no Mexicans allowed in these bathrooms. Our 2015 election cycle was very clear. We voted you in because we knew you would support this ordinance. The people have spoken, and we trust that you will vote and support this common sense update. I ask all of our neighbors to ask our government or demand from our government and his political establishment to send out the same emails to bring all of these people here when we talk about other issues like our poor, or undocumented neighbors, coal ash, and health issues. If you are truly a Christian, you will also fight for those issues as well.

**Elaina Smith, 6511 Windy Rush Road** said let me be clear, please. We are not saying that transgender people are predators, but we are saying that there are countless deviant men in this world who will pretend to be transgender in order to gain access to the people they want to exploit. The situation at Seattle Parks and Rec is proof and evidence that this can and will happen here in Charlotte. Our concerns are falling on deaf ears and we are being called fear mongers and bigots and haters. It is a manipulation and lie to say that we are fear mongering and being hateful simply because we do not want to open the doors for deceitful men. It feels like you the Council and those supporting this ordinance are saying that I have to accept this, or I am an unloving, horrible person. Again, that is manipulation. I am a very loving person, but I do not have to share a bathroom with you or take a shower with you in order to show that. The Charlotte Observer reported that a majority of voters oppose this expansion. So, why are we even here? We already voted. I feel for those that are confused, but a cross dressers liberty to express his gender nonconformity does not trump my right or the right of my daughters.

**Lara Nazario 9028 Providence Colony Drive** said I am a transgender woman, and I am afraid to be here today. I am afraid of an opposition who is also afraid of me. They are afraid that I, or people like me are going to victimize children or cisgender individuals. This idea is opposite to the reality that I live in. Being assigned male at birth and dressing the way I dress can be dangerous. If I were to walk into a men's bathroom I would either be told that I am in the wrong bathroom, or I would be ousted as a transgender woman. This can often lead to violence or harassment, especially when there is no protection in place for people like me. When I am out in public, I am usually with my cisgender girlfriend. We walk into a bathroom together or into a less accepting part of town and then it is clear to me that we are not equals. Is it my height or my Adam's apple that makes me less of a human being? Is it my broad shoulders or my genitalia? I do not want special treatment, and I do not want to change anyone's beliefs or life style choices. I only want to be treated equally.

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**JoAnne Spataro, 9028 Providence Colony Drive** said what is going on here? I thought we were there to add protections to an existing ordinance, which has been around since 1968. That is the same year that Elvis did a comeback special for all of you Elvis fans. This isn't a real discussion, just as what I said is not a real thing, okay? All I see are people holding signs, calling other people perverts. When I typed in the word pervert into Google the word automatically added of God on the end. Religion is a belief, which means it is a choice. That is great. Being transgender, lesbian, and/or gay, is not a choice. The choice is whether they feel safe to be themselves in public. That should be fine too. It is the duty of the City to hold all citizens equal. Transgender people, like my very brave girlfriend you heard, and queer people just like me should not have to endure people raging at them. We do not want special protections, only the same protections, but that would mean the people who do not agree would have to stop calling us perverts and start seeing us as people.

**Juli Ghazi, 1911 Central Avenue** said I am the owner of Pure Pizza, a restaurant with two locations in the city limits of Charlotte. I am a single mom, and I am a Christian, and I am here supporting the non-discrimination ordinance. Many here tonight are speaking out because of fear based, hypothetical, what-ifs, and I am actually one of the only ones of a for-profit private sector business that can speak to you from experience, not fear. That is because, at my restaurant on Central Avenue/Plaza-Midwood, we have a multi-stall, gender neutral restroom. It has received international attention for its inclusion. I am here to tell you what that restroom is not. It is not a place where perverts are drilling holes in the stalls to peep at people beside them. There has not been a single incident of a man dressed as a woman lurking to harm woman and children. There has not been any gay or straight sex initiated in the bathroom. There has not been a single transgender person who has exposed him or her sex to children. A gay person has not hit on a straight, and a straight has not harassed a gay person. There has been no deviant behavior of any kind, and we are a very busy restaurant.

**Kenn Huston, 633 Venue Place** said our current bathroom policy does not discriminate. Everyone now has equal access to a facility that corresponds with their biological gender. A male only, a female only law is objective and can be readily enforced and protect the safety of our perspective occupants. Gender mindset cannot be enforced. Blended bathrooms for the sake of less than 1% of our population will discriminate against Charlotte majority. We should in no way jeopardize our women and children considering the documented exposure cases that have occurred in mixed gender facilities. Keeping separate facilities validates the uniqueness of each gender. Male and female were created distinctly to fulfill vital roles in our society; therefore, a no vote tonight is imperative to protect the safety and sanctity of our men, women, and boys and girls.

**Matthew Craig, 708 Ellsworth Road** said my concern is that there is not a long-term view that is being considered here. The pattern seems to be ordinances like there are being put in to place, activists use these ordinances to target businesses who will not accept their agenda, and local and federal judges make those individuals and owners comply. Headlines from the last 18 months: fact, employer must pay \$115,000 for not acknowledging transgenderism. Fact, baker forced to violate his religious conscious. Fact, fire chief fired for religious believes. Fact, couple loses business and face finds because of gay activists. Fact, TV show canceled by threats. Fact, sport's channel host sacked because of threats of gay activists. Fact, tech giants CEO fired for his moral beliefs. Fact, Cisco fires Christian consultant because of his faith. Fact, Bank of America fires highly respected trainer because of gay activists. Fact, high honored Navy chaplain fired. Fact, gay activists set up an Army chaplain in order to destroy his career. Florida city wages Soviet style crack down. Shame on the City Council for bringing this here.

**Kristin McCora, 3714 Armitage Drive** said with only a minute to speak I do not have the time to tell you how dangerous this ordinance could be for all females. So, instead, I will just say that it is not discrimination to say that if you have a penis, you use this bathroom. If you have a vagina you use this one. It would only be discrimination to say that a person could not use either. It is not the true transgender person that we fear; it is there pervert. It is the perverted cross-dresser. It is the pervert who will use this ordinance to access women and then assault us either physically or electronically. As far as the other part of this law, it goes both ways. If you tell a Christian baker that they are forced to bake a homosexual promoting cake for a homosexual marriage, then you are also telling the gay print shop owner he must print signs and tee shirts for the Westboro Baptist cult that says that God hates fags. A person should be able to say no in both

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of these cases, and Mayor Roberts, since you want us to love our neighbor, I am going to love you enough to say you need to repent from your sins, and turn to Jesus.

**Edwin McCora, 3714 Armitage Drive** said right now women have a right to an area away from men where they are vulnerable. If this passes they will no longer have that right. So, to give these transgender the rights that you are trying to give them, you have to take away the rights from women and children to have an area to use the restroom where they are very vulnerable. It is a bad thing because of men like Bill Clinton, Bill Cosby, men who hide cameras in heating ducts, sex traffickers, peeping toms, upskirt.com. Men assault women. They are famous for it. Women need a place to go use the restroom without worrying about men. So, to pass this you have to take rights from someone else. So, who do you take the rights from, the women and the children or men who like to dress up like women? It is ridiculous.

**Pam Burton, 4736 Kirkgard Trail** said I have been a resident of Charlotte for the last 18 years of my life. The residents of Charlottes voted for you to represent us. I just ask you to please see the hordes of people here tonight, and please do not discriminate against us. Do not discriminate against me or my children. You took an oath of office. You had your left hand on the Bible. The Bible says: Mathew 18, if anyone causes one of these little ones who trust in me to stumble it would be better for them to have a large millstone hung around their neck and be drowned in to the depths of the sea. I just ask to you not take your oath lightly. I am certain that this proposition will be harmful to the children of Charlotte. I am not scared of transgender; that is not what I think that the problem is. Sexual predators are not good people. They do not do the right thing. They are going to see this ordinance as a golden opportunity for fresh victims, our children. My 16 year old daughter swims at the Y year round. I am not going to be able to confidentially continue to allow her to use that locker room if this passes. Crime was up ten percent last year in Charlotte. Shouldn't we be spending our time and resources to lower this, not open the flood gates to raise crime even higher? Again, I just ask to please not discriminate against me and my children. If one child even becomes a victim due to this it is a shame on all of you.

**Bethany Chandler, 4803 Crownvista Drive** said I was born and raised here in Charlotte. I believe by now, most has been said regarding the pros and cons of this ordinance. So, with my time I would like to make two appeals. First, to the Councilmembers in support of this ordinance, you are called to be the leaders of our city, stalwarts of justice. As a high school senior on the edge of adulthood, I am utterly disappointed and ashamed of you. You have acknowledged that the vast majority of Charlotte is against this, but to quote Councilman Austin, you just do not care. What kind of leadership is this? What messages are you sending my generation? You are abandoning objective truth in attempt to protect subjective feelings. I urge you to uphold justice as you each swore to do. Secondly, I appeal to the LGBT community. I know your hearts are filled with turmoil friends, but peace will never be found by perusing your heart. True freedom is only found in surrender to Jesus. It is the most beautiful paradox. I urge you; find true peace and joy in him and his forgiveness. Jesus was nailed to a cross to offer you this freedom. Please take it friends.

**Nathan Chandler, 4803 Crownvista Drive** said I am straight out of Charlotte. Do not pass this ordinance. Do the right thing and thwart this. In every way, it will be unhealthy. The predators will not have to be stealthy. Our feelings are nothing but vanity, leading us down roads of profanity. We need to follow only God's rules; without him we are just mere fools. Think of all that his would affect, to use the bathroom with the other sex, the danger and worry that it would create, it is called concern about safety not hate. I am not giving transgender a label, but a man wearing a dress is unstable. Your comfort level and feelings are untrustworthy, when you should be focusing on eternity. We should never forget propriety and always practice piety, but passionist will cause anxiety. Bathrooms were meant for one gender, not a variety. For true comfort, look to Jesus. Do not continue down this path of sin. Look up, repent, and turn to him. Do not look down on me because I am young. You all know I still have a tongue, and if you do not believe me look it up. It is in Timothy 1.

**Gabriel Rogers, 4712 Tuckaseegee Road** said I want to honor my Lord and Savior Jesus Christ. It is an honor to be here tonight. I am here to adamantly disagree with this ordinance. I say first as a Christian male, I disagree. Secondly, as a black, Christian male I disagree. I will remind you that homosexuality is not the new black. Shame on you who are considering this as the same thing as black people sitting at the back of a bus; homosexuals have not been asked to move to the back of the Charlotte area transit system. They have not been asked to eat in the

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back of the Capital Grill, or caused to drink out of an isolated fountain. So, I ask you tonight to not impose these values on us, and give us the right to disagree. We disagree. I am not a homophobe; I'm a theophobe. I fear God; Jesus is Lord, and that is my opinion. How will you police the perverted man that wants to look at someone's chest? You cannot police it, but at the end of all of this, I will remind you that the Council of the Lord will stand.

**Bill Montross, 7207 Firespike Road** said I work with business men, with small business owners, helping them to live out their faith in their work, running their businesses according to Biblical principles. This ordinance that you are considering tonight will make that impossible for them to do. They will have to make a decision of am I going to violate the law or violate my conscious, violate my principals. That is untenable. It has happened around the country where businesses have closed, economies have been impacted because of laws like this where activists target Christian business owners and file a lawsuit which brings the businesses down. We do not need that here in Charlotte. This ordinance is not fair, it is not necessary, and it is not what the business community of Charlotte wants; it is not what the people of Charlotte wants. So, I urge you vote no.

**Amanda Brown, 4600 Castleton Road** said disappointing is a Mayor who had a golden opportunity to demonstrate true leadership and bring two sides together, but instead chose to throw it away. Disappointing, are the four at large councilmembers who chose not to return my calls. Although you may not share my opinion, I am still your constituent. My opinion should matter to you. Disappoint is an ordinance that will not solve the problem mentioned in the ICYMI survey. This City Council, with the exception of Ed Driggs and Kenny Smith, has made it clear that I, as a conservative and a Christian, do not matter. In the words of Al Austin, the loud voice of 39,000 emails did not make much difference to him, truly and utterly disappointing.

**Mark Blackwell, P.O. Box 1154** said some of you probably remember me from the July 11<sup>th</sup> meeting with the human trafficking proclamation. Again, I really appreciate that. As you know, I work with victims of sex trafficking that are male, female, transgender, homosexual, all types, but this ordinance could really jeopardize our opportunity to offer a correct shelter. For example, right now we can have women that are in a shared shelter space that we would often times have to double up because of the limited funding and limited space, but a transgender or someone that just expresses himself as a female, that actually has a penis, we would have to obligate them, and accommodate them and have them share a space not just with any women, but women who have been raped and exploited and abused for months, and months, and months prior to this. Now, I understand that many of you think that you are doing this right, noble, courageous thing, but the way that the spiritual forces of darkness actually work is that they manipulate good to look like bad and bad to look like good. That is how they pervert things. So, understand that you may be under the influence of demonic forces, and all that I can do for that is just say Lord, please come into this room and just take over this meeting. Let us not be under the minds of corrupt man, but let us be under your wisdom. Give us eyes to see and ears to hear, and in Jesus name, amen.

**Jay Biles, 400 N. Church Street** said I am a Human Resources Executive with a large employer here in Charlotte. I have lived here for 26 years, and I love this city. I am here tonight to ask you to vote yes to expand the non-discrimination ordinance to include LGBT citizens. I am asking this for a number of reasons. First of all, I do not want Charlotte to repeat the mistakes of the past and be perceived as not welcoming all people. I stood in this very chamber in 1998 when the County Commission voted to defund the arts in Charlotte over a controversial play. The city looked ignorant, short sighted, and not accepting of others, and the decision was ultimately reversed. Two years ago, the state amended the Constitution define marriage between a man and a woman, that law has been changed based on the Supreme Court decision. Last year the City Council voted against this ordinance that is before you tonight. I am an out, gay, proud citizen of Charlotte. I expect and deserve the same rights and protections of other citizens, no more, no less. I ask your vote tonight to be yes.

**David Evans, 6209 Nealwood Lane** said vote no; the population of Charlotte is 800,000 people. You are considering the legislation that affects a very, very small group of people, but negatively affects a very large number of people. We went through all of this last year. Why is it back again so soon? If it gets defeated again tonight is it going to be back again next year? There is not a large public outcry in support of this. Are you listening to your constituents, or are you just listening to a few loud people and being pushed around by political correctness? Where folks go

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to the bathroom is about their biology. It is about their body parts, not by what they think that they are. What you are proposing here in this bathroom is very confusing, and it defiles natural laws and common sense. So, in summary you are being pushed around by political correctness and the voices of a very loud few people. Please listen to common sense and the vast majority.

**Ann Hooper, 2127 Winter Street** said I am a lifelong Charlottean and proud member of the LGBT community. When fear and anxiety divide our city, it is then that we run too quickly and too easily to the safety of people who look like us and think like us. Too often we surmise the people who are different from us are in fact a danger to us, but that is fear talking, not fact. As elected officials, you have the opportunity, the responsibility, and our support to make decisions based on facts and to lead us beyond fear. The idea that protecting our trans brothers and sisters will somehow endanger us is simply bogus. Transgender citizens must have ready access to services and goods without denial or harassment. It is really as simple as all men are created equal.

**Ann Marie Lloyd, 4327 Poplar Grove Drive** said I have three points. Point one; there will always be special interest groups. This one is .03 percent of the population. Why should 99.97 percent of the population feel unsafe and uncomfortable? When using a woman's shower room young girls should have the right to not see male genitalia because a confused person feels like a woman. Point two, the cost of this ordinance is huge. How will police enforce such vagueness? Will Charlotte be the first city sued because a pedophile used this law to harm a child? My church will be unable to serve the homeless because of this ordinance. Point three, this whole ordinance is about feelings that change like the wind. How do you prosecute someone when the law says whatever you feel is okay? The feelings are the ultimate arbiter of truth, and I identify myself right now as a Charlotte City Council person who will be voting no tonight follow the lead.

**Alicia Mercer, 10606 Bere Island Drive** said I live in Charlotte; I stand with those who have voiced safety concerns with men using women's public accommodations. In addition, although the LGBT community talks about victimization, in other cities we know that the LGBT have targeted Christian businesses to induce a refusal of service so they can file a lawsuit. Lawsuits are their way of forcing us to accept their lifestyle. It is not the LGBT community that is increasingly experiencing attacks on their character and business and facing fines in exorbitant monetary judgments for adhering to constitutionally protected beliefs. Last year, Councilwoman Mayfield, president of the LGBT Local Officials made a statement dismissing the opinions of people who live just outside of Charlotte. HRC, MeckPAC, and other LGBT packs from across the country funnel money into Charlotte and endorse those who promise to support them if elected, but you want us to be silent, those of us who live in Charlotte and just outside. Looking pragmatically at what you are considering this amendment will cause many more problems than it resolves; you are considering an amendment that will result in people being fined hundreds of thousands of dollars and jail if they do not obey. You are forcing us to choose between obeying our Lord and obeying the law. If you care as much about liberty as you say, you will not pass this amendment.

**Alva Yandle, 2209 Archdale Drive** said I am a lifelong member of this community, and I am a voting, tax payer. I have grandchildren, and I am very much concerned about this ordinance, not for the transgender but for the people who would attempt to act like transgender. I have grandchildren that go to Ray's Splash Planet; they will not be going there anymore if this passes. I have friends that are members at the Y and they will not be going anymore because they will not put their children and grandchildren at risk to this. This is not about hate; I love all people. I told a friend of mine the other day that I would be the first one to come along side someone that was being discriminated against in being served in our city, but that doesn't mean that I agree with their life style, but I always try to say it in love and dignity. You guys, we have elected you to represent us, all of us. So, you all need to use wisdom in this. Righteousness exalts the nation and sin is a reproach to all people, and we have to answer for what we do in this life.

**Jenny Champion, 1613 Lombardy Circle** said I remember when I was a little girl and how shy I was and very protected if showering, dressing, or private times that a young lady needs. I remember being shy about changing clothes in the locker room, even around my friends who I knew so well. I could not even fathom the thought of dressing with a strange man present that may or may not be transgender, who knows, depends on that individual. As I continue, I am not stating that transgender are predators, but I am saying that I am not comfortable with that, and

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Mayor, you based your survey of feelings of 15 incidents that were based on feelings. Well, my feeling is that I am not comfortable with this and, that is what the majority of this community believes. We do not want this. We cannot take a survey based on feelings that are unfortunate, but they do not constitute discrimination, vote no.

**Kathryn Mahan, 2127 Winter Street** said my first encounters with transgender people blew my mind because they were in the midst of a life experience I simply could not understand. Now, my transgender friends blow my mind because I see their courage and their determination to be their authentic selves and to leave this world a better place than they found it. They inspire me. My Christian upbringing taught me that to be companionate like Jesus we must not dismiss people because their life experience makes us uncomfortable. Discomfort is the hallmark of every social justice milestone. Every time we broaden the reach of inclusion and equality we make our community stronger, every single time. Please protect all of our citizens, even the ones who make us uncomfortable. Lesbian, gay, bisexual, and yes transgender citizens deserve leaders who both strive to understand them and protect their basic human rights. Please vote yes.

**Dr. Karen Muehl, 1616 Cleveland Ave.** said a central value of America is that we do not discriminate against people on the basis of identity. This Council knows that every person deserves the right to eat at a restaurant, ride in a cab, or use a public restroom. Unfortunately, transgender people are being harassed, beaten, killed, and driven to suicide, in part because of the intolerance and discrimination that they face. They are regular people, healthy, productive members of our community. They should be admired for their courage to live authentically, affirmed, not assaulted. Some of you will feel uncomfortable with a transgender person in your restroom. Well, the freedoms we are afforded as Americans sometimes make each other uncomfortable. I have felt uncomfortable several times by the free speech that has happened tonight, but I am an adult. I am not asking the Council to protect me from this discomfort that is not your job. So, I can ask you to help protect the LGBT citizens of Charlotte from discrimination. Let's be true to our American values and pass this ordinance. Let's also know that you want him in the women's room.

**Dr. Holly Savoy** said I am a license psychologist in Charlotte and a founding member of the Charlotte Transgender Healthcare Group. The majority of my clients identify as transgender. Here are a few facts. In a recent national transgender discrimination survey, more than half of transgender individuals reported being harassed going into a public place, such as a restroom. Such harassment and discrimination can drive transgender individuals to attempt suicide at higher rates. A staggering 41 percent of transgender individuals attempt suicide compared to only 1.6 percent of the general population. One of my former clients, not only attempted, but died from suicide due to the discrimination she faced in simply trying to be herself and live her life. I count data from other cities with similar ordinances in place does not substantiate claims that the safety of women like myself and children will be at greater risk. I council and support individuals not currently protected in our city every day, and I urge you to take action and reduce the trauma in their lives by passing the ordinance.

**Keren Boyan, 1900 Kensington Avenue** said I have been a successful business owner in Charlotte for over 30 years. I must stand before you this evening and I think Martin Niemöller's famous quote says it all for me about discrimination and not speaking out. They came for the Trade Unionists, and I did not speak, for I did not belong to the Union. They came for the Jews, and I did not speak for I was not a Jew. They came for me, there was no one left to speak. It is my believe that anytime the government allows one group to initial discrimination towards another, we as Americans are stepping on to a slippery slope. We ask you to speak for those asking for equal rights or fold under the pressure of the loudest clanging bell. For me, the bottom line is LGBT community is made up of many facets. They are tax payers, they are voters, and they are citizens who make up a valuable fiber of this community. Many of you sitting on this Council tonight have serves on boards with us.

**Shane Windmeyer, 2226 Collingdale Place** said I am the executive director of a national non-profit organization based here in Charlotte called Campus Pride. We work with about 1,400 different colleges and universities across the country as well as area colleges here in Charlotte. I am proud to stand up here today to put our vote in favor of a fully inclusive non-discrimination ordinance. I am also a resident of Charlotte; I have been a resident for over 20 years. My husband and I got married legally right here in Mecklenburg County this past July, celebrating our 20 year anniversary. I think it is important more than anything tonight to know that our

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words matter, our actions matter. All of you were elected, and if I remember right we had something called TurnOUT Charlotte, and you were elected to make this happen, to pass a fully inclusive ordinance. So, I hope we remember that. I hope we remember that there are young people out there who are lesbian, gay, bisexual, transgender, and we have to send our love, our compassion, and our hope to these young people because the last time we did this we lost people in our own community to suicide, and I do not want to see that happen again. So if you are listening tonight, know that you are loved. Your God loves you.

**Sean Brinza, 1429 Seneca Place** said Jesus is Lord. By what standard are you considering this ordinance tonight? God's word or man's flawed reasoning? Will we be like Adam and Eve in the garden and decide morality for ourselves, or will we obey God? Whether you accept them or not, Jesus is King over all, and he will judge you. As Christians this is not about a religious conscience. It is about what God says. If these folks are so delusional about their gender, perhaps bathroom destinations of penis and vagina would solve the problem. No matter the outcome tonight, I speak for the true church in saying we must obey God rather than wicked men. Psalm 2 said be wise oh kings, be instructed you judges of the earth. Serve the Lord with fear and rejoice with trembling. Kiss the sun, lest he be angry, and you parish in the way when his wrath is kindled but a little. I plead with you to repent, and turn to Jesus.

**Councilmember Smith arrived at 7:44 p.m.**

**Erica Lachowitz, 15721 Castle Watch Avenue** said I have been in Charlotte for about 12 years now. I am a mother and as a transgender woman myself, I have got to tell you; I hear so much rhetoric about religion and how important religion is to everybody when making these decisions. The separation of church and state clearly doesn't apply south of the Mason Dixon. So, I have an issue and the issue really comes with understanding what discrimination is really like. I have had my ribs broken; I have had my face smashed into the ground; I have been denied the use of a restroom, embarrassed, ashamed, and made to feel like less of a person. Police response: well this wouldn't have happened if you were not dressing as a woman. I never knew how to be a boy. I told my mother when I was five. There was no Facebook; there was no way to communicate this. I did not make this stuff up, and I am tired of going to funerals. I am tired of going to wakes. It happens from the top down. City Council, pass this vote, please.

**David Greene, 5240 Carriage Drive Circle** said I am not going to lecture you on the importance of bathrooms or even talk about bathrooms. I am going to share my story. I am a native Charlottean representing HRC North Carolina. As a gay male who came out in the mid-90's back in Charlotte I can share with you that this was not an easy task. I can still remember the pain and the suffering to this day, the time that I was denied a rental property just because I was in a relationship with another man. We have come a long way since that incident happened, but the humiliation of that day still rings true to my mind. I asked the Council to keep this in mind as you vote tonight. Charlotte wants to be known as a forward thinking city. By not passing this ordinance you are not pushing us forward, but instead you are going to hold us back. Let Charlotte join the 225 additional cities around our nation that include protections for all people including our LGBT citizens. Please vote to pass this ordinance tonight.

**Corey Travaguni, 12606 Sitka Court** said Mr. Austin you said recently in support of this ordinance that Charlotte City Council was going to move forward with it because we are trying to show the world that Charlotte is an inclusive place. So, let me understand this correctly. We want Charlotte to be inclusive at the expense of sacrificing our children's safety, security, privacy on the altar of political correctness? With all due respect Sir, this is not an ordinance of inclusion but of confusion. The seeds this Council sows tonight in support of this ordinance in behalf of the most precious and the most vulnerable in our city. You may not see this harvest for a while, and you think what you are doing is right, but it is written that there is a way that seems right to a man, but in the end it leads to death and destruction. Be assured you will reap what you sow here, personally, and in eternity. This local government was set in place to support the City residents, have our best interest in safety as heart, and this is agenda if I have ever seen one, and you will be held accountable for your actions. Please choose to do the right thing and not the popular thing.

**Stephen Waldner, 7011 Ravencrest Drive** said there are many facets to this issue tonight: physical, mental, moral, physiological, traditional, legal, spiritual, cultural, and many others, but for tonight we expect you to make a fact based decision on one thing alone, on biological,

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anatomical makeup. You ladies should never have to worry when you are at a restaurant with your kids about your daughter running face to face with an anatomical male, in the shower or in the restroom. None of you anatomical females have any right; you should never be in the men's restroom either, no matter how masculine you might feel. So, Councilmembers it doesn't really matter what you or I or anyone here thinks, believes, feels, or preserves that day, we expect that we will hold you accountable to make your decision on biological, anatomical makeup. Do not opt out for some third bathroom option either, that is a copout. It is an added expense for all business people. We expect you to vote no.

**Teresa Wilson, 9216 Stonegate Drive** said I have lived in Charlotte all of my life. I recently attended the community forum which was held to discuss this proposed ordinance. We broke up into small groups, and I was told that supposedly transgender people are being beaten in restrooms. This is obviously already illegal which brings me to the question, what is this anti-discrimination ordinance really going to do for the transgender people in the bathrooms? The more I researched this ordinance the more I realized that it is not meant to benefit the LGBT Plus people or anyone physically being abused in bathrooms. It was carefully created to target those who disagree with the beliefs and lifestyles of this community. It was created to give license to prosecute, harass, and destroy anything or anyone who hinders this agenda, whether personal, business, church or individuals or anything else that this ordinance can apply to. This ordinance will be used to silence those who disagree with the agenda, vote no.

**Robbie Wilson, 9216 Stonegate Drive** said I cannot honestly believe that the City of Charlotte is even considering making these changes. You all realize this does not make a bit of sense whatsoever. The only thing that makes sense is that you are not thinking about the bulk of the citizens, the businesses, and the visitors that come to Charlotte and work in Charlotte, but you are thinking of an agenda that you want to shove down the people's throats. This creates so much chaos for nothing. You think you are doing a good thing, to protect a select group, when actually you are promoting a bad thing that is going to bring so much harm to another group. The Scripture tells us that people are so wicked and desire to sin so much they will create new ways of sinning. You are helping them do that. In Isaiah 5:20 it says woe to those that call evil good and good evil, who put darkness for light and light for darkness, who put bitter for sweet and sweet for bitter. You are busted; you all are doing this exact same thing. Don't do it Charlotte.

**Jennifer Ratajczak, 2024 E. 7<sup>th</sup> Street** said I am here on behalf of the Charlotte Transgender Healthcare Group. We are a rapidly growing group of medical and mental health clinicians holding over a dozen different credentials between us. Every day, we are faced with the aftermath of transphobia and legal discrimination. We see individuals who lose remarkable careers, can't find safe shelter, and even our youngest students are afraid to go to the bathroom at school. Grieving loss, after loss, of our promising youth to suicide illustrates how hopeless it can feel to navigate this community. At the end of the day, we are simply here regarding a civil rights issue that in many ways mirrors our histories past. Now is in the past, prejudicial agendas fueled by irrational fears, not based in fact have overshadowed the basic rights of a victimized and vilified minority population. As informed, medical professionals we can assure you that gender diversity is a natural part of human diversity. Charlotte is a remarkable city. So, let's not lose sight of the big picture and join the leading cities of this country by bringing our non-discrimination ordinance up to date to protect both the proud citizens and our great city.

**Connie Vetter, 6096 Chinaberry Court** said I live in Mr. Phipps's District 4. I am a lesbian, and an attorney, and a business owner. Tonight I am speaking for equality and civil rights for LGBT people and others seeking equal treatment. On Thursday, upon receiving the Julius Chambers Diversity Champion award from the Mecklenburg County Bar Association, the... position of these two nights is not lost on me. I and my lesbian, and gay, and bisexual, and transgender brothers and sisters can leave here tonight and be denied service at a hotel, or a restaurant. My transgender brothers and sisters are being treated horribly, denied service, being assaulted. My clients call me for help against the discrimination they suffer. Transgender men are men; transgender women are women, period. We have a lot of work to do. Start tonight by passing this ordinance.

**Quinita Martin, 13206 Winslow Hills Drive** said thank you for the opportunity to exercise my First Amendment Freedom of Speech as a Christian and as a supporter of Jesus Christ. You are taking our city on a very slippery slope to require our citizens to affirmatively endorse and co-sign people's subjective perception of themselves with the City of Charlotte giving my full

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retirement benefits if I was 30 years old and assigned the birthday of 1986 but I feel like, act like, dress like, and identify with being 70 years old. The answer is no because notwithstanding my feelings the facts are that I would not be 70 years old. Another issue is that this provision requires affirmative speech with which I specifically as a Christian disagree. As a Christian I shouldn't be required to make a tee shirt that reads I support gay marriage no more than a homosexual owner of a t-shirt business should be forced to make a tee-shirt that reads marriage between homosexuals is wrong. This ordinance is ill-advised, and I encourage you to turn from your intended course of action and vote no.

**Steve Knight, 420 E. 15<sup>th</sup> Street** said I am an Evangelical pastor at an Evangelical church here in Charlotte, Mission Gathering Christian Church. I am here to urge you to vote in favor of this non-discrimination ordinance tonight. I am speaking on behalf of the transgender members of my church and my friends in the community. I have heard a lot of people quoting the Bible here tonight, but I hear very few people quoting Jesus, except for the Mayor, who reminded us that Jesus said two things, love God with all of your heart, soul, mind, and strength, and the second greatest commandment is love your neighbor as yourself. Is it loving to fear our transgender neighbor? Is it loving to demonize them and discriminate against them. I think we know the answer. I think we know it in our heart of hearts. You have the binder; you have the facts. There have been very few facts that I have heard tonight other than let's get with it; 200 cities have already done it for decades Charlotte. Let's be a major city. Vote in favor of this ordinance.

**Amantha Barbee, 6233 Edmore Blvd** said I am here in support of the anti-discrimination ordinance. It deeply concerns me that some members of the Christian community are making this ordinance about their belief that being gay is a sin. As you are ultimately responsible for this decision, I say this to you as a member of the Christian community and a member of clergy in the Presbyterian church USA denomination. Being Christian means following Jesus, Jesus does not utter a word about homosexuality. In the Bible, it states clearly in John 3:16 that God so loved the world he gave his only begotten son, that whosoever believeth in him shall not perish, but have everlasting life, whoever. This ordinance is not about what Jesus does not talk about, but whether what is asked of you in Mica 6:8. As many of you are Christian, and it is possible to separate your civil service from your Christian service, the Bible states He has told you oh mortal, what is good and what does the Lord require of you but to do justice and to love kindness and to walk humbly with your God. Justice means equality for all no matter what, vote yes.

**John Arrowood, 210 N. Church Street** said I have lived in, paid taxed to, and been involved in Charlotte since 1989. I am an attorney, a former judge, and a former member of the Vestry of St. Peters Episcopal Church. I rise tonight to urge you to vote for these amendments. Discrimination against members of the LGBT community is real. The rhetoric we have heard surrounding this ordinance is exhibit A of why these protections are needed. In this debate, we have seen the opponents focus on fear which has no basis in fact. Fear is what we use when we do not understand things and is a powerful tool used in many jurisdictions against the LGBT community. I am here tonight to ask you to vote your hopes and dreams of a fair and just city and not your fear of the unknown. Let's all continue to work together to make Charlotte a diverse and world class city for all.

**Diana Travis, 6904 Alexander Road** said as I was cleaning out my chicken coop this morning, I congratulated myself on finding a new use for my old vote against Amendment 1 signs. They make an excellent chicken poop catcher under the perches at night. This got me to thinking, has the demise of Amendment one hurt any of you here tonight? Has the fact that I was able to marry Mary Anne, my partner of 25 years, specifically hurt anyone here, gay, straight, or transgender? At the forum earlier this month a lot of us on opposing sides of this issue got together in small groups. In my group, I do not believe any minds were changed but we treated each other with respect and actually did find some common ground. At the end of the session, we all shook hands and realized we were seeing each other as human beings with real fears and hopes. For those of you that oppose this ordinance, my marriage to Mary Anne did not hurt you, and I think that you will find that your fears for bathroom safety and for your rights being trampled on also, will end up being baseless. I urge the City Council to approve this ordinance.

**Justin Reeder, 4816 Sirus Lane** said I have owned and operated a business here in Charlotte for the last ten years. I am in District 3 where Ms. Mayfield serves. I am asking that you vote no for this ordinance. We have already had a lot of challenges in our business that we have to overcome. This would just be another challenge that we would have to overcome. I believe you

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are actually not protecting anyone. You are going the exact opposite by voting yes for this ordinance. We have seen in other cities where businesses have been targeted for their beliefs; why do we think it would be any different here in Charlotte? I love this city and the people in it, but I do not support all ideas or messages. I also have a wife and two children that I am called to protect. By allowing men to enter a women's locker room while my wife and children are in there is not acceptable. I will not allow them to be left unprotected by one of their most vulnerable times. Again, I please ask you to vote no for this ordinance.

**Marguerite Cooke, 1111 Mineral Springs Road** said I just want to first thank you all for serving on the City Council Madam Mayor and Councilmembers. I know you have a very difficult and challenging position. I do understand why male transgenders do not want to use the men's bathroom, and I really feel for their difficult situation, but I also relate to the people who are afraid that their children, especially adolescents and high school would be exposed to an opportunity for abuse of this ordinance. So, I too would ask you to vote against it. I hope and pray that you will have the Wisdom of Solomon and try to come up with some kind of compromise if at all possible. If not taking out the gender identity/gender expression words from the ordinance, perhaps require full floor to ceiling doors and walls in the bathrooms and locker rooms.

**Reverend Robin Tanner, 9704 Mallard Creed Road** said I stand before you representing the 68 faith leaders who are members of the Charlotte Clergy Coalition for Justice. Although I am a minister, I will not quote scripture to you this evening. Instead, I would like to show from a different sacred document that we have in common. We hold it to be self-evident that all persons are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness. The Charlotte community has a moral compass that is grounded in a faith in humanity. It is a moral compass that can guide us beyond fear toward the better angels of our nature. Councilmembers, Madam Mayor, there are few moments in the history of the community when its leaders are afforded the privilege of voting into practice the vision of equality. Tonight is such a moment. May the moral compass of the Constitution guide you; may you vote in favor of the non-discrimination ordinances.

**Dr. Leon Threatt, 7910 Idlewild Road** said I have pastored here in Charlotte for 28 years; I have been honored to do so. I would like to encourage each of you to vote no for this city ordinance. This ordinance is not about hate; it is not about love. It is not about relationships; it is about bad policy and a bad law that will govern over this city. Those of us of the faith community, we have no hatred and no disregard for the people in the LGBT community, in fact if anything we are reaching out to them with a hand of compassion and love, but this ordinance is not good for our city; it is not good for our region. We would ask you to think cautiously and respect the profound impact this will have on this region is far reaching, and I would ask you to consider the long term judgment it has on all of our lives as certainly on your futures as well.

**Sahiba Chawla, 902 West 4<sup>th</sup> Street** said I am 25 and identify as a lesbian woman. Growing up in a very kind of different, traditional country like India, where being gay is basically a criminal offence, I was never given the opportunity of freedom to be completely myself, which is why years ago I just said well, I am going to go and find a better life for myself. I came to the United States which is the land of freedom and opportunity. It wasn't easy for me to come here and make a life, but I have faced a lot of discrimination and rejection from people, but ultimately I was able to overcome all of that and finally find happiness. I have just noticed that if you are giving people a chance that they do not against you; it is the best thing ever. All I just want to say is it is my personal plead to please extend anti-discrimination law to people like me.

**Andrea Hines, 6904 Troika Court** said I have been a Charlotte resident for 22 years. This bill will make what has been safe for females in their vulnerable moments, unsafe. If this bill passes, we females won't use or let our female loved ones used bathrooms or changing facilities outside of our homes unless they are locked private rooms. Council, this bill will impact you as well. Will you be comfortable with you using public facilities? How about for your loved ones? This bill will grossly negatively affect the economy of Charlotte, its businesses, tourism, parks and rec, conventions, sporting events, transportation. Who will want to have a layover in Charlotte? The tax base will tank. This bill will leave us females imprisoned within a small fear with which to travel away from our safe homes or leave us having to wear diapers. This bill is motivated by

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distorted self-interest, a result of the moral chaos that is in this day and age. They do not consider the impact.

**Diane Troy, 9627 Penhurst Trace** said I live in District 6. I am a passionate, straight allies and a proud PFLAG mom. My son came out to me his senior year in college, and I was shocked and devastated. When I finally chose to reach out for help, I was greeted with an outpouring of support of love from PFLAG Charlotte and from my LGBTQ community neighbors. I learned how profoundly ill-informed and cloistered my life had been up until the point that my child came out. By opening my heart and mind to the experiences and challenges of the LGBTQ neighbors, I continued to experience profound personal growth and spiritual strength. Today I join with other PFLAGERS as we offer the same heartfelt support we received. We choose to pay it forward. Although everyone's journey is unique, despair, isolation, and fear are emotions experienced by every LGBTQ person and their families at some point. Tonight I implore members of the council with great emphasis on District 6 Councilmen Mr. Smith to pass.

**Krista Tillman, 809 Mt. Vernon Avenue** said I live in Charlotte, North Carolina just like everybody else here. I am here tonight representing the Straight Allies of the LGBT community. There are many of us and I am only one of many in this community, and I urge you to vote yes for this ordinance. I remind you that there is no credible evidence, none whatsoever of harm caused by passing such an ordinance. Cities as close to us as Columbia, South Carolina have passed this ordinance with no problems experienced or harm caused by this passage. No safety will be compromised. Our law will still protect all of us. I will also remind us all that there is ample evidence of discrimination, as represented unfortunately as some of those views in this room here tonight. Passing this ordinance would be good for all of Charlotte, straight and unstraight. It will tell the world, once again, how great we are in Charlotte.

**Jordan Frederick, 4100 N. Course Drive** said I am a native Charlottean and I teach high school English in Mathews. Every day I try my best to teach my students the meaning of respect. I hold them to high standards when it comes to their treatment of each other and they know that I expect kindness and consideration in all that they do. As we get closer to graduation, it scares me to know that I may be sending those bright, diverse, unique young people out into a world that does not share those same priorities. My transgender students are afraid to do something as simple as using the restroom? My gender non-conforming students fear persecution as they head out to the work place. My gay students feel they have to hide who they truly are. I am here to day to ask the City Councilmembers and Mayor Roberts to please pass the amendment to the non-discrimination act not for my sake, but for the sake of these children. They are our future, and they need our support.

**Lauren Alleman, 2237 Shenandoah Avenue** said I am a resident here in Charlotte, North Carolina, and I am also bisexual and trans gender. I transitioned here in North Carolina four years ago and at that time I can say that there were many challenges that a transgender individual will face here, even in this city. We like to pride ourselves on how friendly we are and welcoming, but even in a restroom where you think you have privacy, there is a challenge in just being able to use the basic facilities. It is funny trying to wrap up everything I have experienced and who I am in one minute, but for me this is a real issue. This is not hypothetical, this is my daily life. I am a good citizen; I pay my taxes; I volunteer; I work hard at my job; I take out my neighbor's trash when she hurt her foot. Do I not deserve the fact to be able to use the restroom?

**Jamie Hildreth, 4608 Somerdale Lane** said I am a resident of East Charlotte, and I am also the chairmen of Mecklenburg County LGBT Political Act Committee. I am here today to urge you to add the protected classes of sexual orientation, gender identity, and gender expression to your protected classes for public accommodation. I remember the first time that I actually spoke here in front of City Council. I spoke about how Charlotte was a safe and accepting city for me, and how I can be me, and how I could not go back to the small hometown that I was from and be who I was. However here, even in this city, some of the basic protections that I thought that I had, let alone the protections that our transgender community needs, they are not there. That is why I urge you to pass these protections so that we can make sure that Charlotte is the city that it wants to be and everyone wants it to be as well. A city that is safe and welcoming to all of its citizens where you can go out and be with your partner, who you love, be who you want to be. So, that is why I urge you to pass these protections for all of our community so we can move forward in unity together.

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**Ryan Morrice, 2300 Overhill Road** said I am a born and raised Charlottean from City Council District 6; and I am a product of our CMS public school system. I came out as a gay man to my parents in high school and to everyone else my first year in college. I have been active in organizing for electoral and issue based campaigns since I was 17, and I can't think of a more salient issue in the fight for civil rights than the one before us this evening. I am sure all of you have received numerous hateful and ignorant emails from opponents of equality of this past week. My charge is to speak with you from experience. This ordinance is more than just the fears and doubts of those who would use our community as a wedge issue to turn out their voters. This ordinance is about real people who need your support to access their rights that they are guaranteed by the Constitution. We are tired of being discriminated against because of who we are. This common sense opportunity to provide the residence you represent with the protections they deserve should be an easy one to take. Teddy Roosevelt told us that aggressive fighting for the right is the noblest sport the world affords, and I hope you will join us in fighting for equality for all.

**Emily Plauche, 170 Allen Street** said I knew a girl once who was raped in a women's public restroom. The incident took place at a Charlotte bar around 7:30 in the evening after her drink had been spiked. This girl happened to be lesbian and the perpetrator happened to be a male dressed as a male in a female restroom. Rape of women and girls happens every day in and outside of bathrooms by males who do not need this ordinance or to dress as females to perpetrate their crimes. While there is no evidence to suggest that granting transgender people access to the bathroom of their choice will increase crime, there is insurmountable amounts of evidence of discrimination and hate violence perpetrated against individuals of the LGBT community. I am that girl who was sexually assaulted in a restroom, and I can tell you that rapists are already rapists and bathrooms are not. The oppositions contrived paranoia is not enough to deny me, as a lesbian, or my friends in the LGBT community the same rights as everyone else, in bathrooms or in businesses. I beckon the City Council to formally recognize that LGBT rights are human rights. Please vote yes.

**Alexander Peña, 2600 Kendrick Drive** said in 1933, Hitler enacted laws which created the Jewish populist of Germany as second class citizens. They lost basic rights; they were threatened and bullied into seclusion. In 2016, Sally meets the man of her dreams; she uploads a picture of herself kissing her boyfriend. She only thinks that she is in love and wants to share her joy. I on the other hand have to make a conscious decision to post a pic of myself and my partner. Will this get me fired? Will this cost me a future job? Is this worth the uncertainty? Today I could lose my job; there is nothing I can do about it. I am a second class citizen. My status further jeopardized by fear mongers and bigots, not unlike 1933 Germany. Charlotte is experiencing tremendous growth, trying to brand itself as a thriving modern city, full of opportunity. A vote no labels Charlotte as a smear from the past. Let us not let Charlotte be that city. I live here; I pay taxes, like all of you. So, remember lets define Charlotte by progress, vote yes.

**Natalia Diez, 7008 Turning Point Lane** said I am on the board of MeckPAC. I am also an immigrant, and although the struggles of immigrant communities differ greatly from those of the LGBT community, they have one fundamental thing in common, the need for equal protection under the law. Protection from discrimination brought on by fear and a lack of information and understanding. Often times, the people who most desperately need our protection are the ones that have the most difficulty getting it. You have the power to change that today. Charlotte doesn't need more discrimination stories; it needs stories of progress and unity. Let today be a day we choose inclusion and love by voting yes.

**Chris Turner, 6327 Kifsgate Court** said I am a resident here in Charlotte longer than I wish to admit. I want to thank Mayor Roberts and the City Councilmembers for allowing us to speak tonight to this issue. There are two documents that were created to guide this country, this state, and this city. The Bill of Rights and the Constitution, within those documents it states that all people are created equal and their rights are to be protected. Now, I am certainly no Constitutional scholar but I do not believe anywhere in those documents days it say rights are protected except for LGBT and certainly not transgender. As an elected official, it is your duty to uphold the rights outlined in these documents. Despite all of the emails, the phone calls on both sides of the issue, I ask that you vote tonight to provide the citizens of Charlotte equal rights and protections by passing this ordinance as written, no amendments.

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**Scott Bishop, 813 Hawthorne Lane** said I am on the National Board of Directors for the Human Rights Campaign. I am a citizen of Charlotte. I come before you tonight to urge you to vote yes on critical updates to Charlotte's city ordinances that protect certain groups of people from discrimination. We know you have a lot of fearful rhetoric from a vocal group of opponents to these updates, most of whom do not live here in Charlotte. What they are saying is simply not true. Despite what opponents say, sexual predators are not waiting for Charlotte City Council to pass a law just so that they can break the law. That is Ludacris. These ordinances will not be able to be used to cover to commit a crime. It is just not true. In reality, these anti-discrimination measures are already emplace in 17 states and over 200 cities around the country. This is not new stuff. The simple truth is these changes will make the City of Charlotte a safer place for gays and lesbians and transgender people to live, work, raise a family, and find opportunity. Tonight, we hope you are listening to the facts and not the fear. The 214 page report you received clearly presents the case to these common sense measures.

**Rosalind Gathers, 1739 Misty Vale Road** said one of the arguments that I have heard with this whole issue is that passing this ordinance is good for business. Since when has discrimination concerns been a deal breaker for companies to do business in North Carolina? Several companies currently pushing for this inclusion language are already here. The tax breaks and other incentives are more than sufficient to attract and retain companies in our beautiful city. Instead of bullying residents to accept this additional language, redirect your focus to holding law enforcement accountable to protect and serve all citizens. I love God, and I am a Charlotte resident. I do not want to see anyone mistreated for any reason. I do not support this change because it conflicts with my faith, and the protection already exists in the current ordinance. So please, don't do it.

**Melissa Morris, 9015 Inverness Bay Road** said I am speaking on behalf of the Charlotte LGBT Chambers of Commerce who is asking for this Council to support the updates to Charlotte's non-discrimination ordinance. From our major banks and corporate leaders to our service organizations and energy providers, Charlotte already has major support from corporate entities related to LGBT rights and inclusion, but without city wide protections, these businesses can only protect their employees while at work which is simply not enough. Today's vote is about much more than just non-discrimination in our city as it exists today. As Charlotte continues its tremendous growth and positions itself to become a global leader in business, we must lay the foundation to secure our future development. In a recent article called open for business, the economic and business case for global LGBT inclusion, a coalition of global companies supporting LGBT inclusions stated that open, inclusive, and diverse societies are better for business and better for economic growth. This report demonstrates that businesses thrive in tolerant societies and that the spread of anti-LGBT policies run counter to the interests of business and economic development. All residents should be treated fairly and equally.

**Jennifer Kant, 10608 Glenmac Road** said I am a teacher for CMS as well as a board member for PFLAG Charlotte. PFLAG is a national organization that has spent over 40 years acting as support, education, advocacy group for those who have loved ones in the LGBT community. At both my PFLAG meetings and my work with high school students, I have met many families, and often their biggest concern, especially with those that have transgender and non-conforming gender children is their safety. The opposition to this ordinance tries to manipulate fear in our community by claiming that some citizens would be made more vulnerable if it is enacted, which evidence has shown that the cities where these protections are already in place have not seen anything of the sort. It is the LGBT members of our community; it is these families that are vulnerable. When they experience acts of discrimination, their hands are tied. There is no law that protects them and their community has left them open for attack. It is the job of our cities leaders to protect those citizens who are most vulnerable. I strongly urge you to do your job well and pass this ordinance.

**Scott Saunders, PO Box 79071** said I have been here for 25 years as a business man, very active in the faith in the business community, and earlier today I sent you an email, hopefully you read it among the 29,000. I don't know if you got down to mine, but in it I quoted presidents, and I quoted North Carolina State Constitution as it related to God's Word in public square. The reason why I gave you a red race baton which you saw that I could not bring in here is because I want you to think when you look at that of the hundreds of millions of American's blood that they shed from the very beginning of our country up to now to uphold Biblical values. Even Queen Charlotte said in a letter to her brother that being queen sovereign of England is nothing

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compared to that of being a Christian. I am not here to bash anybody. I can consider homosexuality a sin just like lying, stealing, and cheating. That is what the Bible said, but I am asking you two questions. One is who is your highest identity? Is it a Councilman? Is it a Democrat or Republican? Is it a Charlottean, or is it a follower of Jesus Christ? Because at the end of the day, if all of us, and there is two kinds of sinners.

**Tom Phillips, 17811 New Mark Ave** said I am a father; I am a grandfather, and I am concerned about this ordinance. The question I have is why is it coming back to Charlotte? It was dealt with last year and brought back. The question would be why? Why would we bring back something that could be a Trojan horse? I heard the situation with the pain of our LGBT community. My heart breaks for that; that needs to be dealt with, but we have seen in other states the degradation of small businesses after a situation like this was passed where they were targeted and then destroyed. We need to think about what we are doing here this night in light of the future. Secondly, there are basic human rights, but we are hearing and looking at a population that is very small and dealing with population that is incredibly large. The Bible says that it is the principle of life that if a mother or father does not care for their family they are worse than an unbeliever. You have heard parents tonight say care for my family; don't let this happen to my children.

**Pastor Nancy Kraft, 2321 Arnold Drive** said like many of those who have spoken tonight, I am a Christian. I am a student of the scriptures. It is my greatest desire to follow Jesus. I am grieved to hear so many who also call themselves Christians, speak and act in a way that to my way of thinking doesn't seem to be all that Christ-like and yet it does not matter if I approve of them or if I agree with them, if they offend me or scare the bejeebers out of me, like all citizens, they are entitled to be protected under the law. In the same way that I want to say to my Christian friends who disagree with me, it doesn't matter if you approve of LGBT folks or if you agree with them, if they offend you or the scare the bejeebers out of you, like all citizens they are entitled to be protected under the law.

**Reverend Debra Hopkins, 2611-1 Milton Road** said despite the arguments that we have heard tonight, I have got to speak from my heart. I am a transgender pastor, preacher, serving over at Sacred Souls Community Church, and I believe that God calls all of us to come together as one body to be able to live in harmony and humanity with man-kind, one with another. The rights for me to be able to have, to be able to go into a restaurant, to be able to go to the bathroom, to be able to walk down the street without discriminative laws against me but for me and with me as every other Charlottean here. I think that we all need to have those rights that we all need to be able to stand as one.

**Steve Triplett, 6939 Kuck Road** said I am pastor of Fellowship Baptist Church here in Charlotte; I am also the moderator of the Independent Baptist Fellowship of the Carolinas, representing many churches in North and South Carolina. This is the third time that I have had to come here and address this very issue. First it was the marriage amendment. Last year we were right down here on this very thing, it was defeated, and now here we are back again. I ask you why? Why are we here? I look to the leaders of our community. Mayor Roberts presented a very bias survey that she had undoubtedly done with a lot of the LGBT community and their president who is Chad Turner, one of his aliases. His name is Chad Eugene Sevearance of the LGBT Chambers of Commerce is a convicted sex offender, and for this to continue on and when I hear these things said about we don't have anything or any problems with it; I wonder about it.

**Christina Stritzinger, 1708 Dilworth Road West** said I moved to Charlotte six years ago to start my career after earning my degree in finance from the University of South Carolina. I am a proud member of the LGBT community here in Charlotte, and I love calling the Queen City home. I would like to quote for you some words from Abraham Lincoln about what I think government means. The legitimate object of government is to do for a community of people whatever they need to have done but cannot do at all or cannot do well for themselves and their separate and individual capacity. So, Charlotte City Council, if you cannot protect me as an equal citizen I will leave before I start a family; I will leave before I start my business; I will leave before another LGBT person feels so discriminated against that they take their own life. I will leave before I call Charlotte my permanent home. I will leave. Mayor, City Council members I urge you to vote yes tonight.

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**Julia Ballou, 4121 Sandcastle Court** said I am a resident of Charlotte. My question regarding this ordinance is who is going to distinguish between the men who actually quote on quote feel like a woman and the men who just want to harm women? Are we going to have someone waiting at the entrance at every single women's restroom to judge every man who wants to enter to make sure they actually qualify to go in, or are we just going to let every and all man in and hope for the best? If this bill is passed, we will be throwing the door wide open, basically saying we do not care, go right ahead, to those who commit horrendous crimes such as rape, voyeurism, and other sexual assaults. Furthermore, statistics say that only 0.03 percent of the population feels discriminated against by not being allowed in the opposite gender's restrooms. Is it worth compromising the safety of the rest of the population, the other 99.97 percent to make those few people feel better? According to the United States Constitution, the rule of the government is not to guarantee people feeling accepted; the role is to protect the people. This ordinance will do anything but protect the people. It compromises the safety of women to accommodate the feelings of a minuscule portion of the population, and it must be turned down.

**Geoffrey McIntyre, 6300 Holly Knoll Drive** said maybe you all have been drinking too much Kool-Aid. This ordinance is a non-starter. You all are thinking about passing an ordinance that might benefit what a handful of people or two and alienating 700,000 people. If you write an ordinance that allows men to enter women's restroom, facilities, and locker rooms then guess what is going to happen. Men are going to enter women's locker rooms, restrooms, and facilities. I do not think that anyone wants that really. It doesn't have to be a rapist or a mass murderer; it could be a voyeur or someone who gets a kick out of exposing themselves. This ordinance is a non-starter. I urge you to reconsider and what exactly is your agenda otherwise? It can't be that or reason or logic.

**Brandy Haynes, 1210-1 Green Oaks Lane** said I serve on a board of the ACLU of North Carolina, a non-partisan, non-profit organization dedicated to protecting civil liberties for all North Carolinians. On behalf of our nearly 10,000 supporters across the state, including many in Charlotte, I am here to strongly urge the Council to expand Charlotte's public accommodations ordinance in order to protect our city's residents from discrimination based on familial status, marital status, sexual orientation, gender identity and expression. One of Charlotte's greatest strengths are diversity, passing this ordinance would send the message that we believe in protecting all members of our community, especially some of the most vulnerable. All people including out gay, lesbian, bisexual, and transgender friends, family, and neighbors have a right to be themselves, to be protected by the law, and to live without fear of harassment, discrimination, or violence. Among other things, this ordinance will simply allow people to use the appropriate restroom. It does not change the rules that govern behavior in the restroom; it offers basic protections for all of those using the restroom including transgender people. The ugly rhetoric from those who oppose these protections is simply not based on evidence; instead, it relies on fear to divide our city.

**Charles Walkup, Jr., 1926 Edgewater Drive** said this ordinance is based on a false and dangerous assumption, that it is more important to protect individual discrimination, than it is to protect individual liberty. Liberty is the right to make our own decision whether anybody agrees with us or not. Our founders declared it a God given right, yet the human rights campaign specifically asked this council to deny this right when they stated that the goal is to protect people from arbitrary discrimination. Until individual discrimination becomes so wide spread that it denies liberty to others, government has no authority to address it. Council has no such evidence. The real evidence from cities that have this ordinance is that government is being used to punish, intimidate, and science opposition. Council your primary responsibility is to protect liberty for all of us.

**Councilmember Eiselt arrived at 8:31 p.m.**

**Roger Reeder, 10660 South Tryon Street** said I would like to simply stand before you. I have heard the word fear a lot tonight, but I would simply like to stand before you as a God fearing grandfather that has been around a long time that still believes that if you raise a child up the way that it should go, they will not depart from it. That is simply being that being a boy is a boy and a girl is a girl, which I cannot believe in my wildest dreams that I would have to stand before I group of elected officials and ask them to vote no in a restroom situation that allows boys to go in girls restrooms and vice versa, but there you are, and here I am. I am asking you to vote no to this ridiculous ordinance.

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**Dr. Marsha Ford, 6836 Alexander Road** said I am speaking in support of the non-discrimination ordinance changes. Voting yes for these changes is the right thing to do because being accepting is part of who we are in Charlotte. I have lived here nearly 34 years and during that time when Charlotteans have confronted intolerance and discrimination whether it be to African Americans to members of the Jewish community to others, we have opened our community to be more inclusive. Members of the LGBT community deserve also to be included and be protected from discrimination, and consider this, a transgender man in the women's bathroom or a transgender women in a men's bathroom, which would occur if bathrooms were assigned based on gender at birth, would be far more disruptive than what this amended ordinance will allow. I urge and hope you will vote yes.

**Reverend Philip Benham, 761 Harris Street, Concord** said I am from Concord, North Carolina, and I want you to know that truly this isn't really about a bathroom thing. It is a battle between whose law is reign and who is Lord? That is what we are fighting here. Is God right or is God wrong, and your city council, the one that is stacked right now to pass this ordinance has raised its tiny little fist in the face of God saying we are God and we know that is best. We know that is a man and we know what is a woman, and we know what is trans, and I want to encourage you in Jesus name that God tells us that if we act this way and disobedience to him, he will turn us over to statutes that are not good and laws that we cannot live by and he will fill us with horror so that we will know he is God. We are going to be filled with horror at what you do and you are going to open the gates of hell for an enemy to come in to rob, to kill, and to destroy. I am asking you in Jesus name to repent of your hell bend way to just bring havoc to our children, in Jesus name.

**Mark Metzger, 300 E. John Street, Matthews** said I am a business owner and an employer here in Mecklenburg County, and I have watched and been involved over the last two years as you have brought up this issue. You have invited the human rights campaign to speak openly to you about this, to help you to craft this ordinance. You have given no such opportunity to the faith based community to do the same. We as a faith community know and understand well our duty to love our LGBT, and we will continue to do that, do our best, flawed as it may be, to show kindness to them; however, it will always be with tough love that speaks the truth that the Bible clearly condemns LGBT life styles. Tough love means they should not get any special treatment allowing them to live outside of societal norms at the expense of other's freedoms. Tough love means speaking the inconvenient truth that we do not get to be who we want to be; we must be who God made us to be. It is God's word that warns us that our hearts are deceitful and desperately wicked and that following our hearts is dangerous and destructive.

**Tami Fitzgerald, 9650 Strickland Road, Raleigh** said I represent the North Carolina Values Coalition, a statewide organization. I hope you realize this morning that Governor McCrory said if this Council approves the transgender bathroom ordinance that they can expect an immediate response from the state. I applaud Governor McCrory for having the sense to throw out this unreasonable and unnecessary ordinance. It is unconstitutional, and you know it. You have gotten bad legal counsel from your lawyer, Mr. Hagemann has told you that this ordinance would be upheld, and he is wrong, and so you are going to force yourselves to be subjected to other means, and if this passes tonight you can guarantee yourselves at least a lawsuit or the State General Assembly coming against what you have done.

**Daniel Parks, 8410 Pit Stop Court, Concord** said I work in Charlotte six days a week and as a concerned father, husband, and pastor, I along with the majority of the speakers last year have already voiced my concerned about this so called non-discrimination ordinance. It seems that this City Council under the leadership of Mayor Roberts has not only ignored and marginalized our concerned but altogether regarded them as extreme and bigoted. Of the concerned individuals you have heard and will hear from tonight who are opposed to this ordinance, not a single one is bigoted. We are genuinely concerned for the safety of the most defenseless in our community and the freedom to disagree with what the Bible calls sinful behavior. Under this ordinance, both will be in jeopardy, safety and freedom in your desperate pursuit to make Charlotte a progressive city through the lack of your reasonable consideration of the majority of responsibly minded people, if you pass this ordinance instead of a world class city, Charlotte will become a world class cesspool. I encourage you to vote no to this ordinance. It is not good for our city.

**Paige Dula, 332 Havenbrook Way, Concord** said I am from Concord, North Carolina and I would like to thank Don't Do It Charlotte, the Benham Brothers, and the North Carolina Values

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Coalition for providing me with the words for my speech on how important these protections are. Here are some excerpts from their social media pages: if I caught someone with male parts in the restroom with my wife, there would be a butt stomping no matter what clothing they had on. I find a transgender male or anything resembling a man going into the ladies room where my daughter might be, and I will rip whatever genitalia that thing has off. I find a male going into the female room where my daughter is I will kill him; Taser, firearm, or a little pepper spray ought to clear out the offending party. If some dude went into the women's restroom when my wife or daughters were there I would go to jail for beating the heck out of him. So, tell me again, who are the dangerous people here tonight? I think you see them here.

**Randall Down, 1005 Apogee Drive, Indian Trail** said years ago in upstate New York, on the New York State Thruway there was a bridge that collapsed. Many plummeted to their death because they did not know of the dangers up ahead. Some stopped in time and the lives were spared, but those spared were the ones waving and pleading with others to stop. Sadly, some refused to listen; they kept on driving thinking that everything was okay. They drove a little further and they come faced with the grim reality that their choice of disobedience came with a consequence. As a car plummeted down hundreds of feet down towards death, and many of you on this council are traveling down a road much like the New York State Thruway, but the road you are going down you call anti-discrimination, equality, gender neutral. The road you are on with this ordinance may seem right to you, but according to God's Word, there is a bridge out ahead. The bridge out is represented from what the Bible says there is a way that seems right to us but the end leads to death. Spiritual death usually comes before physical death. God created all of us male or female; our gender is not self-prescribed but God prescribed, vote no.

**Marty DiGiacomo, 1017 Patricia Avenue, Harrisburg** said I work with anti-human trafficking organizations, local law enforcement, Homeland Security in preventing and fighting human trafficking and rescuing and restoring victims, sexual abuse victims. One thing that I really do not respect is anybody who brings lies and misinformation to a thing like this. One of the lies is that it does not allow for any kind of abuse, and that is wrong. If you look at all of the cities that have already passed this, one of the problems is District Attorneys are very reluctant to prosecute idiot, thugs, pedophiles, sexual abusers who go into these women's restrooms, locker rooms, swimming pools and expose themselves, and I have some pictures of these guys. They are very hard to undercover these stories because they are very well hidden, and they are very well documented, vote no.

**David Jordan, 3990 Shiloh Church Road, Davidson** said everyone keeps talking about fear, fear of this; this is not a bathroom bill. This is a bill that is going to promote perversion in our land. See there was a requirement for people in the leaders of the land back in the day that they had to have before they could take a position of leadership. It would behoove of all of you to know what that is. They had to fear God to accept a leadership responsibility role because that fear of God would keep them from perverting judgment. In the [inaudible] of compromise for other people's feelings you are going to pervert judgment today in the name of someone's feelings instead of standing on what the word of God, which does not change, says it right. We are here to stand on God's Word, and you need to do the same because every knee will bow and every tongue will confess Jesus is lord, and it would behooves you people to do it this day instead of when you stand before him and give an account for your life in rebellion. You have no righteousness apart from Christ. You need to repent of your falling. This is madness.

**Ante Pavkovic, P.O. Box 2335, Davidson** said the HRC was founded by Terry Bean who molested and raped a 15 year old boy and that is who our City Attorney here has been working here with that wicked organization run by a pedophile. Your local guy, Chad Severance is also a convicted sex offender; you are working with two groups that are led by people that have committed crimes against people sexually. This is wrong. Are you getting paid Bob? Is that what this is? You got a secret account in the Cayman Islands? It makes me wonder, why are you working with organizations that are run by sexual predators? Are you all part of this? What is going on here? You have not consulted the people; we do not want this. Homosexuality is a sin. There is no such thing as transgender; these people are confused, and they need the help that only Jesus Christ can give them to set them free from their perversion and their lust. Vote no, you have aligned yourself with wickedness and something funny is going on here, Bob.

**Katherine Pavkovic, P.O. Box 2335, Davidson** said there are so many things that I could say, most of them have already been said. I have been thinking about things while I have been

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listening. I thought of so many times when I was a mom of five small children, how I would go into a place and people would act like they didn't want me there. You know what I did? I just didn't go back. When I was almost 300 pounds, if I went to a bathroom that was too small for me, I just did not go back. I would find a place that had booths that were big enough to fit me. If there is a situation or a circumstance where you do not feel comfortable, just do not go back. Jesus said, I am the way, the truth, and the life. No man can come to the Father except through me, and I urge each and every one of you, please look to Jesus. Repent of your sins and make him the Lord of your life.

**John Kirwin, 9339 Cub Run Drive, Concord** said members of the high Council, my loyal subjects, I am King John the Merciful. I have heard the arguments of the LGBT community, how they have been oppressed and discriminated against because of their orientation... because all of my childhood I have felt the urge to boss people around. I have always known that I was born to be a king, over the hold world, but I have kept it a secret until today. Today, thanks to this movement I am coming out of my kingly closet, and I am taking my rightful place as your sovereign ruler. Today, I identify as gender royal. All of my life I have been offended because people do not bow to me and call me your highness. Everyone is king phobic, and since my sovereign word is law, I decree that anyone who does not bow and call me your highness shall be fined under hate speech laws. I hope my satire illustrates how breathtakingly ridiculous these LGBT arguments are and what a slippery slope they are, and how corrupt and illegitimate this Council has become for even considering this bathroom bill. You talk about decorum but you have made a mockery of your office Mayor.

**Heather Garfolo, 1052 Antioch Woods Lane, Weddington** said I am a small business owner servicing Charlotte. I have friends and family in the LGBT, and I love them. Every American, private business owner should be free to live and work according to their beliefs without fear of unjust punishment by the government. In 2015, The Pew Charitable Trust Organization identified the top ten states for job growth. Eight out of ten of these states do not have non-discrimination ordinances with sexual orientation and gender identity language. Charlotte is a diverse city. There is strength in diversity. There are many world views and work religions that are represented here. Equality means that everyone can speak their beliefs without being silenced. As a business owner, I am concerned about the adverse impact on labor, trade, and commerce that his will have. As a business owner, if I do not check my beliefs at the door then we will have to be forced to have contracts potentially canceled with the city. In that case, that is lost revenue; lost revenue could equal tens of thousands of lost jobs. Lost jobs equal hardships for families.

**Terry Oldham, 102 Castles Gate Drive, Mooresville** said I would like to make five quick points. One, there has never been an actual case of sexual discrimination in Charlotte, ever. So think about that, never. Two, to push forth an agenda in such a deeply religious area as Charlotte, where not a single main stream religion, be it Buddhist, Christian, Hindu, Islam, or Judaism supports homosexuality will only lead to discrimination in divisiveness, which will not promote a unified city. Three, forcing people to course to a standard they morally object to is destructive to one's conscious and to our community. This ordinance will only breed resistance and hatred. I am asking you to vote for what will best unify our city at large. Fourth, the HRC does not represent everyone in the homosexual community. I have homosexual friends who have told me they do not like what these activist groups are doing because they feel that they are creating an issue and making matters worse for them, not better. Finally five, I feel we are making a decision that will enrage many and compromise the safety of some, all for the sake of ...the angst of a few.

**David Benham, 1032 Riding Trail Lane, Concord** said I live in Concord, but I create jobs in Charlotte. I own substantial real-estate in Charlotte. So, this is very important to me. I just believe that we should not be forced to indorse or participate in expressive events or messages that are against our deeply held beliefs. It is not about discriminating against individuals. It is about ideas and events or messages. I would support a Muslim baker that refuses to bake a cake for a gay wedding. I support that. So, we should not be forced, as business owners, to be involved with expressive events or messages that are against our beliefs. It is not against individuals because we love all individuals as Christians.

**Adam Tennant, 520 Cherish Lane, China Grove** said Proverbs 29:2 says when the righteous thrive, people rejoice, but when the wicked rule, the people groan. All across America, people

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like LaWana Mayfield and Jennifer Roberts have been placed in City Councils due to the efforts of the HRC. As a result, these wicked ordinances are getting passed, but this is not the will of the people. Women are being violated and the people are groaning. When the wicked rule, people groan. For the few Councilmembers who will stand in opposition to this ordinance, I want you to know that you are not alone. We have got your back; Raleigh has got your back. The HRC is going to try to bully you into submission, but I ask you to stand strong. You are doing the right thing, and you who will pass it, your seat is going to be taken. Once again, the righteous will thrive in this nation and the people will rejoice, and you will be laid low. I pray that on that day, you will turn to Jesus Christ, the only one that can save you from the wickedness that has invaded your wicked souls.

**Jason Benham, 11522 Riding Trail Lane, Concord** said I apologize, I misplaced my king outfit, but I can tell you, my sister David just went, my mother Flip just spoke a little earlier, and I have always wanted to play in the NBA; however, I wasn't good enough to play in the NBA, but then the WNBA was created, and my dream arose again. Then I realized, wait a second, I am not a woman. I can't do that, but then I thought, well if the laws could change and I could just declare myself a woman. I could guarantee you at 40 years old; I could go out there and create an amazing basketball team because my three-point shot is amazing. Now how ridiculous is that? It is the same type of thing we are talking about here today. It is absolutely ridiculous, but you know what ridiculousness is preceded first by denying God. So, I would tell you today to open your hearts to him. You have already made your decisions, but God can direct the human heart. Please give him an opportunity to do that.

**Thomas Dellinger, 1388 Wynnbrook Way, Concord** said I come to you once again as a frustrated business owner and a concerned, upset father. As a business owner who is in the process of opening a gym here in Charlotte, it is laws like these that hurt my business. Fortunately, the corporate offices of the franchise I have purchased have already seen this happen in their other franchises in other cities, and we are in the process of putting individual bathrooms in because our members, which are actually about 63% made up of women, do not feel safe using a locker room with a man. Ordinances like these damage my business, they threaten my income, and the ultimately put my members safety at risk. We love Charlotte, we love the parks, and we love the stadiums. I want to enjoy these things with my children, please do not take them away from me. Romans 13:4 says this, for the one in authority, which is you Council, is God's servants for your good, but if you do wrong, be afraid for the rulers do not bare the sword for no reason. They are God's servants, agents of wrath to bring punishment on the wrong doer. Your God given civil responsibility is to protect us so please do not pass this ordinance.

**Jason Dellinger, 1064 Riding Trail Lane, Concord** said this morning I asked my four year old about what we are here tonight for. I said, is it okay for a man to walk into a woman's bathroom? My four year old answered shockingly, no. Why did my four year old say that? Because the law of God is written on his heart, and that same law of God is written on my heart and is written on you your heart. That does not mean you love Jesus, but it does one thing, it forces you to make a choice between what is good and what is evil, because the law of God is written on your heart. You have heard the law of God tonight. It says in Proverbs 23:9 do not speak in the hearing of a fool for he will despise the wisdom of your words. I would plead with you not to hate the words that you have heard tonight. Listen, if you have haven't noticed, the church of Jesus Christ has come out because there will be another ordinance just like this. Death and hell are never full; the eyes of man are never satisfied. It will happen again, but the true church, I am not talking about the false profits, the wolves in sheep's clothing that name the name of Christ and do not part from iniquity, but I am talking about those that are standing for truth, truly distinguishing between what is good and what is evil. Please do not do it Charlotte.

**Thomas Barry, 2686 Saddlewood Circle, Concord** said God tells us in Proverbs 29:2, when the righteous are in authority, the people rejoice but when the wicked rule, they groan. I am not sure of how you can define wickedness any more clearly than taking your cues from perverted sex offenders who have been convicted, and we know homosexuality defiantly lands in the direction of pedophilia, it is a perversion, it is a departure from what is known to be right. There is something wrong with it. It was categorized as a mental illness one generation ago. Someone asked what Obama's opinion of marriage was in 2008 was one man, one woman, for life. What scientific discovery made him change that? This is a trend; this is a fad; this is wickedness, and I ask you all just to consider the fact that all mighty God is watching. He is looking on; he is

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paying attention, and if you are being bought or you are giving into things or someone is blackmailing you, I ask you to repent and do the right thing.

**Jason Oesterreich, P.O. Box 2067, Concord** said Mayor Roberts, when we started this meeting it struck me that you instructed people to be conscientious of what you said because there are children in the room, and it struck me that here tonight you are conscientious of what children hear, but you are not conscientious of what the statute is going to do to them. You do not care about that, and it is very likely that we are going to have women standing in the locker room, young girls, naked and a man can walk in, and it is no problem, or we will have a man standing in the women's locker room naked and a 12 year old girl will walk in. Now, Mr. Hagemann said this would be indecent exposure and the law would protect against that. The law doesn't protect against somebody changing in the locker room and standing there naked, of course it doesn't. You would have to arrest every single person that went to the gym, of course that isn't going to protect our young children. Now, you have misquoted the Bible, you said the fore most commandments was love your neighbor and it is not. In Mathew 22:36 they ask him, teacher what is the foremost commandment and the foremost commandment is love the Lord, your God with all of your heart and all of your soul and all of your mind, and if I love Jesus, I love his will, and I love his Word, and if I love my neighbor as you had mentioned, I would not sacrifice them or their children to this agenda.

**Roberta Dunn, 153 Kenway Loop, Mooresville** said I am the Chair of the Carolina Transgender Society. Seven years ago I started meeting with the City Council, the Mayor, and County Commissioners about LGBT rights. Since we have made a lot of progress in equality, tonight we are at the crossroads of providing LGBTQ people the human rights that all citizens of Charlotte and the visitors to this great city should have. These rights are required for everyone to have and not to be denied. That is insuring all LGBTQ people will not be discriminated against here. February 1<sup>st</sup>, CBI held a forum providing an opportunity for people to hear and understand both sides of this issue. I am willing to continue these dialogs with reasonable people, but this is no reason to deny equality for everyone tonight. So, I am asking the City Councilmembers to be on the right side of equality and vote yes on this non-discrimination ordinance.

**Julianna Burgess, Boone** said this ordinance will negatively affect the owners of small businesses in our area. In Washington State, Baronelle Stutzman was approached by longtime customer Rob Ingersoll to do the flowers for his same-sex ceremony. In deposition testimony, when Ingersoll was asked what he wanted, he replied just some sticks or twigs in a vase. Although Ms. Stutzman agreed to provide any materials he requested, she refused to arrange the flowers for the ceremony saying that that practice would go against her Christian beliefs. For that, Ms. Stutzman was dragged into court and may lose the source of her livelihood. Legally, this is unjust. Socially, it is simply rude. The behavior that Ms. Stutzman has been victimized by is not correct, and there is no way that it can be rationally defended.

**Boo Fields, 8055 Bryson Road, Indian Land, SC** said Mayor Roberts you had said that we had heard from many people in the private sector, folks that are LGBT and non-discrimination is very important. We want to do what helps make people feel safe and included and accepted. In 2004, the Charlotte metro area ranked as the 22<sup>nd</sup> largest city in the United States with almost 2.4 million people. In March of 2015, the Gallup poll surveyed this area and found almost 3.8 percent or almost 90 thousand people identified themselves as LGBT. If this ordinance is passed, I will not feel safe. I will not feel included, and I will not feel accepted. Is non-discrimination really important to this City Council? If so, represent the other 2,289,560 people or 96.2 percent of the population in this metro area that are not LGBT, vote no.

**Laura Levin, 14207 Delaney Drive, Concord** said I am a transgender pediatrician who cares for all kids, including those in the LGBT community, and I have heard the stories from my transgender kids and their families about being bullied in school, about parents being told by their pastors to beat it out of their children, and about physicals who handed them a Bible tract instead of medically relevant information. The victory all spewed by the opponents of the NDO today creates anxiety and depression in my kids and is responsible for a lot of the pathology we see in our kids. It gives children, who may not understand, the right to bully instead of the right to try to understand. Now this is Michael Hues. Michael Hues is a transman and he looks really out of place in a woman's bathroom, and quite frankly I get you may say that it is not discrimination to tell trans people to go to the bathroom in the gender in which they were assigned, but it is discrimination to tell him to use the men's room and me to use the women's

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room. When you tell him to use the women's room you create the problem you are trying to avoid. Please vote for this non-discrimination ordinance.

**Noel Woolf, 6101 Bickett Ridge Drive, Monroe** said I am the proud mother of two young boys, the oldest of which is in kindergarten five days a week in the city of Charlotte. I came here tonight knowing that you were convinced that voting yes tonight would be a very smart political decision for yourself, but I ask you to consider do you want to take the career risk that only 10 percent of the mothers in this city will only turn out the next election. Do you want to take the career risk that it is going on record that you are using the survey prepared for you by a convicted pedophile who has served time in prison for molesting a young boy like my son. I urge you to vote no. Protect myself; protect my sons. Do not insult my intelligence. I am 40 years old, and I know what will happen in a bathroom if a grown man comes in.

**Brian Madeira, 6130 Ferncliff Drive NW, Concord** said you know I speak the truth when I say that any commissioner who votes yes is ignoring reason and common sense and your own inner sense of right and wrong. You know this is true, and God will hold you accountable. Jesus said, whoever causes one of these little ones to sin, it would be better for him to be drowned in the sea. To anyone here who considers themselves transgender or homosexual or anyone trying to figure it out, God is calling you to come to him. He has made a great sacrifice so that you can know him and be accepted by him, but you must turn to him. Turn away from everything and seek him in his word. Read the New Testament; it is only about one-fifth of the Bible. You can get through it, and Jesus said, if you truly seek him, you will find him, but you have to block out all of the noise and seek him for yourself.

**Kevin Griffin, 5107 Southpark Drive, Durham** said it is disgusting. It should only be done in private. It will lead to sexual assault and deviance. Those are all things that have been said about a woman breastfeeding in public. The woman who was breastfeeding in the room I was waiting in felt none of that. She was comfortable; she was accepted as an individual, and we honored her right to care for her child. We have to honor every individual, regardless of their orientation, regardless of their presentation, regardless of their origination. Every person is worthwhile; we have to honor them for that. I encourage and urge you to vote yes.

**Jacquelyn Keenan, P.O. Box 37331, Rock Hill, SC** said assuming the population of transgressors is between a half of a percent and one percent, this translates into one person in one hundred for one percent, or one person in two hundred for one-half of a percent. We are talking about a very small segment of the population. There is an orderly and established way of doing things that works to the benefit of all people. For example, all people in the south-bound lane of I-77 travel in the same direction; one person cannot simply turn around and begin traveling north. This would cause confusion for everyone, not to mention the danger. Highway Patrol would never allow it. There exists no inherent right of one person to cause chaos in the lives of so many. Wisdom, common sense, and courage dictate a vote against this ordinance.

**Will Bridenstine, 999 La Forest Lane, Concord** said councilmembers; I am opposed to this ordinance and urge you to vote against it as it affords no protection of religious freedom. The City Attorney stated on page five of their February 5<sup>th</sup> memo that protections and exceptions to laws due to religious beliefs can and have been afforded. They cite the Supreme Court case of *Burwell vs Hobby Lobby* which ruled that Hobby Lobby was not required to provide contraceptives as this conflicted with the owner's religious beliefs. No such protections are included in this proposal. It is well known that these types of ordinances have been used to force business owners to promote events and endorse messages that are contrary to their religious beliefs. By failing to include any protections for these situations, the Council is declaring that sexual expression and orientation is not equal to religious freedom, it is instead superior. Ironically, the current ordinance lists religion as a type of discrimination which is to prohibit, but by enacting the ordinance as written it will serve as a very mechanism for this very thing. I urge you to vote against this ordinance, thank you.

**Christine Evans, 590 Axton Street, Concord** said I just want you to not vote for this ordinance. I am just a simple grandmother out here and I want to be able to take my grandchildren out to dinner, out to lunch, to the gymnasium. I want them to be able to take swimming classes, be able to feel free to change in the gym. Don't open up this Pandora's box. You do not realize the evil that is going to come out of this if you allow this ordinance to go through. Please use common sense. Don't vote for this ordinance, thank you.

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**McLean Faw, 225 Freemont Street, Matthews** said I would urge you to vote no against this ordinance; it is bad public policy. It is unfair and it is unreasonable. This ordinance is unfair to women and children, putting them at risk through sexual predators disguised as transgender persons coming into the bathrooms of which there are documented instances. This ordinance is unreasonable. Gender expression and gender identity are changeable and subjective. The color of one's skin is unchangeable. Public policy cannot be changed on subjective feelings. This ordinance discriminates against business owners who have faithfully serves the LGBT community but have a moral objection to participating in same sex wedding events. I urge you, vote no.

**Sam Miorelli, 4400 Alafava Trail, Orlando, FL** said I am the co-chair of Siemens Energy Pride and Play Resource Group based at our headquarters in Orlando, Florida. Siemens employees 1,700 people here in Charlotte, and we are proud of our many LGBT employees in Charlotte and the LGBT employees amongst our 348,000 employees worldwide. At Siemens we believe that a diverse work force helps us bring ingenuity for life to the highest quality products and services. Unlike many other types of diversity in the workplace, you cannot readily see LGBT coworkers. We tried to change that in my group and remind everyone that they can bring their whole self to work, no matter their sexual orientation or gender identity. In collaboration with some of our major customers, Siemens is proud of the role it plays in promoting diversity and including, including for LGBT people throughout the energy industry. Orlando, where I am from, passed an ordinance very similar to this one in 2014. It makes Orlando a great place to live and work for everyone, including LGBT people. That makes Orlando a great place for Siemens to recruit the best employees from around the world. I hope you support this, thank you.

**Jesse Ryan, 522 Laurel Fork Drive, Matthews** said I am a mother of three elementary school age boys in CMS. Our youngest six year old is gender non-conforming, which means he does not conform to what society says you should wear, the toys you should play with, etcetera. While he loves his brothers and supports all that they do, he likes very different things, Barbie, dresses, anything pink. Initially, this confused us because it was different than what we expected after his two older brothers. What we realized very quickly is that these things are not defined by gender. We are all human beings that deserve to be respected, loved, and cared for while being out authentic selves. I love my boys. Each day we talk about using your manners, being kind, trying your hardest, and also every day when I am getting my six year old ready for school and I am pulling his hair back in pig tails and smoothing out his skirt I am role playing with him on how to handle mean, rude, or disrespectful comments about his attire, or the toys he likes to play with, or where he is going to the bathroom that day. My family is not alone. There are so many gender non-conforming children/youth in Charlotte and they need your support. I urge you to pass this ordinance.

**Rick Scot, 14001 Old Vermillion Drive, Huntersville** said I moved to Charlotte seven months ago from Los. Angeles, California, probably one of the safest cities to live, one of the safest states. I have heard a lot of anger; a lot of vitriol, a lot of fear comes out of people's mouths tonight. It really disheartens me. As my friends post on Facebook, move back to California, why are you there? Well, I will tell you in the seven months that I have been here; I have learned to love this city. Despite what I have heard tonight, I continue to love this city and hope for change. I work for a very large company that protects me. If my husband goes out to apply for a job, he can be turned down because of who he is, because of who he loves, and I hope that tonight, you will vote in favor of this ordinance, that you will support non-discrimination for everyone, including the LGBT community.

**Levi Gray, 736 Washington Lane, Kannapolis** said I am going to put this succinctly. I am opposed to this ordinance, and I am concerned about many of the dangers that it presents. As others have said, there is a discrimination that comes from the government as a result of this regulation, based on the religious beliefs of businesses. There is the regulation of labor and trade, which violates Article 2 section 24 of the North Carolina State Constitution, and most importantly is the loss of privacy and security of women and children and the increased danger of their harassment. This ordinance appears to be another attempt to run the tolerance buzz saw through our culture, and I call it a buzz saw because it will try to achieve its goal of tolerance no matter what liberties, religious beliefs, or laws it has to cut down along the way. Don't fall victim from this buzz saw. We put out trust in you to up hold our liberty and our safety. We ask that you would not let this law destroy that and to fear God rather than to fear men.

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**Ethan Metzger, 20392 Old Sandbar Road, Oakboro** said I am 15 years old. As a young person I am really concerned about this ordinance passing. I was raised to be empathetic, and I have seen first-hand how destructive sin can be. Bad choices bring difficult consequences. It is not that I do not feel bad about people who are confused about their identities; I do, and I feel ashamed to think that anyone would beat someone up as a way of disagreeing with them. That is called assault and it already breaks the law. I am definitely more concerned about my little brothers and sisters being at risk. I come from a big family and we do lots of fun things in Charlotte. My little sister Emily can tell the difference between the ladies room sign and the men's room sign; she is only three. Her sharing the same bathroom with a man is not okay. I am not sure you guys are thinking about the right group of people here. My dad taught me that women and children deserve our protection. This new law certainly won't do that. Please vote no.

**Jordan Roose, 3216 Lancaster Highway, Monroe** said I live in Monroe, North Carolina, and I run a business in the Charlotte area. I have a beautiful wife and four beautiful sons, and there has been a lot said here tonight and a lot of confusion. The sweet Psalmist of Israel said that thy word is a lamp unto my feet and a light unto my path. So, has been said in the Constitution in reference here tonight that all men are created equal, right? All men are created equal. It has also been referenced by both sides, what Jesus has said; even the Mayor herself referenced Jesus commanding us to love our enemies. I want to clear up the confusion by reading from the lamp, the light turns it on, helps us to see clearly. Here is what Jesus said, regardless of what side you are on. Here is what he said: have ye not read, that he which made them at the beginning, God made them male and female. He said for this cause shall a man leave his father and mother and shall cleave to his wife, and they twain shall become one flesh. God made a man and women, be on God's side.

**M. Karpov, Monroe** said thank you for allowing me to exercise my democratic right of free speech. I was born in Soviet Union, and I know first-hand the tyrant of socialism. I now, a US citizen, and I wish that every native born person would take its history to test to learn the reason for the greatness of this nation, one nation under God, not goddesses like earlier it was said here. The founding fathers of this nation understood un-alienated rights and... rights given to us by our Creator rather than by the government. This emphasis on our Creator is because it shows that the rights are permanent, just as Creator is permanent, doesn't change. The vote tonight will be either for the unchanging, mortal values of Biblical heritage of this nation, or fabricated facts of worship and make men gods of LGBT agenda. Don't allow the sacrifice of our children on the LGBT alters. I ask you to choose wisely, and remember that one day we will all give account to that creator.

**Ruth Motley, 4590 Cochran Farm Road, Concord** said I reside in Concord; however, I frequently travel to the Charlotte area for medical purposes. I have a three year old daughter who has Down syndrome. There is no greater gift that I have been given than the opportunity to be a mother of a special needs child, but this gift comes with a great responsibility. I share a dream with all parents who have a child with special needs and that dream is for our child to grow up and live an independent life, integrated as much as possible in society. We are starting to see this happen. Today, people with special needs, like my daughter attend typical schools; they attend college; they are active in sports; they participate in arts. They go on to be employees and some even own their own businesses and get married. With this progress vulnerability has emerged. Just a quick Google search can bring up multiple instances that people with special needs have been physically and sexually attacked in public restrooms and school gym locker rooms, and if these attacks are happening to the most vulnerable among us with the current laws of protection, we imagine what will happen if this protection is removed.

**William Wools, 6101 Bickett Ridge Road, Monroe** said I live in Monroe, but my kids go to a private school here in Charlotte. I love this city. We have lived in the Pittsburg Area, and we moved back, and we just love the city of Charlotte. I am a Christian and I believe that every transgender person should be treated with respect, and I understand that there should be laws already in place. Why don't we just follow those laws? If you make this law then you are going to have to make a law for every group of people. At the next City Council meeting are you going to make a law for Christians to protect us because we get assaulted, and we get discriminate? Are you going to make a different law for another group? I mean, where is it going to stop? We already have laws; let's just enforce the laws that we currently have.

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**Virginia Feimster, 316 Greenwood Avenue, Belmont** said I am the state coordinator for PFlagg North Carolina, and I am a retired exceptional children, special needs teacher from Charlotte-Mecklenburg Schools. I am a mother and a grandmother and a Christian, and I have not seen much Christianity today. I have seen a lot of signs, but I have been in the overflow room, and anything else I had to say has gone out the window because of the way the people in the overflow room who are not in favor of this have acted. I am for it. I was just making notes the whole time. People making fun, people laugh when other people would speak, when a lady minister spoke, she said she is a Christian and then when she said she wanted you to vote for it somebody said oh boy. Everything was like that. These people who profess to be Christians do not have my brand of Christianity, and the brand of Christianity that I am for.

**Annalise Metzger, Oakboro** this is not about discrimination. This is a gateway ordinance. It is pushing its way into schools, businesses, and the private lives of everyone. It will lead to the persecution of those in Charlotte that disagree with the homosexual agenda. That is not fear mongering; it is happening in every city that passes craziness like this. This is not about protection, if it were you would be trying to protect the ones most at right. You need to be protecting children. Keep the bathrooms biologically correct; honor their privacy. This is not about hatred this is about telling the truth. God created them male and female. Sexual immorality of any kind is wrong. Homosexuality is wrong. I didn't say it, God did, and each of you will be accountable to him for your decisions this evening. I don't believe you have any intention to really listening to the people that live and work and visit here. Most of you have already made up your minds, shame on you. Vote no on this ordinance, repent form your sins and turn to Jesus.

**Kyle Aichele, 2069 Burand Road, Fort Mill, SC** said my wife and I and four boys just recently moved here in this area. We were in Fort Mill. You guys probably heard this. In Seattle at Evan's Pool, a man in board shorts entered a woman's locker room and he undressed himself. He said the laws changed and he had the right to be there. Right now there is no specific protocol for how someone should demonstrate their gender in order to access a bathroom. Employees just rely on verbal identification or physical appearance, and this man offered neither. The police who were notified offered no help. This is not what we want in North Carolina. This law gives way to a loop hole that sexual predators can use to their advantage. This is also a contradiction to the indecent exposure laws of North Carolina which is currently in place for the protection of the general public. Are we going to start to change all of those laws after this? We cannot afford to erase laws that protect and create chaos in the name of inclusion.

**Brent Childers, P.O. Box 1176, Hudson** said I serve with Equality North Carolina, work here in Charlotte, and have many family and friends here. Last Thursday I met a young man transitioning, and he was in his third month of his transition. I met this young man at a church, a church like many others, who recognized the need to create affirming and safe spaces for lesbian, gay, bisexual, transgender individuals. This person is somewhat vulnerable right now because of the transitioning process but because of the stigma and hostility that is a part of his social environment. That is why I could not ask him here to join me tonight. I knew it would not be a safe place. I believe you recognize the need to create safe places for gay, lesbian, bisexual, and transgender individuals, and I thank you for recognizing that need.

**Diane McMahon, 1411 Sarah Ann Stephens Drive, Huntersville** said I am here to encourage you to vote no on all parts of the non-discrimination ordinance. My family works, shops, and spends money in Charlotte, and I believe this piece of legislation harms our community and the people and the businesses in it. I find it unfair that the council would force private companies that want to contract with the city, to enact this same policy. This ordinance will also hinder economic growth in the greater Charlotte area, as it discourages people from getting out in businesses where they need to use public restrooms, locker rooms, and showers. I appreciate the city's desire to accommodate a minority portion of the community, but do not sacrifice the rights of the people of our city to believe and do business in liberty, to protect the preferences of a few.

**Steve Widdows, 1415 Depot Street, Iron Station** said Father I pray that every person in this room get the fear of the Lord. Pilate was playing around with the Son of God, and you are playing around with the Son of God. When Pilate was sitting on the judgment seat, there came a messenger to him from his wife that said don't have anything to do with this righteous man, and Pilate knew he was righteous, and I am saying to you tonight, don't have anything to do with this ungodly wickedness that is put before you. You know it is wicked. It is not just the bathroom portion; it is the whole thing, it is wicked and it is putrid.

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**Mayor Roberts** said I am going to let the Council speak one at a time, but I first wanted to thank the speakers. I appreciate your keeping your remarks to a minute. You were very eloquent and articulate in your comments. I also want to thank those who came from far away. We had folks from Raleigh and Boone and even someone here from Orlando, Florida. I just want to thank you for the careful attention to this issue and thank you for your time and patience this evening. I am going to let Council make some comments.

**Councilmember Austin** said you know the world is watching little Charlotte, North Carolina, my hometown. This time it is not for Panthers Football but is really to see what type of world class, global city we have become. The question is, are we a diverse city that is inclusive of all races, genders, religion, thoughts, perspectives, and orientations. Are we a city that celebrates our differences and realizes that we are stronger together, or are we a city that panders to fear and hate of those who wish to perpetuate in justice, discrimination, prejudice, and inequality? I say to you, not on my watch. There has been a lot of arguments on both sides of this non-discrimination ordinance. Many do not really make sense. People have been calling this a bathroom ordinance, spreading misinformation, half-truths, and all out lies. Sounds a little bit like the toll conversation we had last month. You know Council, the construct of our American society speaks of a foundation of freedom and equality, but our history tells a different story. Our history speaks of discovering America; however, I am sure that the Native Americans would say that they have already found it. Our history speaks of a race of people who were enslaved and proclaimed less than human to justify the need of a workforce, and this was supported by the Bible. Our history tells us of women being subjugated and denied full inclusion, or even being told how they can determine the uses of their body. Our current history details of the LGBT community fighting for the ability to marry the person that they love. History will note that we won that one. Tonight, the fight continues in little ol' Charlotte, North Carolina for America to live up to this foundation of freedom and equality. You know, members of the Council, LGBT people are not aliens that arrived on earth demanding rights. We have been here for a very long time; we are your sons; we are your daughters; we are your uncles, your cousins, your mothers, and your fathers. We exist in your families, your churches, from the pulpit to the pews. We are in your workplaces, in your schools, in your hospitals. We are not going anywhere, and we are not living in the shadows any longer. We will have equality. So, tonight I will be voting for the ordinance. Now, there was a lot of conversation about God. The God I know is a God of love. He is not a God or a person of fear or hate. God is love. Maybe we all need to understand that.

**Councilmember Driggs** said I want to emphasize first; I do not believe that anybody should suffer any kind of humiliation or abuse by virtue of gender issues. I think we should protect people who are exposed to that kind of abuse, but at the same time, I don't really think that is the issue here. What troubles me about this whole conversation is the way we have been put on the defensive about trying to hold on to certain traditional values when it relates to bathrooms, because we have been given a choice. Anybody who felt that parts of this was acceptable and parts are not acceptable was don't uh-uh this is how it has to be and there is absolutely no accommodation in here for all of the people that we heard tonight that object to this. Now, let's look specifically at the bathrooms because that seems to be the flash point. I want to emphasize there are other areas. I do not think a gay person should be denied service in a restaurant. If it was possible to have a conversation with my colleagues here on Council about passing that ordinance, okay, but no. Last time we came to vote on this thing, the issue actually arose of whether we would pass something that didn't cover the bathrooms but provided all of these safeguards in other areas, and that failed because a couple of people wanted the bathrooms in there. I believe they want the bathrooms in there because they recognize that if that is actually a different conversation. If you all are going to talk about the history of this country, and the history of civil rights, and you are going to make comparison between the experiences of African Americans and gay people, the comparison stops when you get to the bathrooms. There are three points that I particularly want to emphasize why I think that the bathroom portion of this argument really doesn't hold water. For one, in my mind and it has been said here several times tonight; this is not really about discrimination. The word discrimination is used because of its emotional power, but the truth is, everybody is required to use the bathroom that corresponds to their biological gender. You can't get more equal than that. What we are really talking about here is whether or not special accommodation should be made for people who find themselves in the wrong place. I have sympathy with them; I believe their life is difficult, and I think we should work to insure their safety, and to try to minimize their discomfort. I think the argument that they are being discriminated against by being told that they have to obey the same rules when it

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comes to bathrooms is simply specious. They are the same bathrooms; they are in the same place. It is not the back of the bus. A speaker tonight actually did make that point, but we have to have that discrimination thing in order to fuel the kind of emotional argument. Let's talk about safety. Safety is something that has been highlighted both by victims of abuse of transgender people and LGBT people. It is also an issue that has been raised by a lot of opponents because they have fears about what will happen in bathrooms if the ordinance passes. In truth, the evidence that we have is not very conclusive. The supporters of the ordinance say that there is no evidence at all of any heighten risk to people in bathrooms, and what we have in our book here is 10 cities out of 200 that have passed the ordinance that say, well we haven't really had a problem. That is not very scientific. It is not much proof. I haven't seen any evidence to support the allegation that the safety of transgender people is improved by the passage of this ordinance. So, I do not think that there is a compelling objective safety argument; a fact based supported safety argument. I recognize before anybody objects, that there were many reported instances of abusive behavior towards transgenders. I do not deny that, but what I am saying is, specifically on the bathrooms what has occurred and how has the safety of transgenders been improved by passing this ordinance. The fact is, we already have laws that protect people from assault. Assault and battery, a felony offense which is much stronger than anything that we can legislate around the dais here. People also tend to be mean to each other. It is a fact of life. It is man's inhumanity to man. You get road rage, you get bar fights, you get all kinds of offensive behaviors of every which kind and we cannot legislate them all out of existence. Doesn't mean I think it is good, but I really think that to suggest that we could sort of eliminate bad behavior towards transgender people through the passage of this ordinance, is very optimistic. So, my feeling is the real issue here is a matter of comfort. What I mean by that is, we are talking about the comfort of transgender people being allowed to go to the room where they feel right, and the comfort of opponents of the ordinance who are afraid of some sort of safety issues of their children.

There is also a privacy question. We haven't really talked about that much tonight, but a lot of people would like to see traditional gender values maintained. They would like to see the old fashioned, this is where the boys are, and this is where the girls are. They have no thought of trying to put anybody at a disadvantage from the LGBT community. They were simply raised with a concept of this is where the boys are, and this is where the girls are. There is a lot of emotion and sensitivity around that, which I believe is being thrown under the bus in this conversation tonight. So, for that reason, I cannot vote for this ordinance. I can't support this, and it would have been nice to be able to have a conversation that was a little more inclusive of the views that we heard tonight, but what we are looking at right now is entirely on one side of this argument, and I think there is good reason to believe that a large portion of our community does not want this. One last comment I wanted to make was that the issue of Raleigh has been raised a couple of times and the governor was quoted in the paper about what would happen I think Governor McCrory cares deeply about Charlotte. He was mayor here for 14 years, elected 7 times. He has a feeling that he knows this city. He also knows the state of North Carolina. It is worth noting that tonight of our speakers, when we got to the speakers who were not from Charlotte, the balance shifted pretty decisively against the ordinance. It is a reflection of the fact that Charlotte is a bit different from the surrounding area, but we have to also be mindful of the fact that we have a great deal of influence that goes beyond the city boundaries. We are the core of a MSA of 2.3 million people, and I think what we saw tonight was that a lot of the people who do not live within the limits of the city are worried about coming here to shop or commuting here and represent a different attitude towards the ordinance and the people who live here. I think when the governor spoke out against it, he did out of his own personal conviction that traditional gender values deserve to be defended, and also his perception that the state in which we live and the people in our state government are not entirely with us on this thing. So, for him to point out the fact that since we are in a deal and rule state that the state legislature does control what happens in North Carolina. The City Attorney has argued that City Council has the authority to pass this even though that has been challenged by a member of the General Assembly. I would argue, yes, we have the authority because the General Assembly gave it to us, and they could take it away again. I bring up these issues in my capacity as the Chairman of the Intergovernmental Relations Committee and as a representative of the party that has the majority in Raleigh but the minority here. We should be a little more thoughtful about trying to get along with our neighbors and in the context of our state. So, my main three points are: I do not think this is discrimination; I do not think the safety issue has been proven sufficiently to support the

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decision we are talking about making tonight, and I think a lot of people who are only motivated by traditional values of gender are just being ignored.

**Councilmember Autry** said I am also a father of four. I am a grandfather, and I am comfortable with the language in this ordinance. My children are comfortable with the language in this ordinance. I am the father of a daughter who is a lesbian. Thankfully marriage equality is the law of the land now. My daughter and her partner, from the last 14 or 15 years, were married in September of last year. When I grew up, I had two uncles, and only one of those men was my father's brother. Those two were together since 1961, and they taught me a lot about life, a lot about compassion, a lot about love, and a lot about caring for each other. I hold all of those recollections very dear. So, I will support this ordinance this evening, and I urge my colleagues to do the same.

**Councilmember Kinsey** said it would be easier for me tonight just to sit here, wait for them motion, and the second, then raise my hand to vote; however, I feel that you need to know why I am voting the way that I am. Now, let me give you a little bit of history. Shortly after I started serving my first term of City Council, back in 2004, the issue of domestic partner benefits came up. Now, if you are on this Council, you learn to count very quickly to six or seven, six because it takes that many votes to approve an action, and seven to override a mayoral veto. On the matter of domestic partner benefits, no matter how I counted, I could count only three votes, they came from the three women on Council. Nancy Carter, former City Councilmember elected from District 5, the late Susan Burges, and me. Happily, since that time, those three votes have grown into what I believe will be the votes needed to pass this amendment tonight. Now, I want my colleagues to know that I honor and respect their opinions and their feelings about this issue. I also honor and respect how they might vote tonight. This issue is a very simple issue for me however. I was taught from my earliest days in Sunday School at Allen Street Baptist Church here in Charlotte that we are all God's children and equal in God's sight. Now, I realize that there are days when I fall far short of that teaching, but I do not forget it. I truly believe we are all God's children. I have many friends in the LGBT community, good friends that I have had for many years. I also have a number of transgender friends, a very special one, Roberta who you heard speak tonight. So, for Nancy, Susan, and Roberta, my yes vote tonight is for you.

Motion was made by Councilmember Kinsey and seconded by Councilmember Mayfield to adopt Ordinance No. 7056 amending the City Code by adding marital status, familial status, sexual orientation, gender identity, and gender expression to the list of protected characteristics in the commercial non-discrimination, public accommodations, and passenger vehicles for hire ordinances.

**Councilmember Fallon** said I voted last time for the ordinance that was presented to us then. I would vote for that ordinance again. I would vote for job protection, housing protection, taxi protection, and restaurant protection, but I cannot impose my will on people who are frightened and do not understand and have not been explained to what this is all about when we come to the third part, which is the bathrooms, and because of it I cannot vote for it until the public understands what this is all about and has a fair hearing. Tonight was not a fair hearing; it was one side but not the other side. We heard from LGBT and Equality, we never heard from the other side, and I will not impose my will on other people. My vote is no.

**Councilmember Eiselt** said religion aside, to me community is about learning to live together and respect each other, and sometimes that is not always very comfortable, and I acknowledge that. With this vote, we are going to define ourselves either as a city that legalizes discrimination or prohibits it, and I would just like to make a note about religion. If I think about this as a church, and I was visiting your church tonight, I would never come back. I support this ordinance. I support this ordinance.

**Councilmember Lyles** said it isn't a very comfortable thing, to face a crowd like this that speaks with such passion on such a different issue, but we got elected to do something that we thought would be correct, to serve this community, not just for today but for the future. I heard so much tonight about love and hope and faith as people talked about this ordinance. I also heard the Scriptures, the fear, and the uncertainty about how it will impact our everyday lives. The thing that I think most about though is all of us growing up in this Southern Community, I grew up in South Carolina, and I remember walking through neighborhoods and having to experience

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different people and how they were impacted by being different. I know people often think about that in terms of race, but I am not talking about that tonight, I am talking about people that were called names, students that were ridiculed in school, and those are the things that I most remember and that is what causes my heart to look at this with honor and compassion because I truly believe this ordinance is about treating people with respect and dignity. When I campaigned I said I wanted to make Charlotte a place where people of all ages want to live, work, play, and stay here to raise their families. That is my commitment to this community and I think that we do that by being inclusive. I think that we do that by making certain that we can welcome people here, that people feel invited here. We talk about what is different about Charlotte. It is about when we go out and talk about recruiting businesses we say bring your employees here because they can live here with respect and dignity. We say bring your family here because there will be a place where they can live and work. So, I support this ordinance because I am committed to this community, not just for today, not just for the people today, but for our future, and I believe that this makes a difference for our future.

**Councilmember Mitchell** said thank you everyone for all of your emails and phone calls expressing your opinions on this issue important for our community. This is not an easy decision for any of us sitting down here at this dais. I think most of us try to focus on public service and what is good to make our city better, but I am not a fan of the word discrimination. I campaigned on the trail of if any incidents in our community where discrimination exists, I will vote to remove discrimination. So, tonight I will be supporting the non-discrimination ordinance because I think it would make Charlotte a better city and a better community.

**Councilmember Phipps** said this is an extremely divisive issue as demonstrated by the comments we have heard here tonight, the thousands of emails I have received for and against, and personal phone calls directed to my office. Like my vote last year on this matter, I will not support the ordinance that is before us here tonight. For me, the case has not been made that we do in fact need such an ordinance. The implications of which have not been fully evaluated and assessed. For such a radical departure from existing norms, I have not seen clear, pervasive, or systemic evidence of discrimination that would warrant justification for expansion of the ordinance as proposed. I cannot dismiss the concerns over safety expressed by the overwhelming majority of people who contacted me. I feel Charlotte is a very welcoming city with hundreds of new residents flocking here each and every month. New businesses choosing to relocate here, including many who have already voluntarily embraced the protections this ordinance seeks without municipal mandate or interference. For these reasons, I will not support the ordinance.

Mayor Roberts Councilmember Smith, before we hear your comments I just want to say how sorry we are for your loss and I appreciate your family for letting you come here tonight for this important matter and as soon as you vote you can go home. I appreciate your time here.

**Councilmember Smith** said I did not have to come here tonight because the outcome is already predetermined. The forum and in my opinion, this hearing is a sham. It would have been doubly easy for me to stay home because my father passed away last night, but I could not sit idly by without registering my opposition to this outrageous ordinance. Ed eloquently summed up a lot of my points tonight; I want to add to some stuff he suggested. While there's no evidence to suggest that transgenders will be made any safer with this ordinance, there is evidence all across the country that transgender men are showering in women and children's locker rooms. What this law will do is it will legally make our mothers, daughters, and our wives feel uncomfortable and unsafe in the bathroom. I am voting against this because I simply share the common sense of the majority of Charlotteans.

**Councilmember Mayfield** said I have heard from many of you this evening using religious interpretation this evening. Just for clarification, I did not campaign on religion; I campaigned on economic development, job creation, equity, equality, transparency for all people. There will be many votes. There have been votes in the past; there will be many votes in the future where some residents will be upset, such as when I attended honorable Minister Farrakhan's speaking event a few years ago in Charlotte. Just as when I lobbied and supported banning 287-G which discriminates against those that are undocumented in the Latino community. My vote this evening lies with all laws that have been created to protect the minority. Also, I have heard that, unfortunately, many do not acknowledge and even respect the transgender community, and that saddens me. Luckily, for a number of you there are amendments in place for freedom of speech and many of you have spoken. I personally pray for a day when this much participation is

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enacted regarding the true pedophiles that we have seen in churches, that we have seen in schools, that we have seen in households, because unfortunately, statistics, and the laws do show that it is immediate family members that are in that case. I also look for a day when this much energy is spent to eradicate homelessness, poverty, and address the educational divide in low income communities, and most importantly a day where we have more than an eight percent voter turnout regarding how we govern and how we move forward. The laws are not created for the majority; they are created for the minority. I had some people call me earlier today to say I have a special interest regarding tonight's vote. Well, you are right; I have always had a special interest for anyone, and group, any individual that is ostracized, that is abused, that has little to no voice. As a female, which I am pretty proud of most days, a couple of times out of the month maybe not so much, but I don't have to worry about which restroom to use, but I do need to be concerned as an elected official about how others are treated. It is my responsibility to try, to the best of my ability, to create and support protections for as many people as I possibly can, for that I will continue as I supported the original non-discrimination ordinance that was a fully inclusive ordinance. I will continue to do so this evening.

Mayor Roberts said this is clearly an emotional issue on both sides, and regardless of tonight's vote, it is clear we need to continue to have community conversations and dialog to address concerns and questions that are raised there tonight. I appreciate everyone's point of view; I want to particularly appreciate my colleagues. I know they have put a lot of effort into reading, and by the way, this information was very balanced. We had Focus on The Family; we have Values Coalition information in here; we had both sides, but I want to appreciate very much the thoughtful consideration and the respect that my colleagues have shown for each other and all of you. We have listened to each and every one as is appropriate in a democracy. I have long been a supporter of social justice. As a council commissioner, I support non-discrimination for county employees and voted to extend domestic partner benefits to same sex couples. Discrimination is never right. Many in our business community understand this, and many large and small businesses have lead, as have other cities and counties in LGBT non-discrimination. Our community understands that to attract the best possible talent, we must be a welcoming community that values each and every person's contributions and values them for who they are. Charlotte is committed to being an inclusive and fair community where all people are treated with dignity and respect. I urge my colleagues to support this ordinance but even more, I urge all of us to remember that dignity and respect is afforded to each human being. Many of you have devout Christian principals, and in my Christian upbringing I believe that respect and dignity are very important. Please help us continue this conversation; please help us continue to work together to work for you, and with that we will take a vote.

The vote was taken on the motion and recorded as follows:

YEAS: Councilmember Austin, Autry, Eiselt, Kinsey, Lyles, Mayfield, and Mitchell.

NAYS: Councilmember Driggs, Fallon, Phipps, and Smith.

The ordinance is recorded in full in Ordinance Book 59, at Page 743-747.

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#### PUBLIC HEARING

#### ITEM NO. 6: PUBLIC HEARING ON A RESOLUTION TO CLOSE A PORTION OF E. 17TH STREET AND AN ALLEYWAY OFF OF E. 17TH STREET

**Mayor Roberts** declared the public hearing open.

There being no speakers either for or against, a motion was made by Councilmember Mitchell, seconded by Councilmember Lyles, and carried unanimously to close the public hearing and to adopt resolution to close a portion of E. 17<sup>th</sup> Street and an alleyway off of E. 17<sup>th</sup> Street.

The resolution is recorded in full in Resolution Book 47, at Pages 217-221.

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**ITEM NO. 7: PUBLIC HEARING ON A RESOLUTION TO CLOSE AN ALLEYWAY OFF OF W. 28TH STREET**

**Mayor Roberts** declared the public hearing open.

There being no speakers either for or against, a motion was made by Councilmember Lyles, seconded by Councilmember Mitchel, and carried unanimously to close the public hearing and to adopt a resolution to close an alleyway off of W. 28<sup>th</sup> Street.

The resolution is recorded in full in Resolution Book 47, at Pages 222-227.

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**ITEM NO. 8: PUBLIC HEARING ON A RESOLUTION TO CLOSE A PORTION OF GREENWOOD CLIFF**

**Mayor Roberts** declared the hearing open.

A motion was made by Councilmember Lyles, seconded by Councilmember Mitchell, and carried unanimously to continue a Public Hearing to close a portion of Greenwood Cliff to the March 28, 2016 agenda.

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**ITEM NO. 13: MAYOR AND CITY COUNCIL TOPICS**

**Councilmember Mayfield** said I just want to remind you that the annual District 3 Airport Job Fair has finally arrived. We have normally had it in May; we actually worked with the Airport and our business supporters and we have moved it up. It will be this coming Saturday, February 27<sup>th</sup> starting at 9am at the CLT Center. If you are not familiar, that is the VIP parking location right off of Wilkinson Boulevard. We will have public parking available. Please come out; bring your resume. Dress for an interview because we will be doing live interviews at the time. So, we look forward to having you out again. I would love to thank staff because we have the most amazing staff in the city, and to thank all of the residents who came out this past Saturday for my first of four budget charrettes. We had a wonderful time, community had a great opportunity, and councilmember Eiselt was able to make it, our Mayor was able to be there. We had a number of our commissioners that were there. We really had a good conversation about the budget and how we as a council come to decisions on moving forward with our budget and our budget priorities. I look forward to seeing you at the next one. If you have not received my emails please contact Kim Oliver at [koliever@charlotte.nc.gov](mailto:koliever@charlotte.nc.gov). so we can get your contact information so that we can advise you of upcoming charrettes that are happening.

**Councilmember Lyles** said I would like to say thank you for the invitation to attend the robotics lab at the Charlotte Airport. I went out and saw teams of young people from elementary school up to high school building robots from Legos all the way to robots that would actually be capable of working in a manufacturing environment. Mayor, I would like to invite them to come down before the state championship so that Charlotte can see the kind of work that we are doing with young people. We do not brag about them enough, and I really enjoy that time and would like to have them come back.

**Mayor Roberts** said I want to again remind folks that CIAA is this week. Tomorrow morning Antrice Mitchell has put together a great program at the Extravaganza Depot. I will be speaking about our Business INclusion program and how the CIAA is working very hard to offer opportunity to small women and minority owned businesses. That is part of what we are focusing on, is trying to bring opportunity to all corners of our city, and the CIAA has been terrific in helping us grow our small businesses in the women and minority owned category, and I look forward to seeing folks at the Extravaganza Depot tomorrow at 9:15. Those of you who are visiting Charlotte, seeing your teams play in the CIAA tournament; we welcome you and hope

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you have a terrific wcek. We are very glad to share the CIAA with you. Good luck to all of the teams.

**Councilmember Autry** said I just want to remind us again to please observe the posted speed limits on our streets and roads in Charlotte. I know it is becoming ... for everyone but it is a very serious matter that we really need to address one way or the other. Making it unsafe for us to move around this city whether we are in a car, bicycle, or walking is not the kind of reputation this city needs to have out in front of it. I would also ask us to please look around, pay attention to the littler. Pay attention whenever there is trash in the back of the truck and it is blowing out and making our streets look terrible. I know we need a lot of private investment in Each Charlotte, but I would ask our citizens to also be mindful that the way the city's streets and roads look has a lot of influence. If people think that we do not care about our own neighborhood nobody is going to pay much attention to consider making investments there. Please do not litter.

**Councilmember Driggs** said I just want to mention quickly at my Friday morning coffee meeting I will be talking about the bond offering that is proposed by the state of North Carolina, pros and cons, and people are welcomed to come. You have to get there at 7:30 which is the bad news, but I think it will be a very interesting illumination of why we would want to do this and why we might not. It is at Ballantyne Hotel and Resort on Ballantyne Commons Parkway at 7:30 on Friday.

**Councilmember Austin** said God is love.

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**ADJOURNMENT**

Motion was made by Councilmember Lyles, seconded by Councilmember Mayfield, and carried unanimously to adjourn the meeting.

The meeting was adjourned at 10:09 p.m.



Emily A. Kunze, Deputy City Clerk

Length of Meeting: 4 Hours and 30 minutes  
Minutes Completed: March 21, 2016

**Declaration of Luke C. Platzer**

**EXHIBIT E**

**JA360**

**POLITICS & GOVERNMENT** FEBRUARY 22, 2016 3:06 PM

# Charlotte City Council approves LGBT protections in 7-4 vote

## HIGHLIGHTS

Prevents businesses from discriminating against LGBT customers

140 people spoke on both sides of the issue over 3 hours

Legislature could strike down ordinance, order a referendum



City Council votes 7-4 to approve non-discrimination ordinance 00:38



**JA361**



BY STEVE HARRISON

[sharrison@charlotteobserver.com](mailto:sharrison@charlotteobserver.com)

After more than three hours of impassioned public comment Monday night, Charlotte City Council approved new legal protections for gay, lesbian and transgender people – a decision that will likely provoke a battle with the General Assembly, which could nullify the city’s historic vote.

Council members approved expanding the city’s existing nondiscrimination ordinance in a 7-4 vote.

The decision elicited cheers and hugs from supporters, many carrying signs that read “Facts Not Fear.” Opponents of the ordinance, many with signs that read, “Don’t Do It Charlotte,” were upset by the decision.

The changes mean businesses in Charlotte can’t discriminate against gay, lesbian or transgender customers, in addition to long-standing protections based on race, age, religion and gender. The ordinance applies to places of public accommodation, such as bars, restaurants and stores. It also applies to taxis.

[After LGBT vote, House speaker says lawmakers will ‘correct this radical course’ ]

The most controversial part of the ordinance would allow transgender residents to use either a men’s or women’s bathroom, depending on the gender with which they identify.

The bathroom provision sparked the most opposition, with opponents mostly worried about the safety of women and girls in a public bathroom with people who were born male. Supporters said those fears were overblown, and that transgender people are at risk of violence in the bathroom.



## People speak during public forum on discrimination ordinance

Non-discrimination ordinance public forum at Monday's Charlotte City Council meeting.

[rlahser@charlotteobserver.com](mailto:rlahser@charlotteobserver.com)

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In an email Sunday, Gov. Pat McCrory said the bathroom provision would likely cause “immediate” action by legislators.

In North Carolina, the General Assembly has the ultimate power over municipalities. Legislators could strike down the entire ordinance, or they could eliminate the provision that allows for bathroom flexibility. They also could send the issue to voters to decide in a referendum.

Council members have acknowledged that Raleigh may trump their decision Monday. But supporters said it was important to pass an expanded ordinance.

A year ago, the ordinance failed in a 6-5 vote.

But two new at-large members – Julie Eiselt and James Mitchell – were elected to the council in November, and both supported the ordinance.

Democrat Al Austin voted for the ordinance.

“Are we a city that panders to fear and hate to those who wish to perpetuate fear and injustice?” Austin asked. “I say to you, ‘Not on my watch.’ ”

Democrat Patsy Kinsey, who voted for the ordinance, likened the ordinance’s passage to her efforts more than a decade ago to bring domestic partner benefits to same-sex city employees.

Eiselt criticized the speakers who opposed the ordinance. She said if they were her church, she “wouldn’t return.”

Republican Ed Driggs voted against the ordinance. He said the bathroom provision is troubling.

“Everyone is required to use the bathroom of their gender – you can’t get more equal than that,” Driggs said. “It’s not the back of the bus.”

Driggs was joined by Democrats Claire Fallon and Greg Phipps and Republican Kenny Smith in voting no.

Earlier this year, Fallon said she would vote for the ordinance. She said she couldn’t support the bathroom provision Monday.

[READ MORE: LGBT nondiscrimination ordinance supporters drop off petitions ahead of Monday vote]

[READ MORE: Charlotte is again weighing LGBT protections. Here’s what the rules would do.]

[READ MORE: Similar LGBT proposal failed in 2015]

The council’s main chamber, which holds 250 people, was closed by the Fire Department because it reached capacity. The city placed people in overflow rooms in the Charlotte-Mecklenburg Government Center, and other people filled the outdoor plaza behind the building.

Shortly before 7 p.m., the council began hearing from 140 speakers.

Jeanette Wilson of Charlotte, who opposed the ordinance, shouted at Mayor Jennifer Roberts and council members.

“Real discrimination happened at a lunch counter in Greensboro,” she said.

She added: “Mayor, your community forum was a sham!”

Wilson was referring to a meeting the city held in which supporters and opponents of the ordinance were asked to break into small groups and discuss the issue.

Lara Nazario, who was born a man but who identifies as a woman, said she wants to use the bathroom that corresponds with her gender identity.

“Is it my height or my Adam’s apple that makes me less of a human being?” she said. “I don’t want special treatment. I only want to be treated equally.”

Supporter John Arrowood, an attorney, said: “Discrimination against LGBT people is real. ... We’ve seen the opposition focus on fear-mongering which has no basis in fact.”

Another speaker, Pam Burton of Charlotte, urged council to vote no.

“Please don’t discriminate against me and my children,” she said. “I’m not scared of transgenders, but sexual predators will see this as a chance for fresh victims. If one child becomes a victim through this, shame on all of you.”

Earlier, Franklin Graham, head of the Billy Graham Evangelistic Association, urged Christians to come to Monday’s meeting and speak against the proposed ordinance.

He said the bathroom provision is “wicked and it’s filthy.”

The expanded ordinance would be the first of its kind in North Carolina. Three South Carolina cities have similar ordinances: Columbia, Charleston and Myrtle Beach.

It’s unclear what the Republican-controlled legislature will do, though they will have a number of options. They also will have almost unlimited power, and the ability to nullify all or parts of the city’s nondiscrimination ordinance.

[READ MORE: LGBT nondiscrimination ordinance supporters drop off petitions ahead of Monday vote]

[READ MORE: Charlotte is again weighing LGBT protections. Here’s what the rules would do.]

[READ MORE: Similar LGBT proposal failed in 2015]

The city’s ordinance will go into effect April 1.

Legislators, who will start a new session in May, could have three options if they wish to overturn the city’s decision.

- They could nullify the entire ordinance as it pertains to gay, lesbian and transgender people. That would include the bathroom provision, but also protections in places of public accommodation.

This would be the most controversial path.

Last year, two Charlotte Republicans, state Reps. Dan Bishop and Jacqueline Schaffer, proposed the Religious Freedom Restoration Act, which could have thwarted LGBT protections.

But the bill split House Republicans, and McCrory expressed reservations about it. A number of large businesses, including American Airlines, also expressed reservations.

The bill died in April.

In an interview Monday before the council vote, Bishop said it was too soon to say what path he might choose if Charlotte passed the full nondiscrimination ordinance.

“I don’t want to go to war with Charlotte,” he said.

But he added he wanted to protect small businesses, and said legislators would likely consider some measure to overturn the ordinance.

- The General Assembly could let most of the ordinance stand, through passing legislation that would eliminate the provision allowing transgender residents to use a men’s or women’s bathroom.

In an email to two Republican council members Sunday, McCrory focused on that part of the city proposal.

“It is not only the citizens of Charlotte that will be impacted by changing basic restroom and locker room norms but also citizens from across our state and nation who visit and work in Charlotte,” McCrory wrote in the email. “This shift in policy could also create major public safety issues by putting citizens in possible danger from deviant actions by individuals taking improper advantage of a bad policy.”

- Legislators could hand the issue to voters.

In 2007, a citizen-led petition drive led to a new vote on whether to repeal the half-cent sales tax for transit. The effort failed.

For the nondiscrimination ordinance, there is no procedure at the moment for a petition drive to have a new vote on the issue, said City Attorney Bob Hagemann.

But the General Assembly could pass legislation to allow Charlotteans to petition for a referendum. Legislators could also vote to place the issue directly on a citywide ballot.

Bishop said he believed that could happen quickly, possibly as early as the November ballot. That's when the governor, Senate and president will also be on the ballot.

STAFF WRITER MARK PRICE CONTRIBUTED.

Steve Harrison: 704-358-5160, @Sharrison\_Obs

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POLITICS & GOVERNMENT

FEBRUARY 22, 2016 1:00 AM

# McCrory: If Charlotte approves LGBT protections, 'immediate' state response likely

## HIGHLIGHTS

Charlotte City Council is scheduled to vote Monday on expanding nondiscrimination ordinance

Governor says change could create 'major public safety issues'

Council appears to back measure



Supporters deliver petitions in favor of Charlotte's non-discrimination ordinance 00:35





BY STEVE HARRISON

[sharrison@charlotteobserver.com](mailto:sharrison@charlotteobserver.com)

Gov. Pat McCrory warned two Charlotte City Council members Sunday that if the city approves new legal protections for gay, lesbian and transgender people on Monday, the vote would “most likely cause immediate state legislative intervention.”

McCrory is concerned about a provision in the proposed expanded ordinance that would allow transgender residents to use either a men’s or a women’s bathroom. That part of the ordinance has also caused a furor in Charlotte and led to the ordinance being defeated 6-5 last year.

“It is not only the citizens of Charlotte that will be impacted by changing basic restroom and locker room norms but also citizens from across our state and nation who visit and work in Charlotte,” McCrory said in an email to the council’s two Republicans, Ed Driggs and Kenny Smith. “This shift in policy could also create major public safety issues by putting citizens in possible danger from deviant actions by individuals taking improper advantage of a bad policy.”

McCrory, a Republican, continued: “Also, this action of allowing a person with male anatomy, for example, to use a female restroom or locker room will most likely cause immediate State legislative intervention which I would support as governor.”

Driggs and Smith voted against the ordinance a year ago and have been skeptical of it this year. McCrory’s email was sent after Driggs sent him an email Sunday afternoon asking his opinion on the issue.

Leading up to Monday’s vote, at least eight of 11 council members said they would support the expanded ordinance. Mayor Jennifer Roberts also supports it.

The LGBT community said the bathroom provision is important because many transgender people feel unsafe in a bathroom of the gender of which they no longer identify.

Democrat Al Austin, who supports the ordinance, said Sunday night that council members would move forward.

“We are trying to show the world that Charlotte is an inclusive place,” he said. “We can’t control what Raleigh thinks and what Raleigh does.”

He said he believes draft legislation already exists to overturn the city’s vote.

## **New protections**

The city already has an anti-discrimination ordinance, but it doesn’t apply to discrimination against gay, lesbian or transgender people.

The proposal would give LGBT residents some legal protections in places of public accommodation, including bars, hotels, stores and restaurants. It would also give transgender residents the ability to use either a men’s or women’s restroom.

The ordinance wouldn’t affect employment. A business could refuse to hire someone for being gay. If that same person were denied service because of sexual orientation, it would be a violation of the proposed ordinance.

In his email, McCrory said the issue is too important to ignore.

“Although I have made a point as the former 14 year Mayor and current Governor to stay out of specific issues being voted on by the Charlotte City Council, the item of changing basic long-established values and norms of access to public restrooms is misguided and has major statewide ramifications,” McCrory wrote.

Equality NC, a civil rights nonprofit, issued a statement Monday calling the email exchange between McCrory and Driggs scripted.

“With less than twenty-four hours from the expected passage of crucial non-discrimination protections for lesbian, gay, bisexual, and transgender (LGBT) people in Charlotte, Governor McCrory’s choreographed exchange with Councilman Ed Driggs is disappointing as it is expected from a Governor that has consistently shown himself to be an adversary of North Carolina’s LGBT community,” the statement said.

Opponents and supporters have disagreed on how significant the discrimination is – and on whether an ordinance to outlaw it is needed.

The city’s Community Relations Committee said it has received only a few complaints from residents, but the group also said it doesn’t officially track complaints from the LGBT community.

The city has turned to a survey conducted by local gay-rights groups, which sent a list of questions to 146 members of the LGBT community after an expanded ordinance was defeated by City Council in a 6-5 vote in March 2015.

Council members are scheduled to vote on the ordinance again Monday.

[READ MORE: LGBT nondiscrimination ordinance supporters drop off petitions ahead of Monday vote]

[READ MORE: Charlotte is again weighing LGBT protections. Here's what the rules would do.]

[READ MORE: Similar LGBT proposal failed in 2015]

The LGBT survey, which organizers said is unscientific, asked questions about whether respondents had been discriminated against at a local business, among other questions.

Critics of the survey said it's biased and shouldn't be used by city officials to shape the debate. Tami Fitzgerald of the N.C. Values Coalition said most of the incidents described in the survey are what she calls "hurt feelings," incidents that she said the ordinance wouldn't affect.

"We have deep concerns about the so-called survey," Fitzgerald said.

Other results of the survey:

- Of 32 transgender people asked whether they had been "harassed, assaulted or discriminated against" when attempting to use a public bathroom, 17 said they had.

"I am an androgynous identifying male-bodied person," one person wrote, according to the survey. "I am frequently sneered at and verbally assaulted in public bathrooms and have frequently been harassed by individuals based on my gender-ambivalent appearance."

- Fifty-seven of the 146 people surveyed believed they had received poor service in Mecklenburg County because of their gender expression, gender identity or sexual orientation.

- Fifty-seven people also said an employee of a local restaurant, hotel, taxi company or public business had made a "disparaging comment" against them.

Scott Bishop of MeckPAC, a political lobbying group for the Charlotte LGBT community, said the survey shows that discrimination exists.

“We had 140 people who felt that they had experienced some level of discrimination, and they wanted to let us know about it,” Bishop said. “That’s what we captured in the survey.” Roberts and city officials have cited the survey as concrete proof there is a problem.



## Mayor Roberts on LGBT ordinance

Charlotte Mayor Jennifer Roberts explains why the City Council intends to approve an LGBT non-discrimination ordinance on Monday despite legislative threats to kill it.

[tbatten@charlotteobserver.com](mailto:tbatten@charlotteobserver.com)

## Community input

Opponents of the ordinance have complained the city has not given them an equal platform to discuss their concerns. Though opponents will be allowed to speak Monday, the city has not invited an organization opposed to the proposed ordinance to speak at other meetings before the council.

Last year, for instance, the city invited the Human Rights Campaign, an advocacy group for the LGBT community, to address council members.

The city's Community Relations Committee held a forum last month in which supporters and opponents of the ordinance were encouraged to meet in small groups and discuss their differences.

Fitzgerald, of the N.C. Values Coalition, said the forum was not a substitute for giving opponents the opportunity to make a presentation before the city.

"That may be good for a community discussion, but to report that as community input is just wrong," she said.

At the Feb. 8 meeting, Roberts said the survey was conducted by the LGBT Chamber of Commerce. The chamber said Thursday that her comment was a mistake and that it hadn't worked on the survey.

A social worker had distributed questions to members of the LGBT community, and the results were passed to Bishop's group, MeckPAC.

At the Feb. 8 meeting, the city's Community Relations Committee released a list of cities that had recently passed similar ordinances, including ones with the bathroom flexibility. The summary showed the cities had few problems.

But Fitzgerald points to Seattle, which has a similar ordinance. Earlier this month, Seattle Parks and Recreation said a man entered the women's locker room at a public pool and took off his shirt, according to KING 5 News.

The man was not identifying as a woman.

The report said women informed the pool staff, who told him to leave. The man said, "The law has changed, and I have a right to be here."

## **More pledge support**

Last year's vote focused on the bathroom provision for transgender residents.

Supporters of the expanded measure believed they didn't have six votes on the council for the full ordinance, including the bathroom flexibility. So Vi Lyles, the current mayor pro tem, proposed an ordinance with all protections except the bathroom flexibility.

That version failed 6-5. Two council members who supported the ordinance – John Autry and LaWana Mayfield – said they wouldn't support a watered-down proposal.

This year, at least eight of 11 council members have said they will support the ordinance.

“We still feel pretty good,” Bishop said.

As of Thursday, 119 people had signed up to speak about the ordinance. Roberts has limited speakers to one minute each.

*Steve Harrison: 704-358-5160, @Sharrison\_Obs*

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## COUNCIL HEARING

The City Council's public hearing on the nondiscrimination ordinance will be held at 6 p.m. Monday at the Charlotte-Mecklenburg Government Center, 600 E. Fourth St. To sign up to speak, go to <http://bit.ly/1L4f1LK>.

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## RELATED CONTENT

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## COMMENTS

**JA375**

**Declaration of Luke C. Platzer**

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**JA376**

## Local legislators vow to reverse Charlotte LGBT ordinance



Sen. David Curtis (left) and Rep. Jason Saine.

### **ADAM LAWSON** **Staff Writer**

Lincoln County's two state legislators vow to reverse the decision by Charlotte's 11-person City Council on Monday night to provide discrimination protections to the city's gay, lesbian and transgender population.

After listening to three hours of public opinion on both sides of the aisle, the council voted 7-4 to expand an already existing discrimination ordinance by prohibiting businesses like bars, restaurants and taxis from discriminating against someone for being gay, lesbian or transgender.

It also allowed transgender customers the right to use the restroom of their choice, depending on the gender with which they identify. That part of the ordinance drew the most controversy and caused Gov. Pat McCrory, state House Speaker Tim Moore and Lincoln County's Raleigh representation to threaten legislative intervention.

"I oppose it and I feel like the General Assembly will pass a law reversing it. It's just inappropriate. I'm surprised and I'm disappointed," Republican Sen. David Curtis said. "I think it's just inappropriate. We have rules in our society and that's just one of the rules in our society. This liberal group is trying to redefine everything about our society. Gender and marriage, just the whole liberal agenda."

Two new council members helped an ordinance that failed 6-5 a year ago pass this time around.

Prior to the meeting, McCrory emailed two Republican council members to warn of the potential perils that would result from the proposal's approval. Councilmen Ed Driggs and Kenny Smith each voted in opposition to the ordinance.

"It is not only the citizens of Charlotte that will be impacted by changing basic restroom and locker room norms but also citizens from across our state and nation who visit and work in Charlotte," McCrory wrote, according to the Charlotte Observer. "This shift in policy could also create major public safety issues by putting citizens in possible danger from deviant actions by individuals taking improper advantage of a bad policy."

On Tuesday, Moore put out a statement criticizing the council for a decision that "has gone against all common sense and has created a major public safety issue by opening all bathrooms and changing rooms to the general public."

Jason Saine, who represents Lincoln County in the state House of Representatives, echoed both viewpoints.

"I believe Speaker Moore and Gov. McCrory have framed this issue correctly and will support legislative efforts to address this issue and restore common sense where absent," Saine said.

The American Civil Liberties Union of North Carolina, meanwhile, praised the council's decision.

"With this vote, North Carolina's largest city has affirmed that all people deserve to be treated fairly and protected by the law," acting Executive Director Sarah Preston said in a statement. "When a business decides to open its doors to the public, it should be open to everyone on the same terms. We applaud Charlotte's council members for making their city more safe, welcoming, and inclusive, and we urge municipal leaders across the state to follow their example."

North Carolina is not a home rule state, meaning that local municipalities do not have local authority to govern themselves. This gives the General Assembly the ability to step in and overturn local decisions.

**JA377**

The ordinance goes into effect April 1, and though Curtis doesn't foresee a special session being initiated to stop it before it takes effect, he guaranteed that legislators will "definitely reverse that," perhaps as soon as early May.

"We generally don't get involved in local politics," Curtis said. "We need to do what's right. I don't think we should let national criticism stop us from doing what we should do."

Image courtesy of LTN File

**Declaration of Luke C. Platzer**

**EXHIBIT H**

**JA379**

Politics | Tue Feb 23, 2016 2:02pm EST

Related: ELECTION 2016, POLITICS

# N.C. city's vote to expand transgender rights draws state opposition

BY COLLEEN JENKINS

A top North Carolina lawmaker vowed on Tuesday to correct the "radical course" taken by leaders in Charlotte, the state's largest city, after they voted to allow transgender people to use public bathrooms matching their gender identity.

The Charlotte City Council expanded the city's nondiscrimination ordinance late on Monday to add protections for marital and familial status, sexual orientation, gender expression and gender identity.

A provision that permits bathroom choice based on gender identity drew opposition ahead of the 7-4 vote from Christian evangelist Franklin Graham and North Carolina's Republican governor, Pat McCrory, a former mayor of Charlotte.

State House of Representatives Speaker Tim Moore, a Republican, said he would consider legislation to block the measure, which some critics fear would allow sexual predators to gain access to women's bathrooms.

"The Charlotte City Council has gone against all common sense and has created a major public safety issue by opening all bathrooms and changing rooms to the general public," Moore said in a statement.

"I join my conservative colleagues and Governor McCrory in exploring legislative intervention to correct this radical course," he added.

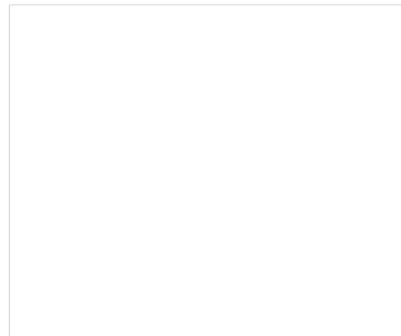
Civil rights groups rejected the public safety concerns as overblown. They praised the council for passing what they said was the first ordinance in the state to prohibit discrimination against gay, lesbian, bisexual or transgender people in public accommodations, including restaurants, hotels and taxis.

Charlotte was one of the largest U.S. cities without a law explicitly protecting the LGBT community from discrimination, according to the Human Rights Campaign, a civil rights group based in Washington. The revised law takes effect on April 1.

"Charlotte has full authority to enact this ordinance, and we hope the General Assembly will respect this local government's decision to protect its residents and visitors from discrimination," said Sarah Preston, acting executive director of the American Civil Liberties Union of North Carolina.

Voters in Houston, the fourth most populous U.S. city, last fall rejected a similar measure that would have banned discrimination based on gender identity and sexual orientation and let transgender men and women use bathrooms that corresponded with their gender identity.

(Reporting by Colleen Jenkins in Winston-Salem, N.C.)



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**Declaration of Luke C. Platzer**

**EXHIBIT I**

**JA381**

STATE POLITICS

FEBRUARY 25, 2016 4:08 PM

# NC House speaker weighs special session on Charlotte LGBT ordinance

## HIGHLIGHTS

Tim Moore says there's 'overwhelming' sentiment against the provision involving restrooms

He said the only question is whether to have a special legislative session or wait until lawmakers reconvene in April



Speaker Tim Moore on Transgender Bathrooms 01:14



BY JIM MORRILL  
[jmorrill@charlotteobserver.com](mailto:jmorrill@charlotteobserver.com)

N.C. House Speaker Tim Moore said Thursday he's exploring a possible special legislative session to deal with a controversial provision of Charlotte's expanded nondiscrimination ordinance.

Moore and others object to the so-called bathroom provision that would allow transgender people to use the restroom of their choice, depending on the gender with which they identify.

In an email to GOP lawmakers, he said, "the recent radical actions of the Charlotte City Council ... pose a real danger to public safety concerning the sexual identity and bathroom matters ... If we do not act, the Charlotte ordinance will go into effect on April 1."

The General Assembly's short session is scheduled to convene April 25.

Whether in a special session or regular session, Moore predicted lawmakers will deal with the provision in a statewide bill. That would prevent other cities from adopting similar ordinances.

This week the Campaign for Southern Equality and Equality NC called on the Asheville City Council to pass similar LGBT measures.

A special session would cost about \$42,000 a day. A two-day special session on redistricting this month cost about \$84,000. Moore said he's gauging the interest of fellow GOP lawmakers. But he said he could be worth it.

"While special sessions are costly," he wrote, "we cannot put a price tag on the safety of women and children."

Scott Bishop of MeckPAC, a lobbying group for the local LGBT community, said he is surprised legislators would call a special session.

"If they are going to come in, then come in and solve some real problems," he said.

The speaker's remarks are the latest legislative blow-back to the ordinance, which the city council passed 7-4 on Monday night.

[READ MORE: Charlotte city attorney says new rule won't outlaw separate restrooms]

[READ MORE: Charlotte City Council approves LGBT protections in 7-4 vote]

Republican Gov. Pat McCrory, who would have to call a special session, said Thursday he hasn't talked to lawmakers about it. But the governor took the unusual step of warning council members of repercussions before they voted.

"I gave a clear warning to city council that they were stirring up a hornet's nest in Raleigh," McCrory said Thursday.

Earlier this week, the speaker said the ordinance goes "against all common sense" and promised to look at "legislative intervention to correct this radical course." And House Majority leader Mike Hager of Rutherford County said lawmakers would try to remove the bathroom provision.

"Restrooms and locker rooms," he said this week, "should remain distinctly private."

Senate leaders declined to comment on "internal caucus communications."

One Charlotte Democrat ridiculed Republicans' haste to overturn the city's ordinance.

"This is the heavy hand of big government from the folks who are always talking about small government," s Sen. Jeff Jackson said. "A special session would show that the folks in Raleigh can't bear the thought of waiting a few more weeks to poke Charlotte with a stick. Apparently harassing Charlotte is an emergency on par with responding to a hurricane."

Rep. Craig Horn, a Union County Republican, said lawmakers are talking about it. But not everyone's convinced a special session is needed.

"There are people who say 'absolutely,'" he said. "And then we've had other voices say, 'Wait a minute, let's be a little more contemplative.' Let's find out what the legal ramifications are."

Moore said there's "overwhelming" sentiment against the provision.

"The only real debate is whether members want to come in for as special session or deal with it in the short session. I'm good either way."

*CHARLOTTE OBSERVER STAFF WRITER STEVE HARRISON AND NEWS & OBSERVER STAFF WRITER COLIN CAMPBELL CONTRIBUTED.*

*Jim Morrill: 704-358-5059, @jimmorrill*

**Declaration of Luke C. Platzer**

**EXHIBIT J**

**JA385**

## Transcript of Video

“Speaker Tim Moore on Transgender Bathrooms”

*News & Observer*

February 25, 2016

Available at: <http://www.newsobserver.com/news/politics-government/state-politics/article62503082.html>

TEXT ON SCREEN: N.C. House Speaker Tim Moore, R-Cleveland, says legislature may act against Charlotte city ordinance allowing transgender people to use the restroom that matches their gender identity.

MOORE: I believe that the Charlotte City Council has kind of forced that issue on us to deal with, and that— It, it's a— To that point, it's a— It's a public safety issue, where a person can identify—where a man can identify himself as a woman, even if he's a registered sex offender, it doesn't matter—and can go inside a women's restroom, where he would be around women and children— It makes no sense. It's absolutely ludicrous. And why someone would pass that thinking that is somehow good policy. That is somebody trying to push a ultra left politically correct agenda in the face of common sense. I mean, we all learned in kindergarten that guys go to the men's room, and gals go to the women's' room. You know, and so why folks think they have to upend that to be politically correct makes no sense.

**Declaration of Luke C. Platzer**

**EXHIBIT K**

**JA387**



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# Group Rallies Against Proposed Special Session on Non-Discrimination Ordinance



By Amy Elliott  
Thursday, March 17, 2016 at 05:11 PM EDT

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RALEIGH – Protesters made their way to Raleigh from the Queen City to voice their concerns over a possible special legislative session in response to Charlotte's non-

**JA388**

discrimination ordinance.

The demonstrators gathered outside the legislative building in Raleigh to say they believe overturning the ordinance would be discriminatory.

The ordinance allows transgender individuals, like Erica Lachowitz, to use the restroom of their choice. Lachowitz spoke out at Thursday's rally.

"It sends a message to everyone that we matter. I've had my ribs broken. I have had my face smashed to the ground. I have woken up with a tube in my throat," Lachowitz said.

She says she has been using the women's restroom for years and the ordinance protects her right to do so.

"It is safer for me to do that than run the risk," Lachowitz said. "I would rather be judged in court than run the risk of getting my face beaten in again because that is more than likely the outcome of that."

"The ordinance reaffirms our shared values as North Carolinians that we should all be treated fairly and live free from discrimination, and the General Assembly should not interfere," said executive director of the ACLU of NC, Sarah Preston.

In response to Thursday's rally, House Speaker Tim Moore said in part: "They want to protect adults who feel compelled to dress up like the opposite sex. I, on the other hand, oppose the ordinance to protect children, who from the time they've been potty trained, know to go into the bathroom of their god-given appropriate gender. Honestly, it is ridiculous we are even having this discussion. I look forward to invalidating this ordinance as soon as possible."

Representative Nelson Dollar says he is also in favor of overturning the ordinance.

"We have known who goes into what bathroom for centuries now. It's really not an issue," Rep. Dollar said on Thursday.

A decision has not yet been made about whether a special session will be called before the short session begins in late April.

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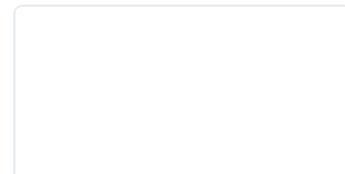


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**Declaration of Luke C. Platzer**

**EXHIBIT L**

**JA390**

# General Assembly may hold special session to block new Charlotte LGBT protections

By Joe Killian [joe.killian@greensboro.com](mailto:joe.killian@greensboro.com) | Posted: Thursday, February 25, 2016 5:23 pm

N.C. House Speaker Tim Moore (R-Cleveland) is rallying Republican support for a special session to address a Charlotte ordinance that expands protections for lesbian, gay, bisexual and transgender people.

The Charlotte ordinance, passed Monday, would allow transgender people to use a public restroom based on the gender with which they identify.



NC government graphic

Gov. Pat McCrory warned this week that the bathroom portion of the ordinance — which also extends non-discrimination protections in many other areas — was too much. The governor predicted the legislature would take immediate action over it.

In an email to Republican lawmakers Wednesday afternoon, Moore suggested a special session to keep the ordinance from going into effect April 1. The General Assembly is not scheduled to return to session until April 25.

Moore suggested a special, early session “to deal with the recent radical actions of the Charlotte City Council that I believe pose a real danger to public safety concerning the sexual identity and bathroom matters, as well as the related mandates upon private businesses.”

Using the bathroom designated for the gender with which they identify isn’t just an issue of preference or comfort for transgender people, said Holden Cession, a Greensboro transgender activist. It’s a matter of safety. A transgender person who identifies as or presents as visibly female could become the victim of an assault if forced to use a male restroom, Cession said.

“Nobody should ever feel like they have to be in harm’s way just to access something as basic as a restroom,” Cession said. “Nobody should face those kinds of barriers for something so basic.”

The General Assembly held a two-day special session last week to approve new congressional district maps after federal judges struck down the old ones as racially gerrymandered.

In his email, Moore acknowledged another special session could be costly, but he wrote “we cannot put a price tag on the safety of women and children.” If he can get 72 lawmakers to agree to a special session, Moore wrote, he would ask state Senate President Pro Tempore Phil Berger (R-Rockingham)

**JA391**

to join him in calling for a special session.

Last year Greensboro became the first North Carolina city to extend such protections in housing discrimination. But Charlotte's ordinance goes a step further.

The ordinance prohibits private businesses from discriminating against gay, lesbian or transgender customers, adding to existing protections against discrimination for gender, age, race and religion.

Members of the Guilford delegation to the N.C. House of Representatives were split Thursday on whether to hold another special session.

"I think it's ridiculous that your anatomy isn't what governs what restroom you use," said N.C. Rep. John Blust (R-Guilford). "I don't understand why they have to make way for this .0001 percent of the population."

While he doesn't like the ordinance, Blust said he isn't yet convinced that it requires a special session.

"If there's some legal reason why we would need to stop it before it goes into effect, maybe a special session is needed," Blust said. "But no one has explained to me yet why we can't just deal with this when we come back in April or in May."

N.C. Rep. Jon Hardister (R-Guilford) said he doesn't yet know enough about the Charlotte ordinance to say where he stands on the issue.

"If it's something the legislators feel like they need to do, and the people want us to deal with it, we'll have a special session," Hardister said. "Right now I'd say it's a good possibility."

N.C. Rep. Pricey Harrison (D-Guilford) said she doesn't believe a special session is needed.

"It costs money to bring us into a special session and we'll be back in two months," Harrison said.

"I know that people are uncomfortable with the whole bathroom issue," she said. "I think there's a real lack of understanding and sympathy for what transgender people go through. Not many of us have that, unfortunately."

Cession said push-back against ordinances like the one in Charlotte are based in ignorance and fear.

"They always try to paint it as having to protect women and children from transgender folks, like they're predators," Cession said. "But the statistics do not bear that out."

"And what about transgender children that need protection, young trans kids who need to be safe and to be able to be their authentic selves?" Cession asked. "Those are never the children the General Assembly is thinking about."

**Declaration of Luke C. Platzer**

**EXHIBIT M**

**JA393**

UNDER THE DOME MARCH 3, 2016 6:09 PM

# Republican lawmakers blast Charlotte's LGBT protections

## HIGHLIGHTS

Senate leaders call on Attorney General Roy Cooper to what 'he was elected to do'

House speaker says his members want a special legislative session to deal with the issue

Sen. Buck Newton: 'The city council of Charlotte has lost its mind'



Berger calls Charlotte transgender bathroom ordinance 'crazy' 00:56





BY JIM MORRILL

[jmorrill@charlotteobserver.com](mailto:jmorrill@charlotteobserver.com)

RALEIGH — Republican legislative leaders on Thursday continued to hammer away at Charlotte's new legal protections for LGBT residents, with the House calling for a special legislative session to deal with it.

Shortly before Speaker Tim Moore announced House support for a special session, Senate leaders called on Democratic Attorney General Roy Cooper to effectively nullify the ordinance.

Senate leaders held out the possibility of a special session, which would have to be called by Republican Gov. Pat McCrory. Lawmakers are scheduled to reconvene for this year's session April 25. The ordinance takes effect April 1.

Top Senate Republicans blasted the Charlotte City Council as well as Cooper. The council last month revised the city's nondiscrimination ordinance to add sexual orientation, gender identity and gender expression to the list of protected groups. The change will allow transgender people the right to use the bathroom of the gender they identify with.

"The City Council of Charlotte has lost its mind," Sen. Buck Newton of Wilson County told a news conference at the General Assembly.

Newton, who is running for attorney general, said the entire ordinance should be overturned, not just the bathroom provision. He also criticized Cooper, who is running for governor.

"Let's be clear about this," Newton said. "We're calling on Roy Cooper to do what Roy Cooper was elected to do."

Asked what specific laws they want Cooper to enforce, Republican Rep. Dan Bishop of Charlotte said the Charlotte ordinance could allow violation of several statutes, including indecent exposure and trespassing.

Charlotte City Attorney Bob Hagemann could not be reached for comment.

Cooper said in a statement that local ordinances "can't trump criminal law."

“District attorneys can prosecute criminals just as always,” he said. “This news conference is at best a partisan political sideshow for an attorney general candidate, and worse it’s misleading North Carolinians about how the law actually works.”

In announcing House approval for a special session, Speaker Tim Moore of Kings Mountain said the Charlotte ordinance “poses an imminent threat to public safety.”

Senate President Pro Tem Phil Berger of Eden called the Charlotte ordinance unreasonable.

“How many fathers are now going to be forced to go to the ladies’ room to make sure their little girls aren’t molested?” he said.

Chris Sgro, executive director of Equality NC, a gay rights group, said “(T)he state’s political leadership continues to focus all its time and energy on creating legislation to usurp local control from towns and cities.

“Ordinances, like the one passed in Charlotte, protect and safeguard the right and opportunity of all persons to be free from arbitrary discrimination,” he said in a statement. “We simply cannot abandon these crucial protections because a small group of extremists in Raleigh are using the LGBT community as political leverage.”

*Jim Morrill: 704-358-5059, @jimmorrill*

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## RELATED CONTENT

- Berger calls Charlotte transgender bathroom ordinance 'crazy'



## MORE UNDER THE DOME

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**Declaration of Luke C. Platzer**

**EXHIBIT N**

**JA397**

## Quotes of the week - Salisbury Post

Published 12:00 am Friday, March 25, 2016

“You know, \$42,000 is not going to cover the medical expenses when a pervert walks into a bathroom and my little girls are in there.”

— **State Sen. Andrew Brock, R-Davie,**

on the daily cost of a special session to block a law that would allow transgender people to use the bathroom of the sex with which they identify

“You go numb. ... You never get over it. You learn to live with it.”

— **The Rev. Carlin Ours,**

on his son Jesse Ours' suicide  
after returning home from Iraq with PTSD

“I don't think novels change the world like they used to. Some may make you think, but that's all.”

— **Jane Smiley, author,**

at Brady Author Symposium

“I began my career in politics as an angry parent who was concerned about the school system in Guilford County, and today I am an angry grandmother who is still concerned about the access of a quality education for all our children.”

— **U.S. Rep. Alma Adams, D-NC,**

speaking to the AAUW in Salisbury

**Correction** *Two quotes were jumbled in the March 18 quotes of the week. Here they are, corrected.*

“You don't have to look far for someone who needs help.”

**Crystal Karriker, organizer,**

Love Thy Neighbor Race, which raised \$35,000

“And you never know when it  
will be you.”

— **Judy Ritchie,**

wife of the man being help  
by the race, Jimmy Ritchie

**Declaration of Luke C. Platzer**

**EXHIBIT O**

**JA399**

[http://www.enquirerjournal.com/news/legislature-trumps-charlotte-overrules-non-discrimination-ordinance/article\\_0d8957a8-f1f9-11e5-a391-f7d5aaa51078.html](http://www.enquirerjournal.com/news/legislature-trumps-charlotte-overrules-non-discrimination-ordinance/article_0d8957a8-f1f9-11e5-a391-f7d5aaa51078.html)

## Legislature trumps Charlotte; overrules non-discrimination ordinance

Carolyn Steeves Mar 24, 2016

The General Assembly met in a special session Wednesday to discuss House Bill 2, the “Public Facilities Privacy & Security Act.”

The bill was passed by both houses and signed by Gov. Pat McCrory Wednesday night. Local representatives Dean Arp, Mark Brody and Craig Horn voted for the legislation, with Arp and Brody co-sponsoring it. State Senators Fletcher Hartsell and Tommy Tucker also approved the bill.

The bill was in response to a recently-passed Charlotte City Ordinance that provided protections for lesbian, gay, bisexual and transgender (LGBT) people. The ordinances included a controversial provision that allowed transgender people to use the bathroom they identified with.



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**JA400**

“The Charlotte ordinance just violates, to me, all basic human principles of privacy and it just has so many unintended consequences,” Brody said. “(It) violates my Christian values and it violates decency values...(I) had to stop it.”

Brody said his decision to co-sponsor the bill was an “exclamation point” to show his support for the legislation.

“The homosexual community just stepped too far and that had to stop and that’s my basic opinion,” Brody said. “This is driven by the homosexual community and they’re emboldened by their victory in the courts on homosexual marriage.”

The law supersedes and pre-empts local government with regard to nondiscrimination policies and creates “statewide consistency” with public accommodations.

It establishes single-sex and multiple occupancy bathrooms and changing areas, though does not prohibit accommodations like single-occupancy bathrooms or changing facilities. There are also exceptions for custodial purposes, maintenance, inspection, to render medical assistance, to accompany people needing assistance or if the room has been temporarily designated for a person’s biological sex.

The law has been criticized for eroding local control, something the North Carolina League of Municipalities opposes.

“Placing limits on local decision-making authority ultimately is a limit on the political power of local residents. Those residents can and do hold local officials responsible for their decisions,” Paul Meyer, Executive Director of the North Carolina League of Municipalities, said in a statement. “The League has and will continue to oppose legislation like this which pre-empts local decision-making and undermines the political power of local residents.”

Brody said that while they want to have a lot of decisions made in the local realm, North Carolina law allows the state to govern municipalities.

“We like local control,” Brody said, adding that they cannot have “local abuse.”

Brody said the protections exist that were there before and it was Charlotte City Council who changed them.

“Keep in mind, we’re not changing anything,” Brody said. “It’s Charlotte (that) changed something and we’re just bringing it back.”

He said the legislation was “sending them a warning” that if the council wants to do something radical, the state will step in.

“It sends a message to these municipalities who have been taken over by the liberal, homosexual, pro-homosexual ideology that we are going to stick up for traditional values and we’ll stick up for them constantly if that’s what we have to do.”

The special session to pass this legislation cost about \$42,000, which Brody said was “money well spent.”

Horn voted for the bill for three reasons, he said in an interview. He felt it was “absolutely an overreach” by the Charlotte City Council, he was concerned about the impact on people outside of Charlotte as well as in Charlotte and he wanted to provide some consistency across the state in how businesses can respond to the needs of the various areas of the state.

He said it seemed to him the Charlotte ordinance dictated to companies outside of Charlotte.

With regard to the bathroom portion of the ordinance, Horn said it was a privacy issue for him.

“I don’t denigrate the needs of or the social aspect of various, LGBT or others at all,” Horn said. “But I think everyone has a right to privacy, regardless of sexual orientation or gender.”

“We live in an era of way too much fear,” Horn said. “It’s a shame that it’s gotten to this point, but it has.”

Horn said that in order to respond to the needs of his constituency, in Union and Mecklenburg Counties, he had to consider the need for privacy.

“Do I have my concerns about it? Yes...I do and I would never deny that,” Horn said. “But in the big picture, in the broadest view, I think that was the right thing to do.”

Arp was a co-sponsor of the bill and spoke on the floor of the House in favor of it. He said in an interview that he was pleased it was a bi-partisan vote in the House.

“I’m glad that we were able to act to protect the privacy rights of all North Carolinians,” Arp said. “I don’t think that counties and municipalities have the authority to strip citizens of their right to...privacy.”

He said the law is “just common sense for me.”

“No men should be in women’s bathrooms, locker rooms or showers,” he said.

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“What we did was make a statement that they do not have the authority to strip North Carolina citizens of their right to bodily privacy...in these distinctly private areas,” Arp said.

The American Civil Liberties Union (ACLU) of North Carolina called the legislation the “most extreme anti-LGBT bill in the nation.”

“Rather than expand nondiscrimination laws to protect all North Carolinians, the General Assembly instead spent \$42,000 to rush through an extreme bill that undoes all local nondiscrimination laws and specifically excludes gay and transgender people from legal protections,” Sarah Preston, acting Executive Director of the ACLU of North Carolina said in a

**JA403**

statement. “The manner in which legislators passed the most extreme anti-LGBT bill in the nation – voting hours after it was unveiled without adequate public debate – flies in the face of fairness and democracy.”

Legislators have gone out of their way to stigmatize and marginalize transgender North Carolinians by pushing ugly and fundamentally untrue stereotypes that are based on fear and ignorance and not supported by the experiences of more than 200 cities with these protections. Transgender men are men; transgender women are women. They deserve to use the appropriate restroom in peace, just like everyone else,” Preston said in a statement.

According to a statement from the ACLU, more than 200 cities, including Myrtle Beach and Columbia, South Carolina, have adopted nondiscrimination ordinances similar to Charlotte’s without negative consequences.

Monroe City Attorney Mujeeb Shah-Khan said staff is still evaluating the impact of the bill on the city. The text of the bill was released Wednesday morning.

He said staff has reviewed some of the city’s programs and they believe the impact will be “minimal.”

Monroe does not have a nondiscrimination ordinance like Charlotte or other places and in terms of bathrooms, multiple occupancy facilities are designated single-sex or family.

“The impact right now is minimal on the city,” Shah-Khan said, noting they are still reviewing it.

While the impact right now is minimal, the law does affect future actions Monroe City Council could take. If Monroe chose to create a nondiscrimination ordinance, they would no longer have that authority.

Shah-Khan said they are also evaluating the city’s enforcement responsibilities under the law, like the standard of proof or what the charges are.

Union County Communications Officer Brett Vines wrote in an e-mail that the county does not have a position on the bill.

Tucker could not be reached for comment.



**Declaration of Luke C. Platzer**

**EXHIBIT P**

**JA406**



# McCrory opposes Charlotte bathroom law but doesn't want a special session

Tags: Pat McCrory, Tim Moore

Posted February 29

669



6 Reactions



By Mark Binker

**RALEIGH, N.C.** — Gov. Pat McCrory says lawmakers should wait until their scheduled return on April 25 to address Charlotte's new ordinance on transgender rights rather than call a special session in the next two months.

"My inclination is to support efforts to have a bill introduced as soon as we come into short session," McCrory said Monday afternoon.

He said the cost of calling lawmakers back early was a primary concern. It costs about \$42,000 per day to operate the state legislature during a special session.

McCrory, a Republican, said he wants the Charlotte ordinance addressed quickly "so we can move on to other priority items."

Last week, House Speaker [Tim Moore](#) began asking other House Republicans whether they would be willing to return to Raleigh to take up the issue. The Charlotte ordinance goes into effect on April 1.

"While special sessions are costly, we cannot put a price tag on the safety of women and children," Moore wrote to members on Wednesday.

Reaction to Moore's inquiry was mixed, with some lawmakers eager to return and other more circumspect about the need.

**JA407**

5/14/2016

A spokeswoman for Moore said he was "still gauging interest" among Republican House members regarding a special session.

As governor, McCrory can call lawmakers back to work at any time. The legislature also has a mechanism by which House and Senate members can call themselves back to session, but the process is cumbersome.

It appears State Senate President Pro Temp [Phil Berger](#), R-Rockingham, agrees with McCrory.

"Charlotte City Council's decision to allow men to share public bathrooms with little girls and women has clearly raised a lot of concern across the state. As of today, the earliest the legislature could take any action would be April 25," a spokeswoman for Berger said Monday afternoon.

The Charlotte measure broadly defines how businesses must treat gay, lesbian and transgender customers, but as in other cities recently, the debate has focused on bathrooms. In particular, the ordinance would allow men and women who identify as something other than their birth gender to use the bathroom in which they are most comfortable.

This has provoked a backlash among social conservatives and others who make the case that it will open the way for sexual predators to harass women and girls. Activists for the rights of transgendered individuals say there is little evidence that would-be molesters would take advantage of such a law. Rather, it would be cases in which, for example, a person presents as a woman but is forced to use the men's room that could be problematic.

McCrory clearly sides against the ordinance. He did not have a specific vision for what the law would look like, but he said he is working with legislative leaders so that there would be one set of rules for bathroom usage statewide.

"We need to respect the privacy of women and children and men in a very private place, and that's our restrooms and locker rooms," McCrory said. "To have many different cities and towns coming up with their own ordinance in how to deal with restrooms and locker rooms is, I don't think, good for our state."

McCrory is running for re-election this year, and his likely Democratic challenger is Attorney General Roy Cooper. Thus far, Cooper has not made a public statement regarding the Charlotte ordinance, although he did [refuse to align North Carolina in court with a Virginia school district that is fighting a discrimination lawsuit by the American Civil Liberties Union seeking to allow a transgender high school student in that state to use the men's bathroom.](#)

The North Carolina Republican Party has been pressuring Cooper to take a stand on the Charlotte matter, and on Monday questioned whether donations to his campaign by advocates for the transgender rights ordinance were influencing his decision.

"The governor and legislature should stop playing politics and start focusing on creating good high paying jobs and making education a priority. State law can't be pre-empted by a local ordinance. Acts that were a crime before this ordinance are still a crime," said Jamal Little, a spokesman for Cooper's campaign.

**CREDITS**

**Reporter** [Mark Binker](#)

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**Declaration of Luke C. Platzer**

**EXHIBIT Q**

**JA409**



**Speaker Tim Moore**  
@NCHouseSpeaker

Follow

I have received requests from more than 3/5 of House to call a special session. #ncga #ncpol  
My statement below:



**OFFICE OF THE SPEAKER**  
Rep. Tim Moore  
Speaker of the House

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**FOR IMMEDIATE RELEASE** Contact: [Mollie Young](#)  
919-733-5917  
Thursday – March 3, 2015

**North Carolina House Calls for Special Session to Address Charlotte Restroom Ordinance**

Raleigh, N.C. – Today Speaker Tim Moore (R-Cleveland) announced he has received requests from more than three-fifths of House members to call a special session to address the Charlotte City Council's recently passed ordinance affecting the safety and privacy of people using restrooms.

"The vast majority of my fellow colleagues in the House and I believe the ordinance passed by the Charlotte City Council poses an imminent threat to public safety. We believe it prudent to consider immediate action because the Charlotte City Council decided to make its ordinance effective prior to the convening of our short session. We understand that special sessions have a cost, but the North Carolina House is unwilling to put a price tag on public safety," said Speaker Moore on Thursday.

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OFFICE OF THE SPEAKER  
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12:35 PM - 3 Mar 2016



@supersbunk Mar 2

**JA410**

**Declaration of Luke C. Platzer**

**EXHIBIT R**

**JA411**

**POLITICS & GOVERNMENT**

MARCH 22, 2016 4:35 PM

# Leaders aren't releasing bill for Wednesday's NC special session on bathrooms

## HIGHLIGHTS

Session responds to Charlotte action that would allow transgender people to use restroom of gender with which they identify

Proclamation says legislators also will address 'regulation of employment'

House minority leader calls for bill to be released: 'We're playing hide-and-seek democracy here'



**JA412**



BY COLIN CAMPBELL

[ccampbell@newsobserver.com](mailto:ccampbell@newsobserver.com)

Proposed legislation for Wednesday's unusual special General Assembly session wasn't released publicly Tuesday, but legislative leaders indicate the bill could go well beyond a Charlotte ordinance on transgender bathroom use.

Lt. Gov. Dan Forest posted a formal proclamation calling for the special session Tuesday afternoon. It says the legislature will meet starting at 10 a.m. to consider proposals "to provide for single-sex multiple occupancy bathroom and changing facilities and to create statewide consistency in regulation of employment and public accommodations."

The proclamation was the first mention of employment regulations in reference to plans for the special session. Forest and House Speaker Tim Moore signed the proclamation.

Andy Munn, a spokesman for Moore, declined to provide a copy of the draft legislation and said it probably wouldn't be made public until Wednesday – hours before it comes to a first vote. "There are still a few tweaks to be made to it," he said.

Munn wouldn't provide details of the proposal under consideration.

House Minority Leader Larry Hall, a Durham Democrat, called on Moore to release the bill so legislators can consider what they'll be voting on Wednesday.

"We're playing hide-and-seek democracy here," Hall told The News & Observer Tuesday afternoon. "We don't know what we're discussing here, we don't know what we're voting on. What we're doing is a perversion of the process."

The Associated Press reported that it obtained a copy of one draft of the bill. That draft, according to The AP, "would appear to pre-empt completely what Charlotte added to its non-discrimination ordinance and prevent local governments from passing similar acts."

Lobbyist Theresa Kostrzewa also obtained a draft version and posted sections of it on Twitter. One potential provision would ban cities and counties from regulating employment practices, including setting a higher minimum wage. Another would prevent counties from requiring government contractors to uphold specific employment practices.

Kostrzewa said she doesn't know whether the draft she posted was still under consideration. Munn would not confirm the authenticity of any of the drafts being circulated.

The N.C. League of Municipalities and the Metropolitan Mayors Coalition said they could not comment on possible curbs to local government control until the bill is introduced.

The special session is in response to the Charlotte City Council's recent vote to expand protections for gay, lesbian, bisexual and transgender people, including a provision that will allow transgender people to use the restroom and locker room facilities of the gender with which they identify. The ordinance goes into effect April 1.

Opponents said the ordinance effectively allows men to use women's restrooms and locker rooms, and they said it will endanger public safety and possibly lead to sexual assaults.

LGBT advocacy groups say that those statements constitute "fearmongering" and that similar ordinances are in place in other cities without compromising safety. They say transgender people often face threats and assaults when using public restrooms.

Wednesday's special session is the second time legislators have returned to Raleigh unexpectedly this year. Last month, the legislature met to approve new congressional districts after a federal court rejected the state's maps. Until now, the General Assembly had not held two special sessions in the same year since 2003.

Hall said Democrats were initially told that this week's special session would take place on Thursday. "We've got a lot caught off guard, and people are scrambling trying to come back," he said.

Governors typically call special sessions, but Gov. Pat McCrory refused to call Wednesday's session because he was concerned the legislature would go beyond addressing the Charlotte ordinance.

That meant legislative leaders opted for a rarely used law that allows special sessions when three-fifths of legislators in both chambers support the call. That provision in the state constitution hasn't been used since 1981, according to Forest's chief of staff, Hal Weatherman.

In the Senate, 31 Republicans backed the session. Only three GOP senators didn't: Sen. Tom Apodaca of Hendersonville, Sen. Tamara Barringer of Cary and Sen. Fletcher Hartsell of Concord.

All House Republicans except Rep. Charles Jeter of Mecklenburg County and Rep. Chuck McGrady of Hendersonville backed the call to session.

*Colin Campbell: 919-829-4698, @RaleighReporter*

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## SPECIAL LEGISLATIVE SESSIONS

Here's what's prompted lawmakers to schedule the most recent special sessions:

**March 2016:** Transgender bathroom use

**February 2016:** Congressional redistricting

**2008:** Expelling a House member accused of fraud

**2004:** Tax breaks and incentives for a Dell computer plant

**2003:** Economic development incentives

**2003:** Redistricting

**2002:** Redistricting

**2000:** Shielding tobacco companies from a class-action lawsuit

**1999:** Hurricane Floyd disaster relief funding

**1998:** Improvements to health insurance

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- NC lawmakers convening in attempt to void Charlotte's LGBT ordinance
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  - Siers cartoon: Legislature's Special LGBT Session
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## MORE POLITICS & GOVERNMENT

**JA415**

**Declaration of Luke C. Platzer**

**EXHIBIT S**

**JA416**

### Transcript of Audio Excerpt

Proceedings of the N.C. House of Representatives  
2d Extra Sess., 1st Legis. Day  
March 23, 2016  
0:10:00 to 0:11:09

Available at: <http://www.ncleg.net/DocumentSites/HouseDocuments/2015-2016%20Session/Audio%20Archives/2016/03-23-2016.mp3>

[Beginning of excerpt.]

SPEAKER TIM MOORE: The Chair directs that a message be sent to the Senate informing that honorable body that the 2015 House of Representatives is organized and ready to proceed with public business for the 2016 Second Extra Session.

[Pause in proceedings.]

SPEAKER TIM MOORE: House will be at ease just a moment.

[Pause in proceedings; inaudible discussion.]

SPEAKER TIM MOORE: Members, it appears, in just a moment we will be reading in our bill to be taken up. The Chair believes that members are doing a final review, so we're going to be at ease just for that purpose. It is the intention of the Chair, for your planning purposes, once this bill is read in, that it will be referred to the Judiciary IV committee, and that the J-IV committee will be meeting five minutes after recess. And given where we are, the Chair would intend to either call us back at 11:15 or 11:30 to take up the bill on the House floor.

[End of excerpt.]

**Declaration of Luke C. Platzer**

**EXHIBIT T**

**JA418**

## POLITICS &amp; GOVERNMENT

MARCH 24, 2016 7:06 PM

# Triangle governments scramble to decipher law's impact

**HIGHLIGHTS**

Questions remain regarding scope of employment provisions

The speed of bill's passage means that few local officials have read it in detail

Some see legislature as preempting local authority

BY HENRY GARGAN

[hgargan@newsobserver.com](mailto:hgargan@newsobserver.com)

RALEIGH — The day after House Bill 2 was introduced, approved and signed into law, the Triangle's municipal governments spent Thursday scrambling to figure out how it might affect the way they conduct business.

Passed in a special session called Wednesday by the General Assembly's Republican leadership, the bill prohibits public agencies, including towns and schools, from allowing people to use restrooms and changing rooms other than those that correspond with the sex they were assigned at birth.

It also bans local and county governments from imposing upon employers non-discrimination requirements that include sexual orientation, gender identity, or any other criteria not listed in the bill. Local governments beginning to interpret that provision are now trying to determine whether that ban applies to their own hiring practices.

No local governments in the state currently include sexual orientation or gender identity as criteria in their regulation of private employment. But several – including Carrboro, Chapel Hill and Raleigh – include sexual orientation and gender identity in policies dealing with the hiring of municipal employees. Orange County's hiring policy includes sexual orientation but not gender identity.

Scott Mooneyham of the N.C. League of Municipalities said the immediate effects of the bill's employment provisions could vary depending on how it is ultimately interpreted. Those effects would be minimal if the bill is found not to apply to municipal governments'

**JA419**

hiring practices, he said.

“

**I THINK IT'S AWFULLY EARLY FOR A BILL THAT'S ONLY BEEN OUT THERE FOR 24 HOURS FOR PEOPLE TO BE COMING TO THESE CONCLUSIONS ABOUT WHAT THIS MEANS.**

Scott Mooneyham of the North Carolina League of Municipalities

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“I think it’s awfully early for a bill that’s only been out there for 24 hours for people to be coming to these conclusions about what this means,” he said, referring to LGBT advocates’ claims that the bill undoes local governments’ hiring policies.

A statement from advocacy group Equality NC on Wednesday claimed 17 North Carolina municipalities, as well as the UNC system, could have their non-discrimination policies nullified.

“The reality of the situation is that there were literally five minutes given in the House committee to read the bill,” said Chris Sgro, Equality NC’s executive director. “The (League of Municipalities) is evaluating that right now, and the League is who I trust to make that call.”

Carrboro Town Alderman Damon Seils, who is openly gay, said Carrboro has often included language in town contracts prohibiting discrimination on those bases, something the new law seems to disallow in Section 2.3. Raleigh’s non-discrimination policy also applies to contractors, though it includes a deference to state and federal law in those cases.

Representatives of Apex, Cary, Rolesville, Knightdale, Garner and Morrisville said they had not analyzed the bill in enough detail to comment, but that they were not aware of local ordinances inconsistent with the new law.

The General Assembly called Wednesday’s special session in response to a Charlotte ordinance allowing transgender individuals to use the restroom of their choice. But the bill, in limiting non-discrimination ordinances to the criteria it listed, might have had consequences unrelated to that motive. Article IV of Orange County’s 1994 civil rights

ordinance, which prohibits employment discrimination based on, among other things, veteran or family status, might now be in conflict with HB 2, which does not include those criteria as protected categories.

## Official responses

Despite ongoing efforts to interpret the bill's effects, some local governments are already taking action against it.

Carrboro's Board of Alderman announced Thursday that it would hold a special session at 1 p.m. Saturday to pass a resolution opposing HB 2. Mayor Lydia Lavelle, the state's only openly gay mayor, said it was disheartening to see the bill pass. She would support Carrboro passing a resolution in support of Charlotte's ordinance or even joining a legal challenge, she said.

"We need to discuss the message that this sends to LGBT North Carolinians, who see their state leaders coming into special session specifically to discriminate against them," Seils, the Carrboro alderman, said. "It's legislative bullying, and we can't stand for it."

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**I FELT SICK TO MY STOMACH THIS MORNING. I THINK THAT THIS GOES AGAINST WHAT WE IN CHAPEL HILL STAND FOR AND WHAT OUR SHARED VALUES ARE.**

Jessica Anderson, Chapel Hill Town Council

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A resolution supporting Charlotte may be under way in Chapel Hill, Town Council member Jessica Anderson said.

"I felt sick to my stomach this morning," Anderson said. "I think that this goes against what we in Chapel Hill stand for and what our shared values are."

## Concerns of overreach

Even in some cities and towns where HB 2 is unlikely to force any sort of immediate change, officials said they were concerned with what Morrisville Mayor Mark Stohlman called a "theme" of legislative involvement in local government.

“Our biggest concern is with the preemption of local authority,” said Lana Hygh, Cary’s intergovernmental relations director. “Our town council believes that local decisions should be made locally.”

Durham Councilman Charlie Reece, in an email, called the law “an unprecedented usurpation of local control on the part of Republican extremists in the General Assembly.”

Mooneyham, whose organization represents the interests of local governments across the state, questioned the legislature’s decision to prohibit local minimum wage ordinances in the law, especially since he said he wasn’t aware of any local governments in the state that had tried to implement one.

“(The League of Municipalities) certainly always has and always will be for local control,” Mooneyham said. “We feel like local citizens and local elections should have consequences.”

*Staff writers Tammy Grubb, Johnny Whitfield, Jonathan Alexander and Chris Cioffi contributed to this report.*

Gargan: 919-460-2604; @hgargan



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**Declaration of Luke C. Platzer**

**EXHIBIT U**

**JA423**

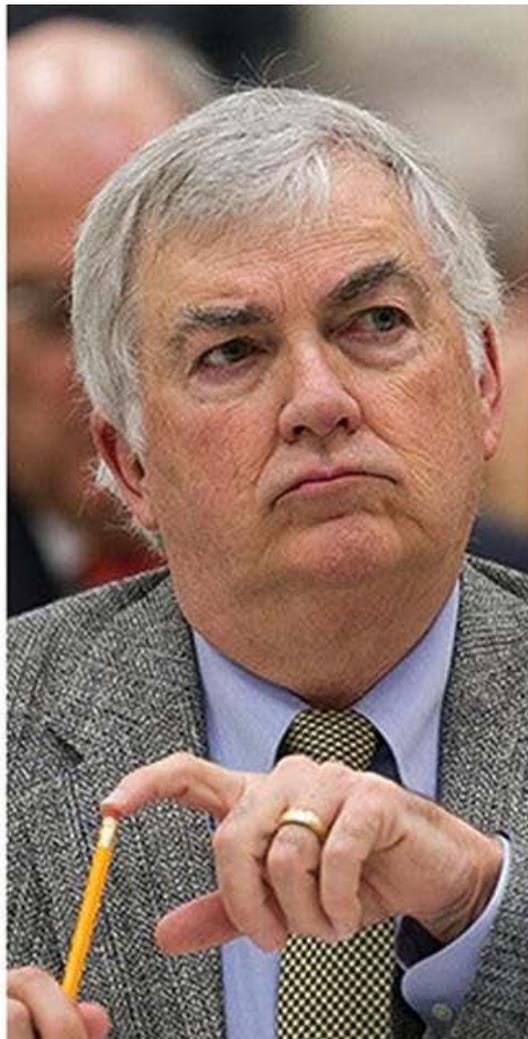
LOCAL MARCH 23, 2016 5:48 PM

# N.C. Gov Pat McCrory signs into law bill restricting LGBT protections

## HIGHLIGHTS

Democratic senators walk out in protest

All new LGBT protections would be invalidated



1 of 8



JA424

BY STEVE HARRISON

[sharrison@charlotteobserver.com](mailto:sharrison@charlotteobserver.com)

RALEIGH — The N.C. General Assembly on Wednesday approved a bill that invalidates Charlotte’s new legal protections for LGBT individuals, doing far more than striking down a controversial provision that allowed transgender people to use the bathroom of the gender with which they identify. Gov. Pat McCrory signed it into law hours later.

The vote in the House was 84-25 after three hours of debate, with all Republicans voting for it and 11 Democrats breaking ranks with their party to support the bill.

In the Senate, the vote was 32-0 after the Democrats walked out in protest, saying they had not been allowed to participate in the process.

“We witnessed an affront to democracy,” said Democratic Sen. Dan Blue of Raleigh, the minority leader. “We will not be silent.”

Last year in Indiana, there was a nationwide uproar over a “Religious Freedom” law that critics said would make it easy for businesses to discriminate against gays and lesbians. Critics of the North Carolina bill, which passed in a one-day special session, said it was perhaps the most “anti-LGBT legislation” in the nation.

Dana Fenton, the city of Charlotte’s lobbyist, said the bill would invalidate the city’s newly expanded nondiscrimination ordinance, passed in a 7-4 City Council vote in February. He said he believes the state’s largest employers would have lobbied the governor to veto it.

The full bill wasn’t made public until Wednesday morning. Until then, it was unclear whether the legislators would target only the bathroom provision, or whether they would go further and strike down the rest of the ordinance.

The impetus of the special session was a provision in Charlotte’s expanded nondiscrimination ordinance that would allow transgender individuals to use the bathroom that corresponds to the gender with which they identify. Critics said it was “social engineering” to allow people born as biological males into women’s restrooms. They said legislation was needed to correct Charlotte’s “overreach” and to protect the safety of women and children.

The bill prohibits any such bathroom flexibility.

But it also will keep Charlotte and any other municipality from adding new protections for gays, lesbians or transgender individuals.

In North Carolina today, there are no legal protections for gays and lesbians. That means a private business in Charlotte or anywhere else in the state can refuse to serve someone who is gay, and a bakery could refuse to make a cake for a wedding of a gay couple.

In Charlotte, that would have changed as of April 1, when the expanded ordinance was scheduled to go into effect.

The only protected classes recognized by the state will be race, color, national origin and biological sex.

McCrory, a Republican, had said he opposes the provision in Charlotte's ordinance that allows transgender people to use a men's or women's bathroom. But he declined to call the special session, saying he was worried legislators would go beyond eliminating the bathroom flexibility.

After the bill passed, the governor had 30 days to sign the bill or issue a veto. He signed it late Wednesday.

McCrory's Democratic opponent, Attorney General Roy Cooper, called the law discriminatory.

"Discrimination is wrong, period," he said. "That North Carolina is making discrimination part of the law is shameful. It will not only cause real harm to families, but to our economy as well."

State Rep. Dan Bishop, a Charlotte Republican who sponsored the bill, said the legislature likely would not have convened had Charlotte passed a nondiscrimination ordinance that included protections for LGBT individuals but didn't allow for the bathroom flexibility.

"We might not be here today," he said.

But when asked why the bill does more than strike down the bathroom flexibility, Bishop said it made sense to keep the state in line with the protected classes recognized by the federal government. There is no federal civil rights legislation that protects LGBT individuals.

Bishop and other legislators said some cities – such as New York – have created numerous new protected classes, which have become too cumbersome on business.

During the debate, Bishop said a "handful of radicals" on the City Council passed the legislation, which he said was a "subversion of the rule of law."

During a committee meeting Wednesday morning, Bishop said a business that allows transgender individuals to use a men's or women's restroom wouldn't be affected. The business could continue with that internal policy, he said.

But a business could not be required by ordinance to make accommodations for someone who is transgender.

The law also prohibits K-12 public schools, and publicly funded universities and colleges from having multistall transgender bathrooms. Critics said that could jeopardize federal funding for education.

The only transgender people who will be exempt are those who had the sex on their birth certificate legally changed.

One opponent of the bill told senators that the legislation would have unintended consequences. The speaker asked them to consider the case of someone born as a female, but who now identifies as a man, with a beard made possible through hormones. That person will be required to use a women's bathroom.

State Rep. Tricia Cotham, a Matthews Democrat, said legislators shouldn't be involved.

"This time, we are here to meddle in the affairs of local government and disrespect local leaders," she said. "This is to advance some political careers and tarnish other political careers."

A Senate committee Wednesday began discussing the bill. A proposed amendment to add sexual orientation and gender identity to the list of protected classes failed.

"We came here to undo what happened in one county," said Sen. Warren Daniel, a Republican from Morganton, who voted against the amendment. "We would extend that across the state?"

Sen. Buck Newton, a Wilson Republican who is running for attorney general, said legislators were responding to "thousands and thousands" of emails and phone calls.

"The city of Charlotte knew they didn't have the authority to do this," he said. "They wanted to do it anyway."

Under the new law, the city of Charlotte can continue an internal policy prohibiting LGBT discrimination for its own employees.

The law also prohibits cities and towns from enacting a minimum wage in their jurisdictions. That prohibition already existed.

*COLIN CAMPBELL AND CRAIG JARVIS OF THE (RALEIGH) NEWS & OBSERVER CONTRIBUTED.*

*Steve Harrison: 704-358-5160, @Sharrison\_Obs*

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## RELATED CONTENT

**JA427**

**Declaration of Luke C. Platzer**

**EXHIBIT V**

**JA428**

# McCrorry signs bill blocking LGBT protections

ASSOCIATED PRESS | Posted: Wednesday , March 23, 2016 10:56 pm

**RALEIGH (AP)** — North Carolina legislators decided to rein in local governments by approving a bill Wednesday that prevents cities and counties from passing their own anti-discrimination rules. The legislation, signed into law later by Gov. Pat McCrorry, dealt a blow to the LGBT movement after success with protections in cities across the country.

The Republican-controlled General Assembly took action after Charlotte city leaders last month approved a broad anti-discrimination measure that allows transgender people to use the restroom aligned with their gender identity. Gov. McCrorry signed the bill into law Wednesday night, said Josh Ellis, the governor's communications director. Gov. McCrorry, who was the mayor of Charlotte for 14 years, has criticized the local ordinance.

Although 12 House Democrats joined all Republicans present in voting for the bill in the afternoon, later all Senate Democrats in attendance walked off their chamber floor during the debate in protest. Remaining Senate Republicans gave the legislation unanimous approval.

"We choose not to participate in this farce," Senate Minority Leader Dan Blue of Raleigh said after he left the chamber.

Senate leader Phil Berger of Eden said he couldn't recall such an action before a vote, which he said was a "serious breach of their obligation to the citizens that voted to elect them."

Republicans and their allies have said intervening is necessary to protect the safety of women and children from "radical" action by Charlotte. There have been arguments that any man — perhaps a sex offender — could enter a woman's restroom or locker room simply by calling himself transgender.

"It's common sense — biological men should not be in women's showers, locker rooms and bathrooms," said GOP Rep. Dean Arp of Monroe before the chamber voted 82-26 for the legislation after nearly three hours of debate.

Gay rights leaders and transgender people said the legislation demonizes the community and espouses bogus claims about increasing the risk of sexual assaults. They say the bill will deny lesbian, gay, bisexual and transgender people essential protections needed to ensure they can get a hotel room, hail a taxi or dine at a restaurant without fear.

"Protections for LGBT people against discrimination are common sense," Chris Sgro, executive director of Equality North Carolina, said in a release after the vote. Advocates had hoped to pressure Gov. McCrorry into vetoing the bill, beginning with a Thursday evening rally.

GOP leaders scheduled the one-day session at the cost of \$42,000 because Charlotte's ordinance was

**JA429**

set to take effect Friday, April 1. Otherwise, the legislature wouldn't have returned until late April.

Current Charlotte Mayor Jennifer Roberts, who pressed since taking office to get the anti-discrimination ordinance approved, said she was appalled by the legislature's actions.

"The General Assembly is on the wrong side of progress. It is on the wrong side of history," Ms. Roberts said in a prepared statement.

The bill bars local governments statewide from prohibiting discrimination in public places based on sexual orientation and gender identity. It directs all public schools, government agencies and public college campuses to require bathrooms or locker rooms be designated for use only by people based on their biological sex. They can offer single-occupancy facilities.

Transgender people who have transitioned to the opposite sex wouldn't be affected if they get their birth certificate changed.

Democrats said the bill makes North Carolina less inclusive and interferes with local governments. They say the state could also risk billions in federal education dollars with the school policy.

"This is really not about bathrooms," said Democratic Rep. Rodney Moore of Charlotte. "This is about fear."

Ordinance supporters and opponents spoke to legislators in House and Senate committees, telling of their personal stories and fears. They included Skye Thompson, 15, of Greenville, who was born female but now identifies as male. He told senators they were putting him in danger by requiring use of a women's restroom.

"I've dealt with bullying my whole life and now I worry that my own state lawmakers are bullying me as well. I feel bullied by you guys," Mr. Thompson said.

Donna Eaton of Cary said everybody deserves to be treated with dignity and respect but is worried that without Wednesday's bill "it's going to open the door for people with malicious intent who would masquerade as transgenders to come in and actually take advantage and have access to our kids."

In a video, Democratic Attorney General Roy Cooper, who is running for governor against Gov. McCrory, called Wednesday's actions "shameful" and "unprecedented" and said they could hurt the state's economy.

Russell Peck, the governor's campaign manager, in turn accused Mr. Cooper of supporting "forcing women and young girls to use the same restrooms and locker rooms as grown men."

Legislation requiring transgender students to use bathrooms corresponding with their birth gender have failed recently. South Dakota's legislature failed to override Gov. Dennis Daugaard's veto and a similar bill in Tennessee bill died Tuesday.

The bill also would also make clear local governments can't require area businesses to pay workers above the current minimum wage, with some exceptions.

**Declaration of Luke C. Platzer**

**EXHIBIT W**

**JA432**



the **two-way**

AMERICA

# North Carolina Passes Law Blocking Measures To Protect LGBT People

March 24, 2016 · 11:29 AM ET

CAMILA DOMONOSKE



On Wednesday, North Carolina Gov. Pat McCrory signed into law a bill blocking anti-discrimination rules that would protect gay and transgender people. Above, McCrory speaks during the Wake County Republican convention at the state fairgrounds in Raleigh on March 8.

*Al Drago/CQ Roll Call*

The North Carolina state Legislature has passed a law blocking local governments from passing anti-discrimination rules to grant protections to gay and transgender people.

**JA433**

The law comes a month after the city of Charlotte passed a measure protecting gay, lesbian, bisexual and transgender people from being discriminated against by businesses.

That measure was set to go into effect on April 1.

The state's General Assembly wasn't due to meet until late April, but it scheduled a special session — for the first time in 35 years, member station WUNC reports — on Wednesday to respond to the Charlotte measure before it went into effect.

Over the course of 12 hours, the state legislators introduced, debated and passed the bill, and Gov. Pat McCrory signed it into law.

The new law establishes a statewide nondiscrimination ordinance that explicitly supersedes any local nondiscrimination measures. The statewide protections cover race, religion, color, national origin and biological sex — but not sexual orientation or gender identity.

**Time Warner, Others Join Disney In Opposing Georgia's 'Religious Liberty' Bill** March 24, 2016

WFAE's Tom Bullock noted a possible implication of those categories: "Since religion is a protected class, and the definition of religion is broad enough, this could be a kind of backdoor religious freedom restoration act — allowing businesses the right to refuse to serve customers based on the owner's religious beliefs."



#### THE TWO-WAY

South Dakota Governor Vetoes Bill Stipulating Transgender Students' Bathroom Use



#### IT'S ALL POLITICS

Did You Know It's Legal In Most States To Discriminate Against LGBT People?

**JA434**

One word dominated the debate over the bill and the Charlotte ordinance before it: "bathroom."

Charlotte already protected residents from discrimination based on race, age, religion and gender. On Feb. 22, the city council voted to expand those protections to apply to sexual orientation and gender identity, too.

The most controversial element of Charlotte's expanded ordinance was the fact that it would allow trans people to use the bathrooms that correspond with their gender identity.

Opponents argued this would make bathrooms unsafe for women and children. WFAE's Sarah Delia, reporting on NPR in February, spoke to Pam Burton of Charlotte.

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## Listen: North Carolina Debates Transgender Rights

Listen · 3:40

Queue

"I'm not scared of transgenders. That's not what I think the problem is. Sexual predators are not good people," Burton said. "They don't do the right thing. They're going to see this ordinance as a golden opportunity for fresh victims — our children. My 16-year-old daughter swims at The Y year-round. I'm not going to be able to confidently continue to allow her to use that locker room if this passes."

Charlotte resident Lara Nazario, a trans woman, said critics of the measure have it backward. The idea that it would be dangerous to defend trans people's rights to use the bathroom of their gender identity "is opposite to the reality that I live in," Nazario said.

It's forcing trans people to use the bathroom of the opposite gender that is dangerous, she said:

"If I were to walk into a men's bathroom, I would either be told that I'm in the wrong

**JA435**

bathroom or I'd be outed as a transgender woman. This can often lead to violence or harassment, especially when there's no protection in place for people like me."

The Charlotte nondiscrimination ordinance extends protections to LGBT customers at bars, restaurants and stores, and in taxis. The heated debate over trans access to restrooms led to it being labeled by some as the "bathroom ordinance."

And North Carolina's response, in turn, is being called the "bathroom bill."

The law opens by requiring all government-controlled facilities — including schools and universities — to assign all multiple-occupancy bathrooms and locker rooms to a single sex and prevent anyone who doesn't match that biological sex from using the facility.

It later declares nondiscrimination "an issue of general, statewide concern," and says local jurisdictions can't craft their own nondiscrimination measures.



U.S.

'Patchwork Of Protection' In Rural Areas For LGBT Community Has Limits

That nullifies Charlotte's ordinance — as well as existing LGBT nondiscrimination ordinances in a half-dozen other jurisdictions in North Carolina, WFAE reports. It also blocks any other city or local government from extending such protections to LGBT residents in the future.

Biogen, which employs more than 1,000 people in North Carolina's Research Triangle, and the Dow Chemical Co. have both tweeted their objections, as employers, to the new law.

The law bars local governments from passing other ordinances, as well.

Again, WFAE's Tom Bullock, from the station's extensive coverage during the bill's debate and passage yesterday:

**JA436**

"The bill would bar cities or counties from imposing their own minimum wage. So any move to establish a local minimum wage higher than the \$7.25 an hour federal minimum wage would be a nonstarter. This has been done by other cities such as Seattle, which is phasing in a \$15 an hour minimum wage.

"Cities and counties often have employment rules for companies seeking contracts. This bill also bars counties or municipalities from requiring these companies to pay a higher minimum wage in order to qualify for contracts. ... This provision also bars requirements like companies provide paid sick leave."

The bill passed the Republican-controlled General Assembly 82-26 in the House, and 32-0 in the Senate.

Gov. McCrory, after signing the bill late Wednesday, described the bill's passage as "bipartisan." But The Associated Press notes:

"Although 12 House Democrats joined all Republicans present in voting for the bill in the afternoon, later all Senate Democrats in attendance walked off their chamber floor during the debate in protest. Remaining Senate Republicans gave the legislation unanimous approval.

" 'We choose not to participate in this farce,' Senate Minority Leader Dan Blue of Raleigh said after he left the chamber."

McCrory also said he was acting to protect citizens' privacy, and criticized the Charlotte ordinance as "government overreach and intrusion."

lgbt charlotte north carolina minimum wage

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**Declaration of Luke C. Platzer**

**EXHIBIT X**

**JA439**



# State of North Carolina

**PAT McCRORY**  
GOVERNOR

April 12, 2016

## EXECUTIVE ORDER NO. 93

### TO PROTECT PRIVACY AND EQUALITY

**WHEREAS**, North Carolina's rich legacy of inclusiveness, diversity and hospitality makes North Carolina a global destination for jobs, business, tourists and talent;

**WHEREAS**, it is the policy of the Executive Branch that government services be provided equally to all people;

**WHEREAS**, N.C. Gen. Stat. § 160A-499.2 permits municipalities to adopt ordinances prohibiting discrimination in housing and real estate transactions, and any municipality may expand such ordinance consistent with the federal Fair Housing Act;

**WHEREAS**, N.C. Gen. Stat. § 143-422.2(c) permits local governments or other political subdivisions of the State to set their own employment policies applicable to their own personnel;

**WHEREAS**, North Carolina law allows private businesses and nonprofit employers to establish their own non-discrimination employment policies;

**WHEREAS**, N.C. Gen. Stat. § 143-128.2 requires each city, county or other local public entity to adopt goals for participation by minority businesses and to make good faith efforts to recruit minority participation in line with those goals;

**WHEREAS**, North Carolina law allows a private business or nonprofit to set their own restroom, locker room or shower policies;

**WHEREAS**, our citizens have basic common-sense expectations of privacy in our restrooms, locker rooms and shower facilities for children, women and men;

**WHEREAS**, to protect expectations of privacy in restrooms, locker rooms and shower facilities in public buildings, including our schools, the State of North Carolina maintains these facilities on the basis of biological sex;

**WHEREAS**, State agencies and local governments are allowed to make reasonable accommodations in restrooms, locker rooms and shower facilities due to special individual circumstances;

**NOW, THEREFORE**, pursuant to the authority vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED**:

**JA440**

**Section 1. Public Services**

In the provision of government services and in the administration of programs, including, but not limited to public safety, health and welfare, public agencies shall serve all people equally, consistent with the mission and requirements of the service or program.

**Section 2. Equal Employment Opportunity Policy for State Employees**

I hereby affirm that the State of North Carolina is committed to administering and implementing all State human resources policies, practices and programs fairly and equitably, without unlawful discrimination, harassment or retaliation on the basis of race, religion, color, national origin, sex, sexual orientation, gender identity, age, political affiliation, genetic information, or disability.

I also affirm that private businesses, nonprofit employers and local governments may establish their own non-discrimination employment policies.

**Section 3. Restroom Accommodations**

In North Carolina, private businesses can set their own rules for their own restroom, locker room and shower facilities, free from government interference.

Under current law, every multiple occupancy restroom, locker room or shower facility located in a cabinet agency must be designated for and only used by persons based on their biological sex. Agencies may make reasonable accommodations upon a person's request due to special circumstances.

Therefore, when readily available and when practicable in the best judgment of the agency, all cabinet agencies shall provide a reasonable accommodation of a single occupancy restroom, locker room or shower facility upon request due to special circumstances.

All council of state agencies, cities, counties, the University of North Carolina System and the North Carolina Community College System are invited and encouraged to make a similar accommodation when practicable.

**Section 4. State Buildings and Facilities Leased to Private Entities**

The Department of Administration shall interpret the application of N.C. Gen. Stat. § 143-760 as follows:

When a private entity leases State real property and the property in the lessee's exclusive possession includes multiple occupancy restrooms, locker rooms or other like facilities, the private entity will control the signage and use of these facilities.

All council of state agencies, cities, counties, the University of North Carolina System and the North Carolina Community College System are invited and encouraged to adopt a similar interpretation of N.C. Gen. Stat. § 143-760.

**Section 5. Human Relations Commission**

Pursuant to N.C. Gen. Stat. § 143B-391, the Human Relations Commission in the Department of Administration shall promote equality and opportunity for all citizens.

The Human Relations Commission shall work with local government officials to study problems and promote understanding, respect and goodwill among all citizens in all communities in North Carolina.

The Human Relations Commission shall receive, investigate and conciliate fair housing, employment discrimination and public accommodations complaints.

The Human Relations Commission shall submit an annual report by April 1st to the Governor detailing the number of complaints received, the number of investigations completed, and the number of conciliations in the preceding calendar year. This report shall also describe any education and outreach efforts made by the Commission in that same calendar year.

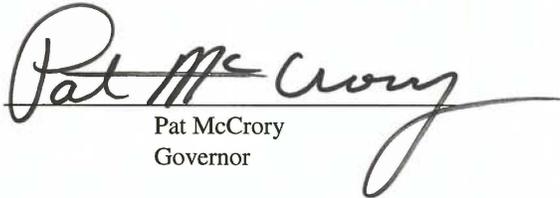
**Section 6. State Cause of Action for Wrongful Discharge**

I support and encourage the General Assembly to take all necessary steps to restore a State cause of action for wrongful discharge based on unlawful employment discrimination.

**Section 7. State or Federal Law**

Nothing in this section shall be interpreted as an abrogation of any requirements otherwise imposed by applicable federal or state laws or regulations.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this twelfth day of April in the year of our Lord two thousand and sixteen.

  
Pat McCrory  
Governor



ATTEST:

  
Elaine F. Marshall  
Deputy Secretary of State

**Declaration of Luke C. Platzer**

**EXHIBIT Y**

**JA443**

UNDER THE DOME APRIL 29, 2016 11:58 AM

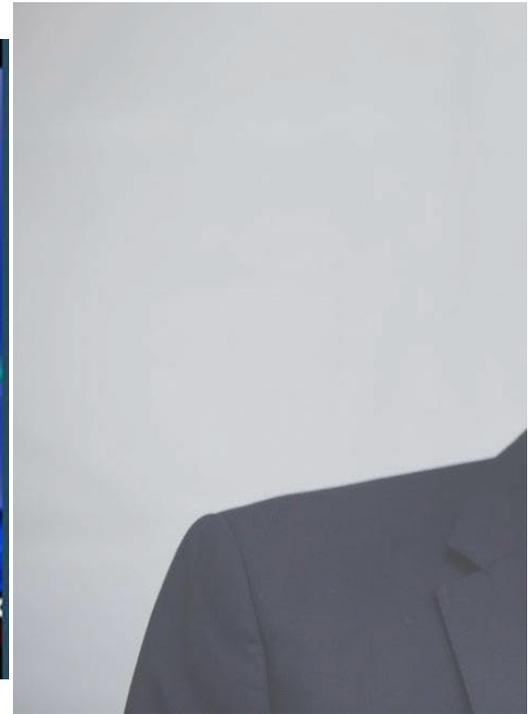
# McCrory distances himself from sexual predator claims backing House Bill 2

### HIGHLIGHTS

Governor: 'I don't like the rhetoric that's used on the right saying what the fear is'

McCrory says House Bill 2 is instead about protecting 'privacy'

Comment on Fox contradicts an earlier statement by the governor



< 1 of 2 >



BY COLIN CAMPBELL  
[ccampbell@newsobserver.com](mailto:ccampbell@newsobserver.com)

Gov. Pat McCrory defended House Bill 2 on Megyn Kelly's Fox News Channel show Thursday night, and he argued that the law is more about bathroom privacy than about fears of sexual predators in bathrooms.

Kelly pressed McCrory about claims that a Charlotte nondiscrimination ordinance - which House Bill 2 overturned March 23 - would have made it easier for "molesters" to commit crimes in bathrooms.

"I don't use that term," the governor said. "Mine is not a fear. I'm not doing it, and I don't like the rhetoric that's used on the right saying what the fear is.

"It's the basic expectation of privacy that I hear from moms and dads and families, that when their daughter or son goes into a facility, a restroom, they expect people of that gender, of that biological sex or gender, to be the only other ones in that. That's the expectation that we've had for many, many years."

ADVERTISING

JA444

That comment appears to put McCrorry’s latest views on House Bill 2 at odds with other supporters of the law. In a campaign ad this week, Lt. Gov. Dan Forest makes the predator claim that McCrorry said he’s “not doing.”

[Find more coverage of NC’s House Bill 2]

“If keeping men out of women’s showers and bathrooms protects just one child or one woman from being molested or assaulted, then it was worth it,” Forest says in the ad.

McCrorry’s comment on Fox News is also at odds with earlier statements he made about the Charlotte ordinance. When the governor suggested in February that the legislature probably would take action on the bathroom provision, he raised the safety issue in an email to Charlotte City Council members.

“This shift in policy could also create major public safety issues by putting citizens in possible danger from deviant actions by individuals taking improper advantage of a bad policy,” he wrote on Feb. 21.

McCrorry spokesman Josh Ellis sent an email Friday explaining the conflicting statements.

“Megyn was basically asking if transgender people were molesters,” Ellis said. “That’s what the governor was responding to. The governor was making it clear that he doesn’t use those terms to describe transgender people.”

PolitiFact North Carolina recently reviewed the claims made about safety and found no instances where criminals used transgender-friendly ordinances and laws as legal cover for sex crimes.

Watch the full interview below:



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**Declaration of Luke C. Platzer**

**EXHIBIT Z**

**JA446**

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FOX NEWS SUNDAY

## Manafort on Trump's fight to rally GOP, defeat Democrats; Gov. McCrory on showdown over NC's transgender bathroom law

Published May 08, 2016  
FoxNews.com

2 11

*This is a rush transcript from "Fox News Sunday," May 8, 2016. This copy may not be in its final form and may be updated.*

CHRIS WALLACE, FOX NEWS ANCHOR: I'm Chris Wallace.

With exactly six months to Election Day, Donald Trump will be the Republican nominee. But can he unite the party?

(BEGIN VIDEOTAPE)

DONALD TRUMP, R-PRESIDENTIAL CANDIDATE: We want to bring unity to the Republican Party. We have to bring unity.

REP. PAUL RYAN, R-WIS., SPEAKER OF THE HOUSE: Saying we're unified doesn't in and of itself unify us.

TRUMP: I didn't get Paul Ryan. I don't know what happened.

The only important thing is the unification of the people.

WALLACE: We'll talk with senior adviser Paul Manafort about Trump's fight to rally the party and defeat the Democrats in November.

Then, a showdown between the feds and North Carolina over the legality of its transgender bathroom law.

GOV. PAT MCCRORY, R-NORTH CAROLINA: This conclusion by the Department of Justice impacts every state, every university and almost every employer in the United States of America.

WALLACE: We'll ask North Carolina Governor Pat McCrory whether he'll defy tomorrow's deadline. It's a "Fox News Sunday" exclusive.

Plus, a Navy SEAL is killed in a firefight with ISIS in Iraq. We'll ask our Sunday panel about the U.S. military's deepening role there.

And our power player of the week: the dish on the designer who has dressed both leading ladies and their tables.

Why would somebody spend \$400 for a plate?

UNIDENTIFIED FEMALE: Because they love it.

WALLACE: All right now on "Fox News Sunday."



JA447

(END VIDEOTAPE)

WALLACE: Hello again and happy Mother's Day from Fox News in Washington.

Well, Donald Trump had barrel put away the competition this week and become the almost certain Republican nominee when a new fight broke out within the GOP. Some top Republicans said they won't vote for Trump and House Speaker Paul Ryan held off on endorsing him.

Joining me now is Donald Trump's senior adviser Paul Manafort.

Paul, let's start with Paul Ryan's comments this week that he's not ready, as he put it, to endorse Trump, and that it's basically on your candidate to unify the party. Here is Paul Ryan.

(BEGIN VIDEO CLIP)

RYAN: I think there's work that needs to be done in order to unify the party. I think our nominee, our presumptive nominee needs to do that. I want to be a part of helping him do that. But right now, no, I think that, you know, there's some work to do here.

(END VIDEO CLIP)

WALLACE: How seriously does Trump take this split within the party and how far is he willing to go when he meets with Paul Ryan later this week to try to repair the split?

PAUL MANAFORT, TRUMP STRATEGIST: I think you need to put things into context here. A week ago you had Republican leaders in Washington, so many, saying that there was going to be a contested convention. And last Tuesday night in Indiana, a state Trump was supposed to lose, he had an overwhelming victory and the race ended. It ended much sooner than anybody expected except maybe the people supporting Donald Trump who knew he was on to something.

So, Washington was in a little bit of an uncertain phase and still is but it's a healing process. It's a healing process that will happen over time and frankly the media's expectations that the day after the Indiana primary and everybody got out of the race everything was going to come together in one moment, it was unrealistic.

Trump understands this. What's important to him is that he unifies the party, that he unifies the voters and then he unifies the Republican Party.

Remember, he ran as an outsider, he ran as somebody who was representing the people's interests who were frustrated with the gridlock in Washington. He wasn't a candidate of the leaders. And so, to expect everything to come together the day after the primary process ended, it was a bit unrealistic. But frankly, I'm very pleased to say that it's happening even faster than we thought.

I mean, many of the candidate who ran against him and there were 16, are now moving behind him, endorsing his candidacy expressing support for it. Party leadership in the Congress as well as members of Congress is coming together. The governors are coming together.

WALLACE: Paul --

MANAFORT: So, I mean, the process is happening faster than we thought.

WALLACE: Paul, does evening that it's important that the party be unified going forward?

MANAFORT: Well, he thinks it's important that the country be unified and that his appeal be presented in such a way that his message is clear. But, of course, he is the head of the Republican Party, he wants the party to get behind him and support him.

**JA448**

There has never been a candidate -- a nominee for president of the United States who had every Republican supporting him and everybody accepting every single position of a presidential candidate. Ronald Reagan had the same issues when he was trying to put the party together in 1980.

So it's a process. It will be fine. We've got plenty of time now. There will be no contested convention. We have plenty of time to put the party together.

And I think you're going to see a successful, united party in Cleveland, and they'll be ready to take on Hillary Clinton.

WALLACE: But, Paul, there are real differences between Trump and Ryan. Ryan is said to be offended by some of the things that your candidate has said about women and Muslims and Hispanics. There are substantive differences on issues like trade and entitlement reform.

How far is Trump willing to go to sign on to the agenda of Paul Ryan?

MANAFORT: Well, let's make something very clear. Donald Trump just won a Republican primary. He won it overwhelmingly.

The largest turnouts in the history of Republican voters in all of the primaries and he is the historic leader now of getting votes as a Republican nominee. So, it's his agenda that has just been cemented as what the American people or at least Republicans and independents who voted for him want.

There will be a process. There will be meetings of minds. There's a lot that unites the leadership in the Congress as well as Donald Trump.

But the important thing to remember is the national titular head of the party is the nominee of the Republican Party. He just won that overwhelmingly, faster than anybody in Washington thought and running as an outsider against Washington.

So, his agenda is the people's agenda. He made it very clear. His vision was clear. He articulated it very well. There is no doubts to where he stands.

WALLACE: All right. I want to turn to another subject.

Trump had said that he was not going to go after Hillary Clinton and her personal life unless she went after him. That in effect as he likes to say, he would counter punch. But then yesterday out in Washington state, he went off on Clinton about the way she treated the women that Bill Clinton had had an affair with. Let's put it up.

(BEGIN VIDEO CLIP)

TRUMP: She's married to a man who was the worst abuser of women in the history of politics. Hillary was an enabler and she treated these women horribly. Just remember this. And some of those women were destroyed not by him, but by the way that Hillary Clinton treated them after everything went down.

(END VIDEO CLIP)

WALLACE: First of all, what specifically did Hillary Clinton do to those women?

MANAFORT: Look, this is a clear case. Donald Trump has made it very clear he is not going to allow hypocrisy on the women's issue. He is not going to let Hillary make the case that he is against women and she is this defender of women's rights.

I mean, his business empire is he has put many women in leadership positions, gender, race --

**JA449**

(CROSSTALK)

WALLACE: Respectfully, I asked you, what did -- what did Hillary Clinton do to those women? He says she destroyed their lives. How?

MANAFORT: I will let him speak to it. The point is that, you know, the history is clear, she's an enabler in the past, I will let him speak to those issues.

But the point is he made it very clear he was not going to let hypocrisy exist on a women's issue. He is not anti-women. He is very pro women. He has proven it in his business life and proven it more so than her because he has proven it with actions not words.

And so, for her to go after him on being anti-women, he's going to go back and talk about some of the things that she did that are less than consistent as far as being pro-women.

WALLACE: Trump also this week got into a nasty Twitter war with Democratic Senator Elizabeth Warren. Now, to be fair, she started it. Here's one of her tweets, "Donald Trump has built his campaign on racism, sexism and xenophobia." But Trump fired back, "I hope corrupt Hillary Clinton chooses goofy Elizabeth Warren as her running mate. I will defeat them both."

I guess the question is, Paul, if you're trying to win over women and you do have a problem with women, according to the polls do you really want to take on a fight with two of them, Clinton and Warren?

MANAFORT: He has taken on a fight with two politicians who are using political terms and being hypocrites about it. That's what he's taken a fight on.

As far as women's issues are concerned, that's exactly the point he is making. He is not going to allow Hillary Clinton or Elizabeth Warren to hide behind their sex to make cases that are hypocritical.

WALLACE: And how is Elizabeth Warren being hypocritical? She wasn't involved in the Clinton affairs.

MANAFORT: The statements that she was making there were totally out of bounds and he gave it back to her. If she can't take it, that's her problem.

WALLACE: During the primaries, Trump made a big deal out of the fact that he was self-funding his campaign and also he said that other candidates, almost all of the other candidates who did take money from big donors he said were puppets. Here he is.

(BEGIN VIDEO CLIP)

TRUMP: One of the things we're doing and one of the things I'm doing is I'm self-funding my campaign, so I can't be bought.

(END VIDEO CLIP)

WALLACE: But now, he announced this week that he won't be completely self-funding, that he is going to be raising some money, so does that mean that he can be bought?

MANAFORT: We're talking now about the general election. He made the case very clear that he wanted to be the nominee of the Republican Party with no question as to whose interests he was defending. He was defending the people's interests and they rallied behind that message and he self-funded his campaigns to the tune of millions of dollars.

Now, we are entering into the general election where he is the head of the party and will be electing not just the president, but will be electing senators, congressmen, governors, local council people. It's a united effort.

**JA450**

And the Democrats have said they're going to be spending hundreds of millions of dollars to try and spread lies about Donald Trump and the Republican Party. Trump has said to compete against them he will support the party and the party's efforts to raise money. He won't allow the distorted process which he doesn't agree with, but to be used against other Republicans as well as him.

WALLACE: But just to make it clear, because he named his own not Republican but Trump finance chair, a fellow named Steve Mnuchin, some of that money that's going to be raised, that's going to go to Trump, not to the party, correct?

MANAFORT: It's going to be the presidential campaign of Trump being the head of the ticket of the party. That is correct.

I mean, the point is that Donald Trump is committed to not letting Hillary Clinton be elected president, not letting Nancy Pelosi become speaker of the House, and to not letting Harry Reid and liberal Democrats be in control of the Senate that will allow them to appoint maybe four justices to the Supreme Court and to continue with trade policies that are destroying jobs in America.

So, he is not going to -- he said as head of the party, he has a responsibility now, not just to himself but to the party, to make sure that these disastrous policies of the Democrats never get a chance to be --

WALLACE: But just to be clear, because he's still going to be taking money from big donors, so in that sense forget whether -- I mean, he didn't say I'm not going to be bought in the primaries but I will be bought in the general election. Why is it that he won't be bought if he's taking that money?

MANAFORT: The one you need to look at being pout is look at Hillary Clinton who has been taking money all along, who is giving secret speeches at Goldman Sachs and other places, that's who you need to talk about being bought.

Donald Trump has proven in the primary process he put his money where his mouth is. He was elected or nominated to be the Republican nominee by the people based on a self-funded campaign. And his interests now are united only with the Republican Party against the liberal agenda of the Democratic Party.

WALLACE: A pro-Clinton super PAC is already running web videos that are contrasting Trump's campaign promises with his actual business practices. Here is a clip.

(BEGIN VIDEO CLIP, PRO-CLINTON SUPER PAC)

DONALD TRUMP, R-PRESIDENTIAL CANDIDATE: Washington is broken.

The truth is I'm doing damn well in life, but if you're going to achieve anything you have to take action.

Until now, you could only enjoy steaks of this quality in one of my resort --

That's going to change quickly. We'll cut taxes for the middle class, negotiate new trade deals.

We're going to teach you business. We're going to teach you life.

(END VIDEO CLIP)

WALLACE: Now, that group, Priorities USA, has reserved \$90 million in TV time between now and the general election to run a series of ads, not web videos, but ads on television and it's pretty clear, I think you would agree, Paul, that they're going to go after Trump the same way that the Democrats and Obama went after Mitt Romney in 2012, which is to say he got rich while exploiting the little guy.

And the question I have is, when they go after Trump's bankruptcies and Trump University, how is Trump going to handle that?

**JA451**

MANAFORT: Look, Donald Trump's businesses employ hundreds of thousands of people that you call the little people.

WALLACE: I called them the little guy. I mean --

MANAFORT: The little guy.

I mean, the point is, you know, he's got a record of creating jobs for people, of helping people rise up in business and this campaign will talk about those things. Yes, the Democrats will try to distort his record. We know that. That's precisely the reason why the Republicans have got to come together, be well-funded to deal with the hypocrisy, to deal with the lies, and to deal with the distortions.

WALLACE: Paul, thank you. Thanks for taking the time today. We very much appreciate it.

MANAFORT: Thank you.

WALLACE: Up next, we'll bring in our Sunday group to discuss Trump's big meeting with Paul Ryan this week.

Plus, what would you like to ask the panel about the challenge Trump faces in unifying the GOP? Just go to Facebook or at Twitter @FoxNewsSunday and we may use your question on the air.

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

RYAN: I'm just not ready to do that at this point. I'm not there right now. And I hope to, though, and I want to, but I think what is required is that we unify this party.

(END VIDEO CLIP)

WALLACE: House Speaker Paul Ryan delivering a highly unusual rebuke of this party's presumed nominee.

And it's time now for our Sunday group. Fox News senior political analyst, Brit Hume, Julie Pace, who covers the White House and the campaign for The Associated Press, Kimberley Strassel from The Wall Street Journal, and Charles Lane of The Washington Post.

Well, Brit, how serious is this split between Trump and Ryan? I have to say I found it interesting today that Paul Manafort was making it clear who is the head of the party and it isn't Paul Ryan in his mind. And what do you expect from their big meeting on Thursday?

BRIT HUME, FOX NEWS SENIOR POLITICAL ANALYST: Well, you know, I think that this is an excellent example of how divided this party is and is likely to remain. After all, remember what Trump said, he said, "I don't support Paul Ryan's agenda."

Paul Ryan's agenda is essentially the current conservative agenda. It is reform conservatism. He is a true blue conservative. Donald Trump ran as something else and he ran to gather the support of people who are alienated and deeply disappointed in the Republican leadership in Washington.

Now comes the moment, does he need to pull these people who are part of the party establishment, if you will, find him? He, I think, believes he doesn't have to. If they want to get on board with him, great, but he doesn't seem to be willing to adjust his way at looking at things, his agenda, his issue positions, his sense of what the Constitution requires to accommodate them and to bring them forward.

WALLACE: And do you think that he can run as a free agent basically aside and apart from the Republican Party establishment?

**JA452**

HUME: I think he thinks he can.

WALLACE: But do you think he can?

HUME: Well, I think that if you look at his numbers, he needs every vote he can get. I mean, after all, Mitt Romney got, what, 93 percent of the Republican vote. With Trump so deeply underwater with women, hopelessly underwater with Hispanics, African-Americans and others, I think, you know, he's got to figure out how to make it all add up to give him some kind of a majority.

And if he begins basically by turning off a lot of, you know, mainstream Republicans, I don't see how he gets there. Now, maybe -- you know, maybe he can -- maybe he can find in this country so many alienated blue collar Democrats that will come to his cause that he can win, but I doubt it.

WALLACE: Meanwhile, President Obama piled on this week making his first comments about Trump since he became the presumptive Republican nominee and he challenged Republican voters. Here he is.

(BEGIN VIDEO CLIP)

BARACK OBAMA, PRESIDENT OF THE UNITED STATES: We are in serious times and this is a really serious job. This is not entertainment. It is not a reality show. This is a contest for the presidency of the United States.

(END VIDEO CLIP)

WALLACE: Julie, how big a role does President Obama plan to play in this campaign? And he seems to take particular delight and he has actually for a few years now in going after -- well, I guess since the birther issue in going after Donald Trump.

JULIE PACE, THE ASSOCIATED PRESS: I think if the president has his way, he will play a very large role in this campaign. And right now, the Clinton campaign would like to see him play a large role, they think that he is still an effective messenger for Democrats, for young voters, for African-Americans who Clinton would need in a general election.

But I think what's interesting with both Obama and Clinton in the last week or so is you hear them making these specific appeals to Republican voters. Clinton talked about thoughtful Republicans. And they think that with Trump at the top of the Republican ticket, that they could appeal to people who may not believe in policy positions that Clinton has, but at least would feel comfortable that she wouldn't necessarily drive the country into a ditch and may be able to come around and vote for her for at least one term.

WALLACE: Do you think it's personal with Obama?

PACE: I do. I really do. You have to remember when Trump was leading the birther movement in Obama's first term what a shot at the president's credibility that was and I think that he is surprised and his staff is surprised that Trump has gone from being this show man on the side of the political arena to actually now the presumptive nominee. And if he were to be succeeded by Donald Trump as president, what would that say about Obama and his stewardship of the country as well?

WALLACE: We asked you for questions for the panel and we got a bunch like these from Craig Coldren on Facebook who writes, "No wonder the GOP is dying. Party members would rather let a Democrat win than vote for a non-perfect candidate. No wonder we the people are uprising."

Kim, how do you answer Craig and, you know, there is this interesting question because we're talking about all the negatives, but the fact is that Trump ran as the anti-establishment candidate, now he is getting hammered by the Bushes and by Romney and Lindsey Graham, they say they can't support Trump. In a sense, doesn't that certify him as the outsider?

**JA453**

KIMBERLEY STRASSEL, THE WALL STREET JOURNAL: Look, when we talk about a non-perfect candidate I keep hearing everyone talk about Trump's agenda. Paul Manafort was on saying his agenda and he articulate it had so well.

What part of that agenda are we talking about? When we put out his tax plan or when he disavowed it this week and said he wasn't a big fan of his own tax plan? When he said we cannot raise the minimum wage and then turned around this week and said, well, yes, we probably can do it after all.

I mean, this is why Paul Ryan cannot support Donald Trump at the moment because Paul Ryan is a conviction politician who believes in certain ideals. Those voters out there who have an understanding of the Republican Party as something that has certain principles will not be able to rally behind this person. And, yes, some of them Obama is on to something, there will be a number who look and say, I would rather have somebody who had a consistent viewpoint, maybe not one I agree with than one who I don't know what he is going to say from one day to the next.

WALLACE: Well, so, having said that -- do you really think they are going to go to this meeting, the nominee of the party, the chairman of the Republican National Committee and the speaker of the House, they're going to sit down and come out and basically say, "No, no deal"?

STRASSEL: No, I think that they probably they will come out. I don't think that there will be a deal.

But, look, what Paul Ryan essentially did here is he sort of said this is a little bit of a test. You've got to go out and prove that you can get the people who are the foundation of our party, because nothing is set in stone really. I mean, in the reality it is that we keep talking about him as the presumptive nominee in a race where everything has been up for grabs, anything could happen, there are a lot of delegates out there who still do not support Donald Trump. Who knows what could happen?

WALLACE: I want to pivot this conversation a bit with you, Chuck.

I want to take a look. It was a fascinating story this week in The Wall Street Journal at the electoral map which shows just the enormous advantage that Democrats begin with. All the states that you see there in blue, particularly on the East Coast and the West Coast have voted Democratic for the last six elections in a row. They represent 242 electoral votes, just 28 shy of a majority. All the states in red have voted Republican for those same six straight elections, that's 102 electoral votes or 168 shy of a majority.

Chuck, the only way -- the only way that Trump can possibly win is to flip some of those blue states that have voted six times in a row like Michigan, like Pennsylvania, like Wisconsin.

CHARLES LANE, THE WASHINGTON POST: There's sort of two theories about that. Trump's theory is, look, I'm talking about immigration, I'm talking about trade, those are issues that resonate in the Rust Belt, which are the areas you just described. And so, I can bring people who used to vote Democratic over to the Republican side. That's the Trump theory of the case.

The case that I think is a little bit more correct is that that might work if he didn't have all the other negatives going against him because he is going to push -- or at least right now, he is pushing women away, he is pushing -- even in those heavily white states, there are a number of Hispanics, those are all pushed away.

In other words, the question that I think that it all revolves around is does he bring in more than he pushes away. Right now it looks like he's pushing away more than he's bringing in. And those relative, handful of red states that you showed there is really all he can count on.

WALLACE: Let me argue a different theory of the case, Brit, in the time we have left, which would be -- there is a huge disgust with Washington and the establishment. We see it not only on the Republican side. We also see it on the Democratic side with Bernie Sanders.

**JA454**

Hillary Clinton represents that, she'd been around for, what, a quarter of a century, and that there may be just a sense of, you know, we'll try it and if he's not good we'll fire him in four years.

HUME: Well, certainly, Trump's great advantage is that the Democratic nominee is weak, discredited, old in the sense of people having known her for a long time. You know, he has terrible negatives, hers are not as bad as his, but they're pretty bad.

So, her weakness is a tremendous asset to him and gives him at least a chance to appeal to voters who might be peeled away to go to him. But remember this about him, Chris, this is above all this Trump mania, is a cult of personality and the people who support him -- basically what they believe in is whatever he says and if he changes his mind, they'll believe that, too.

I just don't know how many people are willing to get on that train. You know, people with convictions, people who are conservative and all that. You know, when your negatives are as bad as his with as many groups as he has the bad negatives, the first thing you shouldn't do is alienate the conservatives in the Republican Party. It is, after all, still to this day a conservative party.

WALLACE: All right. We have to take a break here but we will see you all a little later, panel.

Up next, we will sit down with North Carolina Governor Pat McCrory who is facing a federal deadline tomorrow to suspend a state law limiting bathroom access to transgender people. Plus, what do you think, should the federal government cut off funds to North Carolina over a law it says violate civil rights?

Let me know on Facebook or Twitter @FoxNewsSunday and use the hashtag #fns.

(COMMERCIAL BREAK)

WALLACE: Coming up, another American has been lost in the war on terror.

(BEGIN VIDEO CLIP)

ASHTON CARTER, U.S. SECRETARY OF DEFENSE: These risks will continue. And we greatly regret his loss.

(END VIDEO CLIP)

WALLACE: We'll ask our Sunday panel about our deepening role fighting ISIS, coming up on "Fox News Sunday."

(COMMERCIAL BREAK)

CHRIS WALLACE, FOX ANCHOR: The state of North Carolina faces a deadline tomorrow to stop enforcement of its new law that people must use bathrooms of the gender on their birth certificates. The Justice Department says that law violates the federal Civil Rights Act and is threatening to cut off billions of dollars in federal funds if the state refuses to comply.

Joining me now is North Carolina Governor Pat McCrory.

And, governor, welcome to FOX NEWS SUNDAY.

GOV. PAT MCCRORY (R-NC): Thanks for having me, Chris. I appreciate it.

WALLACE: All right, well, let's start with this deadline that you face tomorrow to suspend implementation of the so-called bathroom law or to face the potential loss of billions of dollars in state funding. Governor, what are you going to do?

MCCRORY: Well, first of all, the bathroom laws (INAUDIBLE) only applies to government buildings or schools and our universities and highway rest stops. It doesn't apply to anyone in the private sector. In fact, our ruling says that the government shouldn't make bathroom laws for anyone in the private sector.

**JA455**

WALLACE: Understood.

MCCRORY: That's up to the private sector.

What I've asked for, I asked for Friday, was an extension. They gave the ninth largest state in the United States, the civil rights division of the Justice Department, three working days to respond to a pretty complex letter and to a pretty big threat. Well, we don't think three working days is enough to respond to such a threat from a -

WALLACE: Did they respond to your request for an extension?

MCCRORY: Yes, they said, no, unless we will give you a one week extension if the governor admits publicly that the ruling that their language regarding bathrooms does, in fact, discriminate. Well, I'm not going to publicly announce that something discriminates which is agreeing with their letter because we're really talking about a letter in which they're trying to define gender identity. And there is no clear identification or definition of gender identity. It's -

WALLACE: Well, all right, but let me - let -

MCCRORY: It's the federal government being a - a bully. It's making law. It's - and by their interpretation. And -

WALLACE: So you asked for an extension of a week.

MCCRORY: Right.

WALLACE: They said no.

MCCRORY: Right.

WALLACE: I've got a copy of the letter, too, and they say you've got to make a decision on whether or not you're going to step away from House Bill 2, this law.

MCCRORY: Right. Right.

WALLACE: By the close of business tomorrow. So what are you going to do?

MCCRORY: Well, first of all, I don't have the authority to change the law as governor of the United States. That's passed by the North - or as governor of North Carolina. That is made by the North Carolina legislature. So they've already made one unrealistic expectation. And, second, they've also sent a letter to our universities and our university by state law has to go to the board of governors, which cannot meet until Tuesday. So this unrealistic deadline by the federal government is quite amazing to the ninth largest state, but I'll make a decision within the next 24 hours on how to respond to them. I - I believe I have until 5:00 tomorrow.

WALLACE: And how are you going to decide?

MCCRORY: I'm discussing all of our legal options, all of our political options, because, frankly, there are two ways the federal government can determine this. One is, is a bathroom policy determined by the Congress and signed by the president, or a dictate from a regulatory agency in the United States federal government. And that's the way it is right now.

WALLACE: Is - is it - it is possible - I'm trying - I'm trying - obviously, I'm doing my job.

MCCRORY: Sure. Sure.

WALLACE: I'm trying to pin you down. Is the - are you willing to rule out at this point that you will disavow, and however you phrase it, in effect say, I'm walking away from this law?

**JA456**

MCCRORY: I'm looking at all my options. And one thing the nation has to realize, this is no longer just a North Carolina issue. This order, this letter by the Justice Department, is saying that every company in the United States of America that has over 15 employees are going to have to abide by the federal government's regulation on bathrooms. So now the federal government is going to tell almost every private sector company in the United States who can and who cannot come into their bathrooms, their restrooms, their shower facilities for their employees, and they're also telling every university in the United States of America. This is not just North Carolina. They are now telling every university that accepts federal funding that boys who may think they're a girl can go into a girls' locker room or restroom or shower facility.

WALLACE: You -

MCCRORY: And that begins, I assume, tomorrow.

WALLACE: Governor, you call this a case of Washington overreach and I want to explore that with you.

MCCRORY: Yes.

WALLACE: Would it be overreach for the Justice Department to send you a letter like this to say, you cannot have bathrooms in the state capital one for white and one for black?

MCCRORY: I don't think there's any correlation between the two and I think it's misleading.

WALLACE: But would you agree that that is within the federal government's purview?

MCCRORY: Absolutely, but we can definitely define the race of people. It's very hard to define transgender or gender - gender identity or -

WALLACE: But - but - but the point is - the reason I ask is -

MCCRORY: Why?

WALLACE: That the Justice Department says that just like whites and blacks that transgender people are a protected class.

MCCRORY: Right.

WALLACE: And that has a legal -

MCCRORY: Right.

WALLACE: That meaning, a protected class under the 1964 Civil Rights Law.

MCCRORY: That's what they say, but that's not what the federal law says. The federal law uses the term "sex" and Congress does not define "sex" as including gender identity or other terms that the Justice Department has currently used. So right now the Justice Department is making law for the federal government as opposed to enforcing law.

WALLACE: It sounds like basically you're going to challenge this in court?

MCCRORY: We're looking at all our options right now, but we also want to get feedback from the business community throughout the nation that's going to be impacted by this and all universities throughout the nation that are impacted by this.

WALLACE: OK.

MCCRORY: But we're literally talking about billions of dollars now, if it is challenged, I assume there's no way - I'm not going to risk any money for the state of North Carolina. And now even the DOT, the national - the DOT -

**JA457**

WALLACE: Department of Transportation.

MCCRORY: Department of Transportation here in Washington is doing press releases saying they're examining whether they can take away North Carolina's money for roads and other transportation needs over a bathroom issue.

WALLACE: But let me - let - I'm going to get to the money in a - in a second. But how many cases - how many cases have you had in North Carolina in the last year where people have been convicted of using transgender protections to commit crimes in bathrooms?

MCCRORY: This wasn't a problem. That's the point I'm making. This is the Democratic Party and the left wing of the Democratic Party -

WALLACE: But have - have there been any cases of this?

MCCRORY: Not that I'm aware of.

WALLACE: Have there been any cases in the last five years?

MCCRORY: Let - why did the Democratic Party in Houston, Texas, and - and -

WALLACE: But - but I guess the question is - forgive me, if I may, sir.

MCCRORY: No.

WALLACE: Why not just then let it go if there's - if there's not a case of transgender people going in and molesting little girls -

MCCRORY: Because there's - I haven't - I haven't used that at all. This is an issue of expectation -

WALLACE: Well, you did say a - a boy who thinks he's a girl going into a girls' bathroom.

MCCRORY: And that's where there's an expectation of privacy. When you go into a restroom or your wife goes into a restroom, you assume the only other people going into that restroom or shower facility is going to be a person of the same gender. That's been an expectation of privacy that all of us have had for years.

WALLACE: But if there's no problem, then why pass the law in the first place?

MCCRORY: Well, there can be a problem because the - the liberal Democrats are the ones pushing for bathroom laws and now President Obama and one of my successors as mayor of Charlotte wants government to have bathroom rules. I'm not interested in that. We did not start this on the right. Who started it was the - the political left in Houston, Texas, then Charlotte, North Carolina, and now, frankly, in Washington, D.C.

WALLACE: Let's talk about the issue of money because North Carolina's attorney general, Roy Cooper, who coincidentally is running against you for governor in your re-election fight in this year -

MCCRORY: Yes. Yes. Right.

WALLACE: Says you made a big mistake signing this law. Here he is.

(BEGIN VIDEO CLIP)

ROY COOPER, D-NORTH CAROLINA ATTORNEY GENERAL: Not only is this new law a national embarrassment, it will set North Carolina's economy back if we don't repeal it.

(END VIDEO CLIP)

**JA458**

WALLACE: Now, you're campaigning against Cooper for re-election in large part on what you call the Carolina comeback

MCCRORY: That's right.

WALLACE: Which is the fact that there has been dramatic economic growth in Carolina for - over the last few years. But let's - let's take a look at the fallout from this law. PayPal canceled a 400 job operations center. This is since the law was passed and you signed it in March. Deutsche Bank shelved plans for facilities that would have employed 250 people. One study found the law has cost North Carolina \$77 million and 750 jobs.

Governor, you say you're not going to risk money. This is - all this has happened just since March.

MCCRORY: Well, let me first say, North Carolina's had the greatest economic recovery in the United States of America, more than any other state.

WALLACE: But this isn't good.

MCCRORY: But since I've been governor - let me finish the sentence, Chris.

WALLACE: OK.

MCCRORY: And then, second, I need to say PayPal, for example, is kind of selective hypocrisy and selective outrage. This is the same PayPal company that did business in Sudan, did business in Iran, did business in Saudi Arabia and they're lecturing North Carolina because the majority of North Carolinians, I believe, think a man who's a man ought to use the restroom that is on the door. And same thing applies to women. And this is especially true in our schools, in our junior highs, in our high schools. This is a basic change of norms that we've used for decades throughout the United States of America and the Obama administration is now trying to change that norm. Again, not just in North Carolina, but they're ordering this to every company in the United States of America starting tomorrow, I assume, or Tuesday, and also making this an order for every university in the United States of America.

WALLACE: Governor McCrory, thank you. Thanks for flying here today and talking with us.

MCCRORY: Thank you very much.

WALLACE: And, of course, we will be looking forward to finding out what you decide and what you say by the close of business tomorrow.

MCCRORY: Thank you very much.

WALLACE: The - the federal deadline. Thank you, sir.

MCCRORY: Thank you. Thank you very much. Thank you.

WALLACE: Good to talk with you.

MCCRORY: Thank you.

WALLACE: Coming up, a Navy SEAL was killed in Iraq this week after getting caught in a firefight with ISIS. Is the U.S. war on terror becoming more of a combat mission? We'll bring back our Sunday group.

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

**JA459**

ASH CARTER, DEFENSE SECRETARY: These people are in - in combat, senator, and I think that we need to say that clearly.

(END VIDEO CLIP)

WALLACE: Defense Secretary Ash Carter telling a congressional committee about the increased U.S. military role in the fight against ISIS.

And we're back now with the panel.

Well, we got bad news this week, Navy SEAL Charles Keating IV was killed in northern Iraq. He's the third U.S. service member to die since the campaign against ISIS began.

Brit, the White House continues to say this is not a combat mission. Isn't that getting to be harder and harder to maintain?

BRIT HUME, FOX NEWS SENIOR POLITICAL ANALYST: Yes, it is, Chris, but I - I don't think we should be believing here that what we really have is some kind of a covert, serious, major combat undertaking. The president is clearly doing this in very, very small steps and I don't think he intends to go beyond that. And, you know, the - you're always reminded of the slippery slope that we've encountered in other - in other conflicts where you start with a few and the next thing you know it's a few more and pretty soon it's many and pretty soon you're in a full-fledged combat role. I don't sense that that will come here. It is getting a little bit silly for the White House to say that this is not combat and you've got the secretary of defense saying something else. I mean that's, you know, just absurd. But I don't - I don't think we should believe that we're - that President Obama's going to be waging any major wars here.

WALLACE: But it is more than just these few tragic deaths, Julie. President Obama recently announced that he's sending 250 more special ops forces. I think there were already 50 on the ground. Now 100 - 250 more special ops forces to Syria, our military advisors are working more closely with Iraqi troops and closer to the front lines on battlefield decisions. We've got A-10s and F-16s dropping bombs on ISIS positions. Forget the critics who may think they're either doing too much or too little. Do they - at the White House do they worry about the slippery slope and mission creep and that we're slowly getting sucked back into a greater involvement?

JULIE PACE, THE ASSOCIATED PRESS: Yes, I think they are mindful of it, but it - it gets to Brit's point, they are mindful of it in the sense that they do not want to get into a position and have our military posture be like it was under the Bush administration in the Middle East. So that is always the thing that they look at as the barrier.

I think what you've seen happen, though, is they - they sometimes take smaller steps to avoid the - the - the idea that they are on a slippery slope and that they are building toward some kind of larger combat role. And you do have to ask, 100 people, 200 people how much difference does that make? Should they be going larger and do they not go larger because they do want to avoid the idea of being on a slippery slope?

WALLACE: I mean they are in kind of a mess of their own making, aren't they, Kim, in the sense that if you send these troops in such small numbers into Iraq and Syria, than the - some people are going to say, you know, it's a Band-Aid. And on the other hand if they send more the people are saying, well, you know, they're not doing enough.

KIMBERLEY STRASSEL, THE WALL STREET JOURNAL: Look, you go back to June 2014, the president said he was going to send 275 uniformed personnel. We're now up to more than 4,100 in Iraq. And, by the way, people in Congress say that the number is actually quite higher because of the way they do temporary troop rotations and that the White House is hiding the real numbers that are over there.

We are at a war. The president doesn't want to admit it because he doesn't want to have to come out and - he promised the American people that this was not something he was going to do. So, instead, he's sliding along hoping to get to the end of the term because he wants his legacy to be able to say, I pulled us out. In the meantime, his vow to dismantle ISIS,

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he has not committed the enforcements that you need there to make that happen and now the conflict is spreading to Syria, Afghanistan, everywhere you look.

WALLACE: Kim, I want to turn to a revealing profile in today's New York Times Sunday magazine. It's about Ben Rhodes, who is not a household name, but he's one of President Obama's top foreign policy advisors. Rhodes says the White House spun a false narrative to sell the Iran nuclear deal claiming that they were - had worked with moderates when Rouhani took over when, in fact, they had been dealing for two years before that with the hardliners, even including Ahmadinejad and the supreme leader. How big a deal that you've got the president's deputy national security adviser basically saying, we misled the American people on how this all came down?

STRASSEL: Big deal because that is in essence what they are saying, that the president had the objective from the minute he walked into office of cutting a deal with Iran so that he could further disengage from the region and then use the excuse of this election in which everyone understood that there were not moderates necessarily elected. This was not some major change in the regime there. But they spun that to the public as an excuse to then pull the pin on this. Revealing, although not necessarily surprising for anybody who has actually watched this administration, because their foreign policy does tend to be mostly spin.

WALLACE: And - and does it make a difference? In other words, if you - does it make the Iran nuclear deal more objectionable to know that they began negotiating it with -

STRASSEL: It was objectionable from the start.

WALLACE: I was going to ask.

STRASSEL: Yes. And now we just know that, in fact, what drove that deal were not in fact a series of imperatives about how we were, in fact, trying to change the behavior of the Iranians, but simply getting a deal, which is not one that's in the long-term benefit of the United States or any of the members of the region.

WALLACE: And Rhodes also brags in this piece - it's worth looking at, it's online - about how the - the White House was able to get the media to tell its narrative. This is what Rhodes said. This is a quote from him in the article. "The average reporter we talked to is 27 years old and their only reporting experience consists of being around political campaigns. That's a sea change. They," those 27-year-old reporters I'm glad to say, I know you'll be surprised, I'm not one of them, "they literally know nothing."

Chuck, what do you make of that?

STRASSEL: The know nothings.

CHARLES LANE, THE WASHINGTON POST: Well, you know, it's - it's not new that a White House would spin reporters and try to mold them to its narrative. It's - it's a little new that they would be so brazen about it. And it's really new that they would brag and express such contempt for the media that they deal with.

I must say, you know, that description he offers of the people he was dealing with could almost have fit Ben Rhodes himself when he arrived at the White House. He was a little older than 27, but he had no particular foreign policy experience and had come up through campaigns.

You know, there used to be a norm -

WALLACE: And prided himself on being a novelist, a story teller.

LANE: A storyteller and somebody who had - was unburdened, really, by political - or rather foreign -

STRASSEL: And don't we know it.

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LANE: Foreign policy experience because another thing he says in this piece is that there's something in Washington he calls "the blob," which is, you know, sort of all the talking heads and foreign policy establishment people. And, I must say, I think there's something to that. It was kind of a refreshing dose of irreverence by Ben Rhodes there. The people had made a lot of mistakes in Iraq and I can understand that. But, you know, nevertheless, there were some very seasoned people out there. Some of them like Leon Panetta and Bob Gates, who helped this president, or at least tried to, and probably don't deserve to be thought of as part of a blob.

WALLACE: Julie, you - have - have you, since this article come out - came out, have you talked to people at the White House?

PACE: Yes. I mean, you know, it's interesting because this White House really prides themselves on being kind of the smartest kid in the room. That's kind of their approach to so many things. They - they take that approach in dealing with the media, in dealing with Capitol Hill, in dealing with think tanks. I think that what you saw in this article is a little bit of how the sausage is made, which is always kind of an ugly thing to - to look at. But I think that they look at this article and I think that they will probably take the criticism of it, which is plenty in coming from people that are even friendly to them, as just another example of how Washington doesn't get what the Obama administration is trying to do. They - they really have this attitude, frankly, that they are the only smart ones in town and the only ones who kind of understand the goals here.

WALLACE: So, wait, wait, wait, because I thought you were going to tell me that they're in a cold furor -

PACE: No, no, no.

WALLACE: About what Ben Rhodes said.

PACE: No. They are - they are - I think that - I think that they are, if anything, being pretty defensive of what he said. Maybe they don't necessarily like the way he said some of it, but I don't necessarily think that they disagree with the larger message of - of the piece and what he was saying.

HUME: It is a different world in which we live when a White House staffer, promoted in this piece as someone who is largely anonymous, who has actually been anything but anonymous -- I think he's one of the most widely quoted figures in Washington - allows a profile like this to come out and build him up and which I think the White House probably approves of and - and agrees with most of what he said, especially about the media. And I think it's, you know - they didn't realize that the criticism was coming and, Julie, you've said that, that - and here it is and I think they were a little surprised by it because I think this is their little star, this young whipper snapper, smart though he may be, Ben Rhodes comes out and - and -

WALLACE: There you got, that - a 27-year-old doesn't talk about whipper snappers.

HUME: Yes, I'm sort of the opposite of -

WALLACE: Yes. We - but we all are.

HUME: I'm 72, right? So I - but I think this is something different. And it's a reflection of the president himself. In fact, Rhodes is said to be in a constant state of mind meld with the president and he says in the article that he doesn't know where the president ends and he begins or vice versa.

LANE: Like a blob.

HUME: Quite - these are quite - yes, a blob, yes. These are quite extravagant claims this young man makes for himself here. Maybe they're true, but what's remarkable about it is that the White House is on board it seems to me with all of it.

WALLACE: I commend the article to you. Thank you, panel. See you next Sunday.

**JA462**

Up next, our "Power Player of the Week." The designer of hand painted fine china that's used at the White House and Buckingham Palace.

(COMMERCIAL BREAK)

WALLACE: There are certain designers whose names signify quality and elegance, whether in dresses or buildings or other objects we live with. Here is our "Power Player of the Week."

(BEGIN VIDEO CLIP)

ANNA WEATHERLEY, DESIGNER: I decided that I will do something which is not practical, not sensible.

WALLACE (voice-over): That is the unique business philosophy of Anna Weatherley, a world famous designer of fine china, whose signature are butterflies and flowers and even bugs that are all painted by hand.

WEATHERLEY: I left the mass market to the mass market. I just want to be very different from any other designer or manufacturer.

WALLACE: If you're curious who eats off Anna Weatherley plates, there are 75 place settings in the White House.

LAURA BUSH, FORMER FIRST LADY: It's taken from the magnolias, the big trees that you can see both from the Blue Room and the Yellow Oval Room.

WALLACE: And there was a special commission to create 250 plates.

WALLACE (on camera): This was a dinner for the prince of whales at Buckingham Palace. How did that make you feel?

WEATHERLEY: It's an absolute fairytale.

WALLACE (voice-over): Anna showed us what a table of her creations looks like, a wondrous garden of plants and flowers and butterflies.

WEATHERLEY: It's a happy table. And I cannot cook, so, therefore, if I set the table, I can put the canned soup in one of those plates and people will think it's a gourmet food.

WALLACE: Born in Hungary, Anna started out designing dresses in the '70s that were just as beautiful and impractical.

WEATHERLEY: Look how pretty that is.

WALLACE: Silk chiffon and hand painted.

WEATHERLEY: You must flint and never (INAUDIBLE) when you have that dinner - this on. Never pay for dinner.

WALLACE: In 1990, she opened a small china studio in Budapest with 20 artists who each specialize.

WEATHERLEY: Butterflies or bugs. And these are the women's work. And the big flowers are painted by the guys.

WALLACE: She's just as meticulous when it comes to leaves, which must have little holes or ragged edges where the bugs have lunch.

WALLACE (on camera): So you would be unhappy if this was a perfect leaf?

WEATHERLEY: Boring. So it's very - it's very boring, just a plain old green leaf.

WALLACE (voice-over): This precision takes time. A place setting of six pieces can take her studio three days.

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WALLACE (on camera): How many does a single Anna Weatherley plate cost?

WEATHERLEY: Just one single plate is between \$200 to \$400.

WALLACE: Why would somebody spend \$400 for a plate?

WEATHERLEY: Because they love it. If you would like to buy a piece of art and put it on your table that's the only time you buy it, otherwise don't buy it. It's not a plate, it's a hand-painted object.

WALLACE (voice-over): Anna's work is based on 17th and 18th century botanical art. She says the 19th century is too modern. She has created her own world and she couldn't be happier.

WEATHERLEY: I don't live in the 20th century. I - I cannot drive. I don't do anything high tech. And I just live in my world of beautiful, impractical, non - not sensible.

(END VIDEOTAPE)

WALLACE: And this spring Anna had another project, she designed the official Easter egg for the White House Historical Association.

And that's it for today. For all you moms, especially mine, have a wonderful Mother's Day and we'll see you next "Fox News Sunday."

(COMMERCIAL BREAK)

END

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## More from Fox News



The rapid unraveling of Hillary Clinton



Hottest looks of the 2016 Cannes Film Festival

**JA464**

**Declaration of Luke C. Platzer**

**EXHIBIT AA**

**JA465**



P.O. Box 2688  
Chapel Hill, NC 27515-2688

**Constituent Universities**

Appalachian  
State University

East Carolina  
University

Elizabeth City  
State University

Fayetteville State  
University

North Carolina  
Agricultural and  
Technical State  
University

North Carolina  
Central University

North Carolina  
State University  
at Raleigh

University of  
North Carolina  
at Asheville

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North Carolina  
at Chapel Hill

University of  
North Carolina  
at Charlotte

University of  
North Carolina  
at Greensboro

University of  
North Carolina  
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University of  
North Carolina  
at Wilmington

University of  
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School of the Arts

Western Carolina  
University

Winston-Salem  
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**Constituent High School**

North Carolina  
School of Science  
and Mathematics

An Equal Opportunity/  
Affirmative Action Employer

**Margaret Spellings  
President**

Office: 919-962-9000

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Email: [margaret.spellings@northcarolina.edu](mailto:margaret.spellings@northcarolina.edu)

May 9, 2016

Vanita Gupta  
Principal Deputy Assistant Attorney General  
U.S. Department of Justice  
Washington, D.C. 20530

Dear Ms. Gupta,

We write in response to your letter of May 4, 2016 notifying the University of North Carolina (“University”) that the Department of Justice has concluded that the University is in violation of Title IX of the Education Amendments of 1972 (“Title IX”), the Violence Against Women Reauthorization Act of 2013 (“VAWA”), and Title VII of the Civil Rights Act of 1964 (“Title VII”). According to your letter, the basis for this determination is the fact that the University, as a state agency, is subject to the recently enacted North Carolina Public Facilities Privacy and Security Act (“the Act” or “House Bill 2”), which provides that all public agencies in North Carolina shall require every multiple-occupancy bathroom and changing facility to be designated for and used only by persons based on their biological sex.

The University takes its obligations to comply with federal non-discrimination statutes and their implementing regulations very seriously. We believe that the University has at all times acted in compliance with federal law, and the University intends to continue to comply in the future. Nothing is more important to the University than the safety and well-being of its students, faculty, and staff. We have always worked to make our campuses welcome and safe for students and faculty of all backgrounds, beliefs, and identities. Toward that end, longstanding policy prohibits University personnel from discriminating on the basis of, among other things, gender identity, sex, or sexual orientation.

After the Act’s passage, our chancellors, faculty, staff, and students responded with a flurry of questions and expressed substantial concerns. My April 5 memorandum and April 11 statement regarding the Act reflected good faith efforts on behalf of the University to answer some of these questions and to offer reassurance. Communicating in real time was not only essential, but also exceedingly difficult given the uncertainty in response to the Act. Throughout all of this time, the University has recognized that the Act does not address enforcement and therefore has not taken any steps to enforce the statute’s requirements on its campuses.

We hope that the Department of Justice appreciates that the University is in a difficult position. The University, created by the State of North Carolina, has an obligation to adhere to laws duly enacted by the State’s General Assembly and Governor. So, too, does the University have an equally clear obligation to follow federal law, including federal prohibitions on discrimination. In ordinary circumstances, these obligations are not in tension. In this instance, however, the Department has explained the conflict it sees between the Act and federal civil rights law. The Act remains the law of the State, however, and the

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Vanita Gupta  
Page 2 of 2  
May 9, 2016

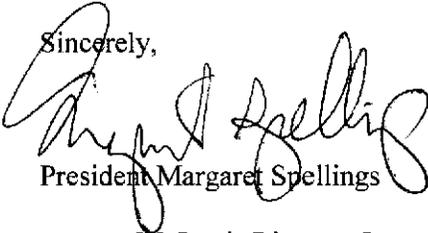
University has no independent power to change that legal reality. As you know, the question of whether Title IX requires schools to allow use of bathrooms and other single-sex facilities based on gender identity remains before the Fourth Circuit in *G.G. v. Gloucester County School Board*. A petition for rehearing *en banc* in that case is pending, and thus the Court has not issued its mandate.

In response to your request for assurances that the University is taking these matters seriously, the Board of Governors has scheduled a special meeting for tomorrow afternoon. At this time, the University pledges its good faith commitment to assure the proper application of non-discrimination law in the university setting, where there remain many difficult and unanswered questions.

We believe that this letter – which unequivocally confirms that the University has and will continue to comply with the requirements of Title IX, VAWA, and Title VII – should suffice at the present time to provide the assurance you sought about the University's efforts to ensure continued compliance with federal law.

If I can answer any questions or be of any further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Margaret Spellings". The signature is fluid and cursive, with a large initial "M" and "S".

President Margaret Spellings

cc: W. Louis Bisette, Jr.  
Thomas C. Shanahan

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**Declaration of Luke C. Platzer**

**EXHIBIT AB**

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## **STATEMENTS**

May 10, 2016

**University of North Carolina leaders offered the following comments today after a special meeting of the UNC Board of Governors to consult with legal counsel regarding legal actions regarding federal nondiscrimination law and the Public Facilities Privacy and Security Act (HB2):**

### **UNC Board of Governors Chairman Lou Bissette said:**

The purpose of today's Board meeting was to consult with our attorneys concerning the pending litigation involving the Department of Justice. We support all the actions President Spellings has taken thus far in leading the University and responding to HB2. The Board appreciates and values her ongoing leadership. As she said yesterday, the University is in a difficult position—caught in the middle between state and federal law. We are committed to resolving the legal issues in the University's favor as quickly as possible. In the meantime, we are going to continue to focus on our primary mission of educating students.

### **UNC President Margaret Spellings added:**

The University of North Carolina is about providing high-quality educational opportunities to all. We depend on federal funding to help provide this access. In fact, more than 138,000 of our students—representing all 100 North Carolina counties and all UNC institutions—receive some type of federal aid. Because of this, we take the legal questions surrounding HB2 and the related lawsuits seriously. We intend to remain in close communication with state and federal officials to underscore our shared interest in resolving these difficult issues as quickly as possible so that we can refocus our efforts on educating students.

**Declaration of Luke C. Platzer**

**EXHIBIT AC**

**JA470**

UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

January 7, 2015

REDACTED - PII

Dear REDACTED - PII

I write in response to your letter, sent via email to the U.S. Department of Education (the Department) on December 14, 2014, regarding transgender students' access to facilities such as restrooms. In your letter, you mentioned statements in recent guidance documents issued by the Department concerning the application of Title IX of the Education Amendments of 1972 (Title IX) to gender identity discrimination. In addition, you identified a particular school district's policy about access to restrooms and asked about the existence and distribution of any guidance by the Department about policies or practices regarding transgender students' access to restrooms. Your letter has been referred to the Department's Office for Civil Rights (OCR), and I am happy to respond.

As you know, OCR's mission includes enforcing Title IX, which prohibits recipients of Federal financial assistance from discriminating on the basis of sex, including gender identity and failure to conform to stereotypical notions of masculinity or femininity.<sup>1</sup> OCR enforces and interprets Title IX consistent with case law,<sup>2</sup> and with the adjudications and guidance documents of other Federal agencies.<sup>3</sup>

<sup>1</sup> See OCR's April 2014 Questions and Answers on Title IX and Sexual Violence at B-2, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

<sup>2</sup> See, e.g., *Price Waterhouse v. Hopkins*, 490 U.S. 228, 251 (1989) (holding that Title VII of the Civil Rights Act of 1964's (Title VII) prohibition on sex discrimination bars discrimination based on gender stereotyping, that is "insisting that [individuals] matched the stereotype associated with their group"); *Barnes v. City of Cincinnati*, 401 F.3d 729, 736-39 (6th Cir. 2005) (holding that demotion of transgender police officer because he did not "conform to sex stereotypes concerning how a man should look and behave" stated a claim of sex discrimination under Title VII); *Smith v. City of Salem*, 378 F.3d 566, 574-75 (6th Cir. 2004) ("[D]iscrimination against a plaintiff who is a transsexual — and therefore fails to act and/or identify with his or her gender — is no different from the discrimination directed against Ann Hopkins in *Price Waterhouse*, who, in sex-stereotypical terms, did not act like a woman."); *Rosa v. Park West Bank & Trust Co.*, 214 F.3d 213 (1st Cir. 2000) (applying *Price Waterhouse* to conclude, under the Equal Credit Opportunity Act, that plaintiff states a claim for sex discrimination if bank's refusal to provide a loan application was because plaintiff's "traditionally feminine attire.... did not accord with his male gender"); *Schwenk v. Hartford*, 204 F.3d 1187, 1201-02 (9th Cir. 2000) (holding that discrimination against transgender females — i.e., "as anatomical males whose outward behavior and inward identity [do] not meet social definitions of masculinity" — is actionable discrimination "because of sex" under the Gender Motivated Violence Act").

<sup>3</sup> See, e.g., U.S. Dept. of Justice, Memorandum from the Attorney General regarding the Treatment of

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The Department's Title IX regulations permit schools to provide sex-segregated restrooms, locker rooms, shower facilities, housing, athletic teams, and single-sex classes under certain circumstances. When a school elects to separate or treat students differently on the basis of sex in those situations, a school generally must treat transgender students consistent with their gender identity.<sup>4</sup> OCR also encourages schools to offer the use of gender-neutral, individual-user facilities to any student who does not want to use shared sex-segregated facilities.

OCR refrains from offering opinions about specific facts, circumstances, or compliance with federal civil rights laws without first conducting an investigation, and does not release information about its pending investigations. Nevertheless, it may be useful to be aware that in response to OCR's recent investigations of two complaints of gender identity discrimination, recipients have agreed to revise policies to make clear that transgender students should be treated consistent with their gender identity for purposes of restroom access. For examples of how OCR enforces Title IX in this area, please review the following resolutions of OCR investigations involving transgender students: Arcadia Unified School District;<sup>5</sup> and Downey Unified School District.<sup>6</sup>

OCR is committed to helping all students thrive at school and ensuring that schools take action to prevent and respond promptly and effectively to all forms of discrimination, including gender-identity discrimination. OCR staff is also available to

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Transgender Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964 (Dec. 15, 2014) (stating that the protection of Title VII extends to claims of discrimination based on an individual's gender identity, including transgender status), [http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/12/18/title\\_vii\\_memo.pdf](http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/12/18/title_vii_memo.pdf); see also *Macy v. Holder*, Appeal No. 012012082 (U.S. Equal Emp't Opportunity Comm'n Apr. 20, 2012) (holding that gender identity and transgender status did not need to be specifically addressed in Title VII in order to be prohibited bases of discrimination, as they are simply part of the protected category of "sex"), <http://www.eeoc.gov/decisions/0120120821%20Macy%20v%20DOJ%20ATF.txt>; U.S. Dept. of Health & Human Services, Office for Civil Rights, *Letter to Maya Rupert, Esq.*, Transaction No. 12-0008000 (July 12, 2012) (stating that Section 1557 of the Affordable Care Act, which incorporates Title IX's prohibition on sex discrimination, "extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity"), <http://www.scribd.com/doc/101981113/Response-on-LGBT-People-in-Sec-1557-in-the-Affordable-Care-Act-from-the-U-S-Dept-of-Health-and-Human-Services>; U.S. Dep't of Labor, Office of Federal Contract Compliance Programs, *Gender Identity and Sex Discrimination*, Directive 2014-02 (Aug. 14, 2014) (directing that for purposes of Executive Order 11246, which prohibits employment discrimination on the basis of sex by federal contractors and subcontractors, "discrimination based on gender identity or transgender status ... is discrimination based on sex"), [http://www.dol.gov/ofccp/regs/compliance/directives/dir2014\\_02.html](http://www.dol.gov/ofccp/regs/compliance/directives/dir2014_02.html).

<sup>4</sup> See, e.g., OCR's December 2014 Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities, at Q. 31, <http://www2.ed.gov/about/offices/list/ocr/docs/faqs-title-ix-single-sex-201412.pdf>.

<sup>5</sup> OCR Case No. 09-12-1020 (July 24, 2013), <http://www.justice.gov/crt/about/edu/documents/arcadialetter.pdf> (resolution letter); and <http://www.justice.gov/crt/about/edu/documents/arcadiaagree.pdf> (resolution agreement).

<sup>6</sup> OCR Case No. 09-12-1095 (October 14, 2014), <http://www2.ed.gov/documents/press-releases/downey-school-district-letter.pdf> (resolution letter); and <http://www2.ed.gov/documents/press-releases/downey-school-district-agreement.pdf> (resolution agreement).

offer schools technical assistance on how to comply with Title IX and ensure all students, including transgender students, have equal access to safe learning environments.

If you have questions, want additional information or technical assistance, or believe that a school is engaging in discrimination based on gender identity or another basis protected by the laws enforced by OCR, you may visit OCR's website at [www.ed.gov/ocr](http://www.ed.gov/ocr) or contact OCR at (800) 421-3481 (TDD: 800-877-8339) or at [ocr@ed.gov](mailto:ocr@ed.gov). You may also fill out a complaint form online at [www.ed.gov/ocr/complaintintro.html](http://www.ed.gov/ocr/complaintintro.html).

I hope that this information is helpful and thank you for contacting the Department.

Sincerely,

A handwritten signature in blue ink, appearing to read "James A. Ferg-Cadima". The signature is stylized and includes a horizontal line extending to the left.

James A. Ferg-Cadima  
Acting Deputy Assistant Secretary for Policy  
Office for Civil Rights

**JA473**

**Declaration of Luke C. Platzer**

**EXHIBIT AD**

**JA474**



**U.S. Department of Justice**  
*Civil Rights Division*



**U.S. Department of Education**  
*Office for Civil Rights*

May 13, 2016

Dear Colleague:

Schools across the country strive to create and sustain inclusive, supportive, safe, and nondiscriminatory communities for all students. In recent years, we have received an increasing number of questions from parents, teachers, principals, and school superintendents about civil rights protections for transgender students. Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulations prohibit sex discrimination in educational programs and activities operated by recipients of Federal financial assistance.<sup>1</sup> This prohibition encompasses discrimination based on a student's gender identity, including discrimination based on a student's transgender status. This letter summarizes a school's Title IX obligations regarding transgender students and explains how the U.S. Department of Education (ED) and the U.S. Department of Justice (DOJ) evaluate a school's compliance with these obligations.

ED and DOJ (the Departments) have determined that this letter is *significant guidance*.<sup>2</sup> This guidance does not add requirements to applicable law, but provides information and examples to inform recipients about how the Departments evaluate whether covered entities are complying with their legal obligations. If you have questions or are interested in commenting on this guidance, please contact ED at [ocr@ed.gov](mailto:ocr@ed.gov) or 800-421-3481 (TDD 800-877-8339); or DOJ at [education@usdoj.gov](mailto:education@usdoj.gov) or 877-292-3804 (TTY: 800-514-0383).

Accompanying this letter is a separate document from ED's Office of Elementary and Secondary Education, *Examples of Policies and Emerging Practices for Supporting Transgender Students*. The examples in that document are taken from policies that school districts, state education agencies, and high school athletics associations around the country have adopted to help ensure that transgender students enjoy a supportive and nondiscriminatory school environment. Schools are encouraged to consult that document for practical ways to meet Title IX's requirements.<sup>3</sup>

### Terminology

- Gender identity* refers to an individual's internal sense of gender. A person's gender identity may be different from or the same as the person's sex assigned at birth.
- Sex assigned at birth* refers to the sex designation recorded on an infant's birth certificate should such a record be provided at birth.
- Transgender* describes those individuals whose gender identity is different from the sex they were assigned at birth. A *transgender male* is someone who identifies as male but was assigned the sex of female at birth; a *transgender female* is someone who identifies as female but was assigned the sex of male at birth.

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Dear Colleague Letter: Transgender Students

Page 2 of 8

- *Gender transition* refers to the process in which transgender individuals begin asserting the sex that corresponds to their gender identity instead of the sex they were assigned at birth. During gender transition, individuals begin to live and identify as the sex consistent with their gender identity and may dress differently, adopt a new name, and use pronouns consistent with their gender identity. Transgender individuals may undergo gender transition at any stage of their lives, and gender transition can happen swiftly or over a long duration of time.

### **Compliance with Title IX**

As a condition of receiving Federal funds, a school agrees that it will not exclude, separate, deny benefits to, or otherwise treat differently on the basis of sex any person in its educational programs or activities unless expressly authorized to do so under Title IX or its implementing regulations.<sup>4</sup> The Departments treat a student's gender identity as the student's sex for purposes of Title IX and its implementing regulations. This means that a school must not treat a transgender student differently from the way it treats other students of the same gender identity. The Departments' interpretation is consistent with courts' and other agencies' interpretations of Federal laws prohibiting sex discrimination.<sup>5</sup>

The Departments interpret Title IX to require that when a student or the student's parent or guardian, as appropriate, notifies the school administration that the student will assert a gender identity that differs from previous representations or records, the school will begin treating the student consistent with the student's gender identity. Under Title IX, there is no medical diagnosis or treatment requirement that students must meet as a prerequisite to being treated consistent with their gender identity.<sup>6</sup> Because transgender students often are unable to obtain identification documents that reflect their gender identity (*e.g.*, due to restrictions imposed by state or local law in their place of birth or residence),<sup>7</sup> requiring students to produce such identification documents in order to treat them consistent with their gender identity may violate Title IX when doing so has the practical effect of limiting or denying students equal access to an educational program or activity.

A school's Title IX obligation to ensure nondiscrimination on the basis of sex requires schools to provide transgender students equal access to educational programs and activities even in circumstances in which other students, parents, or community members raise objections or concerns. As is consistently recognized in civil rights cases, the desire to accommodate others' discomfort cannot justify a policy that singles out and disadvantages a particular class of students.<sup>8</sup>

#### **1. Safe and Nondiscriminatory Environment**

Schools have a responsibility to provide a safe and nondiscriminatory environment for all students, including transgender students. Harassment that targets a student based on gender identity, transgender status, or gender transition is harassment based on sex, and the Departments enforce Title IX accordingly.<sup>9</sup> If sex-based harassment creates a hostile environment, the school must take prompt and effective steps to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects. A school's failure to treat students consistent with their gender identity may create or contribute to a hostile environment in violation of Title IX. For a more detailed discussion of Title IX

**JA476**

requirements related to sex-based harassment, see guidance documents from ED's Office for Civil Rights (OCR) that are specific to this topic.<sup>10</sup>

## **2. Identification Documents, Names, and Pronouns**

Under Title IX, a school must treat students consistent with their gender identity even if their education records or identification documents indicate a different sex. The Departments have resolved Title IX investigations with agreements committing that school staff and contractors will use pronouns and names consistent with a transgender student's gender identity.<sup>11</sup>

## **3. Sex-Segregated Activities and Facilities**

Title IX's implementing regulations permit a school to provide sex-segregated restrooms, locker rooms, shower facilities, housing, and athletic teams, as well as single-sex classes under certain circumstances.<sup>12</sup> When a school provides sex-segregated activities and facilities, transgender students must be allowed to participate in such activities and access such facilities consistent with their gender identity.<sup>13</sup>

- Restrooms and Locker Rooms.** A school may provide separate facilities on the basis of sex, but must allow transgender students access to such facilities consistent with their gender identity.<sup>14</sup> A school may not require transgender students to use facilities inconsistent with their gender identity or to use individual-user facilities when other students are not required to do so. A school may, however, make individual-user options available to all students who voluntarily seek additional privacy.<sup>15</sup>
- Athletics.** Title IX regulations permit a school to operate or sponsor sex-segregated athletics teams when selection for such teams is based upon competitive skill or when the activity involved is a contact sport.<sup>16</sup> A school may not, however, adopt or adhere to requirements that rely on overly broad generalizations or stereotypes about the differences between transgender students and other students of the same sex (*i.e.*, the same gender identity) or others' discomfort with transgender students.<sup>17</sup> Title IX does not prohibit age-appropriate, tailored requirements based on sound, current, and research-based medical knowledge about the impact of the students' participation on the competitive fairness or physical safety of the sport.<sup>18</sup>
- Single-Sex Classes.** Although separating students by sex in classes and activities is generally prohibited, nonvocational elementary and secondary schools may offer nonvocational single-sex classes and extracurricular activities under certain circumstances.<sup>19</sup> When offering such classes and activities, a school must allow transgender students to participate consistent with their gender identity.
- Single-Sex Schools.** Title IX does not apply to the admissions policies of certain educational institutions, including nonvocational elementary and secondary schools, and private undergraduate colleges.<sup>20</sup> Those schools are therefore permitted under Title IX to set their own

sex-based admissions policies. Nothing in Title IX prohibits a private undergraduate women's college from admitting transgender women if it so chooses.

- **Social Fraternities and Sororities.** Title IX does not apply to the membership practices of social fraternities and sororities.<sup>21</sup> Those organizations are therefore permitted under Title IX to set their own policies regarding the sex, including gender identity, of their members. Nothing in Title IX prohibits a fraternity from admitting transgender men or a sorority from admitting transgender women if it so chooses.
- **Housing and Overnight Accommodations.** Title IX allows a school to provide separate housing on the basis of sex.<sup>22</sup> But a school must allow transgender students to access housing consistent with their gender identity and may not require transgender students to stay in single-occupancy accommodations or to disclose personal information when not required of other students. Nothing in Title IX prohibits a school from honoring a student's voluntary request for single-occupancy accommodations if it so chooses.<sup>23</sup>
- **Other Sex-Specific Activities and Rules.** Unless expressly authorized by Title IX or its implementing regulations, a school may not segregate or otherwise distinguish students on the basis of their sex, including gender identity, in any school activities or the application of any school rule. Likewise, a school may not discipline students or exclude them from participating in activities for appearing or behaving in a manner that is consistent with their gender identity or that does not conform to stereotypical notions of masculinity or femininity (*e.g.*, in yearbook photographs, at school dances, or at graduation ceremonies).<sup>24</sup>

#### **4. Privacy and Education Records**

Protecting transgender students' privacy is critical to ensuring they are treated consistent with their gender identity. The Departments may find a Title IX violation when a school limits students' educational rights or opportunities by failing to take reasonable steps to protect students' privacy related to their transgender status, including their birth name or sex assigned at birth.<sup>25</sup> Nonconsensual disclosure of personally identifiable information (PII), such as a student's birth name or sex assigned at birth, could be harmful to or invade the privacy of transgender students and may also violate the Family Educational Rights and Privacy Act (FERPA).<sup>26</sup> A school may maintain records with this information, but such records should be kept confidential.

- **Disclosure of Personally Identifiable Information from Education Records.** FERPA generally prevents the nonconsensual disclosure of PII from a student's education records; one exception is that records may be disclosed to individual school personnel who have been determined to have a legitimate educational interest in the information.<sup>27</sup> Even when a student has disclosed the student's transgender status to some members of the school community, schools may not rely on this FERPA exception to disclose PII from education records to other school personnel who do not have a legitimate educational interest in the information. Inappropriately disclosing (or requiring students or their parents to disclose) PII from education records to the school community may

Dear Colleague Letter: Transgender Students

Page 5 of 8

violate FERPA and interfere with transgender students' right under Title IX to be treated consistent with their gender identity.

- **Disclosure of Directory Information.** Under FERPA's implementing regulations, a school may disclose appropriately designated directory information from a student's education record if disclosure would not generally be considered harmful or an invasion of privacy.<sup>28</sup> Directory information may include a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance.<sup>29</sup> School officials may not designate students' sex, including transgender status, as directory information because doing so could be harmful or an invasion of privacy.<sup>30</sup> A school also must allow eligible students (*i.e.*, students who have reached 18 years of age or are attending a postsecondary institution) or parents, as appropriate, a reasonable amount of time to request that the school not disclose a student's directory information.<sup>31</sup>
- **Amendment or Correction of Education Records.** A school may receive requests to correct a student's education records to make them consistent with the student's gender identity. Updating a transgender student's education records to reflect the student's gender identity and new name will help protect privacy and ensure personnel consistently use appropriate names and pronouns.
  - Under FERPA, a school must consider the request of an eligible student or parent to amend information in the student's education records that is inaccurate, misleading, or in violation of the student's privacy rights.<sup>32</sup> If the school does not amend the record, it must inform the requestor of its decision and of the right to a hearing. If, after the hearing, the school does not amend the record, it must inform the requestor of the right to insert a statement in the record with the requestor's comments on the contested information, a statement that the requestor disagrees with the hearing decision, or both. That statement must be disclosed whenever the record to which the statement relates is disclosed.<sup>33</sup>
  - Under Title IX, a school must respond to a request to amend information related to a student's transgender status consistent with its general practices for amending other students' records.<sup>34</sup> If a student or parent complains about the school's handling of such a request, the school must promptly and equitably resolve the complaint under the school's Title IX grievance procedures.<sup>35</sup>

\* \* \*

We appreciate the work that many schools, state agencies, and other organizations have undertaken to make educational programs and activities welcoming, safe, and inclusive for all students.

Sincerely,

/s/

Catherine E. Lhamon  
Assistant Secretary for Civil Rights  
U.S. Department of Education

/s/

Vanita Gupta  
Principal Deputy Assistant Attorney General for Civil Rights  
U.S. Department of Justice

**JA479**

<sup>1</sup> 20 U.S.C. §§ 1681–1688; 34 C.F.R. Pt. 106; 28 C.F.R. Pt. 54. In this letter, the term *schools* refers to recipients of Federal financial assistance at all educational levels, including school districts, colleges, and universities. An educational institution that is controlled by a religious organization is exempt from Title IX to the extent that compliance would not be consistent with the religious tenets of such organization. 20 U.S.C. § 1681(a)(3); 34 C.F.R. § 106.12(a).

<sup>2</sup> Office of Management and Budget, Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007), [www.whitehouse.gov/sites/default/files/omb/fedreg/2007/012507\\_good\\_guidance.pdf](http://www.whitehouse.gov/sites/default/files/omb/fedreg/2007/012507_good_guidance.pdf).

<sup>3</sup> ED, *Examples of Policies and Emerging Practices for Supporting Transgender Students* (May 13, 2016), [www.ed.gov/oese/osh/emer gingpractices.pdf](http://www.ed.gov/oese/osh/emer gingpractices.pdf). OCR also posts many of its resolution agreements in cases involving transgender students online at [www.ed.gov/ocr/lgbt.html](http://www.ed.gov/ocr/lgbt.html). While these agreements address fact-specific cases, and therefore do not state general policy, they identify examples of ways OCR and recipients have resolved some issues addressed in this guidance.

<sup>4</sup> 34 C.F.R. §§ 106.4, 106.31(a). For simplicity, this letter cites only to ED’s Title IX regulations. DOJ has also promulgated Title IX regulations. See 28 C.F.R. Pt. 54. For purposes of how the Title IX regulations at issue in this guidance apply to transgender individuals, DOJ interprets its regulations similarly to ED. State and local rules cannot limit or override the requirements of Federal laws. See 34 C.F.R. § 106.6(b).

<sup>5</sup> See, e.g., *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989); *Oncale v. Sundowner Offshore Servs. Inc.*, 523 U.S. 75, 79 (1998); *G.G. v. Gloucester Cnty. Sch. Bd.*, No. 15-2056, 2016 WL 1567467, at \*8 (4th Cir. Apr. 19, 2016); *Glenn v. Brumby*, 663 F.3d 1312, 1317 (11th Cir. 2011); *Smith v. City of Salem*, 378 F.3d 566, 572-75 (6th Cir. 2004); *Rosa v. Park W. Bank & Trust Co.*, 214 F.3d 213, 215–16 (1st Cir. 2000); *Schwenk v. Hartford*, 204 F.3d 1187, 1201–02 (9th Cir. 2000); *Schroer v. Billington*, 577 F. Supp. 2d 293, 306-08 (D.D.C. 2008); *Macy v. Dep’t of Justice*, Appeal No. 012012082 (U.S. Equal Emp’t Opportunity Comm’n Apr. 20, 2012). See also U.S. Dep’t of Labor (USDOL), Training and Employment Guidance Letter No. 37-14, *Update on Complying with Nondiscrimination Requirements: Discrimination Based on Gender Identity, Gender Expression and Sex Stereotyping are Prohibited Forms of Sex Discrimination in the Workforce Development System* (2015), [wdr.doleta.gov/directives/attach/TEGL/TEGL\\_37-14.pdf](http://wdr.doleta.gov/directives/attach/TEGL/TEGL_37-14.pdf); USDOL, Job Corps, Directive: Job Corps Program Instruction Notice No. 14-31, *Ensuring Equal Access for Transgender Applicants and Students to the Job Corps Program* (May 1, 2015), [https://supportservices.jobcorps.gov/Program%20Instruction%20Notices/pi\\_14\\_31.pdf](https://supportservices.jobcorps.gov/Program%20Instruction%20Notices/pi_14_31.pdf); DOJ, Memorandum from the Attorney General, *Treatment of Transgender Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964* (2014), [www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/12/18/title\\_vii\\_memo.pdf](http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/12/18/title_vii_memo.pdf); USDOL, Office of Federal Contract Compliance Programs, Directive 2014-02, *Gender Identity and Sex Discrimination* (2014), [www.dol.gov/ofccp/regs/compliance/directives/dir2014\\_02.html](http://www.dol.gov/ofccp/regs/compliance/directives/dir2014_02.html).

<sup>6</sup> See *Lusardi v. Dep’t of the Army*, Appeal No. 0120133395 at 9 (U.S. Equal Emp’t Opportunity Comm’n Apr. 1, 2015) (“An agency may not condition access to facilities—or to other terms, conditions, or privileges of employment—on the completion of certain medical steps that the agency itself has unilaterally determined will somehow prove the bona fides of the individual’s gender identity.”).

<sup>7</sup> See *G.G.*, 2016 WL 1567467, at \*1 n.1 (noting that medical authorities “do not permit sex reassignment surgery for persons who are under the legal age of majority”).

<sup>8</sup> 34 C.F.R. § 106.31(b)(4); see *G.G.*, 2016 WL 1567467, at \*8 & n.10 (affirming that individuals have legitimate and important privacy interests and noting that these interests do not inherently conflict with nondiscrimination principles); *Cruzan v. Special Sch. Dist. No. 1*, 294 F.3d 981, 984 (8th Cir. 2002) (rejecting claim that allowing a transgender woman “merely [to be] present in the women’s faculty restroom” created a hostile environment); *Glenn*, 663 F.3d at 1321 (defendant’s proffered justification that “other women might object to [the plaintiff]’s restroom use” was “wholly irrelevant”). See also *Palmore v. Sidoti*, 466 U.S. 429, 433 (1984) (“Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect.”); *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 448 (1985) (recognizing that “mere negative attitudes, or fear . . . are not permissible bases for” government action).

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<sup>9</sup> See, e.g., Resolution Agreement, *In re Downey Unified Sch. Dist., CA*, OCR Case No. 09-12-1095, (Oct. 8, 2014), [www.ed.gov/documents/press-releases/downey-school-district-agreement.pdf](http://www.ed.gov/documents/press-releases/downey-school-district-agreement.pdf) (agreement to address harassment of transgender student, including allegations that peers continued to call her by her former name, shared pictures of her prior to her transition, and frequently asked questions about her anatomy and sexuality); Consent Decree, *Doe v. Anoka-Hennepin Sch. Dist. No. 11, MN* (D. Minn. Mar. 1, 2012), [www.ed.gov/ocr/docs/investigations/05115901-d.pdf](http://www.ed.gov/ocr/docs/investigations/05115901-d.pdf) (consent decree to address sex-based harassment, including based on nonconformity with gender stereotypes); Resolution Agreement, *In re Tehachapi Unified Sch. Dist., CA*, OCR Case No. 09-11-1031 (June 30, 2011), [www.ed.gov/ocr/docs/investigations/09111031-b.pdf](http://www.ed.gov/ocr/docs/investigations/09111031-b.pdf) (agreement to address sexual and gender-based harassment, including harassment based on nonconformity with gender stereotypes). See also *Lusardi*, Appeal No. 0120133395, at \*15 (“Persistent failure to use the employee’s correct name and pronoun may constitute unlawful, sex-based harassment if such conduct is either severe or pervasive enough to create a hostile work environment”).

<sup>10</sup> See, e.g., OCR, *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties* (2001), [www.ed.gov/ocr/docs/shguide.pdf](http://www.ed.gov/ocr/docs/shguide.pdf); OCR, *Dear Colleague Letter: Harassment and Bullying* (Oct. 26, 2010), [www.ed.gov/ocr/letters/colleague-201010.pdf](http://www.ed.gov/ocr/letters/colleague-201010.pdf); OCR, *Dear Colleague Letter: Sexual Violence* (Apr. 4, 2011), [www.ed.gov/ocr/letters/colleague-201104.pdf](http://www.ed.gov/ocr/letters/colleague-201104.pdf); OCR, *Questions and Answers on Title IX and Sexual Violence* (Apr. 29, 2014), [www.ed.gov/ocr/docs/qa-201404-title-ix.pdf](http://www.ed.gov/ocr/docs/qa-201404-title-ix.pdf).

<sup>11</sup> See, e.g., Resolution Agreement, *In re Cent. Piedmont Cmty. Coll., NC*, OCR Case No. 11-14-2265 (Aug. 13, 2015), [www.ed.gov/ocr/docs/investigations/more/11142265-b.pdf](http://www.ed.gov/ocr/docs/investigations/more/11142265-b.pdf) (agreement to use a transgender student’s preferred name and gender and change the student’s official record to reflect a name change).

<sup>12</sup> 34 C.F.R. §§ 106.32, 106.33, 106.34, 106.41(b).

<sup>13</sup> See 34 C.F.R. § 106.31.

<sup>14</sup> 34 C.F.R. § 106.33.

<sup>15</sup> See, e.g., Resolution Agreement, *In re Township High Sch. Dist. 211, IL*, OCR Case No. 05-14-1055 (Dec. 2, 2015), [www.ed.gov/ocr/docs/investigations/more/05141055-b.pdf](http://www.ed.gov/ocr/docs/investigations/more/05141055-b.pdf) (agreement to provide any student who requests additional privacy “access to a reasonable alternative, such as assignment of a student locker in near proximity to the office of a teacher or coach; use of another private area (such as a restroom stall) within the public area; use of a nearby private area (such as a single-use facility); or a separate schedule of use.”).

<sup>16</sup> 34 C.F.R. § 106.41(b). Nothing in Title IX prohibits schools from offering coeducational athletic opportunities.

<sup>17</sup> 34 C.F.R. § 106.6(b), (c). An interscholastic athletic association is subject to Title IX if (1) the association receives Federal financial assistance or (2) its members are recipients of Federal financial assistance and have ceded controlling authority over portions of their athletic program to the association. Where an athletic association is covered by Title IX, a school’s obligations regarding transgender athletes apply with equal force to the association.

<sup>18</sup> The National Collegiate Athletic Association (NCAA), for example, reported that in developing its policy for participation by transgender students in college athletics, it consulted with medical experts, athletics officials, affected students, and a consensus report entitled *On the Team: Equal Opportunity for Transgender Student Athletes* (2010) by Dr. Pat Griffin & Helen J. Carroll (*On the Team*), [https://www.ncaa.org/sites/default/files/NCLR\\_TransStudentAthlete%2B\(2\).pdf](https://www.ncaa.org/sites/default/files/NCLR_TransStudentAthlete%2B(2).pdf). See NCAA Office of Inclusion, *NCAA Inclusion of Transgender Student-Athletes 2*, 30-31 (2011), [https://www.ncaa.org/sites/default/files/Transgender\\_Handbook\\_2011\\_Final.pdf](https://www.ncaa.org/sites/default/files/Transgender_Handbook_2011_Final.pdf) (citing *On the Team*). The *On the Team* report noted that policies that may be appropriate at the college level may “be unfair and too complicated for [the high school] level of competition.” *On the Team* at 26. After engaging in similar processes, some state interscholastic athletics associations have adopted policies for participation by transgender students in high school athletics that they determined were age-appropriate.

<sup>19</sup> 34 C.F.R. § 106.34(a), (b). Schools may also separate students by sex in physical education classes during participation in contact sports. *Id.* § 106.34(a)(1).

<sup>20</sup> 20 U.S.C. § 1681(a)(1); 34 C.F.R. § 106.15(d); 34 C.F.R. § 106.34(c) (a recipient may offer a single-sex public nonvocational elementary and secondary school so long as it provides students of the excluded sex a “substantially

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equal single-sex school or coeducational school”).

<sup>21</sup> 20 U.S.C. § 1681(a)(6)(A); 34 C.F.R. § 106.14(a).

<sup>22</sup> 20 U.S.C. § 1686; 34 C.F.R. § 106.32.

<sup>23</sup> See, e.g., Resolution Agreement, *In re Arcadia Unified Sch. Dist., CA*, OCR Case No. 09-12-1020, DOJ Case No. 169-12C-70, (July 24, 2013), [www.justice.gov/sites/default/files/crt/legacy/2013/07/26/arcadiaagree.pdf](http://www.justice.gov/sites/default/files/crt/legacy/2013/07/26/arcadiaagree.pdf) (agreement to provide access to single-sex overnight events consistent with students’ gender identity, but allowing students to request access to private facilities).

<sup>24</sup> See 34 C.F.R. §§ 106.31(a), 106.31(b)(4). See also, *In re Downey Unified Sch. Dist., CA*, supra n. 9; *In re Cent. Piedmont Cmty. Coll., NC*, supra n. 11.

<sup>25</sup> 34 C.F.R. § 106.31(b)(7).

<sup>26</sup> 20 U.S.C. § 1232g; 34 C.F.R. Part 99. FERPA is administered by ED’s Family Policy Compliance Office (FPCO). Additional information about FERPA and FPCO is available at [www.ed.gov/fpc](http://www.ed.gov/fpc).

<sup>27</sup> 20 U.S.C. § 1232g(b)(1)(A); 34 C.F.R. § 99.31(a)(1).

<sup>28</sup> 34 C.F.R. §§ 99.3, 99.31(a)(11), 99.37.

<sup>29</sup> 20 U.S.C. § 1232g(a)(5)(A); 34 C.F.R. § 99.3.

<sup>30</sup> Letter from FPCO to Institutions of Postsecondary Education 3 (Sept. 2009), [www.ed.gov/policy/gen/guid/fpc/doc/censuslettertohighered091609.pdf](http://www.ed.gov/policy/gen/guid/fpc/doc/censuslettertohighered091609.pdf).

<sup>31</sup> 20 U.S.C. § 1232g(a)(5)(B); 34 C.F.R. §§ 99.3, 99.37(a)(3).

<sup>32</sup> 34 C.F.R. § 99.20.

<sup>33</sup> 34 C.F.R. §§ 99.20-99.22.

<sup>34</sup> See 34 C.F.R. § 106.31(b)(4).

<sup>35</sup> 34 C.F.R. § 106.8(b).

**Declaration of Luke C. Platzer**

**EXHIBIT AE**

**JA483**



**Pat McCrory**   
@PatMcCroryNC

 **Follow**

Ordinance defied common sense, allowing men to use women's bathroom/locker room for instance. That's why I signed bipartisan bill to stop it

RETWEETS  
**636**

LIKES  
**1,610**



7:16 PM - 23 Mar 2016



**Declaration of Luke C. Platzer**

**EXHIBIT AF**

**JA485**

POLITICS & GOVERNMENT MARCH 24, 2016 6:03 PM

# Critics say new law targets LGBT and undermines workplace protections

## HIGHLIGHTS

'Bathroom law' also eliminates workers' right to file discrimination complaints in state courts

Experts say bill could set up confrontation with feds over billions in education money

Law's author says criticism of the new law amounts to exaggerations, lies and 'BS'



JA486



BY MICHAEL GORDON

[mgordon@charlotteobserver.com](mailto:mgordon@charlotteobserver.com)

A law to overturn Charlotte's effort to extend bathroom rights and other protections to the LGBT community has mushroomed into North Carolina's latest civil war over culture and the law.

Critics say the state's new "Public Facilities Privacy & Security Act" discriminates against LGBT North Carolinians while undermining important workplace protections for all workers – rolling back more than 30 years of legal precedent in the process.

The law, introduced by Rep. Dan Bishop, a Charlotte Republican, also prohibits cities from raising the minimum wage or enacting so-called living wages. During a Thursday speech in Charlotte, Mayor Jennifer Roberts said the measure could have a disproportionate impact on women who traditionally are paid less.

Charlotte attorney Jake Sussman said he's not sure Gov. Pat McCrory or GOP legislative leaders "fully contemplated or understood the havoc this law will create." He says the law rewrites the state's workplace discrimination policies, violates Title IX and other federal statutes and throws billions of education dollars and other federal programs into jeopardy.

"That's what happens when you shove groundbreaking legislation down the throats of your colleagues in only a few hours, and when you legislate based on ugly stereotypes," said Sussman, whose firm has sued the state over same-sex marriage and other cultural/legal issues in the past.

Sarah Preston, acting executive director of the state office of the American Civil Liberties Union, said that the new law clearly "comes out of a place of animus to discriminate against certain groups" and demands a legal response.

"We'll be challenging this law," she said. "What's especially troubling and interesting to me is the idea that we are not going to trust local government to assess their community and determine what additional protections might be appropriate."

Bishop said Thursday that his bill corrects a radical change in the state's public accommodations law that the City of Charlotte had no authority to make. It also clarifies state workplace-discrimination statutes that had been broadened and clouded by the courts, he said. Meanwhile, he dismissed the criticisms of the new law by mostly liberal attorneys as exaggerations, lies and "BS."

"For those who insist that we've made some grand, sweeping changes ... they are lying," Bishop said, describing the changes as mostly "trivial, marginal and purely procedural."

While the law eliminates the rights of workers in certain protected groups to sue in state courts over discriminatory employment practices, Bishop said the same legal options remain available in federal courts, with few differences.

At the heart of the debate is language in the law that excludes the LGBT community from the protected classes spelled out in state law. While Bishop and his peers kept wording that upholds a person's right to hold a job free of discrimination on account of "race, religion, color, national origin, age, biological sex or handicap," it eliminates the right of those people to sue under common law in state courts if that right is compromised.

In that way, it tracks the original law, which did not authorize a discriminated party's right to use the state courts. But over the last three decades, federal and state court rulings have allowed workplace-discrimination lawsuits because they involve a breach of public policy, in the same way that a truck driver can't be fired if he refuses to work hours that jeopardize highway safety.

"Up to now, you couldn't fire someone in violation of public policy set out in this statute. That's been taken away in a very sneaky way that had nothing to do with the purpose of this legislation," says John Gresham, a law partner with Sussman who has taught and practiced employment law for more than 40 years.

Critics acknowledge that employees who feel they have been discriminated against can still file complaints with the U.S. Equal Employment Opportunity Commission, which will investigate and decide whether an individual has a case that can be taken to federal court. But Gresham called the federal process onerous and said it can take years to complete. It also gives employees only a six-month window to file a case, compared with three years in the state.

Charlotte attorney John Wester, a registered Republican, says the new state law sets up a potential confrontation between the state and the U.S. government over school money. Federal law already includes sexual orientation and gender identity under sexual-discrimination statutes, he said. Given the amount of federal dollars that stream into the state's colleges and universities, Wester wonders if the Department of Education might now use Title IX, which prohibits discrimination in education programs, as "a weapon against North Carolina."

Bishop, who has announced a bid for the state Senate, says the state's law eliminates no employment rights that are not readily available through the federal portal.

He said the public facilities act resurrects the original intent of the state's discrimination laws and guards against a flurry of "invented classes" that could one day demand legal protections they don't deserve.

Earlier this month, he criticized the Charlotte City Council for "kowtowing to a small group of radical LGBT activists."

"A small group of far-out progressives should not presume to decide for us all that a cross-dresser's liberty to express his gender nonconformity trumps the right of women and girls to peace of mind," he said.

*STAFF WRITER MARK PRICE CONTRIBUTED.*

*Michael Gordon: 704-358-5095, @MikeGordonOBS*

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**Declaration of Luke C. Platzer**

**EXHIBIT AG**

**JA490**



# Office of the Attorney General

Washington, D. C. 20530

December 15, 2014

## MEMORANDUM

TO: UNITED STATES ATTORNEYS  
HEADS OF DEPARTMENT COMPONENTS

FROM: THE ATTORNEY GENERAL 

SUBJECT: Treatment of Transgender Employment Discrimination Claims  
Under Title VII of the Civil Rights Act of 1964

Title VII of the Civil Rights Act of 1964 makes it unlawful for employers to discriminate in the employment of an individual “because of such individual’s . . . sex.” 42 U.S.C. § 2000e-2(a) (prohibiting discrimination by private employers and by state and local governments); 42 U.S.C. § 2000e-16(a) (providing that personnel actions by federal agencies “shall be made free from any discrimination based on . . . sex”). Title VII’s prohibition of sex discrimination is a strong and vital principle that underlies the integrity of our workforce. In a variety of judicial and administrative contexts, however, questions have arisen concerning the appropriate legal standard for establishing claims of gender identity discrimination, including discrimination claims raised by transgender employees.<sup>1</sup>

Many courts have recognized that gender identity discrimination claims may be established under a “sex-stereotyping” theory. Following the Supreme Court’s decision in *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989), courts have interpreted Title VII’s prohibition of discrimination because of “sex” as barring discrimination based on a perceived failure to conform to socially constructed characteristics of males and females. *See, e.g., Smith v. City of Salem*, 378 F.3d 566 (6th Cir. 2004); *Rosa v. Park West Bank & Trust Co.*, 214 F.3d 213 (1st Cir. 2000); *see also Glenn v. Bromby*, 663 F.3d 1312 (11th Cir. 2011). But courts have reached varying conclusions about whether discrimination based on gender identity in and of itself—including transgender status—constitutes discrimination based on sex. *Compare Schroer v. Billington*, 577 F. Supp. 2d 293 (D.D.C. 2008), *with Etsitty v. Utah Transit Auth.*, 502 F.3d 1215 (10th Cir. 2005).

The federal government’s approach to this issue has also evolved over time. In 2006, the Department stated in litigation that Title VII’s prohibition of discrimination based on sex did not cover discrimination based on transgender status or gender identity *per se*; the district court rejected that position. *See Schroer*, 577 F. Supp. 2d at 293. Subsequently, in 2011, the Office of

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<sup>1</sup> Guidance from the Office of Personnel Management states that “[t]ransgender individuals are people with a gender identity that is different from the sex assigned to them at birth,” and defines “gender identity” as an individual’s “internal sense of being male or female.” *See* <http://www.opm.gov/diversity/Transgender/Guidance.asp>.

JA491

Personnel Management issued guidance announcing that the federal government's policy of providing a workplace free of discrimination based on sex includes a prohibition against discrimination based on gender identity. In 2012, the Equal Employment Opportunity Commission ruled that discrimination on the basis of gender identity is discrimination on the basis of sex. *Macy v. Holder*, Appeal No. 0120120821 (EEOC April 20, 2012). More recently, the President announced that discrimination based on gender identity is prohibited for purposes of federal employment and government contracting. See Executive Order 13672 (July 21, 2014); see also U.S. Dep't of Labor Directive 2014-02 (August 19, 2014).

After considering the text of Title VII, the relevant Supreme Court case law interpreting the statute, and the developing jurisprudence in this area, I have determined that the best reading of Title VII's prohibition of sex discrimination is that it encompasses discrimination based on gender identity, including transgender status. The most straightforward reading of Title VII is that discrimination "because of . . . sex" includes discrimination because an employee's gender identification is as a member of a particular sex, or because the employee is transitioning, or has transitioned, to another sex. As the Court explained in *Price Waterhouse*, by using "the simple words 'because of,' . . . Congress meant to obligate" a Title VII plaintiff to prove only "that the employer relied upon sex-based considerations in coming to its decision." 490 U.S. at 241-242. It follows that, as a matter of plain meaning, Title VII's prohibition against discrimination "because of . . . sex" encompasses discrimination founded on sex-based considerations, including discrimination based on an employee's transitioning to, or identifying as, a different sex altogether. Although Congress may not have had such claims in mind when it enacted Title VII, the Supreme Court has made clear that Title VII must be interpreted according to its plain text, noting that "statutory prohibitions often go beyond the principal evil to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed." *Oncale v. Sundowner Offshore Servs.*, 523 U.S. 75, 79 (1998).

For these reasons, the Department will no longer assert that Title VII's prohibition against discrimination based on sex does not encompass gender identity *per se* (including transgender discrimination).<sup>2</sup> This memorandum is not intended to otherwise prescribe the course of litigation or defenses that should be raised in any particular employment discrimination case. The application of Title VII to any given case will necessarily turn on the specific facts at hand. My hope, however, is that this clarification of the Department's position will foster consistent treatment of claimants throughout the government, in furtherance of this Department's commitment to fair and impartial justice for all Americans.

If you have questions about this memorandum or its application in a case, please contact your Civil Chief or your Component's Front Office.

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<sup>2</sup> "Sex-stereotyping" remains an available theory under which to bring a Title VII claim, including a claim by a transgender individual, in cases where the evidence supports that theory.

**Declaration of Luke C. Platzer**

**EXHIBIT AH**

**JA493**



3. Complainant was present on Respondent's premises both as an employee and as a customer. The general public and employees utilize the store's restrooms, which are designated by gender.

4. Since 2007, Complainant implemented a procedure toward transitioning from male to female. In 2009, Complainant had medical treatment from health care providers and other services at Howard Brown Health Center, which resulted in female secondary sex characteristics, including breasts and absence of facial hair.

5. Complainant is a transsexual who presents and identifies as female.

6. In February 2010, Complainant removed the male name from her employee nametag, without objection from Respondent, as not to confuse the customers with the noticeable physical manifestations of the transition.

7. On July 9, 2010, Complainant formally informed Respondent through Edward Slavin, store manager, of her male to female transition and her intent to use the women's restroom.

8. Respondent changed Complainant's personnel records and benefits information to identify her as female. Complainant appears at work in feminine dress and make-up. Employees and employers refer to Complainant by her chosen female name.

9. However, Respondent did not consent to Complainant's use of the store's designated women's restroom, until Complainant produced legal authority mandating its use to her.

10. On July 12, 2010, Complainant had her name legally changed to "Meggan Renee Sommerville," by order of the Circuit Court of Kendall County, Illinois.

11. On July 29, 2010, the State of Illinois issued its driver's license identifying Complainant as female.

12. In July 2010, Complainant obtained a new social security card with her female name.

13. In July 2010, Complainant produced to Anna Lee Miller, Respondent's Human Resources Specialist, a copy of the Illinois Human Rights Act, related statutes from Iowa and Colorado, a copy of her revised Illinois driver's license, her social security card, and her court ordered name change. The material submitted also included a letter dated July 21, 2015, from Kristin Koglovitz, Clinic Director of Howard Brown Health Center, who identified and verified Complainant as a female transgender individual, described the transition process, and advocated Complainant's use of the women's restroom at Respondent's store.

14. On July 30, 2010, Miller instructed Complainant to communicate with Respondent's legal office and, despite the information submitted, she was not permitted to use the women's restroom.

15. Complainant used the women's facilities at nearby businesses.

16. On February 23, 2011, Complainant was given a written warning for entering Respondent's women's restroom.

17. During the course of litigation, Respondent changed its precondition for the use of the women's facilities from producing legal authority to surgery. In 2014, Respondent modified its condition option to changing her birth certificate.

18. In December 2013 or January 2014, Respondent had built a "unisex" restroom for Complainant's use.

19. As of this Recommended Liability Determination, Complainant is still not permitted to use Respondent's women's restroom facilities as an employee or customer.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter.
2. Complainant established direct evidence of sexual related identity discrimination by Respondent preventing Complainant's access and use of the women's restroom at Respondent's store.

## DISCUSSION

### SUMMARY DECISION STANDARD

Under section 8-106.1 of the Human Rights Act, either party to a complaint may move for summary decision. 775 ILCS 5/8-106.1. A summary decision is analogous to a summary judgment in the Circuit Courts. Cano v. Village of Dolton, 250 Ill.App.3d 130, 138, 620 N.E.2d 1200, 1206 (1st Dist. 1993).

A motion for summary decision should be granted when there is no genuine issue of material fact and the moving party is entitled to a recommended order in its favor as a matter of law. Fitzpatrick v. Human Rights Comm'n, 267 Ill.App.3d 386, 391, 642 N.E.2d 486, 490 (4th Dist. 1994). All pleadings, affidavits, interrogatories, and admissions must be strictly construed against the movant and liberally construed in favor of the non-moving party. Kolakowski v. Voris, 76 Ill.App.3d 453, 456-57, 395 N.E.2d 6, 9 (1st Dist. 1979). Although not required to prove her case as if at a hearing, the non-moving party must provide some factual basis for denying the motion. Birck v. City of Quincy, 241 Ill.App.3d 119, 121, 608 N.E.2d 920, 922 (4th Dist. 1993). Only facts supported by evidence, and not mere conclusions of law, should be considered. Chevrie v. Gruesen, 208 Ill.App.3d 881, 883-84, 567 N.E.2d 629, 630-31 (2d Dist. 1991). If a respondent supplies sworn facts that, if uncontroverted, warrant judgment in its favor as a matter of law, a complainant may not rest on her pleadings to create a genuine issue of material fact. Fitzpatrick, 267 Ill.App.3d at 392, 642 N.E.2d at 490. Where the party's affidavits stand uncontroverted, the facts contained therein must be accepted as true and, therefore, a party's failure to file counter-affidavits in response is frequently fatal to her case. Rotzoll v. Overhead Door Corp., 289 Ill.App.3d 410, 418, 681 N.E.2d 156, 161 (4th Dist. 1997). Inasmuch as summary decision is a drastic means for resolving litigation, the movant's right to a summary decision must be clear and free from doubt. Purtill v. Hess, 111 Ill.2d 229, 240 (1986).

### Summary of Issues

Complainant is a transsexual, who presents and identifies as female, was and is denied access to Respondent's women's restroom at its store, both in her capacity as an employee and a customer. Complainant alleges such disparate treatment is contrary to the Act in terms and conditions of Complainant's employment and a denial of the full and equal enjoyment of a public accommodation.

Respondent contends the Act does not require it as an employer or as a public accommodation to permit Complainant, a transgender person, to use its store's restroom other than the one designated for her birth gender, male, or until she undergoes anatomical surgery.

### Act's Interpretation

"The Illinois Human Rights Act is remedial legislation that must be construed liberally to effectuate its purpose." Nuraoka v. Illinois Human Rights Commission, 252 Ill.App.3d 1039, 625 N.E.2d 251 (1<sup>st</sup> Dist. 1993) citing, Nielsen Co. v. Public Building Commission of Chicago, 81 Ill.2d 290, 410 N.E.2d 40 (1980).

A primary rule of statutory construction is to give effect to the words selected by the General Assembly and its intent. "No word or paragraph should be interpreted so as to be rendered meaningless." Boaden v. Illinois Department of Law Enforcement, 171 Ill.2d 230, 664 N.E.2d 61 (1996); Sangamon County Sheriff's Department v. Illinois Human Rights Commission et al., 233 Ill.2d 125, 908 N.E.2d 39, (2009), citing Wade v. City of North Chicago Police Pension Board, 226 Ill.2d 485, 877 N.E.2d 1011 (2008). The best indication of the legislature's intent is the language of the statute, which must be given its plain and ordinary meaning. Id., citing Cinkus v. Village of Stickney Municipal Officers Electoral Board, 228 Ill.2d 200, 886 N.E.2d 1011 (2008).

### Discrimination Defined

Section 1-102(A) of the Act provides that it is the "public policy" of this State to "secure for all individuals within Illinois the freedom from discrimination against any individual because

of his or her race, color, religion, sex, national origin, ancestry, age, order of protection status, marital status, physical or mental disability, military status, *sexual orientation*, or unfavorable discharge from military service in connection with employment, real estate transactions, access to financial credit, and the availability of public accommodations.” (Emphasis added.) <sup>1</sup>

Section 1-103 (O-1) of the Act defines “sexual orientation,” in pertinent part, as “gender related identity, whether or not traditionally associated with the person’s designated sex at birth.”

Section 2-102(A) of the Act provides it is a “civil rights violation” for “any employer ...to segregate...discipline ...terms, privileges or conditions of employment on the basis of unlawful discrimination ...”

Section 5-102 (A) of the Act provides it is a “civil rights violation” to “deny or refuse to another the full and equal enjoyment of the facilities... and services of any public place of accommodation.”

#### Statutory Interpretation

#### Article 2, Employment

Respondent’s first statutory argument is that the Act does not address whether a transgender employee has the right to use a restroom other than the restroom associated with the person’s sex at birth, “thus, leaving the matter to the employers’ discretion.” <sup>2</sup>

The opposite is correct; Article 2, employment, is meant to be broad with noted exceptions, which does not exclude the use of restrooms by transsexuals.

Respondent has not revealed any pertinent limitations of Section 2-102(A), Civil Rights Violations relating to Section 1-102(A), Freedom from Unlawful Discrimination or Section 1-103 (O-1), Sexual Orientation, in which sexual related identity is part. As read, sexual related

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<sup>1</sup> All of the statutory classes were purposely cited, as each are equally protected and enforced under the Act.

<sup>2</sup> Respondent cites an Article 5, Public Accommodation, clauses, Section 5/5-102(A) and 5/5-103(B) for its Article 2, Employment, argument; this statutory authority is misplaced.

identity is protected against all statutory employment civil rights violations, “whether or not traditionally associated with the person’s designated sex at birth.” *Id.*

There is no special treatment based on sexual orientation here, only the basic treatment of any employee. Section 1-101.1 of the Act. The basic right to use a restroom, as a term and condition of employment, is discussed below.

Significantly, Respondent failed to note that if the legislature wished to limit Article 2, it would have done so under Section 2-104, *Exemptions*. (Emphasis added.) It did not.

Therefore, an employee’s rights under sexual orientation, including sexual related identity, is broadly interpreted and protected against all listed civil rights violations. *Id.*

#### Article 5 – Public Accommodations

Complainant averred that she was both an employee and customer of Respondent, and that the women’s restroom was available to the general public. Respondent does not counter Complainants allegations, and they are accepted as true. Rotzoll, *supra*.

The interpretation of Article Five is limited to the facts of this case, and the issue before me.

Article 1, General Provisions and Definitions, relate to the entire Act. Thus, Section 1-102 (A), Freedom from Unlawful Discrimination; Section 1-103 (D), Civil Rights Violations; Section 1-103 (O), Sex; and Section 1-103 (O-1) Sexual Orientation, are pertinent to Article 5, Public Accommodation.

It has been established that Respondent is a statutory public accommodation and that it cannot “deny or refuse to another (customer) the full and equal enjoyment of the facilities, goods and services of any public place of accommodation.” Section 5-102 (A) Enjoyment of Facilities, Goods and Services.

However, Section 5-103 (B), Facilities Distinctly Private, sets out an exemption to an Article 5 civil rights violation. “Nothing in this Article shall apply to: Any facility, as to discrimination based on sex, which is distinctly private in nature such as restrooms, shower

rooms, bath houses, health clubs and other similar facilities for which the Department, in its rules and regulations, may grant exemption based on bona fide consideration of public policy.”

Respondent contends that being anatomically correct makes a female, as that was and is Respondent's prerequisite before Complainant could be able to use the women's restroom. However, absence of male genitalia does not make a female, as that could occur by illness or injury.

Moreover, enforcement of Respondent's approach is inherently problematic. Broad customer screening could prove difficult, whether by merely asking the customer if they were transsexual or using a version of “stop and frisk” prior to the facility's use.

Section 1-102(O) reads that “Sex means the status of being male or female.” However, the definition of sex must incorporate Section 1-103 (O-1), “gender related identity, whether or not traditionally associated with the person's designated sex at birth.” Thus, it is not relevant what the person's sex was at the time of birth. Sex relates to a person's sexual related identity, which is discussed below.

The same reasoning is used to dismiss the third condition of Respondent's prior to Complainant's use of its women's facility. Respondent required Complainant to change her birth certificate to reflect her current sexual identity. Complainant's birth gender is academic and is not relevant here.

#### Discrimination Standards – Sexual Identity

It is not necessary to discuss *prima facie* elements, as this is a rare case where there is no disagreement as to Respondent's action.

#### Direct Method of Proof

There are two methods for proving discrimination, direct and indirect. Sola v. Illinois Human Rights Commission, 316 Ill.App.3d 528, 736 N.E.2d 1150, (1<sup>st</sup> Dist. 2000).

Under the direct approach, Complainant must present sufficient evidence, direct or circumstantial, without reliance upon inference or presumption, to allow a trier of fact to decide

that her sexual related identity was a motivating factor in Respondent's alleged adverse act. Id. A review of what an employer did and/or said regarding a particular employment decision is required. Where there is direct evidence of discrimination, it is unnecessary to use the three-part analysis. Catherine Littlejohn and Wal-Mart Stores, IHRC, ALS No. 9929, November 4, 2009.

Direct evidence is unique as "it essentially requires an admission by the decision maker that his actions were based on the prohibited animus...." Davy Cady and Northeastern Illinois University, IHRC, ALS No. 10589, February 1, 2005, quoting Haywood v. Lucent Tech, Inc., 169 F. Supp.2d 890, 907 (N.D. Illinois 2001), citing Radue v. Kimberly Clark Corp., 219 F. 3d 612, 616 (7<sup>th</sup> Cir. 2000). (A notice for a teaching position required that candidates "need to be minority."); Melvin Osborne and Robert Boudreaux and Steve's Old Time Tap, IHRC, ALS No. S-11225, April 25, 2001. (The reason as to why complainants were directed to leave the tavern was based on race as they were told, "I own this place and you get your Black asses out of here.")

#### Analysis

The evidence in this case establishes that Respondent's decision forbidding Complainant access and use of its women's restroom violated the Act, under the direct method of proof. Respondent's motive for its decision was and is Complainant's sexual related identity, female, a decision that should have been made irrespective of her designated sex at birth, male. Respondent substantially relied on a prohibited factor in its decision. Lalvani v. Illinois Human Rights Commission, 324 Ill.App.3d 774, 755 N.E.2d 51 (1<sup>st</sup> Dist. 2001).

"There is no surer way to find out what the parties meant, than to see what they have done." Eric Sprinkle and Rivers Edge Complex, Inc., IHRC, ALS No. 10565, August 7, 2000, quoting Brooklyn Life Insurance Co. v. Dutcher, 95 U.S. 269, 273 (1877). In this case, the facts are straightforward.

It has been established that Complainant is a transgender woman, acknowledged as such by Respondent in both words and acts. By July 2010, Complainant had been an employee of Respondent for twelve years, and her transition from male to female was advanced and apparent, as she had physical characteristics in conformity with her gender identity.

In July 2010, after Complainant's discussion with the store's manager and as a result of it, Respondent changed Complainant's personnel records and benefits information to reflect her transition to female. Employees and employers referred to Complainant as "Meggan," her chosen female name, and she performed her assigned duties in feminine dress and makeup.

However, Complainant's request for access to Respondent's women's restroom in its store was denied. Instead, Respondent created its first precondition. It demanded from Complainant presentment of legal authority that would mandate it to allow a transgender person the use of a store's designated restroom different from that of the person's birth gender.

In response, Complainant submitted a copy of her court ordered name change, along with a driver's license and a social security card reflecting that change. Moreover, a written medical explanation and verification of her transition from Howard Brown Health Center was submitted, with its recommendation that Complainant be permitted to use Respondent's facility. Finally, a copy of the Illinois Human Rights Act was presented, along with other states' laws on the topic of sexual identity.

Respondent merely directed Complainant to its legal department. To this day, Complainant is being forced to use the restrooms available in other unrelated stores or, since January 2014, a "unisex" restroom. The prohibition is enforced by threat of employment discipline. For example, in February 2011, Complainant received a written warning because of her attempt to use the women's facility.

### Other Arguments

The totality of this order addresses the legal authority that mandates Respondent to grant Complainant access to its women's restroom both as employee and customer, but other arguments of significance also were raised.

Respondent added anatomical surgery to the list of preconditions it demanded of Complainant. However, nothing in the Act makes any surgical procedure a prerequisite for its protection of sexual related identity. Therefore, Respondent's unilateral surgical requirement is untenable.

Respondent also raised a concern about a woman employee expressing "discomfort" with Complainant being present in the women's restroom. However, a co-worker's discomfort cannot justify discriminatory terms and conditions of employment. The prejudices of co-workers or customers are part of what the Act was meant to prevent. Raintree Health Care Center v. Illinois Human Rights Commission, 173 Ill.2d 469, 672 N.E.2d 1136, (1996) and Eric Sprinkle and Rivers Edge Complex, Inc., IHRC, ALS No.10565, August 7, 2000, (HIV medical condition and loss of customers); Jack Haynes and City of Springfield, Office of Public Utilities, IHRC, ALS No. 7304 (S), April 3, 1998 (unwillingness to be supervised by a black man).

In 2014, Respondent built a "unisex" single use restroom for Complainant, which segregates only her because of her gender related identity, and perpetuates different treatment, contrary to the Act.<sup>3</sup>

Respondent's prohibition and/or segregation of Complainant to a "unisex" restroom is an adverse act and subjects her to different terms and conditions than similarly situated non-transgender employees. Access to restrooms, if available, is a major and basic condition of employment. DeClue v. Central Illinois Light Company, 223 F.3d 434 (7<sup>th</sup> Cir. 2000) and OSHA, Interpretation of 20 C.F.R. 1910.141 Section (c)(1)(i): Toilet Facilities (April 4, 1998)).

<sup>3</sup> However, the "unisex" restroom may resolve any concern by those who are allegedly uncomfortable by Complainant, by giving them the option of using it.

Therefore, I find that Respondent's decision to restrict Complainant's access to the women's restroom on account of her gender related identity violated the Act as it concerns both employment and public accommodation. I further find that the record contains direct evidence related to both counts of the complaints that the decision was based on the gender related identity of the Complainant.

#### RECOMMENDATION

Based upon the foregoing, there are no genuine issues of material fact and Complainant is entitled to a recommended order in her favor as a matter of law.

#### IT IS HEREBY ORDERED:

1. Respondent's motion for summary decision is denied;
2. Complainant's motion for summary decision is granted;
3. A status hearing is set for June 25, 2015, at 10:00 a.m. when a damages

hearing date will be set.

#### HUMAN RIGHTS COMMISSION

BY:   
WILLIAM J. BORAH  
ADMINISTRATIVE LAW JUDGE  
ADMINISTRATIVE LAW SECTION

ENTERED: May 15, 2015

ALS NO(S): 13-0060 (C)  
CHARGE NO(S): N/A  
EEOC NO (S): 2011CN2993,2011CP2994  
CASE NAME: SOMMERVILLE VS. HOBBY  
LOBBY STORES

**MEMORANDUM OF SERVICE**

The undersigned certified that on **May 19, 2015** she **re-served** a copy of the attached **RECOMMENDED LIABILITY DETERMINTAION** on each person named below by depositing the same in the U.S. mail box at **100 W. Randolph St., Suite 5-100, Chicago, Illinois**, properly posted for **FIRST CLASS MAIL**, addressed as follows:

Sonya Rosenberg  
Gray I. Mateo-Harris  
Neal, Gerber & Eisenberg LLP  
2 North LaSalle St., Suite 1700  
Chicago, IL. 60602

Jacob Meister  
Katherine Eder  
Jacob Meister & Associates  
2129 N. Western Avenue  
Chicago, IL. 60647

**INTER-OFFICE MAIL TO:**

Tomas Ramirez  
Staff Attorney  
Illinois Department of Human Rights  
100 W. Randolph St., Suite 10-100  
Chicago, IL. 60601

ALJ:



  
Signature

**JA506**

**Declaration of Luke C. Platzer**

**EXHIBIT AI**

**JA507**



## **Documenting Discrimination on the Basis of Sexual Orientation and Gender Identity in State Employment**

This report addresses whether there has been a widespread and persistent pattern of unconstitutional discrimination by state governments on the basis of sexual orientation and gender identity. This finding will support Congress in exercising its authority under Section 5 of the 14th amendment to provide a private right of action for damages under H.R. 3017, the Employment Non-Discrimination Act of 2009 (“ENDA”), to state government employees who have suffered discrimination.

This report is the result of research conducted during 2008 and 2009 by the Williams Institute.<sup>1</sup> In addition, ten different law firms assisted with the project, with offices and attorneys from across the country.<sup>2</sup> Also making contributions were scholars and experts from a number of academic disciplines, including history, political science, economics, sociology, and demography. The research resulted in a set of reports on employment law and discrimination on the basis of sexual orientation and gender identity for each of the fifty states, which are included as Appendices to this report. Based on these fifty state reports, plus additional studies conducted by the William Institute, literature reviews, and research projects conducted by the firms, we drafted and reviewed the following papers, presented here as a series of chapters summarizing the research findings. Based on this analysis, we conclude that:

- There is a widespread and persistent pattern of unconstitutional discrimination on the basis of sexual orientation and gender identity against state government employees;
- There is no meaningful difference in the pattern and scope of employment discrimination against LGBT people by state governments compared to the private sector and other public sector employers; and
- The list of documented examples that we have compiled far under-represents the actual prevalence of employment discrimination against LGBT people by state and local governments.

These conclusions are based on the following findings:

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<sup>1</sup> The principal co-investigators were Brad Sears, Executive Director of the Williams Institute, Professor Nan Hunter, Georgetown Law Center, and Christy Mallory, Williams Institute Law Fellow.

<sup>2</sup> Alston & Bird LLP, Bryan Cave LLP, Dewey & LeBeouff LLP, DLA Piper LLP, Irell & Manella LLP, Kirkland & Ellis LLP, Latham & Watkins LLP, Manatt, Phelps & Phillips, LLP, Mayer Brown LLP, O'Melveny & Myers LLP.

**State governments are the largest in employer in every state. There are over 400,000 LGBT state employees.**

- According to data from the 2007 American Community Survey, over 6.2 million Americans are state employees. In every state, the state government is the largest employer.
- Using data from the 2000 Census and the 2002 National Survey of Family Growth, in September 2009, the Williams Institute estimates that there are approximately 418,000 LGBT state government employees in the United States.
- There are also an estimated 585,000 local government employees, for a total of slightly more than 1 million state and local LGBT employees. There are just under 7 million LGBT private employees and just over 200,000 LGBT people working for the federal government.

**Courts and legal scholars have concluded that sexual orientation is not related to an individual's ability to contribute to society or perform in the workplace.**

- We document 15 federal and state courts and a number of legal scholars that have concluded that sexual orientation is not related to an individual's ability to contribute to society or perform in the workplace. Every court that has considered this criteria when determining whether sexual orientation is a suspect class has reached the same conclusion.
- For example, in 2008, the Connecticut Supreme Court found that “the characteristic that defines the members of this group—attraction to persons of the same sex—bears no logical relationship to their ability to perform in society, either in familial relations or otherwise as productive citizens.”<sup>3</sup>
- Similarly, in 2004, a justice on the Montana Supreme Court, found that “there is no evidence that gays and lesbians do not function as effectively in the workplace or that they contribute any less to society than do their heterosexual counterparts.”<sup>4</sup>

**When state employers discriminate against LGBT people in the workplace, a cluster of constitutional rights are implicated, including those protected by the Equal Protection Clause, the First Amendment, and the Due Process Clause.**

- **Courts have found that discrimination by state employers on the basis of sexual orientation violates the Equal Protection Clause. For example,**

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<sup>3</sup> *Id.* at 432.

<sup>4</sup> *Snetsinger v. Mont. Univ. Sys.*, 104 P.3d 445, 455-456 (Mont. 2004) (concurring opinion).

- A railroad ticket agent sued the Long Island Railroad, a state employer, for failing to address sexual orientation harassment in the workplace. In 2006, a U.S. District Court, relying on the U.S. Supreme Court's 1996 decision, *Romer v. Evans*,<sup>5</sup> denied the Railroad's summary judgment motion and found that adverse differential treatment of a gay employee in the absence of any legitimate policy justification would violate the Equal Protection Clause.<sup>6</sup> The ticket agent alleged that he was referred to by several people in the office as a "f\*\*\*\*\* faggot" and "a queer."
- In 2001, a lesbian brought an action against her former employer, a hospital district, for wrongful termination based on sexual orientation alleging state and federal equal protection clause violations. She and her immediate supervisor, Nan Miguel, were both terminated for opposing the hospital's discriminatory treatment of her. The director of the radiology department made several derogatory comments, including calling her a "f\*\*\*\*\* faggot" a "f\*\*\*\*\* dyke" and a "queer." The Washington Court of Appeals held that she had raised material issues of fact with respect to whether the hospital and the doctor were "state actors" for her federal claims and remanded the case for trial.<sup>7</sup> The hospital eventually settled with Davis for \$75,000.<sup>8</sup>
- In 1995, Justice Sotomayor, then a judge for the Southern District of New York, denied a motion to dismiss a case where the plaintiff had been fired from his job as a prison kitchen worker because he was gay. Criticizing the defendants' argument that removing the plaintiff was rationally related to preserving mess hall security, Sotomayor stated that a "person's sexual orientation, standing alone, does not reasonably, rationally or self-evidently implicate mess hall security." She also rejected the defendants' qualified immunity defense, stating that "the constitutional right not to be discriminated against for any reason, including sexual orientation, without a rational basis is an established proposition of law."<sup>9</sup>
- **Courts have also found that discrimination against LGBT people violates the Equal Protection Clause when employers engage in impermissible discrimination on the basis of sex and sex stereotyping. For example,**
  - A Legislative Editor for the Georgia General Assembly's Office of Legislative Counsel was fired after she was diagnosed with gender identity disorder and began appearing (upon a doctor's orders) at work as a woman prior to undergoing gender reassignment surgery. Since 2005, she had

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<sup>5</sup> 517 U.S. 620 (1996).

<sup>6</sup> *Pugliese v. Long Island Rail Road Co.*, 2006 WL 2689600 (Sept. 29, 2006 E.D.N.Y.).

<sup>7</sup> *Miguel v. Guess*, 112 Wn. App. 536, (Wash. Ct. App. 2002); *Miguel v. Guess*, 51 P.3d 89 (Wash. Ct. App. 2002).

<sup>8</sup> ACLU, *Following ACLU Lawsuit, Lesbian Illegally Fired from Washington Hospital Received Generous Settlement* (Oct. 8, 2003), <http://www.aclu.org/lgbt/discrim/12359prs20031008.html>.

<sup>9</sup> *Holmes v. Artuz*, 1995 WL 634995 (S.D.N.Y. Oct. 27, 1995).

been responsible for editing proposed legislation and resolutions for the Georgia Assembly. In 2009, in rejecting the state's motion to dismiss, a U.S. District Court ruled that the editor's complaint "clearly states a claim for denial of equal protection" under the 14<sup>th</sup> Amendment on alternative theories of discrimination on the basis of sex and a medical condition.<sup>10</sup> The court summarized the grounds for termination as, "In the view of Glenn's employers, gender transition surgery and presentation as a woman in the workplace would be seen as immoral... and would make other employees uncomfortable."<sup>11</sup> The court the held that "Unequal treatment fails even the most deferential equal protection review when the disadvantage imposed is born of animosity toward the class of persons affected," quoting the Supreme Court's opinion in *Romer v. Evans*<sup>12, 13</sup>.

- Two 16-year-old twin brothers who were subject to "a relentless campaign of harassment by their male co-workers," sued the city they were working for, alleging intentional sex discrimination.<sup>14</sup> The plaintiffs alleged that their harassment included being called "queer" and "fag," comments such as, "[a]re you a boy or a girl?" and talk of "being taken 'out to the woods'" for sexual purposes. One plaintiff wore an earring and was subject to more ridicule than his brother, and was once asked whether his brother had passed a case of poison ivy to him through intercourse. The verbal taunting turned physical when a co-worker grabbed one of the plaintiff's genitals to determine "if he was a girl or a boy." When the plaintiffs failed to return to work, supervisors terminated their employment. The Seventh Circuit noted that "a homophobic epithet like 'fag,' ... may be as much of a disparagement of a man's perceived effeminate qualities as it is of his perceived sexual orientation." The court found that a "because of" nexus between the allegedly proscribed conduct and the victim's gender could be inferred "from the harassers' evident belief that in wearing an earring, [the brother] did not conform to male standards."<sup>15</sup>
- A housing and nuisance inspector for the Bureau of Development Services of Portland settled her lawsuit based on sexual orientation and sex stereotyping harassment for \$150,000 after her Title VII claim survived summary judgment in a U.S. District Court.<sup>16</sup> At work, she did not wear makeup, had short hair and wore men's clothing. Her supervisors made

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<sup>10</sup> *Glenn v. Brumby*, 2009 U.S. Dist. LEXIS 54768 (N.D. Ga. 2009).

<sup>11</sup> *Id.*

<sup>12</sup> *Romer v. Evans*, 517 U.S. 620 (1996).

<sup>13</sup> *Glenn*, 2009 U.S. Dist. LEXIS 54768.

<sup>14</sup> *Doe v. City of Belleville*, 119 F.3d 563 (7th Cir. 1997), *vacated*, 523 U.S. 1001 (1998). The U.S. Supreme Court vacated and remanded to the Seventh Circuit for further consideration in light of *Oncale v. Sundowner Offshore Services* *Oncale v. Sundowner Offshore Services*, 523 U.S. 75 (1998) (holding that same-sex sexual harassment is actionable under Title VII).

<sup>15</sup> *Id.*

<sup>16</sup> LESBIAN & GAY L. NOTES (Dec. 2004), *available at* <http://www.qrd.org/qrd/usa/legal/lgl/12.04>.

remarks such as that her shirt looked “like something her father would wear” and “are you tired of people treating you like a bull dyke[?]” She also alleged her co-workers harassed her, calling her a “bitch,” saying loudly that they were “surrounded by all these fags at work,” and asking her “would a woman wear a man’s shoes?” In holding for the inspector, the court noted that, for the purpose of Title VII analysis, it was irrelevant whether or not the harassers were motivated by plaintiff’s sexual orientation, as sexual orientation, alone, is not actionable under Title VII. However, the court held that gender stereotyping “constitutes actionable harassment.”<sup>17</sup>

- **Courts have held in a number of cases that discrimination against LGBT public employees has also infringed on the First Amendment rights of expression and association. For example,**
  - In 2007, a volleyball coach was awarded \$5.85 million in damages in her discrimination suit against Fresno State University after the University refused to renew her contract. The coach had alleged that this was a result of her advocacy of gender equity in the funding of women’s sports as well as her perceived sexual orientation.<sup>18</sup>
  - Paul Scarbrough, a director/superintendent of schools for the Morgan County School Board, was not selected to continue in his position because of the public outrage that resulted after he was invited to speak at a convention hosted by a church with predominantly gay and lesbian members. At the time, Scarbrough was unaware that the church had a predominately gay and lesbian congregation. He was ultimately unable to accept the invitation, however, approximately a month later, a newspaper published an article announcing—incorrectly—that he would be a speaker at the convention. After this article ran, school board members began receiving criticisms regarding him. In response, he provided written statements to two newspapers explaining the inaccuracies of the article and noting that he did not endorse homosexuality, but he would not refuse to associate with LGBT people. When Scarbrough was then not selected by the school board to continue as Superintendent/Director, he sued and won a judgment from the U.S. Court of Appeals for the Sixth Circuit.<sup>19</sup>
- **In addition, some of the examples of discrimination include cases where employees Due Process Rights are violated, both their right to adequate procedures prior to being terminated, and substantive due process rights of liberty in intimate association and privacy recognized by the Supreme Court in *Lawrence v. Texas*.**

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<sup>17</sup> *Fischer v. City of Portland*, 2004 U.S. Dist. LEXIS 20453 (D. Or. 2004).

<sup>18</sup> LESBIAN & GAY L. NOTES (Summer 2007).

<sup>19</sup> *Scarbrough v. Morgan County Bd of Educ.*, 470 F.3d 250 (6th Cir. 2007).

- A state employee of a community college in Delaware was fired on the basis of a same-sex sexual harassment claim. He filed suit alleging he was denied a proper pre-termination hearing on the charges. A jury awarded that he be reinstated to his teaching position and \$134,081 in back pay.<sup>20</sup>
- In 1995, an applicant for police department job filed a right to privacy action against a police official. She alleged that during her application for a job as a police officer, she was asked, "What exactly are your sexual practices and preferences?" The District Court held that such inquiries had, indeed, violated her right to privacy, but that the police official was entitled to qualified immunity. On appeal, the Second Circuit reasoned that since the conduct had occurred in 1995, a reasonable official would not have known the conduct was constitutionally proscribed.<sup>21</sup>
- An administrator of the City of Petersburg's Community Diversion Incentive Program was fired in 1986 for refusing to answer questions about her sexual orientation as part of a city background check. She had already been in her position for three years when asked to complete the questionnaire. When she refused, she was suspended but then reinstated because the City Manager determined that her position did not require a background check. However, at the same time he changed city policy to require her to have one. When she again refused, she was terminated. In 1990, the 4<sup>th</sup> Circuit relied upon *Bowers v. Hardwick* in holding that she had no right to privacy with respect to this information although it did note that the relevance of this information was "uncertain".<sup>[9]</sup> In 2003, the United States Supreme Court held that *Bowers v. Hardwick* was wrong when it was decided in 1986.<sup>22</sup>

**Beginning with purges of thousands of LGBT employees from public employment in the 1950s and 60s, LGBT people have experienced a long history of explicit and pervasive discrimination by federal, state, and local government employers. Moreover, state laws, including sodomy laws and morality requirements for state-issued occupational licenses, provided the basis for extensive discrimination against LGBT employees in the public and private sectors.**

- The “Lavender Scare” was a part of the anti-communist campaigns during the 1950s and 60s, during which the federal government fired thousands of LGBT federal employees and denied jobs to tens of thousands of more. For example, the State Department dismissed over twice as many employees for being suspected homosexuals as being suspected communists. During this period, the “loyalty oaths” required by the federal government of all employees and contractors, which included questions about homosexuality, spread to state,

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<sup>20</sup> *McDaniels v. Delaware County Cmty. Coll.*, 1994 WL 675292 (E.D. Pa. Nov. 21, 1994).

<sup>21</sup> *Eglise v. Culpin*, 2000 WL 232798, at \*1 (2d Cir. Feb. 28, 2000).

<sup>22</sup> *Walls v. City of Petersburg*, 895 F.2d 188 (4th Cir. 1990).

local, and private employers, eventually impacting as much as 20% of the U.S. workforce.

- Federal agencies could deny LGBT people employment until 1975, when the Civil Service Commission issued guidelines prohibiting sexual orientation, but not gender identity, discrimination. Federal agencies still had policies of denying security clearance to LGBT people until the 1990s. The Department of Defense, the Secret Service, and the FBI still had discriminatory security clearance policies until 1995, when President Clinton issued an Executive Order barring the federal government from denying security clearance simply on the basis of sexual orientation.
- Purges of state and local public employees during the 1950s and 1960s, similar to the Lavender Scare, have been documented across the country, including in California, Florida, Idaho, Iowa, Oklahoma, Massachusetts, North Carolina, and Texas. For example, beginning in 1958, a Florida legislative investigation committee known as the “Johns Committee,” interrogated 320 suspected gay men and lesbians over a five year period. Countless state employees, teachers, hospital workers, and others lost their jobs as a result. Near the end of its tenure, the Johns Committee announced that it had revoked seventy-one teachers’ certificates with sixty-three more cases pending; fourteen professors had been removed from state universities with nineteen cases pending; and thirty-seven federal employees had lost their jobs, while fourteen state employees faced removal in pending cases. State laws and policies explicitly prohibiting LGBT people from public employment continued in some states until the 1990s, including in Oklahoma, New York, South Carolina, and West Virginia.
- State sodomy laws were also used to deny jobs to LGBT employees in the public and private sector. The mere potential that an applicant or employee could violate a state sodomy statute was sufficient grounds to deny employment. The substantial obstacle that state sodomy laws created for LGBT people in obtaining employment was recognized by the Supreme Court in *Lawrence v. Texas*, when it overturned the remaining sodomy laws in the United States. This direct burden that state sodomy laws placed on employment opportunities for LGBT people was also recognized by the highest courts in Arkansas, Maryland, Massachusetts, Minnesota, Montana, and Tennessee when they overturned state sodomy laws.
- One of the areas where sodomy laws presented almost insurmountable barriers to openly LGBT people in public employment was law enforcement. Federal, state and local law enforcement agencies adopted policies stating that it was incompatible for LGBT people, as actual or potential felons, to serve in law enforcement. Explicit discriminatory policies ranged from those in Dallas, Texas successfully challenged in the 1980s and 90s to a policy prohibiting employment of officers in Puerto Rico who even associated with homosexuals

that was not overturned until 2001. The legacy of this history of discrimination is clearly demonstrated in Chapter 12 of this report. Over 40% of the almost 400 examples of discrimination against state and local employees presented in Chapter 12 involve law enforcement and corrections officers.

- Morality requirements for state-issued occupational licenses also provided a substantial barrier to LGBT people in public and private employment. Under these requirements, set by state law, LGBT people in dozens of professions, ranging from lawyers, teachers, and doctors to pilots, realtors, and hairdressers, were considered immoral and had their licenses either denied or revoked. This form of discrimination had a disproportionate impact on public employees: a 2006 survey revealed that over 40% of public employees in the United States are in professions requiring professional licenses.
- One sector where discrimination in state-issued occupational licenses has had the biggest impact is education. Explicit state laws or policy statements that LGBT people could not receive state teaching credentials date from those of California and Florida in the 1950s to a West Virginia Attorney General Opinion in 1983 stating that that homosexual teachers were “immoral” and an Oklahoma law barring LGBT people from teaching that was not repealed until 1989. The legacy of this form of discrimination is also clearly demonstrated in Chapter 12: over 27% of the almost 400 documented examples of discrimination involve employees of public schools and universities.

**Courts have unanimously found that LGBT people have experienced a long history of discrimination.**

- Every state and federal court that has substantively considered whether sexual orientation is a suspect class has held that LGBT people have faced a long history of discrimination. In addition, dozens of legal scholars have reached the same conclusion. In making these determinations, many of these courts and scholars have explicitly considered employment discrimination by public employers, including state, local, and federal government employers.
- Judicial opinions from appellate courts in seven states - including six of those states’ highest courts - have all agreed that LGBT people have faced a long history of discrimination, no matter how they ultimately ruled on whether sexual orientation is a suspect classification.
- For example, in 2008, Maryland’s highest court found that “[h]omosexual persons have been the object of societal prejudice by private actors as well as by the judicial and legislative branches of federal and state governments”<sup>23</sup>

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<sup>23</sup> *Conaway v. Deane*, 932 A.2d 571, 609 (Md. 2007).

and that “homosexual persons, at least in terms of contemporary history, have been a disfavored group in both public and private spheres of our society.”<sup>24</sup>

- Similarly, in 1995, the Sixth Circuit concluded, “Homosexuals have suffered a history of pervasive irrational and invidious discrimination in government and private employment, in political organization and in all facets of society in general, based on their sexual orientation.”<sup>25</sup>

**Based on their own research, many state and local government officials have also concluded that LGBT people have faced widespread discrimination in public employment.**

- A number of state and local elected officials, legislative bodies, and special commissions have issued findings of widespread discrimination against LGBT people in their jurisdictions, including discrimination in public employment. We document 29 examples of such findings from 17 different states.
- For example, in May 2007 when the governor of Ohio issued an executive order prohibiting discrimination in state employment based on sexual orientation and/or gender identity,<sup>26</sup> the order included the finding that the “[i]nformation compiled by the Ohio Civil Rights Commission documents ongoing and past discrimination on the basis of sexual orientation and/or gender identity in employment-related decisions by personnel at Ohio agencies, boards and commissions.”
- Similarly, when the governor of Alaska issued an administrative order in 2002 prohibiting sexual orientation discrimination in state employment,<sup>27</sup> the order stated that it was “in recognition of the findings concerning perceived institutional intolerance in state agencies set out in the final report of the Governor’s Commission on Tolerance.”<sup>28</sup>
- And when the governor of Oregon issued an executive order in 1988 prohibiting sexual orientation discrimination, it was accompanied by a statement that, “Although existing law may require equality in state employment or services, some homosexual employees or applicants for state services are afraid to assert their rights because they fear discrimination if they make their sexual orientation public. This order is intended to reduce that fear

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<sup>24</sup> *Id.* at 610.

<sup>25</sup> *Equal. Found. of Greater Cincinnati v. City of Cincinnati*, 54 F.3d 261, 264 n.1 (6th Cir. 1995) (quoting trial court findings), *rev’d and vacated by* 54 F.3d 261 (6<sup>th</sup> Cir. 1995), *cert. granted, judgment vacated*, 518 U.S. 1001 (1996).

<sup>26</sup> Ohio Exec. Order No. 2007-10S (May 17, 2007), *available at* <http://www.wright.edu/admin/affirm/ExecutiveOrder2007-10S.html> (last visited Feb. 1, 2009).

<sup>27</sup> Alaska Admin. Order No. 195 (Mar. 5, 2002), *available at* <http://gov.state.ak.us/admin-orders/195.html> (last visited Sept. 21, 2009).

<sup>28</sup> *Id.*

by making it clear that the Governor expects state officials and agencies not to discriminate.”<sup>29</sup>

**For the past fifteen years, Congress has consistently reviewed evidence of employment discrimination by public employers when considering ENDA.**

- Direct victims of such discrimination have testified at Congressional hearings; legal scholars have presented specific cases and scholarship on the history of such discrimination; social scientists have presented survey data documenting such discrimination; LGBT rights organizations have submitted reports and expert testimony documenting such discrimination; and members of Congress have shared specific examples and spoken more generally about such discrimination.
- In total, over 67 specific examples of employment discrimination on the basis of sexual orientation or gender identity by public employers have been presented to Congress from 1994 to 2007, including discrimination involving 13 state employees, 28 local employees, and 26 federal employees.

**On surveys, LGBT public employees consistently report high rates of discrimination and harassment in the workplace.**

- We reviewed studies documenting over 80 surveys of LGBT employees about their experiences of discrimination that either were conducted with just public employees, or where a substantial portion of those surveyed were public employees. The majority of these surveys were conducted with just LGBT employees of state governments.
- These surveys provide compelling evidence that discrimination against LGBT state government employees, as well as other public sector workers, is serious, pervasive and continuing. They also indicate that the patterns and level of employment discrimination based on sexual orientation and gender identity by state employers is similar to that of private employers. Examples include:
  - One in five LGB public sector employees in the 2008 General Social Survey reported being discriminated against on the basis of their sexual orientation.
  - A 2009 survey of over 640 transgender employees, 11% of whom were public employees, found that 70% reported experiencing workplace discrimination on the basis of gender identity.

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<sup>29</sup> Or. Exec. Order No. EO-87-20 (Feb. 12, 1988), *available at* <http://extension.oregonstate.edu/internal/sites/default/files/documents/civil-rights/EO-87-20.pdf> (last visited Sept. 21, 2009).

- A 2009 survey of more than 1,900 LGBT employees of state university systems nationwide found that more than 13% had experienced discriminatory treatment or harassment *during the past year alone*.
- In a 2009 survey of LGBT public safety officers published in *Police Quarterly*, 22% reported experiencing discrimination in promotions, 13% in hiring, and 2% reported being fired because of their sexual orientation or gender identity.
- A 2008 Out & Equal survey reported that 36% of lesbians and gay men were closeted at work.

**Analysis of the wages of LGB employees compared with heterosexual employees provides further evidence of discrimination in the public sector.**

- If, after controlling for factors significant for determining wages such as education, a wage gap exists between people who have different personal characteristics, such as sexual orientation, economists typically conclude that the most likely reason for the wage gap is discrimination. More than twelve studies have shown a significant wage gap, ranging from 10% to 32%, for gay men when compared to heterosexual men.
- Two recent studies have found similar wage gaps when looking just at public employees. Together, the studies find that LGB government employees earn 8% to 29% less than their heterosexual counterparts.
- One of these studies finds that men in same-sex couples who are state employees earn 8% to 10% less than their married heterosexual counterparts.
- These studies of wages suggest that sexual orientation discrimination in state government is similar to that in the private sector and other public employment.

**Complaints filed with administrative agencies also document a widespread and persistent pattern of discrimination against LGBT people by state and local government employers.**

- During 2009, the Williams Institute collected data about complaints from state and local administrative agencies charged with enforcing prohibitions against sexual orientation and gender identity discrimination. Although we requested data from 20 state and 203 local agencies, many did not respond, even after repeated requests.

- The agencies that did respond provided us with 430 administrative complaints of sexual orientation and gender identity discrimination by state and local employers between 1999 and 2007 from 18 different states.
- Although not all states could provide us with data distinguishing between state and local government defendants, at least 265 of these were filed by employees of state government agencies.
- Five states provided us information about the dispositions of the claims made by state employees. For four of these states, the combined rate of positive administrative outcomes for the complaints, such as findings of probable cause of discrimination or settlements, averaged 30%. For the fifth state, California, 61% of complainants sought an immediate right to sue letter, which often indicates they have already found counsel to take their cases to court. A review of the dispositions of complaints made to local enforcement agencies found a similar rate of favorable outcomes (23%).
- Scholarship shows that the number of administrative filings most likely significantly under-represents the frequency of employment discrimination experienced by LGBT state and local workers. Several academic studies demonstrate that state and local administrative agencies often lack the resources, knowledge, enforcement mechanisms and willingness to accept sexual orientation and/or gender identity discrimination complaints.
- Supporting this scholarship, of the 36 city and county agencies that responded to the 2009 Williams Institute study with data, two incorrectly referred such complainants to the United States Equal Employment Opportunity Commission even though no federal law prohibits sexual orientation discrimination, one incorrectly said the city did not prohibit such discrimination, one incorrectly said there was no administrative enforcement mechanism for such complaints, five said they did not have the resources to enforce such claims and referred callers to their state administrative agency, and three said they lacked the resources to provide the requested data.

**There are over 380 documented examples of employment discrimination on the basis of sexual orientation and gender identity by state and local employers, 1980 to the present.**

- We compiled a set of documented examples of discrimination based on sexual orientation and gender identity from court opinions, administrative complaints, complaints to community-based organizations, academic journals, newspapers and other media, and books.
- This record demonstrates that discrimination is widespread in terms of quantity, geography, and occupations. The quantity compares favorably to

that of past records of public employment discrimination supporting civil rights legislation, particularly so in light of the size of the LGBT workforce.

- Geographically, the examples reach into every state except North Dakota, which has a small state population and state government workforce. The LGBT public employees discriminated against work for every branch of state government: legislatures, judiciaries, and the executive branch.
- In many of these cases, courts have found violations of rights to equal protection, free expression, and privacy, as well as the impermissible use of sex stereotypes. There are also cases where plaintiffs lose because judges rule that, in the absence a law like ENDA, state and federal law do not provide a remedy.
- In none of these cases do employers assert that sexual orientation or gender identity impacts an employee's performance in the workplace. To the contrary, among the examples are many public servants have received awards, commendations, and excellent work evaluations.
- The irrationality of this discrimination is vividly indicated by the harassment that many of these workers have been subjected to. Here is a very limited sense of what they are called in the workplace: an officer at a state correctional facility in New York, "pervert" and "homo;" a lab technician at a state hospital in Washington, a "dyke;" an employee of New Mexico's Juvenile Justice System, a "queer." There are countless examples of the use of the words "fag" and "faggot" in the report.
- The examples of workplace harassment also frequently include physical violence. For example, a gay employee of the Connecticut State Maintenance Department was tied up by his hands and feet; a firefighter in California had urine put in her mouthwash; a transgender corrections officer in New Hampshire was slammed into a concrete wall; and a transgender librarian at a college in Oklahoma had a flyer circulated about her that said God wanted her to die. Frequently, when employees complain about this kind of harassment, they are often told that it is of their own making, and no action is taken.
- These 380-plus documented examples should in no way be taken as a complete record of discrimination against LGBT people by state and local governments. Based on our research, and on other scholarship, we have concluded that these examples represent just a fraction of the actual discrimination.
  - First, our record does not even completely capture all of the documented instances. For example, of the twenty state enforcement agencies we contacted, only six made available redacted complaints

for us to review. Moreover, 117 of the local agencies never provided any type of response to our requests.

- Second, as noted above, several academic studies have shown that state and local administrative agencies often lack the resources, knowledge and willingness to consider sexual orientation and gender identity discrimination complaints. Similarly, legal scholars have noted that courts and judges have often been unreceptive to LGBT plaintiffs and reluctant to write published opinions about them, reducing the number of court opinions and administrative complaints that we would expect to find.
- Third, many cases settle before an administrative complaint or court case is filed. Unless the parties want the settlement to be public, and the settlement is for a large amount, it is likely to go unreported in the media or academic journals.
- Fourth, LGBT employees are often reluctant to pursue claims for fear of retaliation or of outing themselves further in their workplace. For example, in a study published this month by the Transgender Law Center, only 15% of those who reported that they had experienced some form of discrimination had filed a complaint.
- Finally, and perhaps most important, numerous studies have documented that as many one-third of LGBT people are not out in the workplace. They try to avoid discrimination by hiding who they are.

**Statements by some state and local government officials provide further evidence of animus towards LGBT people.**

- The Supreme Court has recognized that irrational discrimination is often signaled by indicators of bias, and bias is unacceptable as a substitute for legitimate governmental interests.<sup>30</sup> As Justice O'Connor stated in her concurring opinion in *Lawrence v. Texas*, 539 U.S. 558, 580-82 (2003): "We have consistently held...that some objectives, such as "a bare...desire to harm a politically unpopular group," are not legitimate state interests. ... Moral disapproval of this group [homosexuals], like a bare desire to harm the group, is an interest that is insufficient to satisfy rational basis review under the Equal Protection Clause."
- Drawing from the 50 state reports attached, we document comments made by state legislators, governors, judges, and other state and local policy makers and officials which reflect animus towards LGBT people.

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<sup>30</sup> *Board of Trustees of the University of Alabama v. Garrett*, 531 U.S. 356, 367 (2001).

- These include statements that LGBT people are mentally ill, pedophiles, wealthy, terrorists, Nazis, condemned by God, immoral, and unhealthy. Often, these statements are made while the speakers are opposing state or local laws that would prohibit discrimination on the bases of sexual orientation and gender identity or endorsing laws to repeal or prevent the enactment of such protections.
- Such statements are likely to both deter LGBT people from seeking state and local government employment, and cause them to be closeted if they are employed by public agencies. In addition, these statements often serve as indicia of why laws extending legal protections to LGBT people are opposed or repealed.

**Over 120 ballot measures have sought to repeal or prevent laws prohibiting discrimination on the basis of sexual orientation or gender identity.**

- One marker of the animus directed towards LGBT Americans is the proliferation of attempts to use state and local ballot measures to repeal or preclude protection against employment discrimination based on sexual orientation or gender identity. In this analysis we do not include ballot measures to repeal or prevent the extension of marriage to same-sex couples.
- Ballot initiatives aimed at preventing the LGBT population from gaining legal protection from discrimination in the workplace began as attempts to repeal specific legislation or executive orders. Over time, an increasing number of these campaigns have attempted to block future laws to prohibit discrimination.
- Updating prior scholarship, we documented 120 such ballot measures from 1974 to 2009. Most of these, 92, were at the local level, with 28 at the state level. While the ballot measures were proposed in eighteen different states, most were in Oregon, Michigan, Maine, Washington, Florida, and California.
- One hundred and fifteen of these measures sought to repeal prohibitions of discrimination against LGBT people, prevent or inhibit such prohibitions from being passed, or even mandate discriminatory or stigmatizing treatment of LGBT people. Of these ballot measures, 50% passed.
- In 1996, the United States Supreme Court declared unconstitutional Colorado's Amendment 2, which would have repealed several local anti-discrimination laws in the state and two statewide protections and made the passage of such protections in the future require another amendment to the Colorado constitution. Writing for the Court in *Romer v. Evans*, Justice Kennedy stated that the amendment's "sheer breadth is so discontinuous with the reasons offered for it that the amendment seems inexplicable by anything but animus toward the class that it affects; it lacks a rational relationship to

legitimate state interests.”<sup>31</sup> He concluded that it was “a denial of equal protection of the laws in the most literal sense.”<sup>32</sup> Thus, in the Court's opinion, Amendment 2's scope was too expansive to rationally relate to any acceptable state purpose.<sup>33</sup>

- Since the Supreme Court decision in 1996, there have been nearly two dozen such initiatives introduced around the country, with the latest occurring in Gainesville, Florida, in February 2009.

**State statutes and executive orders do not adequately address employment discrimination against state employees on the basis of sexual orientation and gender identity.**

- Twenty-nine states do not have anti-discrimination statutes that prohibit sexual orientation discrimination, and 38 do not have statutes that explicitly prohibit gender identity discrimination.
- Of the states that do have anti-discrimination statutes that prohibit discrimination on these bases:
  - Three do not prohibit discrimination on the basis of *perceived* sexual orientation;
  - Five either do not provide for compensatory damages or subject such damages to caps that are lower than ENDA's; and
  - Five do not provide for attorney's fee's, and another five only provide for them if the employee files a court action as opposed to an administrative action.
- In 10 other states that do not offer statutory protection for sexual orientation or gender identity, gubernatorial executive orders prohibit discrimination on either or both bases against state employees. However, these orders provide little enforcement opportunities and lack permanency:
  - None of these orders provide for a private right of action;
  - Only 6 confer any power to actually investigate complaints; and
  - Executive orders in Kentucky, Louisiana, Iowa, and Ohio have been in flux during the last 15 years and the constitutionality of Virginia's is currently in dispute.

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<sup>31</sup> *Id.* at 632.

<sup>32</sup> *Romer v. Evans*, 517 U.S. 620, 633 (1996).

<sup>33</sup> *Id.*

**Declaration of Luke C. Platzer**

**EXHIBIT AJ**

**JA524**



# Injustice at Every Turn

A Report of the National Transgender Discrimination Survey

*Lead authors in alphabetical order:*

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**JA525**

# EXECUTIVE SUMMARY

This study brings to light what is both patently obvious and far too often dismissed from the human rights agenda. Transgender and gender non-conforming people face injustice at every turn: in childhood homes, in school systems that promise to shelter and educate, in harsh and exclusionary workplaces, at the grocery store, the hotel front desk, in doctors' offices and emergency rooms, before judges and at the hands of landlords, police officers, health care workers and other service providers.

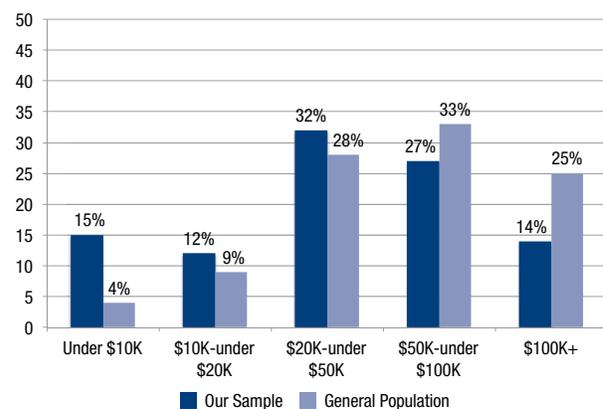
The National Gay and Lesbian Task Force and the National Center for Transgender Equality are grateful to each of the 6,450 transgender and gender non-conforming study participants who took the time and energy to answer questions about the depth and breadth of injustice in their lives. A diverse set of people, from all 50 states, the District of Columbia, Puerto Rico, Guam and the U.S. Virgin Islands, completed online or paper surveys. This tremendous gift has created the first 360-degree picture of discrimination against transgender and gender non-conforming people in the U.S. and provides critical data points for policymakers, community activists and legal advocates to confront the appalling realities documented here and press the case for equity and justice.

## KEY FINDINGS

Hundreds of dramatic findings on the impact of anti-transgender bias are presented in this report. In many cases, a series of bias-related events lead to insurmountable challenges and devastating outcomes for study participants. Several meta-findings are worth noting from the outset:

- Discrimination was pervasive throughout the entire sample, yet **the combination of anti-transgender bias and persistent, structural racism was especially devastating**. People of color in general fare worse than white participants across the board, with African American transgender respondents faring worse than all others in many areas examined.
- Respondents **lived in extreme poverty**. Our sample was nearly four times more likely to have a household income of less than \$10,000/year compared to the general population.<sup>1</sup>
- A staggering **41% of respondents reported attempting suicide** compared to 1.6% of the general population,<sup>2</sup> with rates rising for those who lost a job due to bias (55%), were harassed/bullied in school (51%), had low household income, or were the victim of physical assault (61%) or sexual assault (64%).

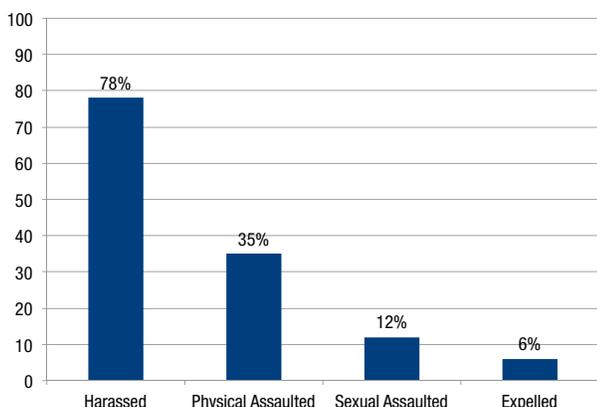
Household Incomes of Respondents<sup>3</sup>



**HARASSMENT AND DISCRIMINATION IN EDUCATION**

- Those who expressed a transgender identity or gender non-conformity while in grades K-12 reported **alarming rates of harassment (78%), physical assault (35%) and sexual violence (12%)**; harassment was so severe that it led **almost one-sixth (15%) to leave a school** in K-12 settings or in higher education.
- Respondents who have been **harassed and abused by teachers** in K-12 settings showed dramatically worse health and other outcomes than those who did not experience such abuse. Peer harassment and abuse also had highly damaging effects.

Harassment, Assault and Discrimination in K-12 Settings



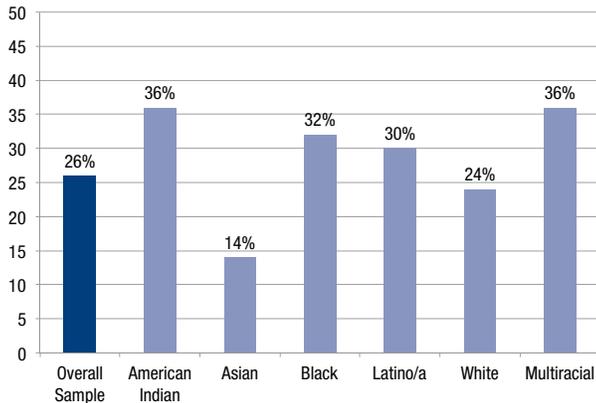
Respondents Income by Mistreatment in School<sup>4</sup>

	General Population	No school mistreatment	Mistreated in school
Under \$10K	4%	12%	21%
\$10K - under \$20K	9%	11%	15%
\$20K - under \$50K	28%	31%	33%
\$50k - under \$100k	33%	30%	21%
\$100k+	25%	16%	9%

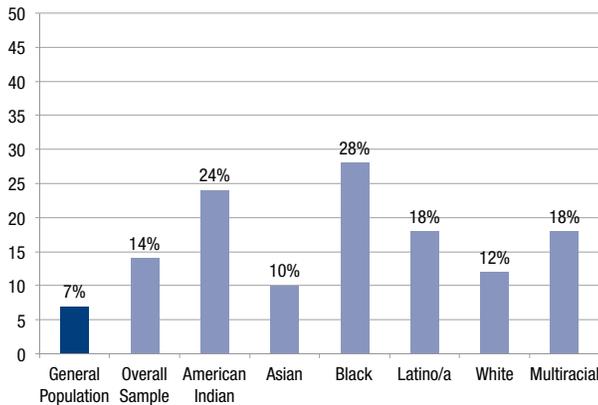
**EMPLOYMENT DISCRIMINATION AND ECONOMIC INSECURITY**

- **Double the rate of unemployment:** Survey respondents experienced unemployment at twice the rate of the general population at the time of the survey,<sup>5</sup> with rates for people of color up to four times the national unemployment rate.
- Widespread mistreatment at work: **Ninety percent (90%) of those surveyed reported experiencing harassment, mistreatment or discrimination** on the job or took actions like hiding who they are to avoid it.
- Forty-seven percent (47%) said they had experienced an adverse job outcome, such as **being fired, not hired or denied a promotion** because of being transgender or gender non-conforming.
- **Over one-quarter (26%) reported that they had lost a job** due to being transgender or gender non-conforming and 50% were harassed.
- Large majorities attempted to avoid discrimination by **hiding their gender or gender transition (71%)** or delaying their gender transition (57%).
- The **vast majority (78%)** of those who transitioned from one gender to the other reported that they **felt more comfortable at work and their job performance improved**, despite high levels of mistreatment.
- Overall, **16% said they had been compelled to work in the underground economy** for income (such as doing sex work or selling drugs).
- **Respondents who were currently unemployed experienced debilitating negative outcomes**, including nearly double the rate of working in the underground economy (such as doing sex work or selling drugs), twice the homelessness, 85% more incarceration, and more negative health outcomes, such as more than double the HIV infection rate and nearly double the rate of current drinking or drug misuse to cope with mistreatment, compared to those who were employed.
- **Respondents who had lost a job due to bias also experienced ruinous consequences such as four times the rate of homelessness**, 70% more current drinking or misuse of drugs to cope with mistreatment, 85% more incarceration, more than double the rate working in the underground economy, and more than double the HIV infection rate, compared to those who did not lose a job due to bias.

Loss of Job by Race



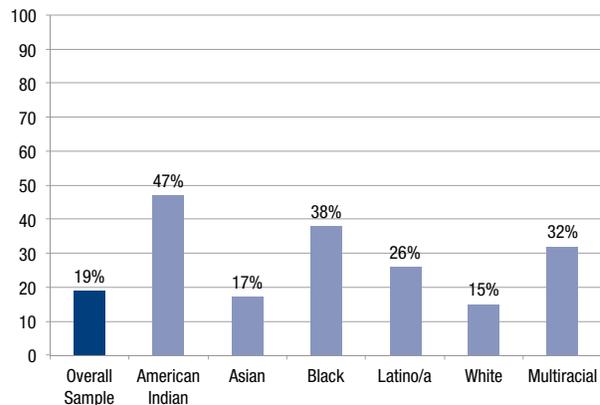
Unemployment Rates including by Race



**HOUSING DISCRIMINATION AND HOMELESSNESS**

- Respondents reported various forms of direct housing discrimination — **19% reported having been refused a home or apartment** and 11% reported being evicted because of their gender identity/expression.
- **One-fifth (19%) reported experiencing homelessness** at some point in their lives because they were transgender or gender non-conforming; **the majority of those trying to access a homeless shelter were harassed by shelter staff or residents (55%), 29% were turned away altogether,** and 22% were sexually assaulted by residents or staff.
- **Almost 2% of respondents were currently homeless,** which is almost twice the rate of the general population (1%).<sup>6</sup>
- Respondents reported **less than half the national rate of home ownership:** 32% reported owning their home compared to 67% of the general population.<sup>7</sup>
- **Respondents who have experienced homelessness were highly vulnerable** to mistreatment in public settings, police abuse and negative health outcomes.

“I was denied a home/apartment” by Race



**DISCRIMINATION IN PUBLIC ACCOMMODATIONS**

- **Fifty-three percent (53%) of respondents reported being verbally harassed or disrespected in a place of public accommodation**, including hotels, restaurants, buses, airports and government agencies.
- Respondents experienced widespread abuse in the public sector, and were often abused at the hands of “helping” professionals and government officials. **One fifth (22%) were denied equal treatment by a government agency or official**; 29% reported police harassment or disrespect; and 12% had been denied equal treatment or harassed by judges or court officials.

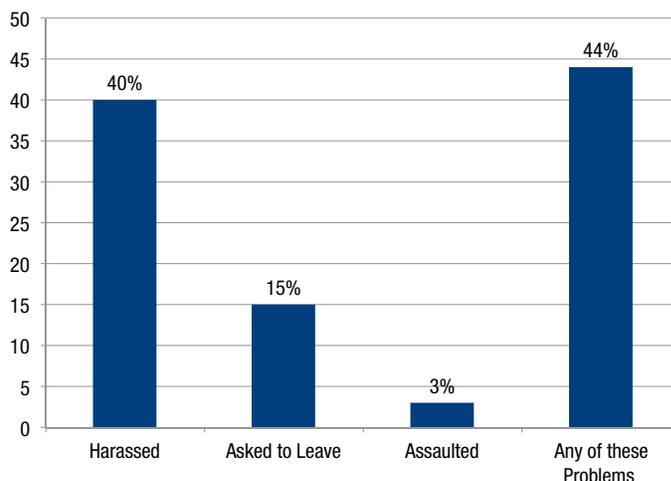
Experiences of Discrimination and Violence in Public Accommodations

Location	Denied Equal Treatment	Harassed or Disrespected	Physically Assaulted
Retail Store	32%	37%	3%
Police Officer	20%	29%	6%
Doctor’s Office or Hospital	24%	25%	2%
Hotel or Restaurant	19%	25%	2%
Government Agency/Official	22%	22%	1%
Bus, Train, or Taxi	9%	22%	4%
Emergency Room	13%	16%	1%
Airplane or Airport Staff/TSA	11%	17%	1%
Judge or Court Official	12%	12%	1%
Mental Health Clinic	11%	12%	1%
Legal Services Clinic	8%	6%	1%
Ambulance or EMT	5%	7%	1%
Domestic Violence Shelter/ Program	6%	4%	1%
Rape Crisis Center	5%	4%	1%
Drug Treatment Program	3%	4%	1%

**BARRIERS TO RECEIVING UPDATED ID DOCUMENTS**

- Of those who have transitioned gender, **only one-fifth (21%) have been able to update all of their IDs and records with their new gender**. One-third (33%) of those who had transitioned had updated *none* of their IDs/records.
- Only 59% reported updating the gender on their driver’s license/state ID, meaning **41% live without ID that matches their gender identity**.
- **Forty percent (40%) of those who presented ID** (when it was required in the ordinary course of life) that did not match their gender identity/expression **reported being harassed, 3% reported being attacked or assaulted, and 15% reported being asked to leave**.

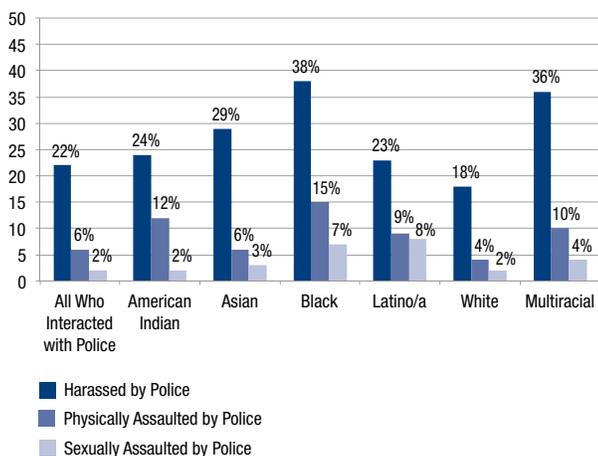
Harassment and Violence When Presenting Incongruent Identity Documents



**ABUSE BY POLICE AND IN PRISON**

- **One-fifth (22%) of respondents** who have interacted with police **reported harassment by police**, with much higher rates reported by people of color.
- Almost half of the respondents (46%) reported being uncomfortable seeking police assistance.
- **Physical and sexual assault in jail/prison is a serious problem:** 16% of respondents who had been to jail or prison reported being physically assaulted and 15% reported being sexually assaulted.

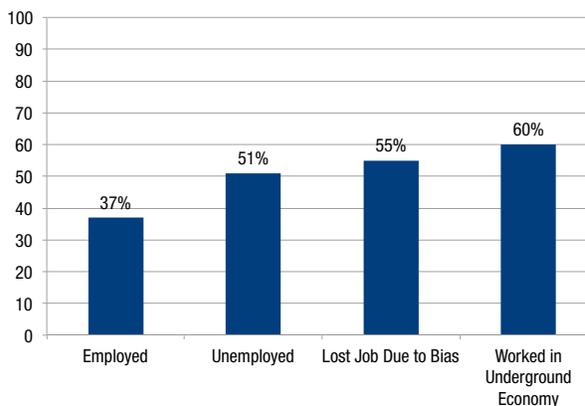
Police Harassment and Assault, Due to Bias, by Race



**DISCRIMINATION IN HEALTH CARE AND POOR HEALTH OUTCOMES**

- **Health outcomes for all categories of respondents show the appalling effects of social and economic marginalization**, including much higher rates of HIV infection, smoking, drug and alcohol use and suicide attempts than the general population.
- Refusal of care: **19% of our sample reported being refused medical care** due to their transgender or gender non-conforming status, with even higher numbers among people of color in the survey.
- Uninformed doctors: **50% of the sample reported having to teach their medical providers about transgender care.**
- High HIV rates: Respondents reported **over four times the national average of HIV infection, with rates higher among transgender people of color.**<sup>8</sup>
- **Postponed care:** Survey participants reported that when they were sick or injured, **many postponed medical care due to discrimination (28%) or inability to afford it (48%).**

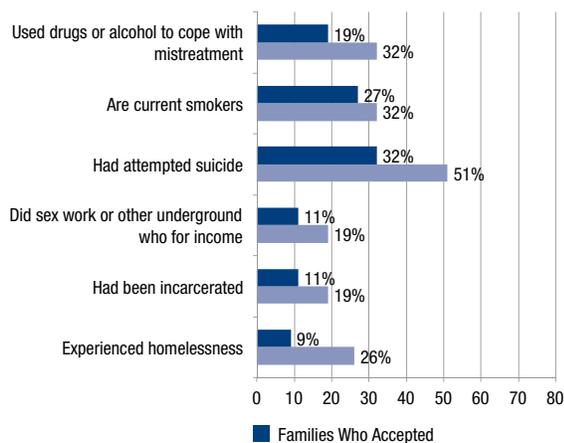
Suicide Attempt by Employment



**FAMILY ACCEPTANCE OF GREAT IMPORTANCE**

- **Forty-three percent (43%) maintained most of their family bonds**, while 57% experienced significant family rejection.
- In the face of extensive institutional discrimination, **family acceptance had a protective affect against many threats to well-being** including health risks such as HIV infection and suicide. Families were more likely to remain together and provide support for transgender and gender non-conforming family members than stereotypes suggest.

Impact of Family Acceptance

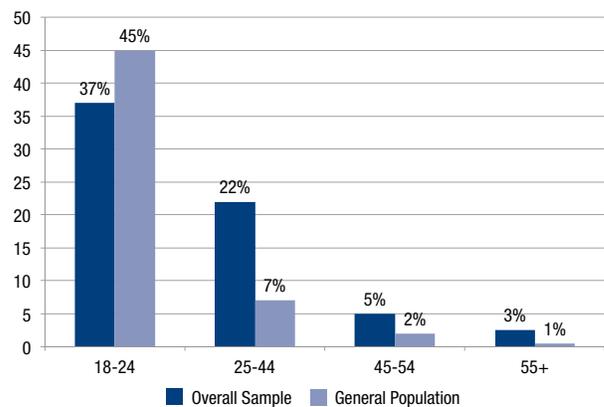


**RESILIENCE**

Despite all of the harassment, mistreatment, discrimination and violence faced by respondents, study participants also demonstrated determination, resourcefulness and perseverance:

- Although the survey identified major structural barriers to obtaining health care, 76% of transgender respondents have been able to receive hormone therapy, indicating a determination to endure the abuse or search out sensitive medical providers.
- Despite high levels of harassment, bullying and violence in school, many respondents were able to obtain an education by returning to school. Although fewer 18 to 24-year-olds were currently in school compared to the general population, respondents returned to school in large numbers at later ages, with 22% of those aged 25-44 currently in school (compared to 7% of the general population).<sup>10</sup>
- Over three-fourths (78%) reported feeling more comfortable at work and their performance improving after transitioning, despite reporting nearly the same rates of harassment at work as the overall sample.
- Of the 26% who reported losing a job due to bias, 58% reported being currently employed and of the 19% who reported facing housing discrimination in the form of a denial of a home/apartment, 94% reported being currently housed.

Status as a Student by Age<sup>9</sup>



## CUMULATIVE DISCRIMINATION

Sixty-three percent (63%) of our participants had experienced a serious act of discrimination — events that would have a major impact on a person's quality of life and ability to sustain themselves financially or emotionally. These events included the following:

- Lost job due to bias
- Eviction due to bias
- School bullying/harassment so severe the respondent had to drop out
- Teacher bullying
- Physical assault due to bias
- Sexual assault due to bias
- Homelessness because of gender identity/expression
- Lost relationship with partner or children due to gender identity/expression
- Denial of medical service due to bias
- Incarceration due to gender identity/expression

Almost a quarter (23%) of our respondents experienced a catastrophic level of discrimination — having been impacted by at least three of the above major life-disrupting events due to bias. These compounding acts of discrimination — due to the prejudice of others or lack of protective laws — exponentially increase the difficulty of bouncing back and establishing a stable economic and home life.

## CONCLUSION

It is part of social and legal convention in the United States to discriminate against, ridicule, and abuse transgender and gender non-conforming people within foundational institutions such as the family, schools, the workplace and health care settings, every day. Instead of recognizing that the moral failure lies in society's unwillingness to embrace different gender identities and expressions, society blames transgender and gender non-conforming people for bringing the discrimination and violence on themselves.

Nearly every system and institution in the United States, both large and small, from local to national, is implicated by this data. Medical providers and health systems, government agencies, families, businesses and employers, schools and colleges, police departments, jail and prison systems—each of these systems and institutions is failing daily in its obligation to serve transgender and gender non-conforming people, instead subjecting them to mistreatment ranging from commonplace disrespect to outright violence, abuse and the denial of human dignity. The consequences of these widespread injustices are human and real, ranging from unemployment and homelessness to illness and death.

This report is a call to action for all of us, especially for those who pass laws and set policies and practices, whose action or continued inaction will make a significant difference between the current climate of discrimination and violence and a world of freedom and equality. And everyone else, from those who drive buses or teach our children to those who sit on the judicial bench or write prescriptions, must also take up the call for human rights for transgender and gender non-conforming people, and confront this pattern of abuse and injustice.

We must accept nothing less than a complete elimination of this pervasive inhumanity; we must work continuously and strenuously together for justice.

Endnotes

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- 1 U.S. Census Bureau, "Current Population Survey," Annual Social and Economic Supplement (Washington, DC: GPO, 2008).
- 2 "U.S.A. Suicide: 2002 Official Final Data," prepared for the American Association of Suicidology by John L. McIntosh, Ph.D. Official data source: Kochanek, K.D., Murphy, S.L., Anderson, R.N., & Scott, C. (2004). Deaths: Final data for 2002. National Vital Statistics Reports, 53 (5). Hyattsville, MD: National Center for Health Statistics DHHS Publication No. (PHS) 2005-1120. Population figures source: table I, p.108. of the National Center for Health Statistics (Kochanek et al., 2004), see [http://www.sprc.org/library/event\\_kit/2002datapg1.pdf](http://www.sprc.org/library/event_kit/2002datapg1.pdf).
- 3 General population data is from U.S. Census Bureau, "Current Population Survey," Annual Social and Economic Supplement (Washington, DC: GPO, 2008).
- 4 See note 3. "Mistreatment" includes harassment and bullying, physical or sexual assault, discrimination, or expulsion from school at any level based on gender identity/expression.
- 5 Seven percent (7%) was the rounded weighted average unemployment rate for the general population during the six months the survey was in the field, based on which month questionnaires were completed. See seasonally unadjusted monthly unemployment rates for September 2008 through February 2009. U.S. Department of Labor, Bureau of Labor Statistics, "The Employment Situation: September 2008," (2008): [http://www.bls.gov/news.release/archives/empsit\\_10032008.htm](http://www.bls.gov/news.release/archives/empsit_10032008.htm).
- 6 1.7% were currently homeless in our sample compared to 1% in the general population. National Coalition for the Homeless, "How Many People Experience Homelessness?" (July 2009): [http://www.nationalhomeless.org/factsheets/How\\_Many.html](http://www.nationalhomeless.org/factsheets/How_Many.html).
- 7 U.S. Department of Housing and Urban Development, "U.S. Housing Market Conditions, 2nd Quarter, 2009" (Washington, DC: GPO, 2009): [http://www.huduser.org/portal/periodicals/ushmc/summer09/nat\\_data.pdf](http://www.huduser.org/portal/periodicals/ushmc/summer09/nat_data.pdf).
- 8 The overall sample reported an HIV infection rate of 2.6% compared to .6% in the general population. United Nations Programme on HIV/AIDS (UNAIDS) and World Health Organization (WHO), "2007 AIDS Epidemic Update" (2007): [http://data.unaids.org/pub/EPISlides/2007/2007\\_epiupdate\\_en.pdf](http://data.unaids.org/pub/EPISlides/2007/2007_epiupdate_en.pdf). People of color in the sample reported substantially higher rates: 24.9% of African-Americans, 10.9% of Latino/as, 7.0% of American Indians, and 3.7% of Asian-Americans in the study reported being HIV positive.
- 9 U.S. Census Bureau, "Current Population Survey: Enrollment Status of the Population 3 Years Old and Over, by Sex, Age, Race, Hispanic Origin, Foreign Born, and Foreign-Born" (Washington, DC: GPO, October 2008): Table 1. <http://www.census.gov/population/www/socdemo/school/cps2008.html>. The last category, over 55, was not rounded to its small size.
- 10 See note 9.

**Declaration of Luke C. Platzer**

**EXHIBIT AK**

**JA534**

# How many people are lesbian, gay, bisexual, and transgender?

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the  
**Williams**  
INSTITUTE

by Gary J. Gates, Williams Distinguished Scholar

April 2011

## Executive Summary

Increasing numbers of population-based surveys in the United States and across the world include questions that allow for an estimate of the size of the lesbian, gay, bisexual, and transgender (LGBT) population. This research brief discusses challenges associated with collecting better information about the LGBT community and reviews eleven recent US and international surveys that ask sexual orientation or gender identity questions. The brief concludes with estimates of the size of the LGBT population in the United States.

Key findings from the research brief are as follows:

- An estimated 3.5% of adults in the United States identify as lesbian, gay, or bisexual and an estimated 0.3% of adults are transgender.
- This implies that there are approximately 9 million LGBT Americans, a figure roughly equivalent to the population of New Jersey.
- Among adults who identify as LGB, bisexuals comprise a slight majority (1.8% compared to 1.7% who identify as lesbian or gay).
- Women are substantially more likely than men to identify as bisexual. Bisexuals comprise more than half of the lesbian and bisexual population among women in eight of the nine surveys considered in the brief. Conversely, gay men comprise substantially more than half of gay and bisexual men in seven of the nine surveys.
- Estimates of those who report any lifetime same-sex sexual behavior and any same-sex sexual attraction are substantially higher than estimates of those who identify as LGB. An estimated 19 million Americans (8.2%) report that they have engaged in same-sex sexual behavior and nearly 25.6 million Americans (11%) acknowledge at least some same-sex sexual attraction.
- Understanding the size of the LGBT population is a critical first step to informing a host of public policy and research topics. The surveys highlighted in this report demonstrate the viability of sexual orientation and gender identity questions on large national population-based surveys. Adding these questions to more national, state, and local data sources is critical to developing research that enables a better understanding of the understudied LGBT community.

## Introduction

Increasing numbers of population-based surveys in the United States and across the world include questions designed to measure sexual orientation and gender identity. Understanding the size of the lesbian, gay, bisexual, and transgender (LGBT) population is a critical first step to informing a host of public policy and research topics. Examples include assessing health and economic disparities in the LGBT community, understanding the prevalence of anti-LGBT discrimination, and considering the economic impact of marriage equality or the provision of domestic partnership benefits to same-sex couples. This research brief discusses challenges associated with collecting better information about the LGBT community and reviews findings from eleven recent US and international surveys that ask sexual orientation or gender identity questions. The brief concludes with estimates of the size of the LGBT population in the United States.

## Challenges in measuring the LGBT community

Estimates of the size of the LGBT community vary for a variety of reasons. These include differences in the definitions of who is included in the LGBT population, differences in survey methods, and a lack of consistent questions asked in a particular survey over time.

In measuring sexual orientation, lesbian, gay, and bisexual individuals may be identified strictly based on their self-identity or it may be possible to consider same-sex sexual behavior or sexual attraction. Some surveys (not considered in this brief) also assess household relationships and provide a mechanism of identifying those who are in same-sex relationships. Identity, behavior, attraction, and relationships all capture related dimensions of sexual orientation but none of these measures completely addresses the concept.

Defining the transgender population can also be challenging. Definitions of who may be considered part of the transgender community include aspects of both gender identities and varying forms of gender expression or non-conformity. Similar to sexual orientation, one way to measure the transgender community is to simply consider self-identity. Measures of identity could include consideration of terms like transgender, queer, or genderqueer. The latter two identities are used by some to capture aspects of both sexual orientation and gender identity.

Similar to using sexual behaviors and attraction to capture elements of sexual orientation, questions may also be devised that consider gender expression and non-conformity regardless of the terms individuals may use to describe themselves. An example of these types of questions would be consideration of the relationship between the sex that individuals are assigned at birth and the degree to which that assignment conforms with how they express their gender. Like the counterpart of measuring sexual orientation through identity, behavior, and attraction measures, these varying approaches capture related dimensions of who might be classified as transgender but may not individually address all aspects of assessing gender identity and expression.

Another factor that can create variation among estimates of the LGBT community is survey methodology. Survey methods can affect the willingness of respondents to report stigmatizing identities and behaviors. Feelings of confidentiality and anonymity increase the likelihood that respondents will be more accurate in reporting sensitive information. Survey methods that include face-to-face interviews may underestimate the size of the LGBT community while those that include methods that allow respondents to complete questions on a computer or via the internet may increase the likelihood of LGBT respondents identifying themselves. Varied sample sizes of surveys can also increase variation. Population-based surveys with a

larger sample can produce more precise estimates (see SMART, 2010 for more information about survey methodology).

A final challenge in making population-based estimates of the LGBT community is the lack of questions asked over time on a single large survey. One way of assessing the reliability of estimates is to repeat questions over time using a consistent method and sampling strategy. Adding questions to more large-scale surveys that are repeated over time would substantially improve our ability to make better estimates of the size of the LGBT population.

### How many adults are lesbian, gay, or bisexual?

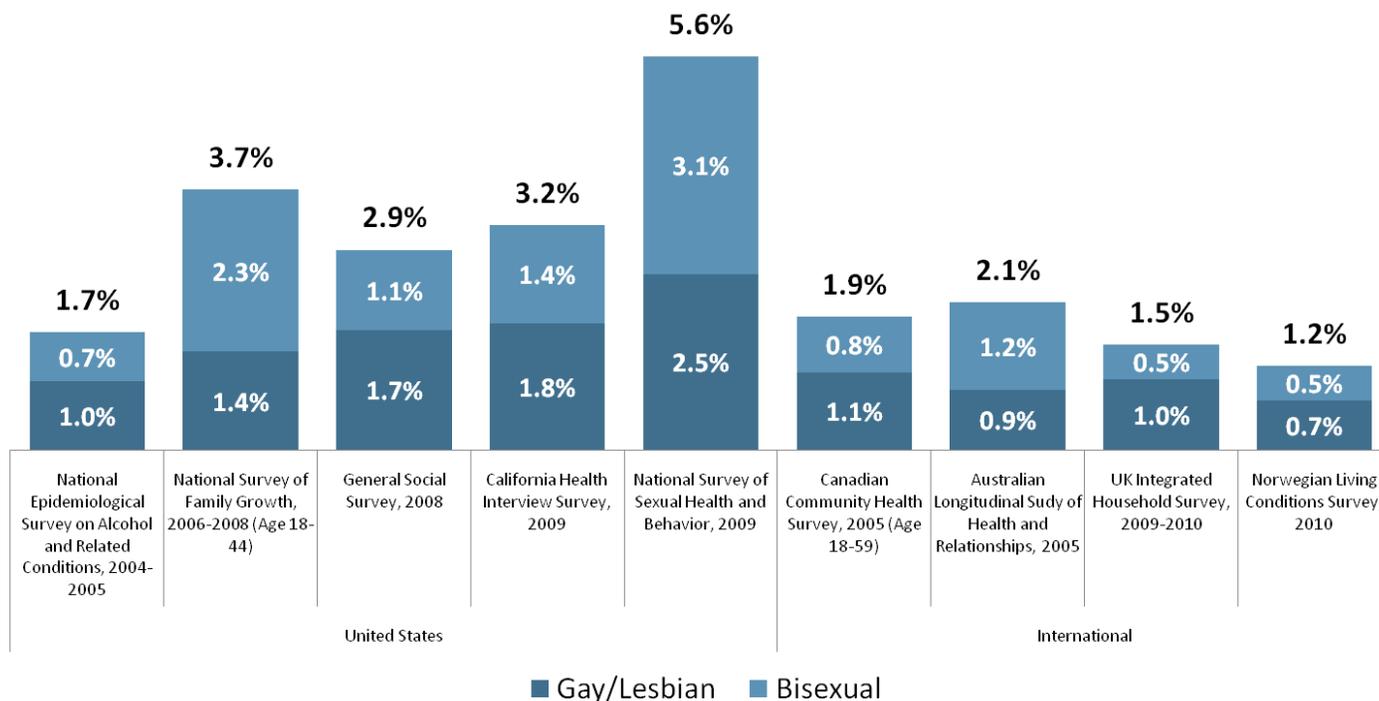
Findings shown in Figure 1 consider estimates of the percentage of adults who self-identify as lesbian, gay, or bisexual across nine surveys conducted within the past seven years. Five of those surveys were fielded in the United States and the others are from Canada, the United

Kingdom, Australia, and Norway. All are population-based surveys of adults, though some have age restrictions as noted.

The lowest overall percentage comes from the Norwegian Living Conditions Survey at 1.2%, with the National Survey of Sexual Health and Behavior, conducted in the United States, producing the highest estimate at 5.6%. In general, the non-US surveys, which vary from 1.2% to 2.1%, estimate lower percentages of LGB-identified individuals than the US surveys, which range from 1.7% to 5.6%.

While the surveys show a fairly wide variation in the overall percentage of adults who identify as LGB, the proportion who identify as lesbian/gay versus bisexual is somewhat more consistent (see Figure 2). In six of the surveys, lesbian- and gay-identified individuals outnumbered bisexuals. In most cases, these surveys were roughly 60% lesbian/gay versus 40% bisexual. The UK Integrated Household Survey found the proportion to be two-thirds lesbian/gay versus one-third bisexual.

Figure 1. Percent of adults who identify as lesbian, gay, or bisexual.

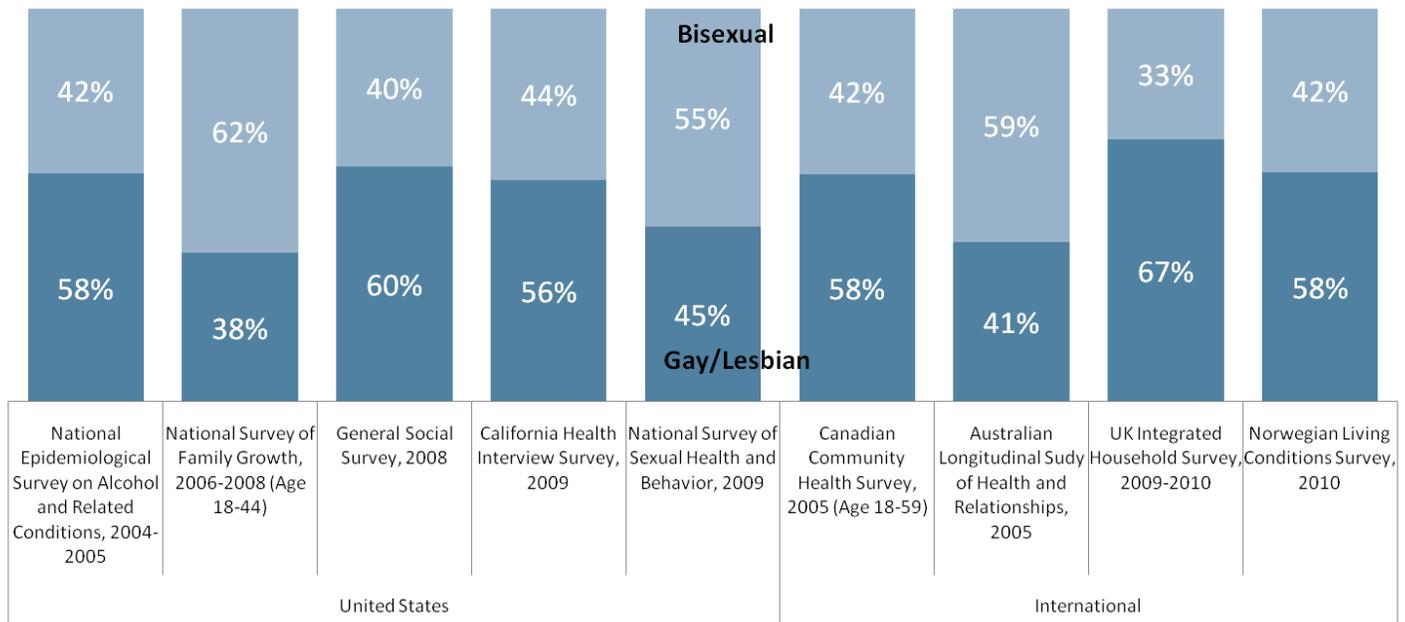


The National Survey of Family Growth found results that were essentially the opposite of the UK survey with only 38% identifying as lesbian or gay compared to 62% identifying as bisexual. The National Survey of Sexual Health and Behavior and the Australian Longitudinal Study

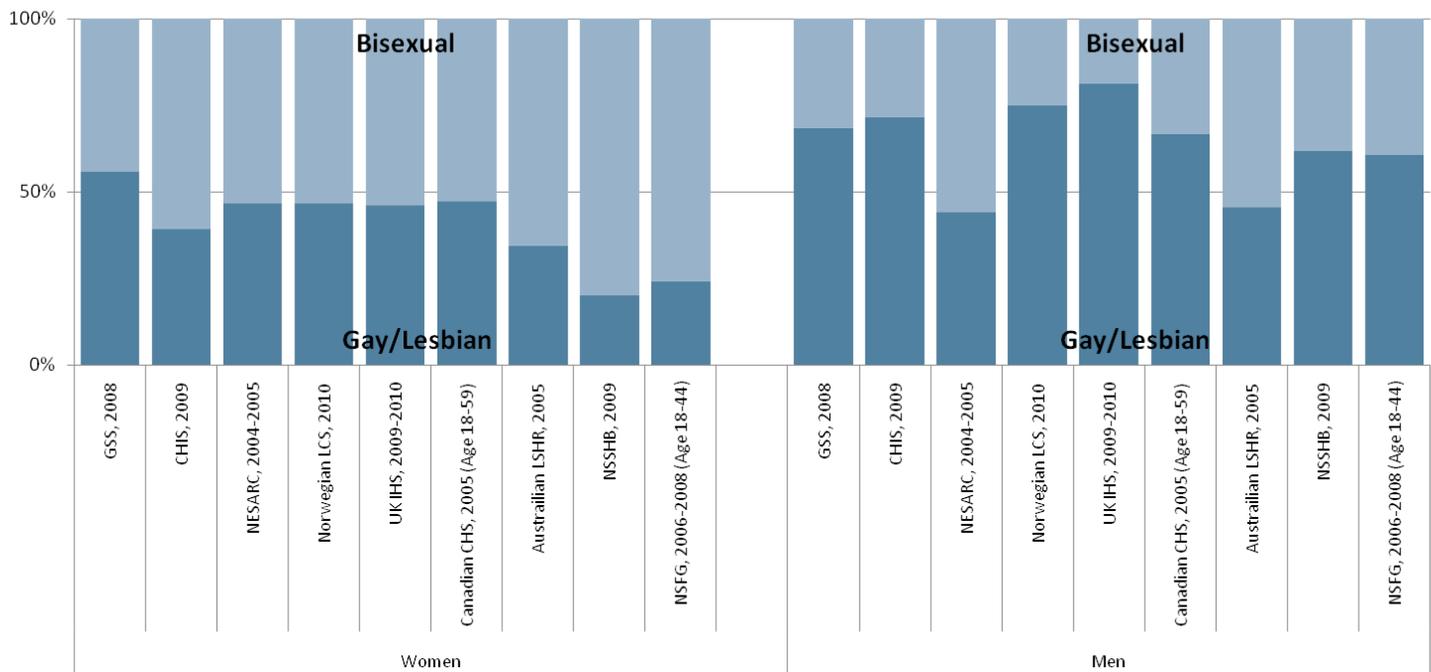
of Health and Relationships both found a majority of respondents (55% and 59%, respectively) identifying as bisexual.

The surveys show even greater consistency in differences between men and women

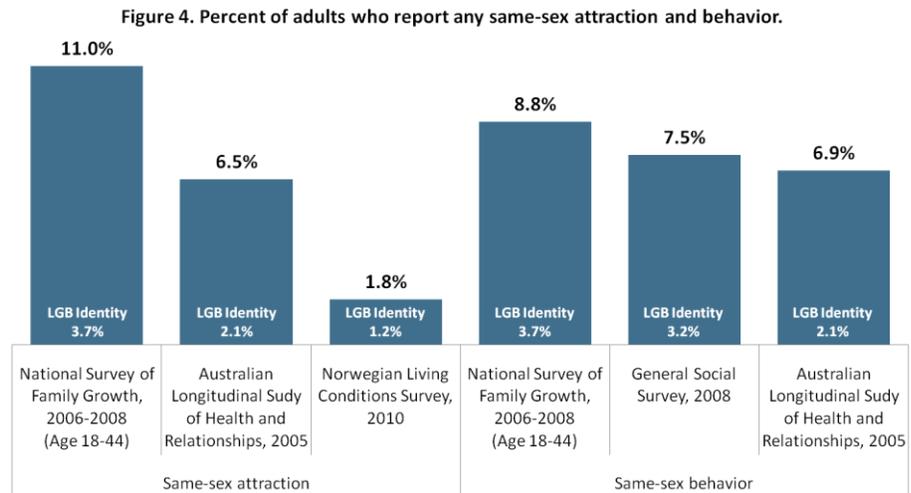
**Figure 2. Percent of adults who identify as gay/lesbian versus bisexual.**



**Figure 3. Percent of adults who identify as lesbian/gay versus bisexual, by sex.**



associated with lesbian/gay versus bisexual identity. Women are substantially more likely than men to identify as bisexual. Bisexuals comprise more than half of the lesbian and bisexual population among women in eight of the nine surveys considered (see Figure 3). Conversely, gay men comprise substantially more than half of gay and bisexual men in seven of the nine surveys.



Four of the surveys analyzed also asked questions about either sexual behavior or attraction. Within these surveys, a larger fraction of adults report same-sex attractions and behaviors than self-identify as lesbian, gay, or bisexual (see Figure 4). With the exception of the Norwegian survey, these differences are substantial. The two US surveys and the Australian survey all suggest that adults are two to three times more likely to say that they are attracted to individuals of the same-sex or have had same-sex sexual experiences than they are to self-identify as LGB.

## How many adults are transgender?

Population-based data sources that estimate the percentage of adults who are transgender are very rare. The Massachusetts Behavioral Risk Factor Surveillance Survey represents one of the few population-based surveys that include a question designed to identify the transgender population. Analyses of the 2007 and 2009 surveys suggest that 0.5% of adults aged 18-64 identified as transgender (Conron 2011).

The 2003 California LGBT Tobacco Survey found that 3.2% of LGBT individuals identified as transgender. Recall that the 2009 California Health Interview Survey estimates that 3.2% of adults in the state are LGB. If both of these

estimates are true, it implies that approximately 0.1% of adults in California are transgender.

Several studies have reviewed multiple sources to construct estimates of a variety of dimensions of gender identity. Conway (2002) suggests that between 0.5% and 2% of the population have strong feelings of being transgender and between 0.1% and 0.5% actually take steps to transition from one gender to another. Olyslager and Conway (2007) refine Conway's original estimates and posit that at least 0.5% of the population has taken some steps toward transition. Researchers in the United Kingdom (Reed, et al., 2009) suggest that perhaps 0.1% of adults are transgender (defined again as those who have transitioned in some capacity).

Notably, the estimates of those who have transitioned are consistent with the survey-based estimates from California and Massachusetts. Those surveys both used questions that implied a transition or at least discordance between sex at birth and current gender presentation.

### How many lesbian, gay, bisexual and transgender people are there in the United States?

Federal data sources designed to provide population estimates in the United States (e.g., the Decennial Census or the American Community Survey) do not include direct questions regarding sexual orientation or gender identity. The findings shown in Figure 1 suggest that no single survey offers a definitive estimate for the size of the LGBT community in the United States.

However, combining information from the population-based surveys considered in this brief offers a mechanism to produce credible estimates for the size of the LGBT community. Specifically, estimates for sexual orientation identity will be derived by averaging results from the five US surveys identified in Figure 1.

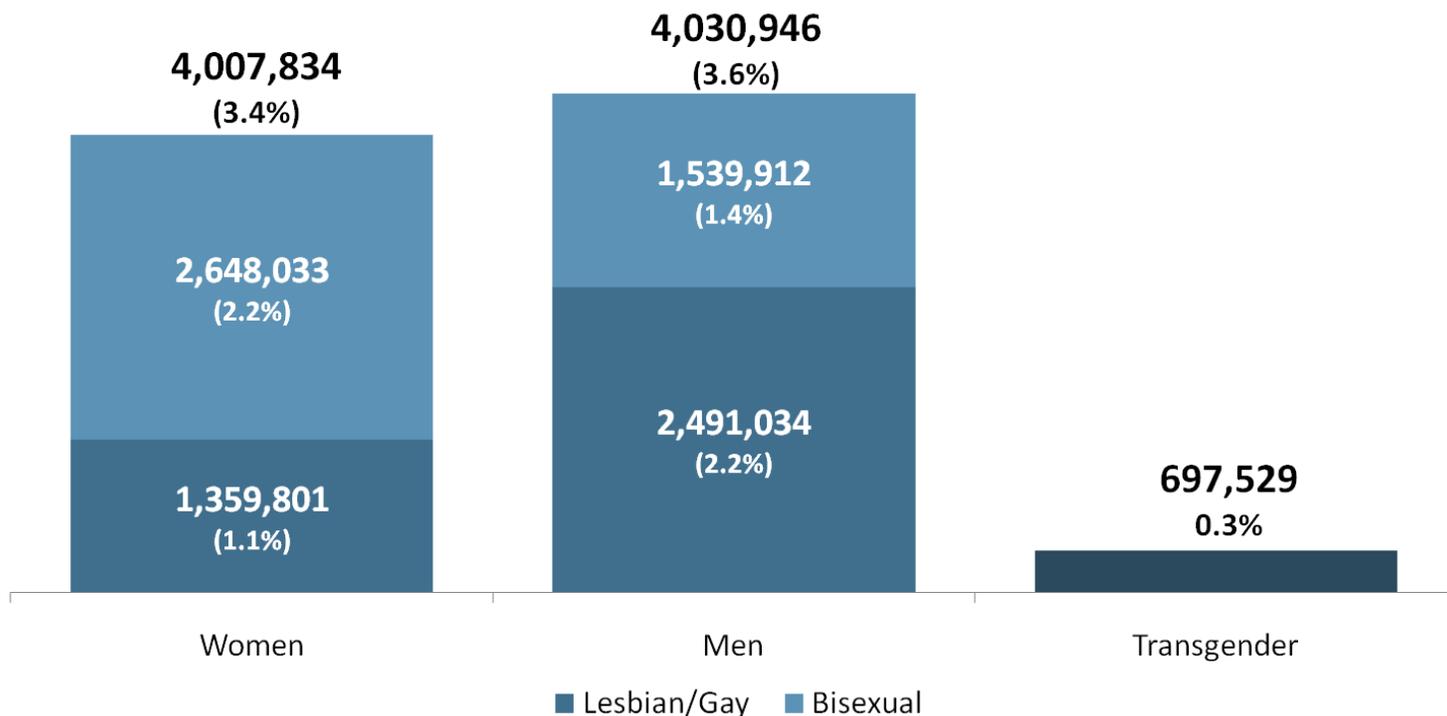
Separate averages are calculated for lesbian and bisexual women along with gay and

bisexual men. An estimate for the transgender population is derived by averaging the findings from the Massachusetts and California surveys cited earlier.

It should be noted that some transgender individuals may identify as lesbian, gay, or bisexual. So it is not possible to make a precise combined LGBT estimate. Instead, Figure 5 presents separate estimates for the number of LGB adults and the number of transgender adults.

The analyses suggest that there are more than 8 million adults in the US who are LGB, comprising 3.5% of the adult population. This is split nearly evenly between lesbian/gay and bisexual identified individuals, 1.7% and 1.8%, respectively. There are also nearly 700,000 transgender individuals in the US. Given these findings, it seems reasonable to assert that approximately 9 million Americans identify as LGBT.

Figure 5. Percent and number of adults who identify as LGBT in the United States.



Averaging measures of same-sex sexual behavior yields an estimate of nearly 19 million Americans (8.2%) who have engaged in same-sex sexual behavior.<sup>1</sup> The National Survey of Family Growth is the only source of US data on attraction and suggests that 11% or nearly 25.6 million Americans acknowledge at least some same-sex sexual attraction.<sup>2</sup>

By way of comparison, these analyses suggest that the size of the LGBT community is roughly equivalent to the population of New Jersey. The number of adults who have had same-sex sexual experiences is approximately equal to the population of Florida while those who have some same-sex attraction comprise more individuals than the population of Texas.

The surveys highlighted in this report demonstrate the viability of sexual orientation and gender identity questions on large-scale national population-based surveys. States and municipal governments are often testing grounds for the implementation of new LGBT-related public policies or can be directly affected by national-level policies. Adding sexual orientation and gender identity questions to national data sources that can provide local-level estimates and to state and municipal surveys is critical to assessing the potential efficacy and impact of such policies.

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<sup>1</sup> This estimate uses data from the National Survey of Family Growth and the General Social Survey.

<sup>2</sup> Since the NSFG data only survey 18-44 year olds, this estimate assumes that patterns in this group are the same for those aged 45 and older. It may be that older adults are less likely to report same-sex attraction. If so, this estimate may somewhat overstate same-sex attraction among all adults.

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## About the Institute

**The Williams Institute** on Sexual Orientation and Gender Identity Law and Public Policy at UCLA School of Law advances law and public policy through rigorous, independent research and scholarship, and disseminates its work through a variety of education programs and media to judges, legislators, lawyers, other policymakers and the public. These studies can be accessed at the Williams Institute website.

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**Declaration of Luke C. Platzer**

**EXHIBIT AL**

**JA543**



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Home (/) > A Comprehensive Guide To The Debunked "Bathroom Predator" Myth

# A Comprehensive Guide To The Debunked "Bathroom Predator" Myth

## Here's The Evidence Refuting The Myth About Trans-Inclusive Bathrooms

*Conservatives have long peddled the myth that sexual predators will exploit nondiscrimination laws to sneak into women's restrooms by pretending to be transgender. The "bathroom predator" myth has been repeatedly debunked -- by experts and government officials in 16 states and the District of Columbia, and school administrators in 23 school districts and four universities. Despite overwhelming evidence, many media outlets continue to uncritically repeat the debunked myth peddled by anti-LGBT groups.*

Here's The Truth About The Anti-LGBT "Bathroom Predator" ... 

States Experts and Law Enforcement Officials ([/print/719181#State Experts and Law Enforcement Officials](/print/719181#State_Experts_and_Law_Enforcement_Officials))

[1]

School Districts and Universities ([/print/719181#\\_Research\\_From\\_23](/print/719181#_Research_From_23)) [2]

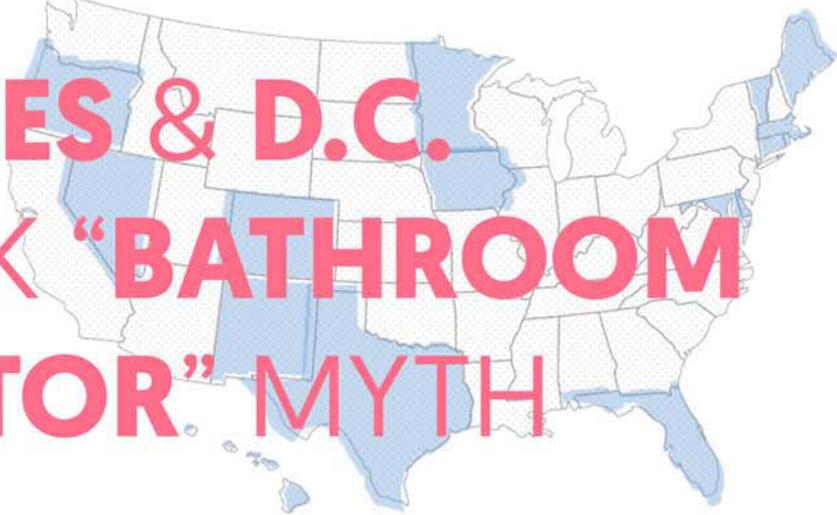
Sexual Assault and Domestic Violence Prevention Experts ([/print/719181#\\_Advocates\\_for\\_Victims](/print/719181#_Advocates_for_Victims)) [3]

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Independent Investigators (/print/719181#Independent Fact-Checkers) [4]

## Experts From 16 States And The District Of Columbia Reported No Issues As A Result Of Nondiscrimination Protections

**JA545**



**16 STATES & D.C.**  
**DEBUNK "BATHROOM  
PREDATOR" MYTH**

**Sexual assaults stemming from law  
"not even remotely" a problem.**

John Elder, Spokesperson for Minneapolis Police

**"Zero allegations" of bathroom  
sexual assault.**

Charlie Burr, Spokesperson for Oregon Bureau of  
Labor and Industries

**"It's the most ridiculous thing I've  
ever heard."**

Det. Nicole Monroe, Public Information Officer  
with the Baltimore Police Department

mediamatters.org

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### **Experts In 12 States And Cities With LGBT Protections Debunk The "Bathroom Predator" Myth.**

Experts -- including law enforcement officials, government employees, and advocates for victims of sexual assault -- in states and cities with LGBT nondiscrimination laws have debunked the "bathroom predator" myth, calling it baseless and "beyond specious." None reported incidents where sexual predators had taken advantage of LGBT nondiscrimination protections. [*Media Matters*, 3/20/14  
(<http://mediamatters.org/research/2014/03/20/15-experts-debunk-right-wing-transgender-bathro/198533>) <sup>[5]</sup>]

**Washington Blade: Law Enforcement Officials In Delaware, Maryland, And Washington, D.C., Report No Issues From Nondiscrimination Laws.** The *Washington Blade* contacted law enforcement officials in Washington, D.C., Delaware, and Maryland -- all of which have LGBT nondiscrimination laws -- to ask if the "bathroom predator" myth had come true. Law enforcement officials reported that their civil rights laws hadn't been linked to any crime. A public information officer with the Baltimore Police Department called the "bathroom predator" talking point "the most ridiculous thing I've ever heard." [*Washington Blade*, 3/31/16  
(<http://www.washingtonblade.com/2016/03/31/predictions-of-trans-bathroom-harassment-unfounded/>) <sup>[6]</sup>]

**Texas Experts Debunk The "Bathroom Predator" Myth.** Experts -- including law enforcement officials, government employees, and advocates for sexual assault victims -- from three Texas cities with LGBT nondiscrimination ordinances debunked the "bathroom predator" myth, citing empirical evidence and experience working with sexual assault victims. [*Media Matters*, 10/15/15  
(<http://mediamatters.org/research/2015/10/15/texas-experts-debunk-the-transgender-bathroom-p/206178>) <sup>[7]</sup>]

**Florida Experts Debunk The "Bathroom Predator" Myth.** Experts -- including law enforcement officials, government employees, and advocates for sexual assault victims -- from 10 different Florida cities and counties with LGBT nondiscrimination ordinances debunked the "bathroom predator" myth, citing empirical evidence and experience working with sexual assault victims. [*Media Matters*, 1/12/16  
(<http://mediamatters.org/research/2016/01/12/florida-experts-debunk-the-transgender-bathroom/207916>) <sup>[8]</sup>]

## Research From 23 School Districts And Four Universities That Have Trans-Inclusive Policies Showed No Incidents Of Inappropriate Behavior



**23 SCHOOL DISTRICTS  
& FOUR UNIVERSITIES  
DEBUNK "BATHROOM"**

**JA547**

# PREDATOR" MYTH

These schools have **trans-inclusive policies** and serve an estimated **1.5 million students** each year without incident.

**"We serve students according to their individual gender identity, we have had no reported incidents of any student abusing our policies."**

Phil Roeder, Director of Communications and Public Affairs  
for Des Moines Public Schools

**"There is no correlation between unsafe school environments and providing equitable access to facilities for transgender and gender non-conforming students."**

Saint Paul Public Schools

**"We haven't had any issues come up ... We want children to feel included and safe and comfortable."**

Jacque Paul, Spokesperson for Riverside Unified  
School District

mediamatters.org

**Seventeen School Districts Debunk "Bathroom Predator" Fears About Protections For Transgender Students.** Seventeen school districts across the country, representing over 640,000 students, have implemented nondiscrimination protections allowing transgender students to use the facilities that

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correspond with their gender identity. None of them have experienced issues concerning inappropriate bathroom use. [*Media Matters*, 6/3/15 (<http://mediamatters.org/research/2015/06/03/17-school-districts-debunk-right-wing-lies-abou/203867>) [9]]

**Four North Carolina Universities Debunk The "Bathroom Predator" Myth.** Davidson and Guilford colleges and Elon and Wake Forest universities have policies allowing transgender students to use the restrooms and facilities that correspond with their gender identity. None have reported negative incidents concerning bathroom access as a result of their nondiscrimination policies. [*Media Matters*, 4/5/16 (<http://mediamatters.org/research/2016/04/05/four-north-carolina-universities-debunk-anti-lg/209739>) [10]]

**Six California School Districts Report No Inappropriate Behavior After Implementing Protections For Transgender Students.** *Media Matters* contacted officials from a number of California's largest school districts to determine if predictions about issues arising from providing protections for transgender students had proved accurate in the first month of a statewide school nondiscrimination law. None of the school districts reported incidents of harassment or inappropriate behavior as a result of the law. [*Media Matters*, 2/11/14 (<http://mediamatters.org/blog/2014/02/11/california-school-officials-debunk-right-wing-l/198001>) [11]]

## Advocates for Victims of Sexual Assault And Domestic Violence Prevention Organizations Have Debunked The "Bathroom Predator" Myth



# ADVOCATES FOR VICTIMS OF SEXUAL ASSAULT & DOMESTIC VIOLENCE DEBUNK "BATHROOM PREDATOR" MYTH

**"Transgender people are not my boogeyman."**

Cassandra Thomas, Chief Compliance Officer at the Houston Area Women's Center

**"In the facts of sexual violence and the facts of rape and sexual assault, one of the most vulnerable populations there are is the transgender population."**

Laura Palumbo, Communications Director at the National Sexual Violence Resource Center

**"Sexual violence is not driven by gender differences but by power imbalances."**

Tara Romano, President of NC Women United

mediamatters.org

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**National Coalition Of Over 250 Sexual Assault And Domestic Violence Organizations: Bathroom Predator Fears Are "False."** In April, the National Task Force To End Sexual And Domestic Violence Against Women released a statement condemning anti-transgender initiatives touted as public safety measures, writing:

Those who are pushing these proposals have claimed that these proposals are necessary for public safety and to prevent sexual violence against women and children. As rape crisis centers, shelters, and other service providers who work each and every day to meet the needs of all survivors and reduce sexual assault and domestic violence throughout society, we speak from experience and expertise when we state that these claims are false.

[...]

Transgender people already experience unconscionably high rates of sexual assault—and forcing them out of facilities consistent with the gender they live every day makes them vulnerable to assault. As advocates committed to ending sexual assault and domestic violence of every kind, we will never support any law or policy that could put anyone at greater risk for assault or harassment. That is why we are able to strongly support transgender-inclusive nondiscrimination protections. [National Task Force To End Sexual And Domestic Violence Against Women, 4/21/16  
(<http://endsexualviolence.org/where-we-stand/statement-of-antisexual-assault-domestic-violence-organizations-in-support-of-equal-access-for-the-transgender-community>) <sup>[12]</sup>

**National Sexual Violence Resource Center: The "Bathroom Predator" Myth Perpetuates "False Narratives," Making It Harder To Prevent Sexual Assault.** Laura Palumbo is the communications director at the National Sexual Violence Resource Center (NSVRC) and a longtime expert on sexual violence prevention. In an interview with *Media Matters*, Palumbo explained that the "bathroom predator" myth perpetuates false narratives about sexual violence, making it harder to prevent sexual assault. Palumbo said the myth operates off of the "wrong assumption that we know who predators are and what they look like or what they behave like. Most people who experience sexual violence are harmed by someone that they know and trust." Palumbo herself has "never heard of ... instances" nor "seen any research" to substantiate the transgender bathroom boogeyman. [*Media Matters*, 4/21/16  
(<http://mediamatters.org/blog/2016/04/21/national-expert-anti-lgbt-bathroom-predator-fears-are-very-misinformed/210001>) <sup>[13]</sup>

### **Houston Sexual Assault Victims' Advocate: "Transgender People Are Not My Boogeyman."**

Cassandra Thomas, chief compliance officer at the Houston Area Women's Center, dismissed the fearmongering of proponents of bathroom bills, citing decades of experience at an organization dedicated to helping individuals affected by domestic and sexual violence. In an interview with *Media Matters*, she questioned the motives of those promoting bathroom bills in the name of women's safety:

Transgender people are not my boogeyman in the closet. My boogeyman in the closet is the man who is a rapist who has a position of power, that everyone thinks, because he has power or because he's nice or because he's white, ... that 'I'm safe from him.' That is my biggest fear."

[...]

If these same people were concerned about the safety of women, they would have come out against any number of issues that have come up about sexual violence over the years, but they have been remarkably silent. So all of a sudden women are in danger because of transgender people? No. They're not. [*Media Matters*, 10/15/15 (<http://mediamatters.org/blog/2015/10/15/an-expert-explains-why-the-right-wing-bathroom/206163>) <sup>[14]</sup>]

**NC Women United: The "Bathroom Predator" Myth Bears No Connection To What We Know About Sexual Violence.** Tara Romano, president of the North Carolina women's advocacy group NC Women United, denounced the "bathroom predator" myth, explaining that "violence already occurs in gender-segregated spaces like bathrooms, dormitories and locker rooms; because predators aren't waiting for a formal invitation." She added that "sexual violence is not driven by gender differences but by power imbalances." [NC Policy Watch, 3/3/16 (<http://www.ncpolicywatch.com/2016/03/03/the-truth-about-sexual-violence-and-the-charlotte-nondiscrimination-ordinance/>) <sup>[15]</sup>]

## Independent Fact-Checkers Have Debunked The "Bathroom Predator" Myth

### ***Houston Chronicle's* Lisa Falkenberg: "Bathroom Predator" Talking Point Is An "Urban Myth."**

Pulitzer Prize-winning *Houston Chronicle* columnist Lisa Falkenberg reached out to state and local experts across the country to ask if the "bathroom predator" myth had proved accurate in cities and states with LGBT nondiscrimination protections, concluding that the talking point is an "urban myth." [*Houston Chronicle*, 8/22/15 (<http://www.houstonchronicle.com/news/columnists/falkenberg/article/Anti-ordinance-campaign-s-scare-tactics-need-to-6465444.php>) <sup>[16]</sup>]

### **Crosscut's Independent Investigation Debunked The "Bathroom Predator" Myth With Evidence From Nevada, Oregon, And Hawaii.**

The independent nonprofit journal Crosscut contacted officials in Nevada, Oregon, and Hawaii, three states with LGBT nondiscrimination laws, to ask if the "bathroom predator" horror

story had proved accurate. Officials from all three states reported that their civil rights laws hadn't been linked to crimes in public bathrooms. [Crosscut.com, 2/10/16 (<http://crosscut.com/2016/02/transgender-threat-other-states-dont-see-an-issue/>) [17]]

**PolitiFact North Carolina: We Haven't Found Any Instances Of Predators Using Transgender Protections As Cover In The United States.** PolitiFact North Carolina investigated claims made by Equality NC's executive director, Chris Sgro, who said that many large cities have LGBT nondiscrimination protections and that there "have not been any public safety issues in those other communities." According to PolitiFact North Carolina's research, there haven't been a single case of someone using transgender nondiscrimination laws as a cover for criminal activity. [North Carolina Politifact, 4/1/16 (<http://www.politifact.com/north-carolina/statements/2016/apr/01/chris-sgro/equality-nc-director-no-public-safety-risks-cities/>) [18]]

#### Posted In

LGBT (<http://www.mediamatters.org/issues/lgbt>) [19]

#### Stories/Interests

Bathroom Predator Myth (<http://www.mediamatters.org/stories-and-interests/bathroom-predator-myth>) [20]

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#### Links

- [1] [http://www.mediamatters.org/research/2016/05/05/comprehensive-guide-debunked-bathroom-predator-myth/210200#State\\_Experts\\_and\\_Law\\_Enforcement\\_Officials](http://www.mediamatters.org/research/2016/05/05/comprehensive-guide-debunked-bathroom-predator-myth/210200#State_Experts_and_Law_Enforcement_Officials)
- [2] [http://www.mediamatters.org/research/2016/05/05/comprehensive-guide-debunked-bathroom-predator-myth/210200#\\_Research\\_From\\_23](http://www.mediamatters.org/research/2016/05/05/comprehensive-guide-debunked-bathroom-predator-myth/210200#_Research_From_23)
- [3] [http://www.mediamatters.org/research/2016/05/05/comprehensive-guide-debunked-bathroom-predator-myth/210200#\\_Advocates\\_for\\_Victims](http://www.mediamatters.org/research/2016/05/05/comprehensive-guide-debunked-bathroom-predator-myth/210200#_Advocates_for_Victims)
- [4] [http://www.mediamatters.org/research/2016/05/05/comprehensive-guide-debunked-bathroom-predator-myth/210200#Independent\\_Fact-Checkers](http://www.mediamatters.org/research/2016/05/05/comprehensive-guide-debunked-bathroom-predator-myth/210200#Independent_Fact-Checkers)
- [5] <http://mediamatters.org/research/2014/03/20/15-experts-debunk-right-wing-transgender-bathro/198533>
- [6] <http://www.washingtonblade.com/2016/03/31/predictions-of-trans-bathroom-harassment-unfounded/>
- [7] <http://mediamatters.org/research/2015/10/15/texas-experts-debunk-the-transgender-bathroom-p/206178>
- [8] <http://mediamatters.org/research/2016/01/12/florida-experts-debunk-the-transgender-bathroom/207916>
- [9] <http://mediamatters.org/research/2015/06/03/17-school-districts-debunk-right-wing-lies-abou/203867>
- [10] <http://mediamatters.org/research/2016/04/05/four-north-carolina-universities-debunk-anti-lg/209739>
- [11] <http://mediamatters.org/blog/2014/02/11/california-school-officials-debunk-right-wing-l/198001>
- [12] <http://endsexualviolence.org/where-we-stand/statement-of-antisexual-assault-domestic-violence-organizations-in-support-of-equal-access-for-the-transgender-community>
- [13] <http://mediamatters.org/blog/2016/04/21/national-expert-anti-lgbt-bathroom-predator-fears-are-very-misinformed/210001>
- [14] <http://mediamatters.org/blog/2015/10/15/an-expert-explains-why-the-right-wing-bathroom/206163>
- [15] <http://www.ncpolicywatch.com/2016/03/03/the-truth-about-sexual-violence-and-the-charlotte-nondiscrimination-ordinance/>
- [16] <http://www.houstonchronicle.com/news/columnists/falkenberg/article/Anti-ordinance-campaign-s-scare-tactics-need-to-6465444.php>
- [17] <http://crosscut.com/2016/02/transgender-threat-other-states-dont-see-an-issue/>

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[18] <http://www.politifact.com/north-carolina/statements/2016/apr/01/chris-sgro/equality-nc-director-no-public-safety-risks-cities/>

[19] <http://www.mediamatters.org/issues/lgbt>

[20] <http://www.mediamatters.org/stories-and-interests/bathroom-predator-myth>

**Declaration of Luke C. Platzer**

**EXHIBIT AM**

**JA555**

# Examples of Policies and Emerging Practices for Supporting Transgender Students



U.S. Department of Education

Office of Elementary and Secondary Education

Office of Safe and Healthy Students

May 2016

**JA556**

U.S. Department of Education  
Office of Elementary and Secondary Education  
Office of Safe and Healthy Students

Ann Whalen

*Senior Advisor to the Secretary, Delegated the Duties of the Assistant Secretary, Office of Elementary and Secondary Education*

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May 2016

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This guide is also available on the Office of Safe and Healthy Students website at [www.ed.gov/oese/oshs/emergingpractices.pdf](http://www.ed.gov/oese/oshs/emergingpractices.pdf). Any updates to this guide will be available at this website.

If you need technical assistance, please contact the Office of Safe and Healthy Students at:

[OESE.Info.SupportingTransgenderStudents@ed.gov](mailto:OESE.Info.SupportingTransgenderStudents@ed.gov)

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**JA557**

### **Examples of Policies and Emerging Practices for Supporting Transgender Students**

The U.S. Department of Education (“ED”) is committed to providing schools with the information they need to provide a safe, supportive, and nondiscriminatory learning environment for all students. It has come to ED’s attention that many transgender students (*i.e.*, students whose gender identity is different from the sex they were assigned at birth) report feeling unsafe and experiencing verbal and physical harassment or assault in school, and that these students may perform worse academically when they are harassed. School administrators, educators, students, and parents are asking questions about how to support transgender students and have requested clarity from ED. In response, ED developed two documents:

- ED’s Office for Civil Rights and the U.S. Department of Justice’s Civil Rights Division jointly issued a Dear Colleague Letter (“DCL”) about transgender students’ rights and schools’ legal obligations under Title IX of the Education Amendments of 1972.<sup>1</sup> Any school that has questions related to transgender students or wants to be prepared to address such issues if they arise should review the DCL.
- ED’s Office of Elementary and Secondary Education compiled the attached examples of policies<sup>2</sup> and emerging practices<sup>3</sup> that some schools are already using to support transgender students. We share some common questions on topics such as school records, privacy, and terminology, and then explain how some state and school district policies have answered these questions. We present this information to illustrate how states and school districts are supporting transgender students. We also provide information about and links to those policies at the end of the document, along with other resources that may be helpful as educators develop policies and practices for their own schools.

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<sup>1</sup> 20 U.S.C. §§ 1681-1688; Dear Colleague Letter: Transgender Students (May 13, 2016), [www.ed.gov/ocr/letters/colleague-201605-title-ix-transgender.pdf](http://www.ed.gov/ocr/letters/colleague-201605-title-ix-transgender.pdf).

<sup>2</sup> In this document, the term *policy* or *policies* refers generally to policies, guidance, guidelines, procedures, regulations, and resource guides issued by schools, school districts, and state educational agencies.

<sup>3</sup> ED considers *emerging practices* to be operational activities or initiatives that contribute to successful outcomes or enhance agency performance capabilities. Emerging practices are those that have been successfully implemented and demonstrate the potential for replication by other agencies. Emerging practices typically have not been rigorously evaluated, but still offer ideas that work in specific situations.

Each person is unique, so the needs of individual transgender students vary. But a school policy setting forth general principles for supporting transgender students can help set clear expectations for students and staff and avoid unnecessary confusion, invasions of privacy, and other harms. The education community continues to develop and revise policies and practices to address the rights of transgender students and reflect our evolving understanding and the individualized nature of transgender students' needs.

This document contains information from some schools, school districts, and state and federal agencies. Inclusion of this information does not constitute an endorsement by ED of any policy or practice, educational product, service, curriculum or pedagogy. In addition, this document references websites that provide information created and maintained by other entities. These references are for the reader's convenience. ED does not control or guarantee the accuracy, relevance, timeliness, or completeness of this outside information. This document does not constitute legal advice, create legal obligations, or impose new requirements.

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## **Student Transitions**

### **1. How do schools find out that a student will transition?**

Typically, the student or the student's parent or guardian will tell the school and ask that the school start treating the student in a manner consistent with the student's gender identity. Some students transition over a school break, such as summer break. Other students may undergo a gender transition during the school year, and may ask (or their parents may ask on their behalf) teachers and other school employees to respect their identity as they begin expressing their gender identity, which may include changes to their dress and appearance. Some school district or state policies address how a student or parent might provide the relevant notice to the school.

- Alaska's Matanuska-Susitna Borough School District issued guidelines ("Mat-Su Borough Guidelines") advising that transgender students or their parents or guardians should contact the building administrator or the student's guidance counselor to schedule a meeting to develop a plan to address the student's particular circumstances and needs.
- The guidelines issued by Washington's Superintendent of Public Instruction ("Washington State Guidelines") offer an example of a student who first attended school as a boy and, about midway through a school year, she and her family decided that she would transition and begin presenting as a girl. She prefers to dress in stereotypically feminine attire such as dresses and skirts. Although she is growing her hair out and consistently presents as female at school, her hair is still in a rather short, typically boyish haircut. The student, her parents, and school administrators asked her friends and teachers to use female pronouns to address her.

### **2. How do schools confirm a student's gender identity?**

Schools generally rely on students' (or in the case of younger students, their parents' or guardians') expression of their gender identity. Although schools sometimes request some form of confirmation, they generally accept the student's asserted gender identity. Some schools offer additional guidance on this issue.

- Los Angeles Unified School District issued a policy ("LAUSD Policy") noting that "[t]here is no medical or mental health diagnosis or treatment threshold that

students must meet in order to have their gender identity recognized and respected” and that evidence may include an expressed desire to be consistently recognized by their gender identity.

- The New York State Education Department issued guidance (“NYSED Guidance”) recommending that “schools accept a student’s assertion of his/her/their own gender identity” and provides examples of ways to confirm the assertion, such as a statement from the student or a letter from an adult familiar with the student’s situation. The same guidance also offers the following example: “In one middle school, a student explained to her guidance counselor that she was a transgender girl who had heretofore only been able to express her female gender identity while at home. The stress associated with having to hide her female gender identity by presenting as male at school was having a negative impact on her mental health, as well as on her academic performance. The student and her parents asked if it would be okay if she expressed her female gender identity at school. The guidance counselor responded favorably to the request. The fact that the student presented no documentation to support her gender identity was not a concern since the school had no reason to believe the request was based on anything other than a sincerely held belief that she had a female gender identity.”
- Alaska’s Anchorage School District developed administrative guidelines (“Anchorage Administrative Guidelines”) noting that being transgender “involves more than a casual declaration of gender identity or expression but does not require proof of a formal evaluation and diagnosis. Since individual circumstances, needs, programs, facilities and resources may differ; administrators and school staff are expected to consider the needs of the individual on a case-by-case basis.”

### **3. How do schools communicate with the parents of younger students compared to older transgender students?**

Parents are often the first to initiate a conversation with the school when their child is transgender, particularly when younger children are involved. Parents may play less of a role in an older student’s transition. Some school policies recommend, with regard to an older student, that school staff consult with the student before reaching out to the student’s parents.

- The District of Columbia Public Schools issued guidance (“DCPS Guidance”) noting that “students may choose to have their parents participate in the transition process, but parental participation is not required.” The guidance further

recommends different developmentally appropriate protocols depending on grade level. The DCPS Guidance suggests that the school work with a young student's family to identify appropriate steps to support the student, but recommends working closely with older students prior to notification of family. The guidance also provides a model planning document with key issues to discuss with the student or the student's family.

- Similarly, the Massachusetts Department of Elementary and Secondary Education issued guidance ("Massachusetts Guidance") that notes: "Some transgender and gender nonconforming students are not openly so at home for reasons such as safety concerns or lack of acceptance. School personnel should speak with the student first before discussing a student's gender nonconformity or transgender status with the student's parent or guardian. For the same reasons, school personnel should discuss with the student how the school should refer to the student, *e.g.*, appropriate pronoun use, in written communication to the student's parent or guardian."
- Chicago Public Schools' guidelines ("Chicago Guidelines") provide: "When speaking with other staff members, parents, guardians, or third parties, school staff should not disclose a student's preferred name, pronoun, or other confidential information pertaining to the student's transgender or gender nonconforming status without the student's permission, unless authorized to do so by the Law Department."
- Oregon's Department of Education issued guidance stating, "In a case where a student is not yet able to self-advocate, the request to respect and affirm a student's identity will likely come from the student's parent. However, in other cases, transgender students may not want their parents to know about their transgender identity. These situations should be addressed on a case-by-case basis and school districts should balance the goal of supporting the student with the requirement that parents be kept informed about their children. The paramount consideration in such situations should be the health and safety of the student, while also making sure that the student's gender identity is affirmed in a manner that maintains privacy and confidentiality."

## **Privacy, Confidentiality, and Student Records**

### **4. How do schools protect a transgender student's privacy regarding the student's transgender status?**

There are a number of ways schools protect transgender students' interests in keeping their transgender status private, including taking steps to prepare staff to consistently use the appropriate name and pronouns. Using transgender students' birth names or pronouns that do not match their gender identity risks disclosing a student's transgender status. Some state and school district policies also address how federal and state privacy laws apply to transgender students and how to keep information about a student's transgender status confidential.

- California's El Rancho Unified School District issued a regulation ("El Rancho Regulation") that provides that students have the right to openly discuss and express their gender identity, but also reminds school personnel to be "mindful of the confidentiality and privacy rights of [transgender] students when contacting parents/legal guardians so as not to reveal, imply, or refer to a student's actual or perceived sexual orientation, gender identity, or gender expression."
- The Chicago Guidelines provide that the school should convene an administrative support team to work with transgender students and/or their parents or guardians to address each student's individual needs and supports. To protect the student's privacy, this team is limited to "the school principal, the student, individuals the student identifies as trusted adults, and individuals the principal determines may have a legitimate interest in the safety and healthy development of the student."
- The Mat-Su Borough Guidelines state: "In some cases, a student may want school staff and students to know, and in other cases the student may not want this information to be widely known. School staff should take care to follow the student's plan and not to inadvertently disclose information that is intended to be kept private or that is protected from disclosure (such as confidential medical information)."
- The Massachusetts Guidance advises schools "to collect or maintain information about students' gender only when necessary" and offers an example: "One school reviewed the documentation requests it sent out to families and noticed that field trip permission forms included a line to fill in indicating the student's gender. Upon consideration, the school determined that the requested information was irrelevant to the field trip activities and deleted the line with the gender marker request."

##### **5. How do schools ensure that a transgender student is called by the appropriate name and pronouns?**

One of the first issues that school officials may address when a student notifies them of a gender transition is determining which name and pronouns the student prefers. Some schools have adopted policies to prepare all school staff and students to use a student's newly adopted name, if any, and pronouns that are consistent with a student's gender identity.

- A regulation issued by Nevada's Washoe County School District ("Washoe County Regulation") provides that: "Students have the right to be addressed by the names and pronouns that correspond to their gender identity. Using the student's preferred name and pronoun promotes the safety and wellbeing of the student. When possible, the requested name shall be included in the District's electronic database in addition to the student's legal name, in order to inform faculty and staff of the name and pronoun to use when addressing the student."
- A procedure issued by Kansas City Public Schools in Missouri ("Kansas City Procedure") notes that: "The intentional or persistent refusal to respect the gender identity of an employee or student after notification of the preferred pronoun/name used by the employee or student is a violation of this procedure."
- The NYSED Guidance provides: "As with most other issues involved with creating a safe and supportive environment for transgender students, the best course is to engage the student, and possibly the parent, with respect to name and pronoun use, and agree on a plan to reflect the individual needs of each student to initiate that name and pronoun use within the school. The plan also could include when and how this is communicated to students and their parents."
- The DCPS Guidance includes a school planning guide for principals to review with transgender students as they plan how to ensure the school environment is safe and supportive. The school planning guide allows the student to identify the student's gender identity and preferred name, key contacts at home and at school, as well as develop plans for access to restrooms, locker rooms, and other school activities.

## 6. How do schools handle requests to change the name or sex designation on a student's records?

Some transgender students may legally change their names. However, transgender students often are unable to obtain identification documents that reflect their gender identity (*e.g.*, due to financial limitations or legal restrictions imposed by state or local law). Some school district policies specify that they will use the name a student identifies as consistent with the student's gender identity regardless of whether the student has completed a legal name change.

- The NYSED Guidance provides that school records, including attendance records, transcripts, and Individualized Education Programs, be updated with the student's chosen name and offers an example: "One school administrator dealt with information in the student's file by starting a new file with the student's chosen name, entered previous academic records under the student's chosen name, and created a separate, confidential folder that contained the student's past information and birth name."
- The DCPS Guidance notes: "A court-ordered name or gender change is not required, and the student does not need to change their official records. If a student wishes to go by another name, the school's registrar can enter that name into the 'Preferred First' name field of [the school's] database."
- The Kansas City Procedure recognizes that there are certain situations where school staff or administrators may need to report a transgender student's legal name or gender. The procedure notes that in these situations, "school staff and administrators shall adopt practices to avoid the inadvertent disclosure of such confidential information."
- The Chicago Guidelines state: "Students are not required to obtain a court order and/or gender change or to change their official records as a prerequisite to being addressed by the name and pronoun that corresponds to their gender identity."
- The Massachusetts Guidance also addresses requests to amend records after graduation: "Transgender students who transition after having completed high school may ask their previous schools to amend school records or a diploma or transcript that include the student's birth name and gender. When requested, and when satisfied with the gender identity information provided, schools should amend the student's record."

## **Sex-Segregated Activities and Facilities**

### **7. How do schools ensure transgender students have access to facilities consistent with their gender identity?**

Schools often segregate restrooms and locker rooms by sex, but some schools have policies that students must be permitted to access facilities consistent with their gender identity and not be required to use facilities inconsistent with their gender identity or alternative facilities.

- The Washington State Guidelines provide: “School districts should allow students to use the restroom that is consistent with their gender identity consistently asserted at school.” In addition, no student “should be required to use an alternative restroom because they are transgender or gender nonconforming.”
- The Washoe County Regulation provides: “Students shall have access to use facilities that correspond to their gender identity as expressed by the student and asserted at school, irrespective of the gender listed on the student’s records, including but not limited to locker rooms.”
- The Anchorage Administrative Guidelines emphasize the following provision: “However, staff should not require a transgender or gender nonconforming student/employee to use a separate, nonintegrated space unless requested by the individual student/employee.”

### **8. How do schools protect the privacy rights of all students in restrooms or locker rooms?**

Many students seek additional privacy in school restrooms and locker rooms. Some schools have provided students increased privacy by making adjustments to sex-segregated facilities or providing all students with access to alternative facilities.

- The Washington State Guidelines provide that any student who wants increased privacy should be provided access to an alternative restroom or changing area. The guidelines explain: “This allows students who may feel uncomfortable sharing the facility with the transgender student(s) the option to make use of a separate restroom and have their concerns addressed without stigmatizing any individual student.”

- The NYSED Guidance gives an example of accommodating all students' interest in privacy: "In one high school, a transgender female student was given access to the female changing facility, but the student was uncomfortable using the female changing facility with other female students because there were no private changing areas within the facility. The principal examined the changing facility and determined that curtains could easily be put up along one side of a row of benches near the group lockers, providing private changing areas for any students who wished to use them. After the school put up the curtains, the student was comfortable using the changing facility."
- Atherton High School, in Jefferson County, Kentucky, issued a policy that offers examples of accommodations to address any student's request for increased privacy: "use of a private area within the public area of the locker room facility (e.g. nearby restroom stall with a door or an area separated by a curtain); use of a nearby private area (e.g. nearby restroom); or a separate changing schedule."
- The DCPS Guidance recommends talking to students to come up with an acceptable solution: "Ultimately, if a student expresses discomfort to any member of the school staff, that staff member should review these options with the student and ask the student permission to engage the school LGBTQ liaison or another designated ally in the building."

**9. How do schools ensure transgender students have the opportunity to participate in physical education and athletics consistent with their gender identity?**

Some school policies explain the procedures for establishing transgender students' eligibility to participate in athletics consistent with their gender identity. Many of those policies refer to procedures established by state athletics leagues or associations.

- The NYSED Guidance explains that "physical education is a required part of the curriculum and an important part of many students' lives. Most physical education classes in New York's schools are coed, so the gender identity of students should not be an issue with respect to these classes. Where there are sex-segregated classes, students should be allowed to participate in a manner consistent with their gender identity."
- The LAUSD Policy provides that "participation in competitive athletics, intramural sports, athletic teams, competitions, and contact sports shall be facilitated in a

manner consistent with the student's gender identity asserted at school and in accordance with the California Interscholastic Federation bylaws." The California Interscholastic Federation establishes a panel of professionals, including at least one person with training or expertise in gender identity health care or advocacy, to make eligibility decisions.

- The Rhode Island Interscholastic League's policy states that all students should have the opportunity to participate in athletics consistent with their gender identity, regardless of the gender listed on school records. The policy provides that the league will base its eligibility determination on the student's current transcript and school registration information, documentation of the student's consistent gender identification (*e.g.*, affirmed written statements from student, parent/guardian, or health care provider), and any other pertinent information.

#### **10. How do schools treat transgender students when they participate in field trips and athletic trips that require overnight accommodations?**

Schools often separate students by sex when providing overnight accommodations. Some school policies provide that students must be treated consistent with their gender identity in making such assignments.

- Colorado's Boulder Valley School District issued guidelines ("Boulder Valley Guidelines") providing that when a school plans overnight accommodations for a transgender student, it should consider "the goals of maximizing the student's social integration and equal opportunity to participate in overnight activity and athletic trips, ensuring the [transgender] student's safety and comfort, and minimizing stigmatization of the student."
- The Chicago Guidelines remind school staff: "In no case should a transgender student be denied the right to participate in an overnight field trip because of the student's transgender status."

## **Additional Practices to Support Transgender Students**

### **11. What can schools do to make transgender students comfortable in the classroom?**

Classroom practices that do not distinguish or differentiate students based on their gender are the most inclusive for all students, including transgender students.

- The DCPS Guidance suggests that “[w]herever arbitrary gender dividers can be avoided, they should be eliminated.”
- The Massachusetts Guidance states that “[a]s a general matter, schools should evaluate all gender-based policies, rules, and practices and maintain only those that have a clear and sound pedagogical purpose.”
- Minneapolis Public Schools issued a policy providing that students generally should not be grouped on the basis of sex for the purpose of instruction or study, but rather on bases such as student proficiency in the area of study, student interests, or educational needs for acceleration or enrichment.
- The Maryland State Department of Education issued guidelines that include an example of eliminating gender-based sorting of students: “Old Practice: boys line up over here.” New Practice: birthdays between January and June; everybody who is wearing something green, etc.”

### **12. How do school dress codes apply to transgender students?**

Dress codes that apply the same requirements regardless of gender are the most inclusive for all students and avoid unnecessarily reinforcing sex stereotypes. To the extent a school has a dress code that applies different standards to male and female students, some schools have policies that allow transgender students to dress consistent with their gender identity.

- Wisconsin’s Shorewood School District issued guidelines (“Shorewood Guidelines”) that allow students to dress in accordance with their gender identity and remind school personnel that they must not enforce a dress code more strictly against transgender and gender nonconforming students than other students.
- The Washington State Guidelines encourage school districts to adopt gender-neutral dress codes that do not restrict a student’s clothing choices on the basis of gender: “Dress codes should be based on educationally relevant considerations, apply

consistently to all students, include consistent discipline for violations, and make reasonable accommodations when the situation requires an exception.”

### **13. How do schools address bullying and harassment of transgender students?**

Unfortunately, bullying and harassment continue to be a problem facing many students, and transgender students are no exception. Some schools make clear in their nondiscrimination statements that prohibited sex discrimination includes discrimination based on gender identity and expression. Their policies also address this issue.

- The NYSED Guidance stresses the importance of protecting students from bullying and harassment because “[the] high rates experienced by transgender students correspond to adverse health and educational consequences,” including higher rates of absenteeism, lower academic achievement, and stunted educational aspirations.
- The Shorewood Guidelines specify that harassment based on a student’s actual or perceived transgender status or gender nonconformity is prohibited and notes that these complaints are to be handled in the same manner as other discrimination, harassment, and bullying complaints.
- The DCPS Guidance provides examples of prohibited harassment that transgender students sometimes experience, including misusing an individual’s preferred name or pronouns on purpose, asking personal questions about a person’s body or gender transition, and disclosing private information.

### **14. How do school psychologists, school counselors, school nurses, and school social workers support transgender students?**

School counselors can help transgender students who may experience mental health disorders such as depression, anxiety, and posttraumatic stress. Mental health staff may also consult with school administrators to create inclusive policies, programs, and practices that prevent bullying and harassment and ensure classrooms and schools are safe, healthy, and supportive places where all students, including transgender students, are respected and can express themselves. Schools will be in a better position to support transgender students if they communicate to all students that resources are available, and that they are competent to provide support and services to any student who has questions related to gender identity.

- The NYSED Guidance suggests that counselors can serve as a point of contact for transgender students who seek to take initial steps to assert their gender identity in school.
- The Chicago Guidelines convene a student administrative support team to determine the appropriate supports for transgender students. The team consists of the school principal, the student, adults that the student trusts, and individuals the principal determines may have a legitimate interest in the safety and healthy development of the student.

### **15. How do schools foster respect for transgender students among members of the broader school community?**

Developing a clear policy explaining how to support transgender students can help communicate the importance the school places on creating a safe, healthy, and nondiscriminatory school climate for all students. Schools can do this by providing educational programs aimed at staff, students, families, and other community members.

- The Massachusetts Guidance informs superintendents and principals that they “need to review existing policies, handbooks, and other written materials to ensure they are updated to reflect the inclusion of gender identity in the student antidiscrimination law, and may wish to inform all members of the school community, including school personnel, students, and families of the recent change to state law and its implications for school policy and practice. This could take the form of a letter that states the school’s commitment to being a supportive, inclusive environment for all students.”
- The NYSED Guidance states that “school districts are encouraged to provide this guidance document and other resources, such as trainings and information sessions, to the school community including, but not limited to, parents, students, staff and residents.”

### **16. What topics do schools address when training staff on issues related to transgender students?**

Schools can reinforce commitments to providing safe, healthy, and nondiscriminatory school climates by training all school personnel about appropriate and respectful treatment of all students, including transgender students.

- The Massachusetts Guidance suggests including the following topics in faculty and staff training “key terms related to gender identity and expression; the development of gender identity; the experiences of transgender and other gender nonconforming students; risks and resilience data regarding transgender and gender nonconforming students; ways to support transgender students and to improve school climate for gender nonconforming students; [and] gender-neutral language and practices.”
- The El Rancho Regulation states that the superintendent or designee “shall provide to employees, volunteers, and parents/guardians training and information regarding the district’s nondiscrimination policy; what constitutes prohibited discrimination, harassment, intimidation, or bullying; how and to whom a report of an incident should be made; and how to guard against segregating or stereotyping students when providing instruction, guidance, supervision, or other services to them. Such training and information shall include guidelines for addressing issues related to transgender and gender-nonconforming students.”

#### **17. How do schools respond to complaints about the way transgender students are treated?**

School policies often provide that complaints from transgender students be handled under the same policy used to resolve other complaints of discrimination or harassment.

- The Boulder Valley Guidelines provide that “complaints alleging discrimination or harassment based on a person’s actual or perceived transgender status or gender nonconformity are to be handled in the same manner as other discrimination or harassment complaints.”
- The Anchorage Administrative Guidelines provide that “students may also use the Student Grievance Process to address any civil rights issue, including transgender issues at school.”

## Terminology

### **18. What terms are defined in current school policies on transgender students?**

Understanding the needs of transgender students includes understanding relevant terminology. Most school policies define commonly used terms to assist schools in understanding key concepts relevant to transgender students. The list below is not exhaustive, and only includes examples of some of the most common terms that school policies define.

- *Gender identity* refers to a person's deeply felt internal sense of being male or female, regardless of their sex assigned at birth. (Washington State Guidelines)
- *Sex assigned at birth* refers to the sex designation, usually "male" or "female," assigned to a person when they are born. (NYSED Guidance)
- *Gender expression* refers to the manner in which a person represents or expresses gender to others, often through behavior, clothing, hairstyles, activities, voice or mannerisms. (Washoe County Regulation)
- *Transgender* or *trans* describes a person whose gender identity does not correspond to their assigned sex at birth. (Massachusetts Guidance)
- *Gender transition* refers to the process in which a person goes from living and identifying as one gender to living and identifying as another. (Washoe County Regulation)
- *Cisgender* describes a person whose gender identity corresponds to their assigned sex at birth. (NYSED Guidance)
- *Gender nonconforming* describes people whose gender expression differs from stereotypic expectations. The terms *gender variant* or *gender atypical* are also used. Gender nonconforming individuals may identify as male, female, some combination of both, or neither. (NYSED Guidance)
- *Intersex* describes individuals born with chromosomes, hormones, genitalia and/or other sex characteristics that are not exclusively male or female as defined by the medical establishment in our society. (DCPS Guidance)
- *LGBTQ* is an acronym that stands for "lesbian, gay, bisexual, transgender, and queer/questioning." (LAUSD Policy)

- *Sexual orientation* refers to a person's emotional and sexual attraction to another person based on the gender of the other person. Common terms used to describe sexual orientation include, but are not limited to, heterosexual, lesbian, gay, and bisexual. Sexual orientation and gender identity are different. (LAUSD Policy)

### **19. How do schools account for individual preferences and the diverse ways that students describe and express their gender?**

Some students may use different terms to identify themselves or describe their situations. For example, a transgender male student may identify simply as male, consistent with his gender identity. The same principles apply even if students use different terms. Some school policies directly address this question and provide additional guidance.

- The Washington State Guidelines recognize how “terminology can differ based on religion, language, race, ethnicity, age, culture and many other factors.”
- Washington's Federal Way School District issued a resource guide that states: “Keep in mind that the meaning of gender conformity can vary from culture to culture, so these may not translate exactly to Western ideas of what it means to be transgender. Some of these identities include Hijra (South Asia), Fa'afafine (Samoa), Kathoey (Thailand), Travesti (South America), and Two-Spirit (Native American/First Nations).”
- The Washoe County Regulation, responding to cultural diversity within the state, offers examples of “ways in which transgender and gender nonconforming youth describe their lives and gendered experiences: trans, transsexual, transgender, male-to-female (MTF), female-to-male (FTM), bi-gender, two-spirit, trans man, and trans woman.”
- The DCPS Guidance provides this advice to staff: “If you are unsure about a student's preferred name or pronouns, it is appropriate to privately and tactfully ask the student what they prefer to be called. Additionally, when speaking about a student it is rarely necessary to label them as being transgender, as they should be treated the same as the rest of their peers.”

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### Select Federal Resources on Transgender Students

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  - National Center on Safe Supportive Learning Environments, [safesupportivelearning.ed.gov](http://safesupportivelearning.ed.gov)
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  - Administration for Children and Families, *Resources for Serving Lesbian, Gay, Bisexual and Transgender Youth*, <http://ncfy.acf.hhs.gov/features/serving-lesbian-gay-bisexual-transgender-and-questioning-youth-open-arms/resources-serving>
  - Centers for Disease Control and Prevention, *LGBT Youth Resources*, [www.cdc.gov/lgbthealth/youth-resources.htm](http://www.cdc.gov/lgbthealth/youth-resources.htm)
  - Homelessness Resource Center, *Homeless Populations: LGBTQI2-S Youth*, <http://homeless.samhsa.gov/Channel/LGBTQ-153.aspx>
  - Stopbullying.gov, *Bullying and LGBT Youth*, <http://www.stopbullying.gov/at-risk/groups/lgbt>
- U.S. Department of Housing and Urban Development
  - *Community-Wide Prevention of LGBTQ Youth Homelessness* (June 2015), <https://www.hudexchange.info/resources/documents/LGBTQ-Youth-Homelessness-Prevention-Initiative-Overview.pdf>

- U.S. Department of Labor
  - Office of Job Corps, *Directive: Job Corps Program Instruction Notice No. 14-31* (May 1, 2015), [https://supportservices.jobcorps.gov/Program Instruction Notices/pi\\_14\\_31.pdf](https://supportservices.jobcorps.gov/Program%20Instruction%20Notices/pi_14_31.pdf)

**Declaration of Luke C. Platzer**

**EXHIBIT AN**

**JA581**



<http://www.health.state.mn.us/index.html>

## Document Requirements to Amend a Birth Record

Reference: Minnesota Rules, parts [4601.1000 \(https://www.revisor.mn.gov/rules/?id=4601.1000\)](https://www.revisor.mn.gov/rules/?id=4601.1000) and [4601.1100 \(https://www.revisor.mn.gov/rules/?id=4601.1100\)](https://www.revisor.mn.gov/rules/?id=4601.1100).

To add missing information to a birth record you need to submit at least one document. To change information on a birth record you must submit at least two documents.

### Document Requirements

Each document must show the information exactly as you want it to appear on the birth record.

Each document must also show other information that matches the birth record already. Most documents need to show at least **two** of the following:

- subject's last name
- subject's date of birth
- subject's place of birth
- a parent's name
- a parent's date of birth
- a parent's place of birth

Each document must show an established date that meets the following age requirements:

- If the subject of the record is under the age of 7, the documents must have been established (created) either more than one year ago or within the subject's first year of life.
- If the subject of the record is 7 or older, the documents must have been established (created) either more than seven years ago or within the subject's first three years of life.

Each document must be an original, a certified copy issued by a government office, or a copy authenticated by the person issuing the document to you. All original documents will be returned to you when we're finished with our process.

- Clinic and hospital records must be authenticated by the person giving you the records. They must give you a signed and dated letter on the clinic or hospital letterhead that verifies the document is a true and accurate copy of their records.
- School records must be authenticated like clinic and hospital records or be official school transcripts.
- Certified documents must be issued by government offices and include birth/death certificates, marriage certificates, military discharge forms, and court orders.

Each document must be legible. Each document must be in English or submitted with a notarized English translation by a qualified or certified translator.

Each document must show no sign of erasure, alteration, or change of pertinent information.

### Acceptable Document Types

**These documents will be considered if each document meets all requirements:**

- authenticated school record or official school transcript

**JA582**

- authenticated hospital or clinic record
- valid passport
- original or a certified copy of a US military discharge (such as a DD214 form)
- certified copy of a marriage certificate
- certified copy of a birth certificate of a child
- certified copy of a birth certificate of a parent or sibling (these can only be used to amend parent information)
- baptism certificate or other church record with a phone number to the church so the record may be verified
- original or certified copy of a naturalization certificate
- official tribal enrollment record
- certified copy of a court order

**These documents are NOT acceptable to amend a birth record:**

- hospital souvenir birth certificate
- driver's license
- state, employee, or other ID card or permit
- social security card or statement
- application of any kind
- insurance card or policy
- paycheck stub
- tax return
- bill
- newspaper article

**Court Orders**

Sometimes a court order that directs the birth record to be amended is required. A court order is required if information to be amended has been established by another court order, such as an adoption decree or paternity order. A court order is also required if a child's last name has already been changed with a Recognition of Parentage form.

If a court order specifically directs the birth record to be amended it could be the only document required. The court order must:

- uniquely identify the birth record to be amended (contain the subject's name as it currently appears on the birth record and the subject's date of birth)
- clearly identify which items are to be amended on the birth record
- specifically direct the birth record to be amended in the "Is Ordered" section of the court order.

For information on getting a court order please see the [Minnesota Judicial Branch website \(http://www.mncourts.gov/\)](http://www.mncourts.gov/).

A court order that does not direct the birth record to be amended must meet all regular [document requirements \(http://www.health.state.mn.us/regdocs.html\)](http://www.health.state.mn.us/regdocs.html).

**Requirements to amend gender**

To change the sex of the subject on a birth record, the subject must submit medical certification of appropriate clinical treatment for gender transition in the form of an original letter from a licensed physician.

The letter must contain the subject's name and date of birth that are on the current birth record to positively identify the record.

The subject may also submit a court order that specifically directs the birth record to be amended.

If you still have questions about amending a birth record after reading this information, email us at [health.amend@state.mn.us](mailto:health.amend@state.mn.us) or call 651-201-5990.

651-201-5000 Phone  
888-345-0823 Toll-free

Information on this website is available in alternative formats to individuals with disabilities upon request.

**Declaration of Luke C. Platzer**

**EXHIBIT AO**

**JA585**



## Department of Health

**ANDREW M. CUOMO**  
Governor

**HOWARD A. ZUCKER, M.D., J.D.**  
Commissioner

**SALLY DRESLIN, M.S., R.N.**  
Executive Deputy Commissioner

September 28, 2015

Dear Applicant:

Individuals who wish to change their gender designation and are seeking to change the gender designation on their birth certificate must make a request in writing to the New York State Department of Health, Bureau of Vital Records (the Department). Each case will be reviewed individually and determined based on the following documents:

(a) A completed Application for Correction of Certificate of Birth (DOH-297) signed by the applicant. This application indicates:

(i) the applicant's name, date of birth, parents' names on existing birth certificate, and place of birth, and

(ii) the change being requested, including the corrected gender designation and, if applicable, name change.

(b) A certified copy of the applicant's current birth certificate or a notarized affidavit from the applicant confirming that they are 18 years of age or older. In each case they need to submit a Notarized Affidavit of Gender Error, substantially similar to the one enclosed, attesting that the applicant has been living in their correct gender immediately preceding the application.

and either (c) or (d)

(c) A notarized affidavit from a physician (MD or DO) or nurse practitioner or physician assistant, confirming that surgical procedures have been performed on the applicant to complete sex reassignment.

(d) A notarized affidavit on professional letterhead from a physician (MD or DO) or nurse practitioner or physician assistant, licensed in the United States that have treated, or reviewed and evaluated, the gender-related medical history of the applicant. The notarized affidavit must include a statement noting that the provider is making his/her findings upon independent and unbiased review and evaluation and is not related to the applicant. The letter must include:

(i) the physician (MD or DO) or nurse practitioner or physician assistant's license number;

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- (ii) language stating that the applicant has undergone appropriate clinical treatment for a person diagnosed with Gender Dysphoria as defined in the most current edition of the *Diagnostic and Statistical Manual of Mental Disorders* or language stating that the applicant has undergone appropriate clinical treatment for a person diagnosed with Transsexualism as defined in the most current edition of *International Statistical Classification of Diseases and Related Health Problems*; or as these diagnoses may be referred to in future editions.

If an applicant is incarcerated pursuant to a state sentence of imprisonment, the application for correction of certificate of birth must first be submitted through the appropriate state judicial or legal process, then through the New York State Department of Health, Bureau of Vital Records. If an incarcerated applicant's criminal history includes one or more felony convictions enumerated in Article 6 of the Civil Rights Law or its equivalent, if committed in another jurisdiction, the application shall for each such conviction specify such felony conviction, the date of such conviction or convictions, and the court in which such conviction or convictions were entered. At the same time that the application is submitted for consideration, the applicant shall serve, in like manner as a notice of a motion upon an attorney in an action, a copy of the application upon the district attorney of every county (or comparable jurisdiction) in which such person has been convicted of such felony and upon the court or courts in which the sentence for such felony was entered.

If the applicant is under community supervision, the applicant shall submit a letter from their department of correction and community supervision (or comparable entities), on official letterhead TO THE NEW YORK STATE DEPARTMENT OF HEALTH, BUREAU OF VITAL RECORDS, with knowledge of the applicant's history certifying that there are no public safety concerns with the application.

If the applicant is simultaneously requesting that their name be changed on their birth certificate, their written request to the Department must also include an original or certified copy of their legal name change order from a court of competent jurisdiction and a proof of publication of the assumed name, if required by law. The order must bear the court seal and be certified by the clerk of the court. Please be sure the order includes the following information needed to identify the individual named on the birth certificate: original name, date and place of birth.

As soon as all documentation is submitted, your request will be referred to Department of Health's legal and medical staff for review. Processing takes approximately three months.

If the aforementioned required documents are provided, the Department shall approve the applicant's request for a change in the gender designation. In reviewing the applicant's request, the Department shall not require proof of any particular treatment or request any documents other than those listed in sections (1)(a)-(d).

Upon the approval of a request to change the gender designation and, if applicable, the applicant's name, the Department will issue a new birth certificate reflecting the requested change(s). The new certificate will not indicate that there was a change in the original sex item designation or name, as the case may be.

When a birth certificate is amended to reflect a change in the gender designation, and, if applicable, name, the original birth certificate and all other documents relating to the change in the gender designation, will be retained in a sealed file. When a new certificate of birth is made, the Commissioner will substitute such new certificate for the certificate of birth then on file, if any, and will send the registrar of the district in which the birth occurred a copy of the new certificate of birth. The registrar will make a copy of the new certificate for the local record and hold the contents of the original local record confidential. The original state record and the local record will not be released or otherwise divulged except by order of a court of competent jurisdiction.

One certified copy will be provided following the amendment. Additional copies are \$30.00 each.

If you have any questions, please contact my office directly at (518) 474-5245.

Sincerely,

Guy Warner  
Director  
Bureau of Vital Records

Please mail all forms to:  
New York State Department of Health  
Director of Vital Records  
Attention: Guy Warner  
**Personal and Confidential**  
800 North Pearl Street 2nd Floor  
Albany, NY 12204

Enclosure

**JA588**

**Declaration of Luke C. Platzer**

**EXHIBIT AP**

**JA589**



## Gender Change on a Birth Certificate

**People who want to change their gender on their birth certificate must send:**

**• A letter that includes:**

- Name on record (first, middle, last)
- Date of birth (month, day, year)
- Place of birth (city or county)
- Mother/Parent full name listed on certificate (first, middle, last)
- Father/Parent full name listed on certificate (first, middle, last)
- Contact information (return mailing address and phone number)
- The change being requested and new information such as name and gender

**• And one of the following:**

- A letter, on applicable letterhead, from your medical (MD) or osteopathic physician (DO) stating that you have had the appropriate clinical treatment and your new gender. We will not return the documentation.

**Or**

- A CERTIFIED copy of a court order that states your name, date of birth, gender currently listed on birth record and new gender. Certified copies of court orders have an original signature or raised seal from the court clerk. Photo copies will not be accepted. The court order will be returned to you.

**If you want to change your name at the same time as your gender:**

- Send a CERTIFIED copy of the court-order name change. The court order will be returned to you.

**If you would like a certified copy of the birth certificate reflecting the change, send:**

- A certified copy of the birth certificate for replacement. We will exchange birth certificates up to one year from the date issued at no charge. The date issued is in the top right-hand corner of the birth certificate.

**Or**

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- A [Mail-in Request Form \(PDF\)](#) for a birth certificate. A personal check or money order of \$20 for each birth certificate(s) you are purchasing.

**Send to:**

Vital Records Amendments  
Washington State Department of Health  
Center for Health Statistics  
PO Box 9709  
Olympia, WA 98507-9709

**Questions?**

If you have any questions call (360) 236-4300 select option 3, and then option 3.

**Declaration of Luke C. Platzer**

**EXHIBIT AQ**

**JA592**

 Governor McCrory Takes Action to Protect Privacy and Equality

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## Governor McCrory Takes Action to Protect Privacy and Equality

Raleigh, N.C.

Apr 12, 2016

Governor Pat McCrory has signed an Executive Order to protect the privacy and equality of all North Carolinians. Executive Order 93 clarifies existing state law and provides new protections for North Carolina residents.

**Executive Order 93 does the following:**

- **Maintains common sense gender-specific restroom and locker room facilities in government buildings and schools**
- **Affirms the private sector's right to establish its own restroom and locker room policies**
- **Affirms the private sector and local governments' right to establish non-discrimination employment policies for its own employees**
- **Expands the state's employment policy for state employees to cover sexual orientation and gender identity**
- **Seeks legislation to reinstate the right to sue in state court for discrimination**

With this Executive Order, the State of North Carolina is now one of 24 states that have protections for sexual orientation and gender identity for its employees.

**“After listening to people’s feedback for the past several weeks on this issue, I have come to the conclusion that there is a great deal of misinformation, misinterpretation, confusion, a lot of passion and frankly, selective outrage and hypocrisy, especially against the great**

JA593

state of North Carolina,” said Governor McCrory. “Based upon this feedback, I am taking action to affirm and improve the state’s commitment to privacy and equality.”

Governor McCrory has posted a video statement on the Executive Order. It is available [here](#) or by clicking the image below.

## Governor McCrory Takes Action to Protect Privacy and Equality



Click [here \(https://governor.nc.gov/document/executive-order-no-93-protect-privacy-and-equality\)](https://governor.nc.gov/document/executive-order-no-93-protect-privacy-and-equality) to view the Executive Order.

### Transcript:

Hi, I’m North Carolina Governor Pat McCrory.

North Carolina proudly welcomes all people to live, work and visit our great state.

We didn’t become the ninth most populous state in the nation by accident. We have long held traditions of both ensuring equality for all of our citizens and our visitors, while also respecting the privacy of everyone.

We are also a state that strives to allow our people and businesses to be as independent as possible without overreaching government regulations.

These North Carolina values of privacy and equality came into conflict recently when the Charlotte City Council passed a new mandate that forced on businesses a city-wide ordinance of bathroom and locker room regulations, something frankly we had never seen or had before in that great city or in North Carolina.

Simply put, this government overreach was a solution in search of a problem.

In fact, the Charlotte City Council rejected this proposal less than a year ago.

In a letter prior to the most recent vote, I notified the Charlotte City Council that this unnecessary and intrusive mandate conflicts with basic expectations of privacy in the most private of settings.

Therefore, as I expected, the state took action on what was seen as government overreach.

You know, after listening to people's feedback for the past several weeks on this issue, I have come to the conclusion that there is a great deal of misinformation, misinterpretation, confusion, a lot of passion and frankly, selective outrage and hypocrisy, especially against the great state of North Carolina.

But based upon this feedback, I am taking action to affirm and improve the state's commitment to privacy and equality.

To that end, today I have signed an executive order with the goal of achieving that fine balance.

This executive order accomplishes the following:

First, it maintains common sense gender-specific restroom and locker room facilities in government buildings and in our schools, and when possible, encourages reasonable accommodations for families and those who have unique or special circumstances.

Second, the private sector can make its own policy with regard to restrooms, locker rooms and/or shower facilities. This is not a government decision. This is your decision in the private sector.

Third, I have affirmed the private sector and local government's right to establish its own non-discrimination employment policies.

And fourth, as governor, I have expanded our state equal employment opportunity policy to clarify that sexual orientation and gender identity are included.

And fifth, I will immediately seek legislation in the upcoming short session to reinstate the right to sue for discrimination in North Carolina state courts.

Simply put, I have listened to the people of North Carolina, and the people of North Carolina are entitled to both privacy and equality. We can and we must achieve both of these goals.

Now I know these actions will not totally satisfy everyone, but the vast majority of our citizens want common sense solutions to complex issues.

This is the North Carolina way.

Thank you very much, and may God continue to bless the great state of North Carolina.

### **This resource is related to:**

Governor's Office



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**JA596**

**Declaration of Luke C. Platzer**

**EXHIBIT AR**

**JA597**

**MINUTE ORDER**

DATE: 03/13/2014 TIME: 02:00:00 PM DEPT: 53

JUDICIAL OFFICER PRESIDING: David Brown

CLERK: E. Brown

REPORTER/ERM:

BAILIFF/COURT ATTENDANT:

CASE NO: **34-2013-00151153-CU-CR-GDS** CASE INIT.DATE: 09/09/2013

CASE TITLE: **Department of Fair Employment and Housing vs. American Pacific Corporation**

CASE CATEGORY: Civil - Unlimited

**EVENT TYPE:** Hearing on Demurrer - Civil Law and Motion - Demurrer/JOP

**APPEARANCES**

**Nature of Proceeding: Ruling on Submitted Matter (Hearing on Demurrer) taken under submission on 3/11/2014**

**TENTATIVE RULING**

Defendant American Pacific Corp.'s ("AMPAC") Demurrer to Plaintiff Dept. of Fair Employment and Housing's ("DFEH") Complaint is OVERRULED.

Plaintiff DFEH's complaint alleges three causes of action against defendant AMPAC: the 1<sup>st</sup> for Discrimination based on Sex, Gender, Gender Identity, and Gender Expression (Gov. Code § 12940(a)), the 2<sup>nd</sup> for failure to prevent Discrimination based on Sex, Gender, Gender Identity, and Gender Expression (Gov. Code § 12940 (k)) and the 3<sup>rd</sup> for Failure to Take All Reasonable Steps to Prevent Discrimination based on Sex, Gender, Gender Identity, and Gender Expression (Gov. Code, § 12940(k)).

It is alleged that Plaintiff DFEH is the state agency charged with enforcing the Fair Employment and Housing Act ("FEHA") (Gov. Code, § 12900 et seq.) and is authorized by Government Code section 12965 to file civil complaints in its own name and on behalf of real parties in interest aggrieved by discriminatory employment practices. DFEH's enforcement of the FEHA implements the public policy of the State of California, to protect the civil rights of all Californians to seek, obtain, and hold employment without discrimination because of sex, gender, gender identity or gender expression. (Gov. Code, § 12920). (Compl., para. 2)

Real Party in Interest Lozano is a transgender female to male. Lozano presented as male to AMPAC and received an employment offer as an Operations Technician from AMPAC. After accepting the position, he was required to complete background check forms and he disclosed to AMPAC's Human Resources department that he was in transition to male from his assigned gender birth identity (female). He did not have any legal or medical documentation to reflect his gender change.

AMPAC expressed concern about Lozano's use of the men's locker room and restroom, since he had not had sex reassignment surgery. AMPAC asked Lozano about delaying his employment start date until after he had completed sex reassignment surgery.

Lozano explained that as a trained firefighter, he had successfully worked in similar situations in the past, and had never been questioned about his use of the men's restroom or shower.

As alleged, AMPAC required that Lozano use the female locker room and restroom facilities until his gender transition to male was "complete" after sex reassignment surgery.

Demurrer to the 1<sup>st</sup> for Discrimination based on Sex, Gender, Gender Identity, and Gender Expression (Gov. Code § 12940(a)) is OVERRULED.

FEHA makes it an unlawful employment practice for an employer, because of the sex, gender, gender identity or gender expression, to discriminate against any person in terms, conditions, or privileges of employment. Govt. Code § 12940(a).

In construing statutes, the court's "fundamental task is 'to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute.' We begin by examining the statutory language because it generally is the most reliable indicator of legislative intent. We give the language its usual and ordinary meaning, and '[i]f there is no ambiguity, then we presume the lawmakers meant what they said, and the plain meaning of the language governs. If, however, the statutory language is ambiguous, 'we may resort to extrinsic sources, including the ostensible objects to be achieved and the legislative history.' Ultimately we choose the construction that comports most closely with the apparent intent of the lawmakers, with a view to promoting rather than defeating the general purpose of the statute." (*Mays v. City of Los Angeles* (2008) 43 Cal. 4th 313, 321.) Moreover, courts do not sit as super-legislatures to determine the wisdom, desirability or propriety of statutes enacted by the Legislature. (*Estate of Horman* (1971) 5 Cal.3d 62, 77).

Moving party Defendant AMPAC asserts that the demurrer to the discrimination claim should be sustained because the FEHA does not prohibit restroom and locker room use based on biological gender. The parties agree that there is no published California case law addressing these facts, thus this is a case of first impression in California.

Moving party cites to out of state statutes and case law in support of its position. Defendant cites to the Minnesota's Human Rights Act ("MHRA") prohibits discrimination with "respect to conditions, facilities, or privileges employment" on the basis of "sexual orientation." (Minn. Stat. § 363A.08, subd. 2(3) and *Goins v. West Group* (Minn. 2001) 635 N.W.2d 717, in which the Minnesota Supreme Court concluded that an employer did not violate the MHRA's protection of gender "self- image or identity" by designating employee restroom use based on biological gender. Additionally, defendant cites to New York State law in *Hispanic AIDS Forum v. Estate of Bruno* (N.Y. App. Div. 2005) 16 A.D.3d 294, where a non-profit tenant claimed its landlord violated the New York State Human Rights Act and the New York City Human Rights Act because the landlord refused to execute a lease renewal because the tenant's transgender clients were using the common area restrooms that did not coincide with their biological gender.

In opposition, plaintiff DFEH asserts that this Court need not look to out-of-state law, as the language of Govt. Code § 12940(a) is clear and unambiguous on its face. Of course, in interpreting statutes, the court begins with the plain, commonsense meaning of the language used by the Legislature; if the language is unambiguous, the plain meaning controls. *Surfrider Foundation v. California Regional Water Quality Control Board, San Diego Region*, (2012) 211 Cal. App. 4th 557; *Polster v. Sacramento County Office of Education*, (2009) 180 Cal. App. 4th 649, 663.

The relevant language reads: "It is an *unlawful employment practice*, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California: (a) *For an employer, because of the . . . sex, gender, gender*

identity, gender expression, age, sexual orientation . . . of any person, to refuse to hire or employ the person or . . . to discriminate against the person in compensation or in terms, conditions, or privileges of employment." Govt. Code § 12940.

The Legislature amended the FEHA in 2003 and 2011 to clarify and expand the definition of gender. It specifically added "gender identity" and "gender expression" as protected classes in 2011. (Assembly Bill 887 (2011-2012 Reg. Sess.); Defs. Request for Judicial Notice, Exh. 9.) The author of AB 887 noted "[n]early 70% of transgender Californians have experienced discrimination or harassment at work." (Assem. Com. on Judiciary, Rep. on Assem. Bill. No. 887 (2011-2012 Reg. Sess.) Mar. 29, 2011, p.3, DFEH RJN at Exh. B.) A legislator's statement is entitled to consideration when it is a reiteration of legislative discussion and events leading to adoption of proposed amendments rather than merely an expression of personal opinion. (*California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal. 3d 692, 699-701; *In re Marriage of Bouquet* (1976) 16 Cal. 3d 583, 589-590.) Nonetheless, at the end of the day, the ultimate interpretation of a statute is an exercise of the judicial power conferred upon the courts by the Constitution and, in the absence of a constitutional provision, cannot be exercised by any other body. *Yamaha Corp. of Am. v. State Bd Of Equalization* (1998) 19 Cal. 4th 1, 7. AB 887 was introduced to "reduce confusion among those who bear the responsibility of ensuring that current anti-discrimination laws are enforced." (*Id.* at 2.) AB 887 clarified the definition of gender in numerous anti-discrimination laws, including the FEHA and Education Code sections 200 and 220, to expressly include the terms "gender identity" and "gender expression" where only the term "gender" previously appeared. (*Ibid.*)

Gender identity "refers to a person's deeply felt internal sense of being male or female." (*Id.* at 3.) Gender expression "refers to one's behavior, mannerisms, appearance, and other characteristics that are perceived to be masculine or feminine." (*Ibid.*)

Because many schools did not understand their obligations to transgender students, the Education Code, sec. 221(f) was amended to require that "a pupil be permitted to participate in sex-segregated school programs, activities, and facilities including athletic teams and competitions, consistent with his/her gender identity, regardless of the gender listed on the pupil's records."

Defendant contends that the Legislature's amendment of the Education Code, through AB 1266, to allow transgender students to use facilities corresponding to their gender identity must be understood to exclude this requirement from FEHA, which was not amended in the same manner. When a statute contains a particular provision, the omission of that provision from similar statutes on the same or a related subject reveals a different intent. *City of Dublin v. County of Alameda* (1993) 14 Cal. App. 4th 264, 280.

As plaintiff and amici explain, the AB 1266 amendment to the Education Code restates and clarifies existing nondiscrimination law, to provide guidance to school districts to ensure their compliance with existing law; *it did not change the existing anti-discrimination laws.*

Where more than one statutory construction is arguably possible, California's policy has long been to favor the construction that leads to the more reasonable result, considering the consequences that will flow from a particular interpretation and avoiding a construction that would lead to unreasonable, impractical or arbitrary results. *Bernard v. City of Oakland* (2012) 202 Cal. App. 4th 1553, 1567.

Here, defendant contends that the more reasonable interpretation of FEHA is, absent a regulation or legislation specifically stating otherwise, that restrooms and locker rooms can be separated by biological gender.

The DFEH asserts that the California non-discrimination statutes must be construed together to achieve

a uniform legislative purpose. If discrimination based on gender identity and gender expression is interpreted differently in the FEHA than in the Education Code, a female to male transgender high school student could be faced with a situation where he uses the male restroom/locker room at school, but must use the female restroom/locker room at his after-school job. Such inconsistent results are not compatible with the Legislature's intent.

Plaintiff DFEH further asserts that this Court must accord great respect to its interpretation of the statute, as it is the administrative agency charged with enforcing the FEHA statutes. "While the ultimate interpretation of a statute is an exercise of the judicial power, when an administrative agency is charged with enforcing a particular statute, its interpretation of the statute will be accorded great respect by the courts and will be followed if not clearly erroneous." *Giles v. Horn* (2002) 100 Cal. App. 4th 206, 220.

Plaintiff DFEH asserts that although the Court need look no further than California law, other jurisdictions in other states have found that denying transgender people the right to use gender identity appropriate facilities violates nondiscrimination laws (citing Iowa, Washington, Colorado, District of Columbia, New York City and Federal agency authorities.)

The *Goins* case from Minnesota relied upon by moving party is distinguishable, as there the employer did not require the employee to use the restroom of her assigned birth sex, but to use a single occupancy restroom.

Defendant's hypothetical assertions of emotional discomfort about sharing facilities with transgender individuals are no different than similar claims of discomfort in the presence of a minority group, which formed the basis for decades of racial segregation in housing, education, and access to public facilities like restrooms, locker rooms, swimming pools, eating facilities and drinking fountains. (See, e.g., *Wyatt v. Adair* (Ala. 1926) 110 So. 801, 803-04.)

Defendant speculates that under the DFEH's interpretation of the FEHA, "a male employee need only claim a female gender identity and the employer must permit him to shower, disrobe, and perform bodily functions with female coworkers." These claims are not currently before the Court. Individuals who claim a different gender from day to day, or who do so simply to be disruptive or to sexually harass other employees, do not meet the definition of transgender.

The Court is satisfied that the plaintiff has pled sufficient facts to state a cause of action for employment discrimination.

Demurrer to the 2<sup>nd</sup> and the 3<sup>rd</sup> for failure to prevent discrimination based on sex, gender, gender identity, and gender expression (Gov. Code, § 12940(k)) are OVERRULED.

As the demurrer to these causes of action depends upon the sustaining of the demurrer to the 1<sup>st</sup> cause of action, the Court must overrule the demurrers on the same basis.

Defendant shall file and serve its Answer to the Complaint not later than Friday, March 21, 2014.

The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

#### **COURT RULING**

The matter was argued and submitted. The matter was taken under submission

Having taken the matter under submission on 3/11/2014, the Court now rules as follows:

**SUBMITTED MATTER RULING**

The Court affirms the Tentative Ruling with the following additional comment:

Defendant AMPAC has submitted to the Court a request pursuant to Code of Civil Procedure 166.1. The request is denied. AMPAC is not, of course, precluded from seeking interlocutory appellate review if it desires to do so.

**Declaration of Mailing**

I hereby certify that I am not a party to the within action and that I deposited a copy of the 3/12/14 minute order in a sealed envelope with first class postage prepaid, addressed to each party or the attorney of record in the U.S. Mail at 720 Ninth Street, Sacramento, California.

Dated: March 13, 2014

E. Brown, Deputy Clerk \_\_\_\_\_s/ E. Brown\_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 18, 2016, the foregoing document was served on all parties or their counsel of record through the CM/ECF system.

/s/ Jon W. Davidson  
Jon W. Davidson

No. 16-1989

**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

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**JOAQUÍN CARCAÑO**, *et al.*,

*Plaintiffs-Appellants,*

v.

**PATRICK McCRORY**, in his official capacity as  
Governor of North Carolina,

*Defendant-Appellee,*

and

**PHIL BERGER**, in his official capacity as President *pro tempore* of the North  
Carolina Senate, and **TIM MOORE**, in his official capacity as Speaker of the  
North Carolina House of Representatives,

*Intervenors/Defendants-Appellees.*

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On Appeal from the United States District Court  
for the Middle District of North Carolina  
No. 1:16-cv-00236-TDS-JEP

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**JOINT APPENDIX**

**VOLUME II**

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Reply Declaration of Luke C. Platzer in Support of Plaintiffs’ Motion for Preliminary Injunction.....	JA738
Exhibit D: Transcript, Kelly File, <i>Cruz Reacts to Boehner’s Attacks: ‘I Don’t Know the Guy’; NC Governor Responds to ‘Bathroom Bill’ Backlash</i> , Fox News (Apr. 28, 2016), <a href="http://www.foxnews.com/transcript/2016/04/28/cruz-reacts-to-boehner-attacks-dont-know-guy-nc-governor-responds-to-bathroom/">http://www.foxnews.com/transcript/2016/04/28/cruz-reacts-to-boehner-attacks-dont-know-guy-nc-governor-responds-to-bathroom/</a> .....	JA741
Exhibit E: Ann Doss Helms, <i>CMS: Transgender Students Can Choose Identity and Bathroom</i> , Charlotte Observer (June 20, 2016), available at <a href="http://www.charlotteobserver.com/news/local/education/article84889307.html">http://www.charlotteobserver.com/news/local/education/article84889307.html</a> .....	JA760

Exhibit F: Rebecca Tippett, Non-NC Native Population by County, UNC Carolina Population Center: Carolina Demography (Aug. 4, 2014), <http://demography.cpc.unc.edu/2014/08/04/non-nc-native-population-by-county> ..... JA764

Transcript of Preliminary Injunction Hearing (Aug. 1, 2016)..... JA767

Exhibits to Defendants’ and Intervenor-Defendants’ Supplemental Brief in Opposition to Motions for Preliminary Injunction and Request for Stay of Proceedings in Light of *G.G.*

    Order on Application to Recall and Stay, *Gloucester County School Board v. G.G. ex rel. Grimm*, No. 16A52 (U.S. Aug. 3, 2016)..... JA910

Memorandum Opinion, Order, and Preliminary Injunction ..... JA911

Notice of Appeal ..... JA994

Second Amended Complaint for Declaratory and Injunctive Relief and Nominal Damages ..... JA997

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

**JOAQUÍN CARCAÑO; et al.,**

*Plaintiffs,*

v.

**PATRICK MCCRORY, et al.,**

*Defendants*

**Case No. 1:16-cv-00236-TDS-JEP**

**DECLARATION OF PRESIDENT SPELLINGS**

I, Margaret Spellings, President of the University of North Carolina, declare:

1. I am the President of the University of North Carolina (the “University”), a North Carolina, public and multi-campus university.

2. As President of the University, I am the chief administrative and executive officer of the University with complete authority to manage the affairs and execute the policies of the University and its constituent institutions, subject to the direction and control of the Board of Governors and the provisions of *The Code of the Board of Governors* (“*The Code*”). *The Code*, Sec. 501 A. Exhibit 1.

3. The University’s seventeen constituent institutions receive federal financial assistance from the United States Department of Education and the University must comply with the requirements of Title IX of the Education Amendments of 1972 (“Title IX”), which prohibit discrimination on the basis of sex.

**JA603**

4. The University has a policy of prohibiting “discrimination against any person on the basis of . . . sex, sexual orientation, [or] gender identity.” *The Code*, Sec. 103. Exhibit 2.

5. The University, in accordance with its non-discrimination policies, does not have a policy or practice of prohibiting transgender students from using single-sex restrooms consistent with their gender identity.

6. On March 23, 2016, the North Carolina General Assembly passed the Public Facilities Privacy and Security Act, Act of March 23, 2016, 2016 N.C. Sess. Laws 3 (“the Act”), which amended the North Carolina General Statutes to provide, among other things, that the University and all other public agencies “shall require every multiple occupancy bathroom or changing facility to be designated for and only used by persons based on their biological sex,” which is defined as “the physical condition of being male or female, which is stated on a person’s birth certificate.” Exhibit 3.

7. On April 5, 2016, I sent a memorandum entitled “Guidance - Compliance with the Public Facilities Privacy & Security Act” (“Guidance Memorandum”) to the chancellors of the University’s constituent institutions that set forth the requirements of the Act. Exhibit 4.

8. The Guidance Memorandum stated that the Act “does not require University institutions to change their nondiscrimination policies, and those policies should remain in effect.”

9. The Guidance Memorandum cautioned the chancellors that “[t]he Act does not contain provisions concerning enforcement of the bathroom and changing facility requirements.”

10. The Guidance Memorandum noted that “UNC institutions already designate and label multiple-occupancy bathrooms and changing facilities for single-sex use with signage and should maintain these designations and signage.”

11. The Guidance Memorandum also reminded institutions that they could “provide accommodations such as single-occupancy bathrooms or changing facilities and may designate those facilities as gender-neutral.”

12. At the time of the Act’s passage, the University had no policy and had not issued any instructions to any of its constituent institutions directing that they require students, employees, or third parties to use the restroom or changing facility that corresponds with their biological sex, as listed on their birth certificate.

13. The University has not threatened to enforce the Act’s requirement that the University require individuals to use the restroom or changing facility that corresponds with their biological sex, as listed on their birth certificate. In fact, I

have repeatedly cautioned the constituent institutions that the Act confers no enforcement authority on the University or any other entity.

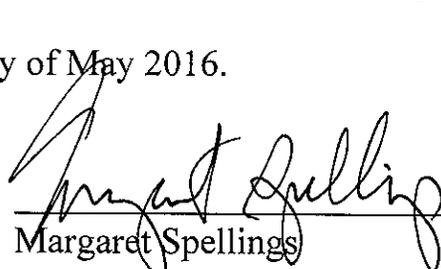
14. Since the passage of the Act, I am not aware of any complaints from any transgender students or employees that any University staff or administrator has required them to use the restroom or changing facility that corresponds with their biological sex, as listed on their birth certificate.

15. If any transgender student or employee does complain that they have been forced to use a restroom inconsistent with their gender identity, I will ensure that the complaint is investigated to determine whether there has been a violation of the University nondiscrimination policy and applicable law.

16. Pending a final judgment in this case, I have no intent to exercise my authority to promulgate any guidelines or regulations that require that transgender students use the restrooms consistent with their biological sex. UNC Policy Manual 100.2 3.(a). Exhibit 5.

17. I declare under penalty of perjury that the foregoing is true and correct.

Executed this the 26<sup>th</sup> day of May 2016.



Margaret Spellings

President of the University of North Carolina

*CODE*

## SECTION 501. PRESIDENT OF THE UNIVERSITY.

## 501 A. General Authority.

The president of the University of North Carolina shall be the chief administrative and executive officer of the University. [See G.S. 116-14(a)] The president shall have complete authority to manage the affairs and execute the policies of the University of North Carolina and its constituent institutions, subject to the direction and control of the Board of Governors and the provisions of this Code. The president shall personally represent before the state, the region and the nation the ideals and the spirit of the University of North Carolina. As the chief executive, the president shall be the official administrative spokesperson for and the interpreter of the University to the alumni and alumnae as a whole, the news media, the educational world, and the general public. The president shall be responsible for the presentation and interpretation of all University policies, recommendations, and requests to the General Assembly, the governor, state officers and commissions, and the federal government.

## 501 B. Relation of the President to the Board of Governors.

(1) The president, as the chief executive officer of the University, shall perform all duties prescribed by the Board of Governors. The president shall be responsible to the Board of Governors for the prompt and effective execution of all laws relating to the University of North Carolina and of all resolutions, policies, rules, and regulations adopted by the board for the operation of the University of North Carolina and for the government of any and all of its constituent institutions, and the president's discretionary powers shall be broad enough to meet the extensive responsibilities of the presidency.

(2) The president shall make recommendations to the Board of Governors with respect to the adoption, modification, revision or reversal of policies, rules, and regulations applicable to the University of North Carolina and any or all of its constituent institutions. To this end, the president shall establish and maintain agencies of inquiry and administrative lines of communication, which include the constituent institutions, to ensure prompt perception of needs for problem identification and analysis, decision, and policy formulation.

(3) The president shall prepare and submit to the Board of Governors such reports and recommendations concerning the University of North Carolina and its constituent institutions as the president may deem wise or as the board may require.

(4) The president shall attend and may participate in, without the privilege of voting, the meetings of the Board of Governors and its various committees, and the president may attend the meetings of all the boards of trustees.

(5) The president shall be the official administrative medium of communication between the Board of Governors and all individuals, officials, agencies, and organizations, both within and without the University and its constituent institutions.

(6) The president, consistent with the provisions of Section 500 B(2), shall make nominations for all appointments that are to be acted upon by the Board of Governors and shall make recommendations for all promotions, salaries, transfers, suspensions, and dismissals that are to be acted upon by the board. The board reserves the right, in all instances, to act on its own initiative.

(7) The president shall assume, and retain at all times, control over the budget of the University of North Carolina, subject to the direction and control of the Board of Governors. The president shall prepare the proposed budget of the University of North Carolina and shall submit such proposed budget to the Board of Governors for approval; administrative procedures uniformly applicable to all institutions shall be established by the president to ensure that each institution has full opportunity to provide information

and advice concerning the formulation of such proposed budget. The president shall be responsible for the presentation and explanation of budget requests approved by the Board of Governors to the director of the budget and the Advisory Budget Commission, the General Assembly and its committees, officers, and members. The president shall be responsible for the execution of the budget of the University of North Carolina as approved by the General Assembly. All revisions of the budget which require approval of the Advisory Budget Commission shall be acted upon by the Board of Governors on recommendation of the president.

(8) The president, with the approval of the Board of Governors, shall appoint an advisory committee composed of representative presidents of the private colleges and universities of the state. [See G.S. 116-14(c)]

501 C. Relation of the President to the University.

(1) The president shall be the leader of the University of North Carolina and its constituent institutions and shall coordinate the activities of all constituent institutions in accordance with the principle of allocated functions prescribed by the Board of Governors. The president shall promote the general welfare and development of the University in its several parts and as a whole.

(2) The president shall be a member of, and shall have the privilege of attending meetings of, all faculties of the constituent institutions of the University of North Carolina.

(3) In the absence of policies prescribed by the Board of Governors, the president shall resolve all issues of jurisdiction and dispute among the constituent institutions of the University.

(4) Repealed

(5) The president may refer for investigation, report, and advice any question of University concern to any council, faculty, or scientific, extension, or administrative staff.

(6) The medium for official communications between the president and the constituent institutions of the University shall be the respective chancellors.

(7) The president shall establish administrative organizations to carry out the policies of the University and shall interpret these organizations to the Board of Governors and to the officers and faculties of the University. The president shall ensure that the University and its constituent institutions are properly staffed with personnel competent to discharge their responsibilities effectively. In carrying out the president's duties and responsibilities, the president shall be assisted by staff officers and by the chancellors of the constituent institutions. The president shall prescribe the duties and assignments of the staff officers reporting to the president. The president may establish and define the duties of all-University councils and committees to advise and assist the president in the execution of the president's duties. The president may delegate to other officers portions of the president's duties and responsibilities, with the required authority for their fulfillment. However, such delegation shall not reduce the president's overall responsibility for those portions of duties which the president may choose to delegate.

The UNC Policy Manual  
Chapter 100.1 - *The Code*  
Section 103

*CODE*

SECTION 103.

EQUALITY OF OPPORTUNITY IN THE UNIVERSITY.

Admission to, employment by, and promotion in the University of North Carolina and all of its constituent institutions shall be on the basis of merit, and there shall be no unlawful discrimination against any person on the basis of race, color, religion, sex, sexual orientation, gender identify, national origin, age, disability, genetic information, or veteran status.

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SECOND EXTRA SESSION 2016**

**SESSION LAW 2016-3  
HOUSE BILL 2**

1 AN ACT TO PROVIDE FOR SINGLE-SEX MULTIPLE OCCUPANCY BATHROOM AND  
2 CHANGING FACILITIES IN SCHOOLS AND PUBLIC AGENCIES AND TO CREATE  
3 STATEWIDE CONSISTENCY IN REGULATION OF EMPLOYMENT AND PUBLIC  
4 ACCOMMODATIONS.

5 Whereas, the North Carolina Constitution directs the General Assembly to provide for  
6 the organization and government of all cities and counties and to give cities and counties such  
7 powers and duties as the General Assembly deems advisable in Section 1 of Article VII of the  
8 North Carolina Constitution; and

9 Whereas, the North Carolina Constitution reflects the importance of statewide laws  
10 related to commerce by prohibiting the General Assembly from enacting local acts regulating  
11 labor, trade, mining, or manufacturing in Section 24 of Article II of the North Carolina  
12 Constitution; and

13 Whereas, the General Assembly finds that laws and obligations consistent statewide for  
14 all businesses, organizations, and employers doing business in the State will improve intrastate  
15 commerce; and

16 Whereas, the General Assembly finds that laws and obligations consistent statewide for  
17 all businesses, organizations, and employers doing business in the State benefit the businesses,  
18 organizations, and employers seeking to do business in the State and attracts new businesses,  
19 organizations, and employers to the State; Now, therefore,

20  
21 The General Assembly of North Carolina enacts:  
22  
23

24 **PART I. SINGLE-SEX MULTIPLE OCCUPANCY BATHROOM AND CHANGING**  
25 **FACILITIES**

26 **SECTION 1.1.** G.S. 115C-47 is amended by adding a new subdivision to read:

27 "(63) To Establish Single-Sex Multiple Occupancy Bathroom and Changing  
28 Facilities. – Local boards of education shall establish single-sex multiple  
29 occupancy bathroom and changing facilities as provided in G.S. 115C-521.2."

30 **SECTION 1.2.** Article 37 of Chapter 115C of the General Statutes is amended by  
31 adding a new section to read:

32 **"§ 115C-521.2. Single-sex multiple occupancy bathroom and changing facilities.**

33 (a) Definitions. – The following definitions apply in this section:

34 (1) Biological sex. – The physical condition of being male or female, which is  
35 stated on a person's birth certificate.

36 (2) Multiple occupancy bathroom or changing facility. – A facility designed or  
37 designated to be used by more than one person at a time where students may be  
38 in various states of undress in the presence of other persons. A multiple  
39 occupancy bathroom or changing facility may include, but is not limited to, a  
40 school restroom, locker room, changing room, or shower room.

41 (3) Single occupancy bathroom or changing facility. – A facility designed or  
42 designated to be used by only one person at a time where students may be in  
43 various states of undress. A single occupancy bathroom or changing facility  
44 may include, but is not limited to, a single stall restroom designated as unisex  
45 or for use based on biological sex.

46 (b) Single-Sex Multiple Occupancy Bathroom and Changing Facilities. – Local boards of  
47 education shall require every multiple occupancy bathroom or changing facility that is designated  
48 for student use to be designated for and used only by students based on their biological sex.



1 (c) Accommodations Permitted. – Nothing in this section shall prohibit local boards of  
2 education from providing accommodations such as single occupancy bathroom or changing  
3 facilities or controlled use of faculty facilities upon a request due to special circumstances, but in  
4 no event shall that accommodation result in the local boards of education allowing a student to use  
5 a multiple occupancy bathroom or changing facility designated under subsection (b) of this section  
6 for a sex other than the student's biological sex.

7 (d) Exceptions. – This section does not apply to persons entering a multiple occupancy  
8 bathroom or changing facility designated for use by the opposite sex:

9 (1) For custodial purposes.

10 (2) For maintenance or inspection purposes.

11 (3) To render medical assistance.

12 (4) To accompany a student needing assistance when the assisting individual is an  
13 employee or authorized volunteer of the local board of education or the  
14 student's parent or authorized caregiver.

15 (5) To receive assistance in using the facility.

16 (6) To accompany a person other than a student needing assistance.

17 (7) That has been temporarily designated for use by that person's biological sex."

18 **SECTION 1.3.** Chapter 143 of the General Statutes is amended by adding a new  
19 Article to read:

20 "Article 81.

21 "Single-Sex Multiple Occupancy Bathroom and Changing Facilities.

22 **"§ 143-760. Single-sex multiple occupancy bathroom and changing facilities.**

23 (a) Definitions. – The following definitions apply in this section:

24 (1) Biological sex. – The physical condition of being male or female, which is  
25 stated on a person's birth certificate.

26 (2) Executive branch agency. – Agencies, boards, offices, departments, and  
27 institutions of the executive branch, including The University of North Carolina  
28 and the North Carolina Community College System.

29 (3) Multiple occupancy bathroom or changing facility. – A facility designed or  
30 designated to be used by more than one person at a time where persons may be  
31 in various states of undress in the presence of other persons. A multiple  
32 occupancy bathroom or changing facility may include, but is not limited to, a  
33 restroom, locker room, changing room, or shower room.

34 (4) Public agency. – Includes any of the following:

35 a. Executive branch agencies.

36 b. All agencies, boards, offices, and departments under the direction and  
37 control of a member of the Council of State.

38 c. "Unit" as defined in G.S. 159-7(b)(15).

39 d. "Public authority" as defined in G.S. 159-7(b)(10).

40 e. A local board of education.

41 f. The judicial branch.

42 g. The legislative branch.

43 h. Any other political subdivision of the State.

44 (5) Single occupancy bathroom or changing facility. – A facility designed or  
45 designated to be used by only one person at a time where persons may be in  
46 various states of undress. A single occupancy bathroom or changing facility  
47 may include, but is not limited to, a single stall restroom designated as unisex  
48 or for use based on biological sex.

49 (b) Single-Sex Multiple Occupancy Bathroom and Changing Facilities. – Public agencies  
50 shall require every multiple occupancy bathroom or changing facility to be designated for and only  
51 used by persons based on their biological sex.

52 (c) Accommodations Permitted. – Nothing in this section shall prohibit public agencies  
53 from providing accommodations such as single occupancy bathroom or changing facilities upon a  
54 person's request due to special circumstances, but in no event shall that accommodation result in  
55 the public agency allowing a person to use a multiple occupancy bathroom or changing facility  
56 designated under subsection (b) of this section for a sex other than the person's biological sex.

57 (d) Exceptions. – This section does not apply to persons entering a multiple occupancy  
58 bathroom or changing facility designated for use by the opposite sex:

59 (1) For custodial purposes.

- 1           (2) For maintenance or inspection purposes.  
 2           (3) To render medical assistance.  
 3           (4) To accompany a person needing assistance.  
 4           (4a) For a minor under the age of seven who accompanies a person caring for that  
 5               minor.  
 6           (5) That has been temporarily designated for use by that person's biological sex."  
 7

8 **PART II. STATEWIDE CONSISTENCY IN LAWS RELATED TO EMPLOYMENT AND**  
 9 **CONTRACTING**

10 **SECTION 2.1.** G.S. 95-25.1 reads as rewritten:

11 "**§ 95-25.1. Short title and legislative purpose; local governments preempted.**

12 (a) This Article shall be known and may be cited as the "Wage and Hour Act."

13 (b) The public policy of this State is declared as follows: The wage levels of employees,  
 14 hours of labor, payment of earned wages, and the well-being of minors are subjects of concern  
 15 requiring legislation to promote the general welfare of the people of the State without jeopardizing  
 16 the competitive position of North Carolina business and industry. The General Assembly declares  
 17 that the general welfare of the State requires the enactment of this law under the police power of  
 18 the State.

19 (c) The provisions of this Article supersede and preempt any ordinance, regulation,  
 20 resolution, or policy adopted or imposed by a unit of local government or other political  
 21 subdivision of the State that regulates or imposes any requirement upon an employer pertaining to  
 22 compensation of employees, such as the wage levels of employees, hours of labor, payment of  
 23 earned wages, benefits, leave, or well-being of minors in the workforce. This subsection shall not  
 24 apply to any of the following:

- 25           (1) A local government regulating, compensating, or controlling its own  
 26               employees.  
 27           (2) Economic development incentives awarded under Chapter 143B of the General  
 28               Statutes.  
 29           (3) Economic development incentives awarded under Article 1 of Chapter 158 of  
 30               the General Statutes.  
 31           (4) A requirement of federal community development block grants.  
 32           (5) Programs established under G.S. 153A-376 or G.S. 160A-456."

33 **SECTION 2.2.** G.S. 153A-449(a) reads as rewritten:

34 "(a) Authority. – A county may contract with and appropriate money to any person,  
 35 association, or corporation, in order to carry out any public purpose that the county is authorized  
 36 by law to engage in. A county may not require a private contractor under this section to abide by  
 37 ~~any restriction that the county could not impose on all employers in the county, such as paying~~  
 38 ~~minimum wage or providing paid sick leave to its employees, regulations or controls on the~~  
 39 ~~contractor's employment practices or mandate or prohibit the provision of goods, services, or~~  
 40 ~~accommodations to any member of the public as a condition of bidding on a contract or a~~  
 41 ~~qualification-based selection, except as otherwise required or allowed by State law."~~

42 **SECTION 2.3.** G.S. 160A-20.1(a) reads as rewritten:

43 "(a) Authority. – A city may contract with and appropriate money to any person,  
 44 association, or corporation, in order to carry out any public purpose that the city is authorized by  
 45 law to engage in. A city may not require a private contractor under this section to abide by ~~any~~  
 46 ~~restriction that the city could not impose on all employers in the city, such as paying minimum~~  
 47 ~~wage or providing paid sick leave to its employees, regulations or controls on the contractor's~~  
 48 ~~employment practices or mandate or prohibit the provision of goods, services, or accommodations~~  
 49 ~~to any member of the public as a condition of bidding on a contract or a~~  
 50 ~~qualification-based selection, except as otherwise required or allowed by State law."~~

51  
 52 **PART III. PROTECTION OF RIGHTS IN EMPLOYMENT AND PUBLIC**  
 53 **ACCOMMODATIONS**

54 **SECTION 3.1.** G.S. 143-422.2 reads as rewritten:

55 "**§ 143-422.2. Legislative declaration.**

56 (a) It is the public policy of this State to protect and safeguard the right and opportunity of  
 57 all persons to seek, obtain and hold employment without discrimination or abridgement on  
 58 account of race, religion, color, national origin, age, biological sex or handicap by employers  
 59 which regularly employ 15 or more employees.

1 (b) It is recognized that the practice of denying employment opportunity and  
2 discriminating in the terms of employment foments domestic strife and unrest, deprives the State  
3 of the fullest utilization of its capacities for advancement and development, and substantially and  
4 adversely affects the interests of employees, employers, and the public in general.

5 (c) The General Assembly declares that the regulation of discriminatory practices in  
6 employment is properly an issue of general, statewide concern, such that this Article and other  
7 applicable provisions of the General Statutes supersede and preempt any ordinance, regulation,  
8 resolution, or policy adopted or imposed by a unit of local government or other political  
9 subdivision of the State that regulates or imposes any requirement upon an employer pertaining to  
10 the regulation of discriminatory practices in employment, except such regulations applicable to  
11 personnel employed by that body that are not otherwise in conflict with State law."

12 **SECTION 3.2.** G.S. 143-422.3 reads as rewritten:

13 **"§ 143-422.3. Investigations; conciliations.**

14 The Human Relations Commission in the Department of Administration shall have the  
15 authority to receive charges of discrimination from the Equal Employment Opportunity  
16 Commission pursuant to an agreement under Section 709(b) of Public Law 88-352, as amended by  
17 Public Law 92-261, and investigate and conciliate charges of discrimination. Throughout this  
18 process, the agency shall use its good offices to effect an amicable resolution of the charges of  
19 discrimination. This Article does not create, and shall not be construed to create or support, a  
20 statutory or common law private right of action, and no person may bring any civil action based  
21 upon the public policy expressed herein."

22 **SECTION 3.3.** Chapter 143 of the General Statutes is amended by adding a new  
23 Article to read:

24 "Article 49B.

25 "Equal Access to Public Accommodations.

26 **"§ 143-422.10. Short title.**

27 This Article shall be known and may be cited as the Equal Access to Public Accommodations  
28 Act.

29 **"§ 143-422.11. Legislative declaration.**

30 (a) It is the public policy of this State to protect and safeguard the right and opportunity of  
31 all individuals within the State to enjoy fully and equally the goods, services, facilities, privileges,  
32 advantages, and accommodations of places of public accommodation free of discrimination  
33 because of race, religion, color, national origin, or biological sex, provided that designating  
34 multiple or single occupancy bathrooms or changing facilities according to biological sex, as  
35 defined in G.S. 143-760(a)(1), (3), and (5), shall not be deemed to constitute discrimination.

36 (b) The General Assembly declares that the regulation of discriminatory practices in places  
37 of public accommodation is properly an issue of general, statewide concern, such that this Article  
38 and other applicable provisions of the General Statutes supersede and preempt any ordinance,  
39 regulation, resolution, or policy adopted or imposed by a unit of local government or other  
40 political subdivision of the State that regulates or imposes any requirement pertaining to the  
41 regulation of discriminatory practices in places of public accommodation.

42 **"§ 143-422.12. Places of public accommodation – defined.**

43 For purposes of this Article, places of public accommodation has the same meaning as defined  
44 in G.S. 168A-3(8), but shall exclude any private club or other establishment not, in fact, open to  
45 the public.

46 **"§ 143-422.13. Investigations; conciliations.**

47 The Human Relations Commission in the Department of Administration shall have the  
48 authority to receive, investigate, and conciliate complaints of discrimination in public  
49 accommodations. Throughout this process, the Human Relations Commission shall use its good  
50 offices to effect an amicable resolution of the complaints of discrimination. This Article does not  
51 create, and shall not be construed to create or support, a statutory or common law private right of  
52 action, and no person may bring any civil action based upon the public policy expressed herein."

53  
54 **PART IV. SEVERABILITY**

55 **SECTION 4.** If any provision of this act or its application is held invalid, the  
56 invalidity does not affect other provisions or applications of this act that can be given effect  
57 without the invalid provisions or application, and to this end the provisions of this act are  
58 severable. If any provision of this act is temporarily or permanently restrained or enjoined by  
59 judicial order, this act shall be enforced as though such restrained or enjoined provisions had not

1 been adopted, provided that whenever such temporary or permanent restraining order or injunction  
2 is stayed, dissolved, or otherwise ceases to have effect, such provisions shall have full force and  
3 effect.

4  
5 **PART V. EFFECTIVE DATE**

6 **SECTION 5.** This act is effective when it becomes law and applies to any action  
7 taken on or after that date, to any ordinance, resolution, regulation, or policy adopted or amended  
8 on or after that date, and to any contract entered into on or after that date. The provisions of  
9 Sections 2.1, 2.2, 2.3, 3.1, 3.2, and 3.3 of this act supersede and preempt any ordinance, resolution,  
10 regulation, or policy adopted prior to the effective date of this act that purports to regulate a  
11 subject matter preempted by this act or that violates or is not consistent with this act, and such  
12 ordinances, resolutions, regulations, or policies shall be null and void as of the effective date of  
13 this act.

14 In the General Assembly read three times and ratified this the 23<sup>rd</sup> day of March, 2016.

15  
16  
17 s/ Daniel J. Forest  
18 President of the Senate

19  
20  
21 s/ Tim Moore  
22 Speaker of the House of Representatives

23  
24  
25 s/ Pat McCrory  
26 Governor

27  
28  
29 Approved 9:57 p.m. this 23<sup>rd</sup> day of March, 2016



PO Box 2688  
Chapel Hill, NC 27515

#### Constituent Universities

Appalachian  
State University

East Carolina  
University

Elizabeth City  
State University

Fayetteville State  
University

North Carolina  
Agricultural and  
Technical State  
University

North Carolina  
Central University

North Carolina  
State University  
at Raleigh

University of  
North Carolina  
at Asheville

University of  
North Carolina  
at Chapel Hill

University of  
North Carolina  
at Charlotte

University of  
North Carolina  
at Greensboro

University of  
North Carolina  
at Pembroke

University of  
North Carolina  
at Wilmington

University of  
North Carolina  
School of the Arts

Western Carolina  
University

Winston-Salem  
State University

#### Constituent High School

North Carolina  
School of Science  
and Mathematics

An Equal Opportunity/  
Affirmative Action Employer

#### Margaret Spellings President

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Fax: 919-843-9695

Email: margaret.spellings@northcarolina.edu

### MEMORANDUM

**TO:** Chancellors

**FROM:** Margaret Spellings

**DATE:** April 5, 2016

**SUBJECT:** Guidance - Compliance with the Public Facilities Privacy & Security Act

The General Assembly and Governor McCrory enacted the Public Facilities Privacy & Security Act (the "Act," copy attached) on March 23, 2016. This memorandum responds to requests for guidance from UNC system institutions concerning the Act's requirements.

The Act amends the state's public policy statement regarding nondiscrimination, and provides that it supersedes nondiscrimination regulations imposed upon employers and public accommodations by political subdivisions of the state, including local governments. The Act does not limit the ability of local governments and universities to adopt policies with respect to their own employees. The Act requires multiple occupancy bathrooms and changing facilities in government buildings to be designated for and only used by persons based on biological sex.

1. *Does the Act require the University to change its nondiscrimination policies?*

*Answer:* No. The Act does not require University institutions to change their nondiscrimination policies, and those policies should remain in effect.

2. *What are the University's obligations under the Act relating to bathrooms and changing facilities?*

*Answer:* University institutions must require every multiple-occupancy bathroom and changing facility to be designated for and used only by persons based on their biological sex.

3. *How should University institutions meet their obligations related to bathrooms and changing facilities?*

*Answer:* University institutions should take the following actions to fully meet their obligations under the Act:

**JA615**

Chancellors  
Page 2 of 2  
April 5, 2016

- a. Designate and label multiple-occupancy bathrooms and changing facilities for single-sex use with signage.
- b. Provide notice of the Act to campus constituencies as appropriate.
- c. Consider assembling and making information available about the locations of designated single-occupancy bathrooms and changing facilities on campus.

UNC institutions already designate and label multiple-occupancy bathrooms and changing facilities for single-sex use with signage and should maintain these designations and signage. Institutions may provide accommodations such as single-occupancy bathrooms or changing facilities and may designate those facilities as gender-neutral.

4. *Does the Act address enforcement of the bathroom and changing facility provisions?*

*Answer:* The Act does not contain provisions concerning enforcement of the bathroom and changing facility requirements.

5. *What is the status of the lawsuit filed against the Governor, the Attorney General, and the University and how will it affect the implementation of the Act?*

*Answer:* The lawsuit is pending in federal court. The plaintiffs include a student, a faculty member, and a staff member from UNC system institutions. Once the lawsuit is formally served, the University will have several weeks to file a response. The lawsuit alleges that the Act violates rights to equal protection, due process, and privacy protected by the United States Constitution and discriminates on the basis of sex in violation of Title IX. The plaintiffs have asked the court to declare the Act unconstitutional and to stop the state from enforcing its provisions. The Attorney General has announced that he will not represent the Governor or the University in the lawsuit. The University will work with the Attorney General's office to make arrangements for counsel in the lawsuit. Like all public agencies, the University is required to fulfill its obligations under the law unless or until the court directs otherwise.

6. *What should constituent institutions do if contacted by a federal regulatory agency concerning the Act and its implementation?*

*Answer:* If your institution is contacted by a federal agency with questions about the Act, please notify the Division of Legal Affairs at UNC General Administration.

7. *What is the effective date of the Act?*

*Answer:* The Act took effect and became law on March 23, 2016.

8. *Are there any other issues that institutions should consider?*

*Answer:* State and federal law protect personal privacy and limit the personal information that may be requested and/or disclosed by the University concerning students, employees, visitors, patients, and others. In addition, constituent institutions must continue to operate in accordance with their nondiscrimination policies and must take prompt and appropriate action to prevent and address any instances of harassment and discrimination in violation of University policies.

If you have specific questions about your facilities and the Act, please address those with your campus legal counsel. We will continue to provide further guidance and information as appropriate.

Attachment

**JA616**

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SECOND EXTRA SESSION 2016**

**HOUSE BILL 2  
RATIFIED BILL**

AN ACT TO PROVIDE FOR SINGLE-SEX MULTIPLE OCCUPANCY BATHROOM AND CHANGING FACILITIES IN SCHOOLS AND PUBLIC AGENCIES AND TO CREATE STATEWIDE CONSISTENCY IN REGULATION OF EMPLOYMENT AND PUBLIC ACCOMMODATIONS.

Whereas, the North Carolina Constitution directs the General Assembly to provide for the organization and government of all cities and counties and to give cities and counties such powers and duties as the General Assembly deems advisable in Section 1 of Article VII of the North Carolina Constitution; and

Whereas, the North Carolina Constitution reflects the importance of statewide laws related to commerce by prohibiting the General Assembly from enacting local acts regulating labor, trade, mining, or manufacturing in Section 24 of Article II of the North Carolina Constitution; and

Whereas, the General Assembly finds that laws and obligations consistent statewide for all businesses, organizations, and employers doing business in the State will improve intrastate commerce; and

Whereas, the General Assembly finds that laws and obligations consistent statewide for all businesses, organizations, and employers doing business in the State benefit the businesses, organizations, and employers seeking to do business in the State and attracts new businesses, organizations, and employers to the State; Now, therefore,

The General Assembly of North Carolina enacts:

**PART I. SINGLE-SEX MULTIPLE OCCUPANCY BATHROOM AND CHANGING FACILITIES**

**SECTION 1.1.** G.S. 115C-47 is amended by adding a new subdivision to read:

"(63) To Establish Single-Sex Multiple Occupancy Bathroom and Changing Facilities. – Local boards of education shall establish single-sex multiple occupancy bathroom and changing facilities as provided in G.S. 115C-521.2."

**SECTION 1.2.** Article 37 of Chapter 115C of the General Statutes is amended by adding a new section to read:

**"§ 115C-521.2. Single-sex multiple occupancy bathroom and changing facilities.**

(a) Definitions. – The following definitions apply in this section:

- (1) Biological sex. – The physical condition of being male or female, which is stated on a person's birth certificate.
- (2) Multiple occupancy bathroom or changing facility. – A facility designed or designated to be used by more than one person at a time where students may be in various states of undress in the presence of other persons. A multiple occupancy bathroom or changing facility may include, but is not limited to, a school restroom, locker room, changing room, or shower room.
- (3) Single occupancy bathroom or changing facility. – A facility designed or designated to be used by only one person at a time where students may be in various states of undress. A single occupancy bathroom or changing facility may include, but is not limited to, a single stall restroom designated as unisex or for use based on biological sex.

(b) Single-Sex Multiple Occupancy Bathroom and Changing Facilities. – Local boards of education shall require every multiple occupancy bathroom or changing facility that is



designated for student use to be designated for and used only by students based on their biological sex.

(c) Accommodations Permitted. – Nothing in this section shall prohibit local boards of education from providing accommodations such as single occupancy bathroom or changing facilities or controlled use of faculty facilities upon a request due to special circumstances, but in no event shall that accommodation result in the local boards of education allowing a student to use a multiple occupancy bathroom or changing facility designated under subsection (b) of this section for a sex other than the student's biological sex.

(d) Exceptions. – This section does not apply to persons entering a multiple occupancy bathroom or changing facility designated for use by the opposite sex:

- (1) For custodial purposes.
- (2) For maintenance or inspection purposes.
- (3) To render medical assistance.
- (4) To accompany a student needing assistance when the assisting individual is an employee or authorized volunteer of the local board of education or the student's parent or authorized caregiver.
- (5) To receive assistance in using the facility.
- (6) To accompany a person other than a student needing assistance.
- (7) That has been temporarily designated for use by that person's biological sex."

**SECTION 1.3.** Chapter 143 of the General Statutes is amended by adding a new Article to read:

"Article 81.

"Single-Sex Multiple Occupancy Bathroom and Changing Facilities.

**"§ 143-760. Single-sex multiple occupancy bathroom and changing facilities.**

(a) Definitions. – The following definitions apply in this section:

- (1) Biological sex. – The physical condition of being male or female, which is stated on a person's birth certificate.
- (2) Executive branch agency. – Agencies, boards, offices, departments, and institutions of the executive branch, including The University of North Carolina and the North Carolina Community College System.
- (3) Multiple occupancy bathroom or changing facility. – A facility designed or designated to be used by more than one person at a time where persons may be in various states of undress in the presence of other persons. A multiple occupancy bathroom or changing facility may include, but is not limited to, a restroom, locker room, changing room, or shower room.
- (4) Public agency. – Includes any of the following:
  - a. Executive branch agencies.
  - b. All agencies, boards, offices, and departments under the direction and control of a member of the Council of State.
  - c. "Unit" as defined in G.S. 159-7(b)(15).
  - d. "Public authority" as defined in G.S. 159-7(b)(10).
  - e. A local board of education.
  - f. The judicial branch.
  - g. The legislative branch.
  - h. Any other political subdivision of the State.
- (5) Single occupancy bathroom or changing facility. – A facility designed or designated to be used by only one person at a time where persons may be in various states of undress. A single occupancy bathroom or changing facility may include, but is not limited to, a single stall restroom designated as unisex or for use based on biological sex.

(b) Single-Sex Multiple Occupancy Bathroom and Changing Facilities. – Public agencies shall require every multiple occupancy bathroom or changing facility to be designated for and only used by persons based on their biological sex.

(c) Accommodations Permitted. – Nothing in this section shall prohibit public agencies from providing accommodations such as single occupancy bathroom or changing facilities upon a person's request due to special circumstances, but in no event shall that accommodation result in the public agency allowing a person to use a multiple occupancy bathroom or

changing facility designated under subsection (b) of this section for a sex other than the person's biological sex.

(d) Exceptions. – This section does not apply to persons entering a multiple occupancy bathroom or changing facility designated for use by the opposite sex:

- (1) For custodial purposes.
- (2) For maintenance or inspection purposes.
- (3) To render medical assistance.
- (4) To accompany a person needing assistance.
- (4a) For a minor under the age of seven who accompanies a person caring for that minor.
- (5) That has been temporarily designated for use by that person's biological sex."

## **PART II. STATEWIDE CONSISTENCY IN LAWS RELATED TO EMPLOYMENT AND CONTRACTING**

**SECTION 2.1.** G.S. 95-25.1 reads as rewritten:

**"§ 95-25.1. Short title and legislative ~~purpose~~ purpose; local governments preempted.**

- (a) This Article shall be known and may be cited as the "Wage and Hour Act."
- (b) The public policy of this State is declared as follows: The wage levels of employees, hours of labor, payment of earned wages, and the well-being of minors are subjects of concern requiring legislation to promote the general welfare of the people of the State without jeopardizing the competitive position of North Carolina business and industry. The General Assembly declares that the general welfare of the State requires the enactment of this law under the police power of the State.

(c) The provisions of this Article supersede and preempt any ordinance, regulation, resolution, or policy adopted or imposed by a unit of local government or other political subdivision of the State that regulates or imposes any requirement upon an employer pertaining to compensation of employees, such as the wage levels of employees, hours of labor, payment of earned wages, benefits, leave, or well-being of minors in the workforce. This subsection shall not apply to any of the following:

- (1) A local government regulating, compensating, or controlling its own employees.
- (2) Economic development incentives awarded under Chapter 143B of the General Statutes.
- (3) Economic development incentives awarded under Article 1 of Chapter 158 of the General Statutes.
- (4) A requirement of federal community development block grants.
- (5) Programs established under G.S. 153A-376 or G.S. 160A-456."

**SECTION 2.2.** G.S. 153A-449(a) reads as rewritten:

"(a) Authority. – A county may contract with and appropriate money to any person, association, or corporation, in order to carry out any public purpose that the county is authorized by law to engage in. A county may not require a private contractor under this section to abide by ~~any restriction that the county could not impose on all employers in the county, such as paying minimum wage or providing paid sick leave to its employees,~~ regulations or controls on the contractor's employment practices or mandate or prohibit the provision of goods, services, or accommodations to any member of the public as a condition of bidding on a ~~contract~~ contract or a qualification-based selection, except as otherwise required or allowed by State law."

**SECTION 2.3.** G.S. 160A-20.1(a) reads as rewritten:

"(a) Authority. – A city may contract with and appropriate money to any person, association, or corporation, in order to carry out any public purpose that the city is authorized by law to engage in. A city may not require a private contractor under this section to abide by ~~any restriction that the city could not impose on all employers in the city, such as paying minimum wage or providing paid sick leave to its employees,~~ regulations or controls on the contractor's employment practices or mandate or prohibit the provision of goods, services, or accommodations to any member of the public as a condition of bidding on a ~~contract~~ contract or a qualification-based selection, except as otherwise required or allowed by State law."

### **PART III. PROTECTION OF RIGHTS IN EMPLOYMENT AND PUBLIC ACCOMMODATIONS**

**SECTION 3.1.** G.S. 143-422.2 reads as rewritten:

**"§ 143-422.2. Legislative declaration.**

(a) It is the public policy of this State to protect and safeguard the right and opportunity of all persons to seek, obtain and hold employment without discrimination or abridgement on account of race, religion, color, national origin, age, biological sex or handicap by employers which regularly employ 15 or more employees.

(b) It is recognized that the practice of denying employment opportunity and discriminating in the terms of employment foments domestic strife and unrest, deprives the State of the fullest utilization of its capacities for advancement and development, and substantially and adversely affects the interests of employees, employers, and the public in general.

(c) The General Assembly declares that the regulation of discriminatory practices in employment is properly an issue of general, statewide concern, such that this Article and other applicable provisions of the General Statutes supersede and preempt any ordinance, regulation, resolution, or policy adopted or imposed by a unit of local government or other political subdivision of the State that regulates or imposes any requirement upon an employer pertaining to the regulation of discriminatory practices in employment, except such regulations applicable to personnel employed by that body that are not otherwise in conflict with State law."

**SECTION 3.2.** G.S. 143-422.3 reads as rewritten:

**"§ 143-422.3. Investigations; conciliations.**

The Human Relations Commission in the Department of Administration shall have the authority to receive charges of discrimination from the Equal Employment Opportunity Commission pursuant to an agreement under Section 709(b) of Public Law 88-352, as amended by Public Law 92-261, and investigate and conciliate charges of discrimination. Throughout this process, the agency shall use its good offices to effect an amicable resolution of the charges of discrimination. This Article does not create, and shall not be construed to create or support, a statutory or common law private right of action, and no person may bring any civil action based upon the public policy expressed herein."

**SECTION 3.3.** Chapter 143 of the General Statutes is amended by adding a new Article to read:

"Article 49B.

"Equal Access to Public Accommodations.

**"§ 143-422.10. Short title.**

This Article shall be known and may be cited as the Equal Access to Public Accommodations Act.

**"§ 143-422.11. Legislative declaration.**

(a) It is the public policy of this State to protect and safeguard the right and opportunity of all individuals within the State to enjoy fully and equally the goods, services, facilities, privileges, advantages, and accommodations of places of public accommodation free of discrimination because of race, religion, color, national origin, or biological sex, provided that designating multiple or single occupancy bathrooms or changing facilities according to biological sex, as defined in G.S. 143-760(a)(1), (3), and (5), shall not be deemed to constitute discrimination.

(b) The General Assembly declares that the regulation of discriminatory practices in places of public accommodation is properly an issue of general, statewide concern, such that this Article and other applicable provisions of the General Statutes supersede and preempt any ordinance, regulation, resolution, or policy adopted or imposed by a unit of local government or other political subdivision of the State that regulates or imposes any requirement pertaining to the regulation of discriminatory practices in places of public accommodation.

**"§ 143-422.12. Places of public accommodation – defined.**

For purposes of this Article, places of public accommodation has the same meaning as defined in G.S. 168A-3(8), but shall exclude any private club or other establishment not, in fact, open to the public.

**"§ 143-422.13. Investigations; conciliations.**

The Human Relations Commission in the Department of Administration shall have the authority to receive, investigate, and conciliate complaints of discrimination in public accommodations. Throughout this process, the Human Relations Commission shall use its good

offices to effect an amicable resolution of the complaints of discrimination. This Article does not create, and shall not be construed to create or support, a statutory or common law private right of action, and no person may bring any civil action based upon the public policy expressed herein."

#### **PART IV. SEVERABILITY**

**SECTION 4.** If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable. If any provision of this act is temporarily or permanently restrained or enjoined by judicial order, this act shall be enforced as though such restrained or enjoined provisions had not been adopted, provided that whenever such temporary or permanent restraining order or injunction is stayed, dissolved, or otherwise ceases to have effect, such provisions shall have full force and effect.

#### **PART V. EFFECTIVE DATE**

**SECTION 5.** This act is effective when it becomes law and applies to any action taken on or after that date, to any ordinance, resolution, regulation, or policy adopted or amended on or after that date, and to any contract entered into on or after that date. The provisions of Sections 2.1, 2.2, 2.3, 3.1, 3.2, and 3.3 of this act supersede and preempt any ordinance, resolution, regulation, or policy adopted prior to the effective date of this act that purports to regulate a subject matter preempted by this act or that violates or is not consistent with this act, and such ordinances, resolutions, regulations, or policies shall be null and void as of the effective date of this act.

In the General Assembly read three times and ratified this the 23<sup>rd</sup> day of March, 2016.

s/ Daniel J. Forest  
President of the Senate

s/ Tim Moore  
Speaker of the House of Representatives

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Pat McCrory  
Governor

Approved \_\_\_\_\_ .m. this \_\_\_\_\_ day of \_\_\_\_\_, 2016

## Adoption of the Policy Manual, Rescission of Prior Policies and Promulgation of Policies

The Board of Governors adopts *The University of North Carolina Policy Manual* as the official document articulating Board of Governors' policies and the administrative regulations and guidelines of the president. Policies existing prior to the adoption of this policy and not included in the *Policy Manual* are rescinded and are no longer in effect.

### 1. Definitions

a. **Policies:** Policies direct the University of North Carolina, its constituent institutions and affiliated entities according to the board's mission and philosophies. Policies should articulate in a concise manner the official statement of the board on issues it deems important to the governance of the University. The Board of Governors is the only entity that may establish a policy of the University.

b. **Regulations:** Regulations are those rules or requirements of the President that the General Administration, the constituent institutions and the designated affiliated entities are required to follow.

c. **Guidelines:** Guidelines are interpretations of policies or other requirements that are issued for the assistance of the General Administration, the constituent institutions and the University's affiliated entities in conducting the affairs of the University.

d. **Transmittal letters:** Transmittal letters will be used to transmit new or amended policies, regulations, or guidelines to the campuses. They will not contain information with long-term significance and will not be included in the *Policy Manual*. Transmittal letters will be sequentially numbered.

### 2. Procedures for adoption or amendment of policies

a. Before the board may adopt, amend or repeal a policy, a standing or special committee of the board must give notice of its proposed action concerning the policy by making a public announcement at a prior meeting of the board or by notice given to members of the board at least 28 days prior to the meeting at which action on the policy is proposed. At the meeting of the board at which the board is to take action, the committee's proposal may be adopted, adopted with amendments, or rejected.

b. Once a board policy is adopted, the Vice President and General Counsel will assign it an outline number and the Secretary of the University will incorporate it in the *Policy Manual*, denoting it in the contents with capital letters. The first page of every policy shall note its promulgation date and dates of amendment. Policies and amendments shall state an effective date if that date is different from the date of adoption.

c. The Secretary of the University will maintain a permanent record of each policy adopted or amended by the Board of Governors and will prepare a transmittal letter to transmit each to the vice presidents, chancellors, and others, as designated by the President.

### 3. Procedures for adoption of regulations and guidelines

a. Regulations and guidelines pertaining to board policies, or other matters not addressed by a policy, will be promulgated by the president and distributed to the campuses. The terms "policy," "policies," or "procedures" will not be used to designate regulations or guidelines.

b. Regulations or guidelines may be issued by the President on the President's initiative or on the recommendation of a vice president after the President's cabinet has had an opportunity to

review and comment on the proposal. All regulations and guidelines issued by the President will be signed and dated by the President.

c. The Vice President and General Counsel will assign an outline number for use when the regulation or guidelines are incorporated into the *Policy Manual*.

d. The President or the vice president responsible for proposing a new or amended regulation or guidelines shall, after it is signed by the President, prepare an appropriate transmittal letter, obtain a number for the transmittal letter from the Secretary of the University, and shall transmit it to the vice presidents, chancellors, Secretary of the University, and others, as designated by the President.

e. The Secretary of the University will control the numbering of transmittal letters and will keep a permanent record of each transmittal letter and the accompanying regulation or guideline.

4. Maintaining the *Policy Manual*

The *Policy Manual* will be maintained in hard copy form and in a format accessible via the world wide web. The Secretary of the University, in consultation with the Vice President and General Counsel, will be responsible for updating the electronic version of the *Policy Manual* regularly and the hard copy version of it biennially by including new or amended policies, regulations, and guidelines. Hard copies will be distributed to the members of the Board of Governors, the President, the vice presidents, chancellors, and others, as designated by the President.

**EXHIBIT A**

**JA624**

## Man in women's locker room cites gender rule

Alison Morrow and KING 5 News, KING 5:25 PM, PST February 16, 2016



(Photo: KING)

Seattle Parks and Recreation is facing a first-of-a-kind challenge to gender bathroom rules. A man undressed in a women's locker room, citing a new state rule that allows people to choose a bathroom based on gender identity.

It was a busy time at Evans Pool around 5:30pm Monday February 8. The pool was open for lap swim. According to Seattle Parks and Recreation, a man wearing board shorts entered the women's locker room and took off his shirt. Women alerted staff, who told the man to leave, but he said "the law has changed and I have a right to be here."

"Really bizarre," MaryAnne Sato said. "I can't imagine why they would want to do that anyway!"

Sato uses the locker room a few times a week, but she says this is a first for her. It's also a first for Seattle Parks and Recreation. Employees report that the man made no verbal or physical attempt to identify as a woman, yet he still cited a new rule that allows bathroom choice based on gender identification.

The issue drew protesters from both sides to Olympia

(<http://www.king5.com/story/news/politics/state/2016/02/15/supporters-protesters-wa-transgender-bathroom-rule-protest/80410108/>) on Monday. Opponents claim the rule opens up bathrooms to voyeurs but supporters say that's an unrealistic fear.

No one was arrested in this case and police weren't called, even though the man returned a second time while young girls were changing for swim practice.

"Sort of works against the point they're trying to make. They're causing people to feel exposed and vulnerable with the intention of reducing people feeling exposed and vulnerable," said pool regular Aldan Shank.

The man's protest, if that's what it was, hurts the greater cause, Shank says.

As far as policy to protect everyone, Seattle Parks spokesman David Takami says they're still working on the issue. Right now, there's no specific protocol for how someone should demonstrate their gender in order to access a bathroom. Employees just rely on verbal identification or physical appearance, and this man offered neither.

"This didn't seem like a transgender issue to staff – someone who was "identifying" as a woman," Takami wrote in a statement to KING 5. "We have guidelines that allow transgender individuals to use restrooms and locker rooms consistent with their gender identity. We want everyone to feel comfortable in our facilities."

**JA625**

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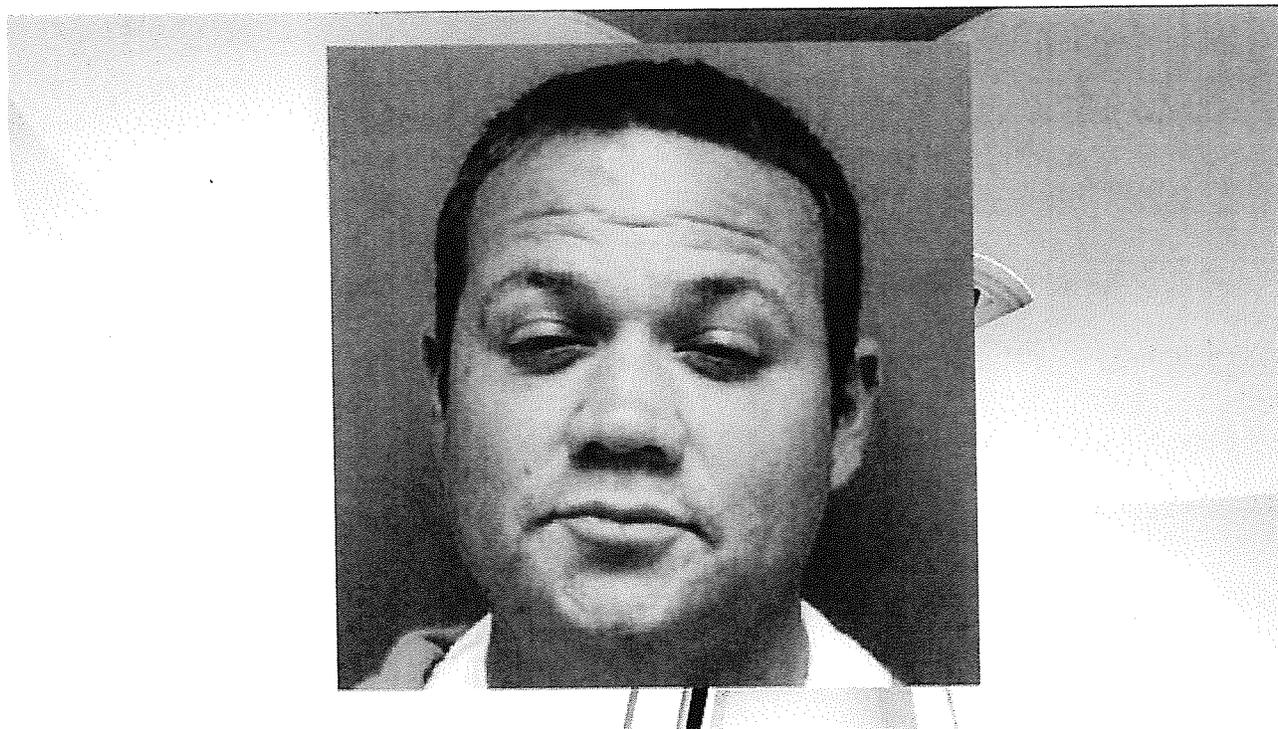
[LEAVE A COMMENT \(\)](#)

**JA626**

**EXHIBIT B**

**JA627**

## Man Dressed as Woman Arrested for Spying Into Mall Bathroom Stall, Police Say



A man dressed as a woman was arrested in Virginia on Monday after police say he was caught peeping into restroom stalls three times in the past year.

Richard Rodriguez, 30, filmed a woman in a bathroom stall at the Potomac Mills Mall, Prince William County Police said on Tuesday. A 35-year-old woman was in the stall when she saw a bag moved toward her under the stall divider. Rodriguez apparently had been filming her, police said.

The victim rushed out of the stall to confront the man and saw him hurry to another stall, next to another woman. The victim alerted the woman and then contacted mall security of the shopping center on 2700 block of Potomac Mills Circle in Woodbridge, Virginia.



Photo of suspect in May 15 and Oct. 11 peeping incidents

Photo credit: Prince William County Police Department

Mall security detained Rodriguez until police arrived. Police then determined that he matches the description of a man who is accused of using a mirror to see into a women's restroom stall on May 15 at a nearby Walmart and also at the Potomac Mills Mall on Oct. 11.

The suspect in the May 15 incident allegedly spied on a 53-year-old woman, police said. The suspect in the Oct. 11 incident -- believed to be the same man -- looked in on a 35-year-old woman and her 5-year-old daughter.

Rodriguez, of Fredericksburg, was charged with three counts of unlawful filming of a non-consenting person and three counts of peeping.

He's due in court Dec. 22 and is being held without bond.

Published at 9:44 PM EST on Nov 17, 2015

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**Find this article at:**

<http://www.nbcwashington.com/news/local/Man-Dressed-as-Woman-Arrested-for-Spying-Into-Mall-Bathroom-Stall-Police-Say-351232041.html>

Check the box to include the list of links referenced in the article.

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**JA629**

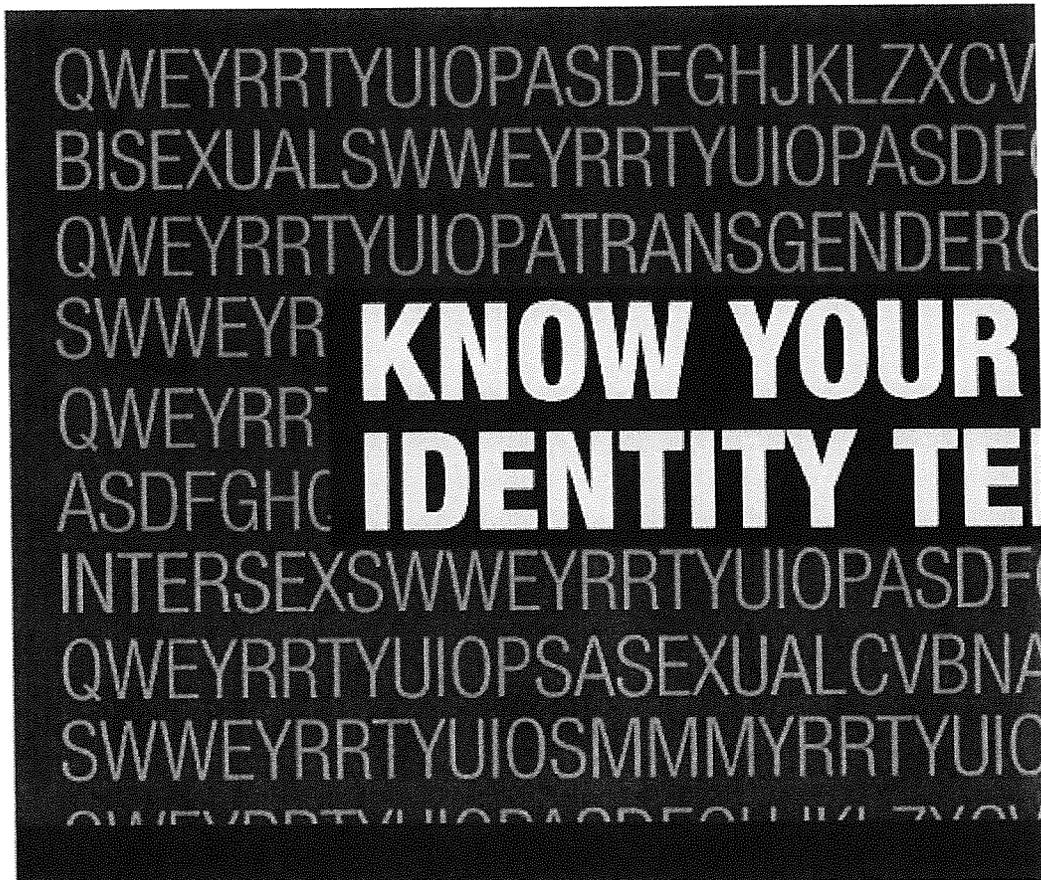
**EXHIBIT C**

**JA630**

# What it means to be gender-fluid

By Lauren Booker, Special to CNN

Updated 1:22 PM ET, Wed April 13, 2016



Photos: Know your identity terms

New terms are entering the cultural lexicon as people endeavor to co gender. These definitions, which have been edited, are primarily from Trevor Project. The gender fluid definition is from Dictionary.com. Vis details.



## Story highlights

Gender fluidity is when gender identity shifts between masculine and feminine

"Orange Is the New Black" actor Ruby Rose

**(CNN)**For some people, gender is not just about being male or female; in fact, how one identifies can change every day or even every few hours.

**JA631**

identifies as gender-fluid

Gender fluidity, when gender expression shifts between masculine and feminine, can be displayed in how we dress, express and describe ourselves.

Expert: Millennials are using the Internet as a guide to put a name to their gender identity

Everyone's gender exists on a spectrum, according to Dot Brauer, director of the LGBTQA Center at the University of Vermont. Progressive gender expression is the norm for the university, which offers gender-neutral bathrooms and allows students to use their preferred names.

"If you imagine the spectrum and imagine the most feminine expression you have ever seen and most masculine you have ever seen and just sort of imagine where you are on that," Brauer said.

Brauer, who identifies as gender-queer and prefers the pronoun "they," said gender identification is about what feels right for the person.

### Information is fluid

"In my generation, all the information that came to me was filtered through some very sort of limited perspectives and limiting languages. So for example, if I was going to find out about gender, I was going to find out about it through health class in a curriculum that was set by the Board of Education," Brauer said.

Since millennials grew up with the Internet, members of that generation can easily find information on topics like gender expression, added Brauer, 58.



Lee Luxion, who is 26 and also prefers the pronoun "they," might wake up as a man or as a woman, sometimes as both and sometimes as neither.

"How I express it is usually how I dress, how I do my hair. But then my mannerisms change.

**JA632**

Lee Luxion

The way I speak might change a little, too," Luxion said.

Luxion agreed that the Internet, along with the emergence of gender-fluid celebrities such as "Orange Is the New Black's" Ruby Rose, has made millennials more comfortable with expressing their gender.

"There shouldn't be a sense of what's normal and what is not," Luxion said. "And (with) more representation of transgender or gender-fluid or non-binary individuals, the more likely it is that we are going to feel safe to also be that publicly."

There are lots of misconceptions about gender fluidity, according to those in the community. Being gender-fluid doesn't determine a person's sexual preference.

Gender fluidity isn't the equivalent of transgenderism, in which a person's gender identity is different from the one assigned at birth.

Luxion balks at the idea that gender fluidity isn't a valid gender, a refrain they've heard time and again.

"Gender fluidity is much more than saying, 'oh, I want to play up the femininity traits that I have' or that 'I want to play up the masculine traits that I have.' It's an actual physical, mental and, for me, emotional shift in how I interact with the world."

## More than just appearance



Theresa "TDo" Do

Theresa "TDo" Do, a 37-year-old San Francisco native, was born and raised female but never felt that way. She appears androgynous with a short haircut and expresses her gender fluidity in how she behaves.

In situations when Do feels challenged, she said, she feels more masculine and

**JA633**

expresses herself in that way.

"The tone of my voice does change. It comes a little bit more forward. My voice drops a bit," she said. "I have been told that I walk really masculine, and I puff my chest out when I'm walking."

When she feels like she is in a safer place, she becomes more feminine.

"My voice gets a little higher. I drop my shoulders. I allow people to just get closer to me emotionally and in a physical way," Do said. "For me in particular, when I am in touch with my feminine side, I feel soft."

Brauer said others' perceptions and an individual's interpretation of their own gender play a part in how gender is conveyed.

"There's this constant exchange going on. ... Identity is this weird thing that exists between us people. It's like this perception, thought space, between us and other people," they said.

Thomas Webb, 33, identifies as gender-fluid and feels masculine "two-thirds" of the time. Webb's gender-fluid expression alternates from masculine to feminine with how they dress, from suits to skirts.

"When I was in high school, I don't remember words like that ever existing. I didn't learn about the word 'gender-queer' until my early 20s. I was using terms like 'cross-dresser' or 'transvestite' to describe myself, because that was all that I was aware of at the time," they said.

## Raising a gender-fluid child

Franki Davis, 14, identifies as gender-fluid demiboy and uses the "they" pronoun.

Demiboy means a person identifies partially as a man.

Franki has bright green hair and an androgynous, neutral appearance. Like any teenager, they like to go to concerts, take pictures and Skype with friends.

**JA634**

Franki discovered their gender identity during adolescence. And when they came out as demiboy, mom Kristen Shaw homeschooled Franki due to the anxiety they faced at school.

"My greatest concern was that they were going to be more isolated and the limited friendships they have socially," Shaw said.

Shaw said she would tell a parent of a child like hers to understand that it's important to let them grow.

"Before our children were born, what was most important was that we proclaimed that all we wanted was a healthy baby. And if we are lucky enough to have that, then we just take it from there. It's a one day at a time process. Our job is to be their life cheerleader and set them up for success," she said.

## Opinion and intersectionality

Brauer writes in a paper titled "Gender: It's Complicated" that younger generations see identity through "the lens of intersectionality," which includes age, sex, location, socioeconomic class and other factors.

"I might be perceived as someone who has a female sex to be pretty masculine by the gender standards of femininity that exists" in the mid-Atlantic, Brauer said. "But here, in Vermont, the standards for gender and femininity are different. So, right here I would be seen not overly masculine and not overly feminine."

When Do is in the office, she said, she gets stares from clients when expressing her gender fluidity.

"In a business meeting, I might have to look a little bit harder to earn the respect of others," she said. And when she leaves the "San Francisco bubble," she feels more tension.

Webb, who lives in Southern California, said they haven't felt discriminated against because they stopped publicly wearing women's clothing and dressing

**JA635**

androgynously. They said it was easier dressing as a man than a woman.

"People kind of confuse personality and gender. My personality isn't stereotypically feminine. So even when I'm wearing a skirt and everything, people just look at me as a dude in a skirt for better or worse. ... I don't think they treat me as they would a lot of the trans or other gender-fluid people who happen to act more feminine," Webb said.

For Luxion, telling someone their gender identity can lead to hurtful responses.

"When I get negative responses or people telling me that my gender is invalid or wrong, it's frustrating and it's hurtful, but really it's making me sad that people still aren't willing to take a step back," Luxion said. "It's not doing anyone harm. So I don't understand why they would be so opposed to it."

**EXHIBIT D**

**JA637**

EXPANDING THE LGBTQ CONVERSATION

MARCH 24 2015 10 00 AM

# What the Heck Is *Genderqueer*?

By Vanessa Vitiello Urquhart



Photo illustration by Holly Allen. Photo by ThinkStock.

Are gender stereotypes a natural, if culturally influenced, outgrowth of **sexual dimorphism**? Or are they a coercively imposed social regime that stifles individual expression in order to maintain oppressive, entrenched power structures? A great many self-certain people argue passionately for the former point of view, using it to justify everything from differences in employment patterns and wages between the sexes to their distaste for individuals who fall too far outside the expectations for persons with their genital configuration. On the other hand, members of the LGBTQ community tend to incline more toward the latter view, which is intellectually based in **queer theory** and culturally practiced by individuals who declare themselves to fall under the genderqueer umbrella.

*Genderqueer*, along with the somewhat newer and less politicized term *nonbinary*, are umbrella terms intended to encompass individuals who feel that terms like *man* and *woman* or *male* and *female* are insufficient to describe the way they feel about their gender and/or the way they outwardly present it. The term *genderqueer* was originally coined in the 1990s to describe those who “queered” gender by defying oppressive gender norms in the course of their binary-defying activism. Members of the genderqueer community differentiate themselves from people who are transgender (itself originally intended as an umbrella term), because that word has come to refer primarily to people who identify with the binary gender different from the one they were assigned in infancy.

Advertisement

Some genderqueer individuals undergo surgery or take synthetic hormones, while others do not. Some genderqueer people continue to identify partially with one gender, others do not. What they share is a deep, persistent unease with being associated *only* with the binary gender assigned to them from infancy—apart from that, their expressions, experiences, and preferences vary greatly from individual to individual.

“Genderqueer is about acknowledging that gender expression and identity is not binary, that there are more than just two genders,” explained Jordan Miller, a grad student in Atlanta who described herself as genderqueer, transmasculine, transgender, and femme. (Multiple and ever-expanding labels to describe the many different nonbinary identities seem to be a feature of the genderqueer community at this point in its development—along with the occasional use of **bespoke pronouns**.)

“I tend to not identify with a gender, because I would not be able to stick with one for a long time,” is how Sarah (who asked that their name not be used for this article), explained their genderqueer identity, which they experience as something that shifts around significantly.

**JA638**

From [ages] 7 through 9, I believed I was a boy and prayed I'd wake up and have the right body,” Kyle Jones, a **blogger** and workshc

but masculine. I was in my 40s when I did some soul-searching and realized that genderqueer really resonated with me because I'd always felt more masculine, but not male."

Advertisement

"I've identified as genderqueer for a long time. Femme (which is my main identity) came later, after a lot of reading. My history is as a lifelong crossdresser (we mostly use the term *transvestite* in the U.K.). I spent a long time trying to understand what I was doing without reference to notions of 'femaleness' (which aren't correct for me; I'm not trans in that way). Eventually I realized that 'femme' fit me very well, though I came to that sort of by reflection: by reading about butch women, and in particular **Leslie Feinberg's *Stone Butch Blues***: writes Jonathan Tait, who **blogs** about gender from Nottingham, England, via email.

The complex and swiftly changing terminology of the genderqueer subculture creates a barrier to increased understanding and acceptance of genderqueer individuals by those on the outside. Identifiers such as *agender*, *bigender*, *trigender*, *neutrois*, *genderfluid*, *trans\**, *transmasculine*, *transfeminine*, *bear*, *butch*, *femme*, *boi*, *demiboy*, *demigirl* and others form a densely overlapping and ever-expanding thicket of language that can make the terrain of genderqueer identities feel bit forbidding to those encountering it for the first time. Dividing the world into males and female is such a big part of the culture that it seems impossible, and perhaps even aggravating, to try to think outside those categories. This is not only a problem for squares stuck in a binary way of thinking—many of the terms associated with genderqueerness end up referring back to masculinity or femininity in some way, which is a bit tricky if the ideal is to move beyond the gender binary entirely.

Outside of academic arguments about queer theory, however, the fact is that some people feel constrained by a culture that insists that they be either male or female, with all the expectations, assumptions, and stereotypes that come along with choosing one of those identities. Whether they shift their clothing and expression to suit their moods, work to achieve an ambiguous appearance that cannot easily be classified as male or female, or dress or act in a way that fails to conform with the expectations for members of their gender, or *any* gender (or something else altogether—when reporting on this community one learns there's always room for more exceptions), accommodating genderqueer individuals really isn't so difficult. It comes down to listening to what they say about themselves, accepting that this is true for them, and not making a fuss about it. Occasionally, it may also mean making an effort to remember a pronoun that feels a little awkward.

The gender binary works fine for most of us, but who are we to impose it on those few people for whom it doesn't? Perhaps the cultural concept of gender really did develop naturally from sexual dimorphism—but just as there are **intersex** individuals whose biological sex does not fit neatly in the categories of male and female, so, too, are there individuals for whom the standard gender categories aren't working, for whatever reason. It seems unreasonably petty to seek to restrict them to those categories.

Vanessa Vitiello Urquhart is working to improve comments on **Slate**.

**EXHIBIT E**

**JA640**

# Here's a List of 58 Gender Options for Facebook Users

February 13, 2014

By RUSSELL GOLDMAN



Facebook introduced dozens of options for users to identify their gender today - and although the social media giant said it would not be releasing a comprehensive list, ABC News has found at least 58 so far.

Previously, users had to identify themselves as male or female. They were also given the option of not answering or keeping their gender private.

User's can now select a "custom" gender option.

"There's going to be a lot of people for whom this is going to mean nothing, but for the few it does impact, it means the world," Facebook software engineer Brielle Harrison told the Associated Press. Harrison, who worked on the project, is in the process of gender transition, from male to female.

Facebook will also allow users to select between three pronouns: "him," "her" or "their."

The following are the 58 gender options identified by ABC News:

- Agender
- Androgyne
- Androgynous
- Bigender
- Cis
- Cisgender

**JA641**

- Cis Female
- Cis Male
- Cis Man
- Cis Woman
- Cisgender Female
- Cisgender Male
- Cisgender Man
- Cisgender Woman
- Female to Male
- FTM
- Gender Fluid
- Gender Nonconforming
- Gender Questioning
- Gender Variant
- Genderqueer
- Intersex
- Male to Female
- MTF
- Neither
- Neutrois
- Non-binary
- Other
- Pangender
- Trans
- Trans\*
- Trans Female
- Trans\* Female
- Trans Male
- Trans\* Male
- Trans Man
- Trans\* Man
- Trans Person
- Trans\* Person
- Trans Woman
- Trans\* Woman
- Transfeminine
- Transgender
- Transgender Female
- Transgender Male
- Transgender Man
- Transgender Person
- Transgender Woman
- Transmasculine
- Transsexual
- Transsexual Female
- Transsexual Male
- Transsexual Man
- Transsexual Person
- Transsexual Woman
- Two-Spirit

**EXHIBIT F**

**JA643**

# THE WALL STREET JOURNAL.

<http://www.wsj.com/articles/paul-mchugh-transgender-surgery-isnt-the-solution-1402615120>

COMMENTARY

## Transgender Surgery Isn't the Solution

A drastic physical change doesn't address underlying psycho-social troubles.

By PAUL MCHUGH

Updated May 13, 2016 2:18 p.m. ET

*Editors' note: This op-ed was originally published on June 12, 2014.*

The government and media alliance advancing the transgender cause has gone into overdrive in recent weeks. On May 30, a U.S. Department of Health and Human Services review board ruled that Medicare can pay for the "reassignment" surgery sought by the transgendered—those who say that they don't identify with their biological sex. Earlier last month Defense Secretary Chuck Hagel said that he was "open" to lifting a ban on transgender individuals serving in the military. Time magazine, seeing the trend, ran a cover story for its June 9 issue called "The Transgender Tipping Point: America's next civil rights frontier."

Yet policy makers and the media are doing no favors either to the public or the transgendered by treating their confusions as a right in need of defending rather than as a mental disorder that deserves understanding, treatment and prevention. This intensely felt sense of being transgendered constitutes a mental disorder in two respects. The first is that the idea of sex misalignment is simply mistaken—it does not correspond with physical reality. The second is that it can lead to grim psychological outcomes.

**JA644**

<http://www.wsj.com/articles/paul-mchugh-transgender-surgery-isnt-the-soluti...> 6/9/2016

Case 1:16-cv-00236-TDS-JEP Document 55-6 Filed 06/09/16 Page 2 of 5

The transgendered suffer a disorder of "assumption" like those in other disorders familiar to psychiatrists. With the transgendered, the disordered assumption is that the individual differs from what seems given in nature—namely one's maleness or femaleness. Other kinds of disordered assumptions are held by those who suffer from anorexia and bulimia nervosa, where the assumption that departs from physical reality is the belief by the dangerously thin that they are overweight.

With body dysmorphic disorder, an often socially crippling condition, the individual is consumed by the assumption "I'm ugly." These disorders occur in subjects who have come to believe that some of their psycho-social conflicts or problems will be resolved if they can change the way that they appear to others. Such ideas work like ruling passions in their subjects' minds and tend to be accompanied by a solipsistic argument.

For the transgendered, this argument holds that one's feeling of "gender" is a conscious, subjective sense that, being in one's mind, cannot be questioned by others. The individual often seeks not just society's tolerance of this "personal truth" but affirmation of it. Here rests the support for "transgender equality," the demands for government payment for medical and surgical treatments, and for access to all sex-based public roles and privileges.

With this argument, advocates for the transgendered have persuaded several states—including California, New Jersey and Massachusetts—to pass laws barring psychiatrists, even with parental permission, from striving to restore natural gender feelings to a transgender minor. That government can intrude into parents' rights to seek help in guiding their children indicates how powerful these advocates have become.

How to respond? Psychiatrists obviously must challenge the solipsistic concept that what is in the mind cannot be questioned. Disorders of consciousness, after all, represent psychiatry's domain; declaring them off-limits would eliminate the field. Many will recall how, in the 1990s, an accusation of parental sex abuse of children was deemed unquestionable by the solipsists of the "recovered memory" craze.

You won't hear it from those championing transgender equality, but controlled and follow-up studies reveal fundamental problems with this movement. When children who reported transgender feelings were tracked without medical or surgical treatment at both Vanderbilt University and London's Portman Clinic, 70%-80% of them spontaneously lost those feelings. Some 25% did have persisting feelings; what differentiates those individuals remains to be discerned.

We at Johns Hopkins University—which in the 1960s was the first American medical center to venture into "sex-reassignment surgery"—launched a study in the 1970s comparing the outcomes of transgendered people who had the surgery with the outcomes of those who did not. Most of the surgically treated patients described themselves as "satisfied" by the results, but their subsequent psycho-social adjustments were no better than those who didn't have the surgery. And so at Hopkins we stopped doing sex-reassignment surgery, since producing a "satisfied" but still troubled patient seemed an inadequate reason for surgically amputating normal organs.

It now appears that our long-ago decision was a wise one. A 2011 study at the Karolinska Institute in Sweden produced the most illuminating results yet regarding the transgendered, evidence that should give advocates pause. The long-term study—up to 30 years—followed 324 people who had sex-reassignment surgery. The study revealed that beginning about 10 years after having the surgery, the transgendered began to experience increasing mental difficulties. Most shockingly, their suicide mortality rose almost 20-fold above the comparable nontransgender population. This disturbing result has as yet no explanation but probably reflects the growing sense of isolation reported by the aging transgendered after surgery. The high suicide rate certainly challenges the surgery prescription.

There are subgroups of the transgendered, and for none does "reassignment" seem apt. One group includes male prisoners like Pvt. Bradley Manning, the convicted national-security leaker who now wishes to be called Chelsea. Facing long sentences and the rigors of a men's prison, they have an obvious motive for wanting to change their sex and hence their prison. Given that they committed their crimes as males, they should be punished as such; after serving their time, they will be free to reconsider their gender.

Another subgroup consists of young men and women susceptible to suggestion from "everything is normal" sex education, amplified by Internet chat groups. These are the transgender subjects most like anorexia nervosa patients: They become persuaded that seeking a drastic physical change will banish their psycho-social problems. "Diversity" counselors in their schools, rather like cult leaders, may encourage these young people to distance themselves from their families and offer advice on rebutting arguments against having transgender surgery. Treatments here must begin with removing the young person from the suggestive environment and offering a counter-message in family therapy.

Then there is the subgroup of very young, often prepubescent children who notice distinct sex roles in the culture and, exploring how they fit in, begin imitating the opposite sex. Misguided doctors at medical centers including Boston's Children's Hospital have begun trying to treat this behavior by administering puberty-delaying hormones to render later sex-change surgeries less onerous—even though the drugs stunt the children's growth and risk causing sterility. Given that close to 80% of such children would abandon their confusion and grow naturally into adult life if untreated, these medical interventions come close to child abuse. A better way to help these children: with devoted parenting.

At the heart of the problem is confusion over the nature of the transgendered. "Sex change" is biologically impossible. People who undergo sex-reassignment surgery do not change from men to women or vice versa. Rather, they become feminized men or masculinized women. Claiming that this is civil-rights matter and encouraging surgical intervention is in reality to collaborate with and promote a mental disorder.

*Dr. McHugh, former psychiatrist in chief at Johns Hopkins Hospital, is the author of "Try to Remember: Psychiatry's Clash Over Meaning, Memory, and Mind" (Dana Press, 2008).*

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**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

JOAQUÍN CARCAÑO; PAYTON GREY  
MCGARRY; H.S., by her next friend and  
mother, KATHRYN SCHAFER; ANGELA  
GILMORE; KELLY TRENT; BEVERLY  
NEWELL; and AMERICAN CIVIL  
LIBERTIES UNION OF NORTH  
CAROLINA,

*Plaintiffs,*

v.

PATRICK MCCRORY, in his official capacity  
as Governor of North Carolina; UNIVERSITY  
OF NORTH CAROLINA; BOARD OF  
GOVERNORS OF THE UNIVERSITY OF  
NORTH CAROLINA; and W. LOUIS  
BISSETTE, JR., in his official capacity as  
Chairman of the Board of Governors of the  
University of North Carolina,

*Defendants,*

and

PHIL BERGER, in his official capacity as  
President *pro tempore* of the North Carolina  
Senate; and TIM MOORE, in his official  
capacity as Speaker of the North Carolina  
House of Representatives,

*Defendants-Intervenors.*

No. 1:16-cv-00236-TDS-JEP

**DECLARATION OF PAUL M. SMITH**

1. I am a member of the bar of the States of Maryland and New York and of the District of Columbia and have been specially admitted to this Court pursuant to L.R. 83.1(d). I am a partner in the law firm Jenner & Block LLP, counsel for Plaintiffs in this action. I make this declaration on personal knowledge, in support of Plaintiffs' Opposition to the University of North Carolina Defendants' Motion to Stay Proceedings.

2. Attached as Exhibit A to this declaration is a true and correct copy of *G.G. ex rel. Grimm v. Gloucester Cty. Sch. Bd.*, No. 15-2056 (4th Cir. June 9, 2016) (ECF No. 94) (order denying motion to stay mandate).

3. Attached as Exhibit B to this declaration is a true and correct copy of *G.G. ex rel. Grimm v. Gloucester Cty. Sch. Bd.*, No. 15-2056 (4th Cir. June 17, 2016) (ECF No. 95) (mandate).

4. Attached as Exhibit C to this declaration is a true and correct copy of Press Release, UNC, *President Spellings Comments on Public Facilities Privacy and Security Act (HB2)* (April 11, 2016), available at [http://www.northcarolina.edu/sites/default/files/4.11.16\\_ms\\_statement\\_on\\_hb2\\_0.pdf](http://www.northcarolina.edu/sites/default/files/4.11.16_ms_statement_on_hb2_0.pdf).

5. Attached as Exhibit D to this declaration is a true and correct copy of E-mail from UNC-Chapel Hill Chancellor Carol L. Folt *et al.* to Joaquín Carcaño (April 8, 2016, 6:47 PM).

6. Attached as Exhibit E to this declaration is a true and correct copy of Office of the Chancellor, The University of North Carolina at Chapel Hill, *Message From University Leaders: Update on House Bill 2* (April 19, 2016), available at

<http://chancellor.unc.edu/2016/04/message-from-university-leaders-update-on-house-bill-2/>.

7. Attached as Exhibit F to this declaration is a true and correct copy of Rep. Paul Stam, Speaker *Pro Tem*, North Carolina House of Representatives, *Legends vs. the Truth about HB2* (June 6, 2016), available at <http://paulstam.info/wp-content/uploads/2016/06/Legends-vs-the-Truth-HB2.pdf>.

8. Attached as Exhibit G to this declaration is a true and correct copy of University of North Carolina Greensboro, *Student Policy Handbook: Student Code of Conduct* (July 1, 2015), available at <https://sa.uncg.edu/handbook/student-code-of-conduct/>.

9. Attached as Exhibit H to this declaration is a true and correct copy of an excerpt (pages 1-27) from The University of North Carolina at Chapel Hill, *The Instrument of Student Judicial Governance* (May 11, 2016), available at <https://studentconduct.unc.edu/sites/studentconduct.unc.edu/files/documents/Instrument.pdf>.

\* \* \*

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 20th day of June, 2016.

A handwritten signature in black ink, appearing to read "Paul M. Smith", written over a horizontal line.

Paul M. Smith

**Declaration of Paul M. Smith  
June 20, 2016**

**EXHIBIT C**

**JA652**



## **President Spellings comments on Public Facilities Privacy and Security Act (HB2)**

Last week, UNC General Administration issued a Q&A summary of the requirements of the Public Facilities Privacy and Security Act (HB2) enacted on March 23. That Q&A was developed in response to campus requests for guidance on how to interpret the new law and how to apply it across the University. As a state institution, the University is bound to comply with HB2 and all other laws passed by the General Assembly and signed by the Governor.

We have heard from students, faculty, and staff who see HB2 as an effort to single out individuals based on their sexual orientation or gender identity for ridicule or harassment. They are hurt, angry, and even afraid. It is apparent that our providing factual guidance on the requirements of the law has been misinterpreted by many as an endorsement of the law. Nothing could be further from the truth.

The guidance we issued simply states what the General Assembly and Governor passed into law, and it addresses some key issues:

- ! We clarify that UNC and its campuses will not change existing non-discrimination policies that apply to all students and employees, and that we will not tolerate any sort of harassing or discriminatory behavior on the basis of gender identity or sexual orientation;
- ! We explicitly say that campuses need not change existing labeling of bathrooms; and
- ! We caution that the law does not address enforcement and confers no authority for the University or any other public agency to undertake enforcement actions.

The University's fundamental values include a commitment to diversity, inclusion, academic freedom, free speech, free expression, and the pursuit of free inquiry. We want our campuses to be welcoming and safe places for students and faculty of all backgrounds, beliefs and identities.

I have contacted state leaders and advised them that this law is sending a chill throughout the University of North Carolina. It is adversely affecting faculty, staff, and student recruitment and retention. Some alumni are rescinding donations. This law could negatively impact the significant federal funding on which the University relies. One federal lawsuit has already been filed. And major conferences hosted by UNC campuses are now being delayed, cancelled, or moved to other states. Legislative leaders tell me they are open to hearing the University's concerns during the upcoming legislative short session, and we plan to take full advantage of that opportunity.

We will continue to share information with the University community as it becomes available.

**JA653**

**Declaration of Paul M. Smith  
June 20, 2016**

**EXHIBIT D**

**JA654**

From: [no\\_reply@email.unc.edu](mailto:no_reply@email.unc.edu) [mailto:[no\\_reply@email.unc.edu](mailto:no_reply@email.unc.edu)]

Sent: Friday, April 8, 2016 6:47 PM

To: Carcano, Joaquin [REDACTED]

Subject: [FORMAL NOTICE] Message from Chancellor Folt and University Leaders



Dear Campus Community:

Over the past several weeks, since House Bill 2 (HB2) became the Public Facilities Privacy and Security Act, the response to this new law on our campus has grown more intense and more quickly than any issue we've faced in recent memory. Diversity and inclusiveness are at the heart of what makes Carolina a true University of the people. And many on our campus now feel excluded and unwelcome here and in our state.

Several days ago, we received [guidance on HB2 issued](#) by UNC System President Margaret Spellings about how universities in the system should interpret and apply HB2. To be clear, this was not intended to be an endorsement of HB2 – only guidance – and **all of UNC-Chapel Hill's relevant policies remain in effect**. All that Carolina has worked hard to establish over the decades – policies including protections for sexual orientation and gender identity, and fostering a culture of acceptance, respect for one another and human dignity above all else – remain a fundamental cornerstone of what our University aspires to be.

Although the policies on our campus remain, there is no question that many in our LGBTQ community and many others are feeling unwelcome, unsafe and unhappy in the communities where they live and work. We all must work tirelessly to ensure that every

**JA655**

member of our community feels welcome and safe and is able to share equally in the benefits of this place where we work, study and live. We encourage you to visit the [Equal Opportunity and Compliance Office](#) for more information.

The memo from UNC General Administration also confirms that the law relating to public restrooms and changing facilities does apply to the University. This is an issue that is deeply personal and involves some of our most basic and extremely private dignities. We have been asked how the University intends to “enforce” this provision of the law. As noted in the memorandum, the law does not contain any provisions concerning enforcement. We have added and will continue to add public gender-neutral single-use restrooms and changing facilities throughout our campus and we will be adding additional signage.

It is clear that the impacts to Carolina go well beyond the personal toll. There are implications to us, ranging from conferences that will no longer send delegates to North Carolina and our campus; concerns and a pause among some prospective students, faculty, researchers and staff; current and prospective donors who are signaling a reconsideration of their gifts; grants and relationships with businesses that are now in jeopardy; and more. We will continue to share this feedback and concern about effects of the law on our campus with UNC General Administration.

What does this all mean today? We find ourselves in a complicated and uncertain legal environment, involving potential conflicts between federal and state laws that address sensitive issues about which people justifiably have strong feelings. The University must do its best to comply with all laws that govern us while taking practical steps to lessen discomfort and distress.

As University administrators and members of our Carolina community, we are in a challenging situation. We don't agree with the Act, but as stewards of this great University we must comply with it while also ensuring Carolina is welcoming and inclusive, and continues to be an economic and innovation engine for the state. We want to reassure our community, whether they are here today, have been with us in the past, or are future Tar Heels, that Carolina is deeply committed to the ideals embedded in the soul of our beloved University.

Sincerely,

Carol L. Folt  
Chancellor

James W. Dean, Jr.  
Executive Vice Chancellor and Provost

Winston Crisp

**JA656**

Vice Chancellor for Student Affairs

Felicia A. Washington

Vice Chancellor for Workforce Strategy, Equity and Engagement

This message is sponsored by: Office of the Chancellor

**JA657**

**Declaration of Paul M. Smith  
June 20, 2016**

**EXHIBIT E**

**JA658**

# Office of the CHANCELLOR



THE UNIVERSITY  
of NORTH CAROLINA  
at CHAPEL HILL

(<http://chancellor.unc.edu>)

## News & Messages

### Message from University leaders: Update on House Bill 2

Posted April 19, 2016 & filed under [News & Messages \(http://chancellor.unc.edu/category/news-messages/\)](http://chancellor.unc.edu/category/news-messages/).

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**JA659**

Although the policies on our campus remain, there is no question that many in our LGBTQ community and many others are feeling unwelcome, unsafe and unhappy in the communities where they live and work. We all must work tirelessly to ensure that every member of our community feels welcome and safe and is able to share equally in the benefits of this place where we work, study and live. We encourage you to visit the [Equal Opportunity and Compliance Office \(http://eoc.unc.edu/\)](http://eoc.unc.edu/) for more information.

The memo from UNC General Administration also confirms that the law relating to public restrooms and changing facilities does apply to the University. This is an issue that is deeply personal and involves some of our most basic and extremely private dignities. We have been asked how the University intends to “enforce” this provision of the law. As noted in the memorandum, the law does not contain any provisions concerning enforcement. We have added and will continue to add public gender-neutral single-use restrooms and changing facilities throughout our campus and we will be adding additional signage.

It is clear that the impacts to Carolina go well beyond the personal toll. There are implications to us, ranging from conferences that will no longer send delegates to North Carolina and our campus; concerns and a pause among some prospective students, faculty, researchers and staff; current and prospective donors who are signaling a reconsideration of their gifts; grants and relationships with businesses that are now in jeopardy; and more. We will continue to share this feedback and concern about effects of the law on our campus with UNC General Administration.

What does this all mean today? We find ourselves in a complicated and uncertain legal environment, involving potential conflicts between federal and state laws that address sensitive issues about which people justifiably have strong feelings. The University must do its best to comply with all laws that govern us while taking practical steps to lessen discomfort and distress.

As University administrators and members of our Carolina community, we are in a challenging situation. We don't agree with the Act, but as stewards of this great University we must comply with it while also ensuring Carolina is welcoming and inclusive, and continues to be an economic and innovation engine for the state. We want to reassure our community, whether they are here today, have been with us in the past, or are future Tar Heels, that Carolina is deeply committed to the ideals embedded in the soul of our beloved University.

Sincerely,

Carol L. Folt  
Chancellor

**JA660**

James W. Dean, Jr.

Executive Vice Chancellor and Provost

Winston Crisp

Vice Chancellor for Student Affairs

Felicia A. Washington,

Vice Chancellor for Workforce Strategy, Equity and Engagement



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**Declaration of Paul M. Smith  
June 20, 2016**

**EXHIBIT F**

**JA662**

Office of the Speaker Pro Tem  
North Carolina  
House of Representatives

300 N. Salisbury St., Room 612, Raleigh, NC 27603  
(919) 733-2962 – Paul.Stam@ncleg.net

Representative  
Paul Stam



## Legends vs. the Truth about HB2

By: Rep. Paul Stam, Speaker Pro Tem  
North Carolina House of Representatives  
June 6, 2016

The narrative of the mass media is that HB 2, ([Session Law 2016 – 3, “Public Facilities Privacy and Security Act”](#)) was a big change, an outrageous overreach which denies rights and is unenforceable. Let's take these legends one by one and explain the law.

**Legend 1:** HB2 was a big change in North Carolina law.

**TRUTH:** (with one exception discussed under *Legend Number 5*) HB2 codified what had been the law of North Carolina for years, decades and, for the most part, centuries. It:

1. Provides for single sex multiple occupancy bathrooms and changing facilities in public buildings, public schools and public agencies (while allowing accommodations by single occupancy facilities and other exceptions) – please read it for yourselves. The Charlotte ordinance tried to set its policy throughout the city, even in private businesses (and even throughout the state for businesses contracting with Charlotte). There are an estimated 20,000 private entities in Charlotte that would have been affected. The new law sets common sense policy for government facilities but leaves private business free, subject to laws concerning indecent exposure, to make reasonable accommodations.

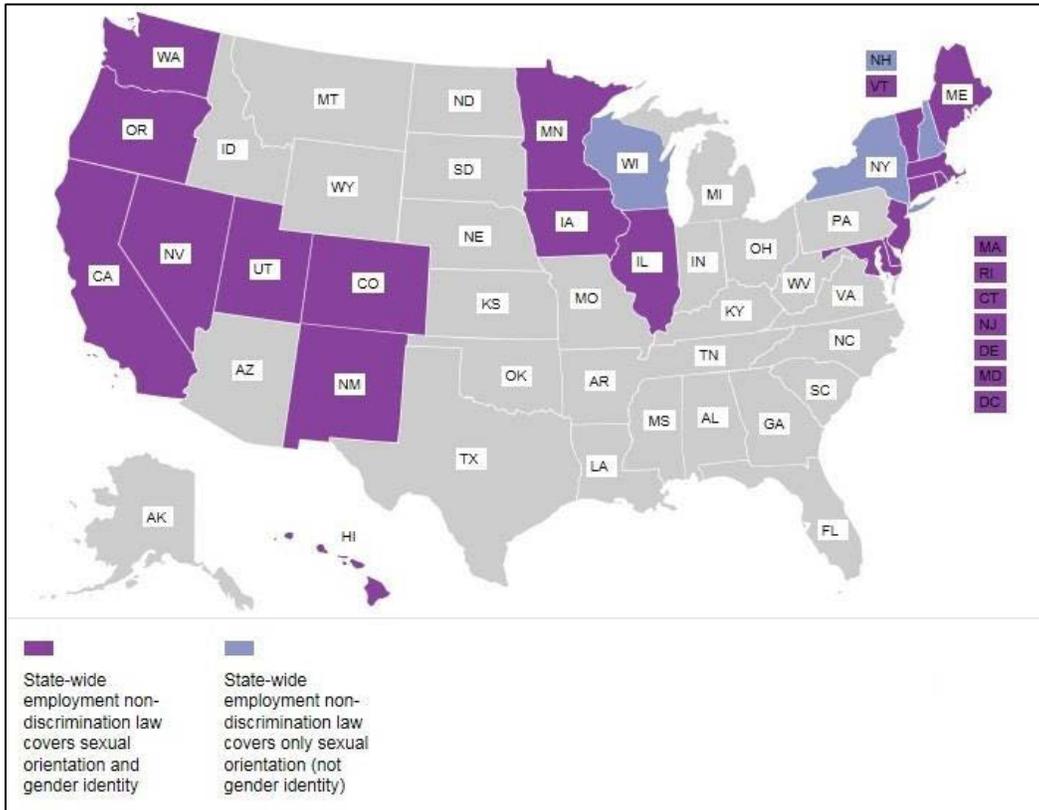
Pursuant to 180 years of NC Constitutional (Art. II Sec. 24(j) & Art. VII Sec. 1) economic policy, HB2:

2. Preempts local ordinances on employers pertaining to compensation of employees, with exceptions.
3. Prohibits cities and counties from requiring private contractors to abide by regulations on employment practices or mandate or prohibit provision of goods, services, or accommodations to any member of the public, except as required by State law.
4. Preempts local ordinances that regulate or impose requirements on employers pertaining to discriminatory practices in employment.
5. States the public policy of the state prohibiting discrimination on the basis of race, religion, color, national origin, or biological sex in public accommodations.

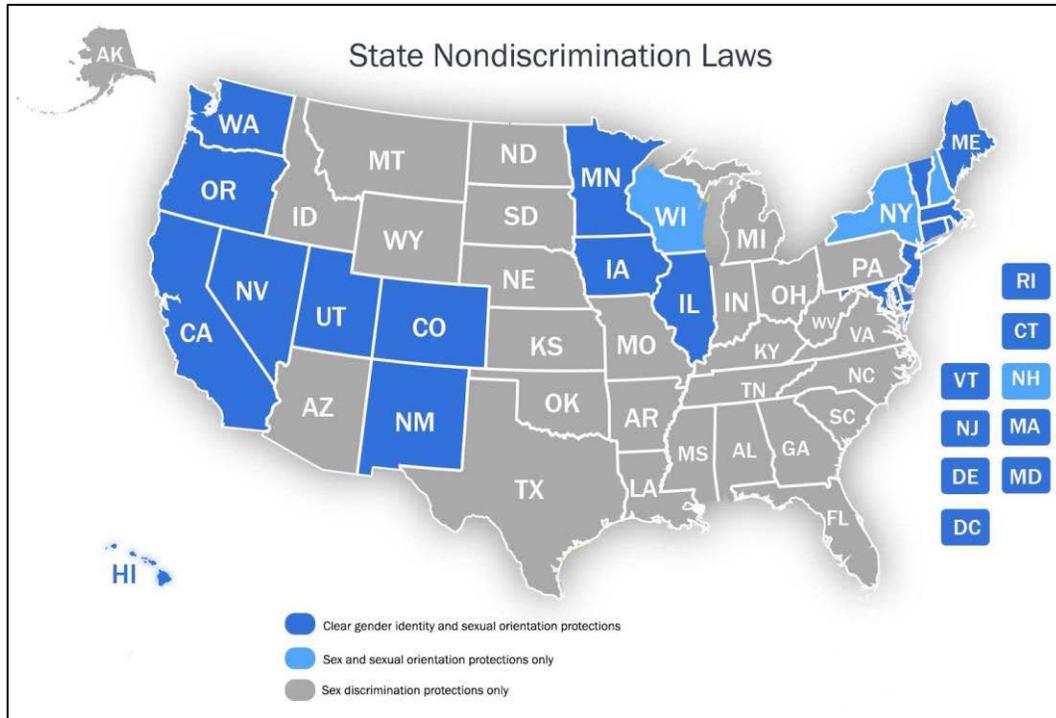
**Legend 2:** North Carolina is a unique outlier engaged in some vast overreach.

**TRUTH:** The North Carolina state law on non-discrimination is the same or very similar to that of

28 other states.<sup>1</sup> For visual proof please examine the two maps below compiled by opponents of HB2. On each map the gray states similar to North Carolina do not have extra special rights based on “sexual orientation” or “gender identity.”



[www.aclu.org](http://www.aclu.org)



[www.transequality.org](http://www.transequality.org)

<sup>1</sup> See <http://paulstam.info/wp-content/uploads/2016/05/I-WANT-TO-HELP-PAYPAL.pdf>. Also see <https://www.aclu.org/map/non-discrimination-laws-state-state-information-map>.

Proponents of the Charlotte type discrimination ordinance say it has been enacted in 200 cities nationwide. Their leader, Rep. Chris Sgro, uses 100 cities. Whether it is 100 or 200 means that about 10,000 other cities and towns nationwide do not have an ordinance similar to Charlotte's.

**Legend 3:** Under HB2 the rights of LGBT persons are not protected. This is not true at all.

**TRUTH:** LGBT persons have the same rights that the rest of us do. Let me explain in detail:

*What is discrimination?* North Carolina residents have a full panoply of rights that come from the United States Constitution and Statutes, the North Carolina State Constitution (particularly Article I of the Declaration of Rights), and Statutes, and local ordinances. These rights are available in full to *almost* everyone.

Article I Section I of the North Carolina Constitution provides as follows:

**The equality and rights of persons.**

We hold it to be self-evident that all persons are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness.

There are exceptions. Aliens do not have the right to vote, whether here legally or illegally. Children do not have the right to enter into most contracts nor the right to vote nor the right to buy alcohol. Those who by mental disease are not able to conduct their own affairs may be declared incompetent by a Court. Their rights are protected and enhanced by the appointment of a Guardian. Convicted criminals lose some of their rights. But even convicted criminals have the right in most circumstances to not undress or use the bathroom or shower in the presence of a person of the opposite sex.<sup>2</sup>

Each of us has the same rights when facing the same circumstances. For historical reasons the exercise of these rights has been protected by additional constitutional or statutory provisions.

Article I Section 19 of the North Carolina Constitution provides:

**Law of the land; equal protection of the laws**

No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.

The 14<sup>th</sup> Amendment (Section 1) to the United States Constitution provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person

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<sup>2</sup> The North Carolina Department of Public Safety, Adult Correction and Juvenile Justice stated in a memo on May 10, 2016, that, "Convicted criminals and inmates do have privacy rights when it comes to their using the restroom or changing clothes and they have the right to not be observed by members of the opposite sex while using the restroom or changing clothes. The specific policy language is included in the Prison Rape Elimination Act (PREA), with which the Division of Adult Correction...Community Corrections and Juvenile Justice...abides."

of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

### Private v. Public

Some acts of discrimination may be appropriate for private persons but are not appropriate for a government. I may prefer to vacation in the mountains of North Carolina but the government of North Carolina must not say that I must go to the mountains rather than to the beach.

When Romeo met Juliet, he discriminated on the basis of (biological) sex because he chose a particular biological female. When Juliet met Romeo she discriminated on the basis of (biological) sex, choosing a particular biological male. Homosexual or lesbian persons are allowed to exercise private discrimination by choosing a partner of the same sex.

Discrimination based on some factors at sometimes may be reasonable (like choosing the mountains over the beach). A "discriminating" person is one who is discerning, one who notes "differences with nicety," one who has "excellent taste or judgment." But certain types of discrimination are improper for a government or for a provider of public accommodations. These types of discrimination are not changed by HB2.

Prior to the passage of HB2 the personal characteristics subject to extra scrutiny for discrimination have generally been race, color, national origin, sex (biological) and religion. That was true before the passage of the HB2 and that is true today. (Note: other personal character traits like age, handicap, and familial status are also used where appropriate. A complete list is included at the end of this paper.)

**Legend 4:** Proponents of the Charlotte type discrimination ordinance claim that HB2 sets them back a century. LGBT persons just want the same rights that everyone else already has.

**The TRUTH:** Please review again the maps shown under Legend 2. For many years bills have been filed to allow local governments to extend characteristics for extra scrutiny to "sexual orientation," "gender identity" and "gender expression." Some have been filed on a statewide basis. A list of those bills is attached at the end of this paper. **NONE** of these were ever passed by the General Assembly, whether in recent years or in past years, under Republican or Democratic majorities.<sup>i</sup> HB2 did not change that.

In 2009, N. C. Gen. Stat. §§115C-407.5 - 407.8. required all local schools to adopt a policy prohibiting bullying. This law references gender identity, physical appearance and sexual orientation for extra scrutiny. But that law specifically states that it is *only* to be used in the context of bullying in K-12 public schools.

There are **at least 38 characteristics** listed at the end of the paper that have obtained special scrutiny in the laws or ordinances of various states and cities for particular purposes.<sup>ii</sup>

None of this changes the proposition that, except in the circumstances stated at the beginning, **WE ALL HAVE THE SAME RIGHTS** when confronting the same situation.

The opponents of HB2 are demanding extra special rights. They are not asking to have the same rights that other North Carolinians have. The United States Supreme Court in its decision of July 2015 finding a constitutional right to same-sex marriage nationwide did not find that "sexual orientation" was a "suspect classification."

The primary problem with "identity"-based preferences (like "sexual orientation" or "gender identity") is subjectivity. That subjectivity translates to rule other than by law. The "identity" actor determines the law. The law that codifies the right becomes nothing more than "law cover" for the individual, a tool of individualized empowerment.

"I want to be Cherokee," said Sen. Elizabeth Warren, whose tenure at Harvard improved its diversity rating. But that did not turn her into a Native American.

**Legend 5:** "Sexual Orientation" is a reasonable and definable term in discrimination law.

**TRUTH:** No. "Sexual orientation" is inherently undefinable and undefined. What is the meaning of the word "orientation?" Is it purely subjective? Is it what is in a person's mind or does it relate to behavior?

What is meant by "sexual orientation?" Some people, male and female, have the "orientation" or "behavior" of wanting or having more than one sexual partner. For centuries we have had laws against bigamy and polygamy and there are civil consequences for adultery. Those laws are being challenged in some Western states. There are tens of thousands of polygamous marriages in those states that are not being prosecuted. In addition there are millions of Americans who see nothing wrong with polygamy or adultery, either because of their cultural background or their own personal desires.

Extra scrutiny for discrimination on the basis of "sexual orientation" would mean that a job applicant who states to his or her prospective employer or current employer that he or she has a polygamous marriage or is in a polygamous or adulterous living situation, or wishes to have multiple sexual partners, would have extra special rights to be hired or to not be fired. If the desire (or behavior) of having multiple sexual partners is not a "sexual orientation" what could be?

There are many good reasons why an employer might not want to employ a person whose "sexual orientation" is to polygamy or adultery. The employer should have the right to make that decision. Similarly, the employee should have the right to choose those employers who actually want such employees.

**Legend 6:** "Gender Identity" is a reasonable and definable term. False.

**TRUTH:** President Obama's Departments of Justice and Education have proven that "gender identity" is purely subjective.

In the recent case of *G.G. ex rel. Grimm v. Gloucester Cnty. School Bd.*, No. 15–2056, 2016 WL 1567467 (4th Cir. Apr. 19, 2016), "gender identity" was the issue. Judge Niemeyer in dissent pointed out that "gender identity" is entirely subjective as it was applied by the 2-1 majority of the 4<sup>th</sup> Circuit panel.

On May 13, 2016, the United States Departments of Justice and Education issued a joint letter to public schools nationwide, explaining a school's obligation under Title IX regarding transgender students and "gender identity."<sup>3</sup> The letter claimed to rely on Title IX of the Education Amendments of 1972 and stated:

"[g]ender identity refers to an individual's internal sense of gender. A person's gender identity may be different from or the same as the person's sex assigned at

<sup>3</sup> Available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>.

birth...Under Title IX, a school must treat students consistent with their gender identity even if their education records or identification documents indicate a different sex...Under Title IX, there is no medical diagnosis or treatment requirement that students must meet as a prerequisite to being treated consistent with their gender identity." (*emphases added*).

This is **purely subjective**. It is left to the individual to determine whether "he," "she" or "s(he)" identifies as female or male on a day-to-day basis.

Legal lines are more acceptable when drawn on the basis of benign and immutable characteristics - e.g., race, color, national origin, sex (biological) and disabilities. Religion is included as a suspect class because of its place in the First Amendment to the U.S. Constitution and Article I Section 13 of the NC Declaration of Rights.

If individuals are allowed to justify and demand universal acceptance of their behavior by wholly self-determined "identity" claims then the law becomes lawless.

To see where this is headed, please see Facebook's new policy on updating a user's gender identity on the user's profile page: <https://www.rt.com/usa/236283-facebook-gender-custom-choice/>. Facebook offers 58 pre-populated options to choose from OR a user can create and type in the user's chosen "gender" for the public to see.

**Legend 7:** HB2 has no enforcement provisions and can be disregarded. I have heard this statement from one community college President and from the affidavit of the President of UNC and from many others. Those spreading this legend think that the entire *corpus juris* has to be contained within each law.

**TRUTH:** This legend is not true at all. There is now the same enforcement of the law concerning changing rooms, locker rooms and facilities as before HB 2. To intentionally go into a room or remain in a room that is marked for a person of the opposite sex is a misdemeanor called trespass. In the matter of S.M.S. 196 N.C. App. 170, 675 S.E. 2d (2009).

There is also enforcement by the North Carolina Building Code, which is adopted by the State Building Code Council under express delegation of authority by the General Assembly. *Greene v. City of Winston-Salem*, 287 N.C. 66, 75, 213 S.E.2d 231, 237 (1975). It governs the construction, as well as the use and occupancy, of "public accommodations." 2012 N.C. Bldg. Code § 101.2 (Int'l Code Council, Inc. 3d prt. 2014). It expressly mandates the numbers of toilet and lavatory facilities in buildings. And it mandates that, in most commercial buildings, "[w]here plumbing fixtures are required, separate facilities shall be provided for each sex." *Id.* §§ [P] 2902.1, 2902.2, Table 2902.1 (*emphasis added*). It requires signage for each facility "designating the sex." *Id.* § 2902.4.

The law will not permit subjecting building owners and occupants to conflicting requirements: to construct, label and operate separate, sex-specific bathroom facilities, on one hand, and to not allow bathrooms designated by sex, on the other hand.

By forbidding facility operators from designating showers by sex, the Charlotte ordinance (and President Obama's interpretation of Title VII and Title IX) also would conflict with the state's criminal indecent exposure statute, which expressly forbids cross-sex exposure of "private parts" in public places. N.C. Gen. Stat. § 14-190.9.

There are other remedies as well for government officials who refuse to obey the law-injunction and mandamus for starters.

**Legend 8:** The employment non-discrimination provisions prohibit one from suing in state court for discrimination. This oft repeated legend is not true.

**TRUTH:** Under both Title VII (equal employment opportunity law) and under title 42 U.S.C. 1981, discrimination suits can be brought in state court. This is called concurrent jurisdiction. In *Yellow Freight Syst. V. Donnelly*, 494 U.S. 820 at 823 (1990), the Supreme Court construed Title VII to allow suits in state court against private employers because (1) federal and state courts are presumed to have concurrent jurisdiction over cases arising under the laws of the United States and (2) Title VII contains no language stripping state courts of their "presumptive jurisdiction." *See also* Bullock v. Napolitano, 666 F.3d 281, 283 (4th Cir. N.C. 2012). *Legend 8* is oft repeated by those who know better. It does not become true by frequent repetition.

The real complaint is that there was an overlapping state tort claim. That claim was only for wrongful discharge from employment and only for discrimination based on race, national origin, color, sex, religion, age and handicap. That overlapping tort claim is affected by HB2 and I would support reinstating that state claim.

That does not change the fact that under HB2 claims of discrimination can still be brought in state court. I have heard it said that this is inadequate because Title VII has a shorter time for filing than the state law tort claim. For claims based on race that is not true.

Title 42 USC 1981, *Equal Rights Under the Law* provides:

**(a) Statement of equal rights**

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

**(b) "Make and enforce contracts" defined**

For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

**(c) Protection against impairment**

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

Section 1981 was enacted in 1870 after ratification of the 13th Amendment. It effectuates the purpose of that amendment, to eradicate the vestiges of slavery. For almost 50 years it has been construed to allow a private right of action against another private person for discrimination based on race. State courts have concurrent jurisdiction with federal courts. There is a four-year statute of limitations, longer than the three year statute of limitations on the state overlapping claim for wrongful discharge. Attorney fees are available. This is a much better remedy than the overlapping state tort claim.

**Legend 9:** HB2 takes away rights to sue for violations of the rights of the disabled. This is not true.

**TRUTH:** The laws for disability discrimination are in [Chapter 168A of the NC General Statutes](#) and are quite robust. It complements the *Americans with Disabilities Act* 42 U.S.C. §§12101-12213.

**Legend 10:** HB2 means that one cannot sue for discrimination as a veteran.

**TRUTH:** Wrong. Rights of veterans to sue are set out in other statutes. North Carolina has preferences and protections for veterans. Veterans have preferences under the following statutes: N. C. Gen. Stat. §§ 17C-10.1, 20-7(f)(3b) & (q), 93B-15.1, 95-28.4, 105-277.1C, 113-296, 113-174.2(c)(6), 116-143.3A, 116-209.54(b)(6), 112C-115.4, 126 art. XIII, 127A-202.1, 127B-11,12, and 14, 128-15, 143B art. XIV Parts 2, 3 & 9.

**Legend 11:** House Bill 2 requires one to use the locker room or changing room or restroom based on biological sex assigned at birth. That is not true.

**TRUTH:** The law states “as shown on the birth certificate.” Birth certificates can be changed after sex reassignment surgery. [N.C. Gen. Stat. § 130A-118\(b\)\(4\)](#). In 46 states, birth certificates can be changed under varying criteria. HB 2 gives “full faith and credit” to these decisions of other states. There is no requirement that anyone carry or present a birth certificate.

**Legend 12:** HB2 is a North Carolina problem. Hardly.

**TRUTH:** In May, the State of Texas and 10 other states sued the federal government for relief from the same Presidential attack which has been launched against North Carolina.

The Department of Justice sued North Carolina for sanctions under Title VII and Title IX. Title VII involves employment discrimination for all employers of more than 15 employees. 42 U.S.C. § 2000(e)(2) (1994). Eighty percent of the employees in America are covered under Title VII. They are in every state of the nation. The Obama administration has threatened every business in America with more than 15 employees with Title VII suits if they do not submit to its subjective and radical redefinition of the word “sex.”

**Legend 13:** The federal government will take education money away if states do not cave in.

**TRUTH:** Under Title IX schools have the right to comply within 30 days after the completion of legal proceedings. This can take years. In the 44 year history of Title IX not one school has lost funding on this ground. The Obama administration announced on [May 12, 2016](#), that it would not seek to stop Title IX funding until the litigation is concluded.

**Legend 14:** North Carolina will suffer financial disaster if it persists in HB 2. This is a curious claim since HB2 did not significantly change the substantive law. See Legends 2, 3 and 4.

**TRUTH:** The Census Bureau recently reported that since 2013 North Carolina has had the fastest growing economy in the nation. Recently, and after the enactment of HB2, *Site Selection Magazine*<sup>4</sup> stated that North Carolina (despite HB2) and Texas (despite falling oil prices), were tied for FIRST PLACE in the competition to locate new businesses. Even more recently, CEO

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<sup>4</sup> Bruns, Adam. *Site Selection magazine*, May 2016. Available at <http://siteselection.com/issues/2016/may/prosperity-cup.cfm>.

Magazine ranked North Carolina 3<sup>rd</sup> in the nation as the BEST place to do business.<sup>5</sup>

A wolf will look for the crippled or sick or just born caribou calf to separate from the herd and take down. The wolf who tries to feed on the herd or the healthy will not often be successful.

It is unclear why the Human Rights Campaign decided to make an example of North Carolina. There was and is nothing unique about North Carolina's policies on non-discrimination, which were virtually the same before and after HB2.

But the campaign picked the wrong target. Of all the states, North Carolina is most likely to survive the onslaught. The other 28 states and the tens of millions of affected employees are waking up and realizing that they are all targets.

At last count more than 1.3million Americans have agreed to boycott Target for joining the attack on North Carolina.<sup>6</sup>

On March 16, PayPal announced that it would gladly receive \$3.6 million from the state of North Carolina to locate a new facility near Charlotte. Then on April 5<sup>th</sup>, PayPal President & CEO, Dan Schulman, announced that it would not move to North Carolina because of the passage of HB2. Certainly, this was not because of the bathroom/locker-room situation since the bill did not even apply to private business facilities. PayPal was incensed at the so-called failure of the legislation to include extra special protections for sexual orientation, gender expression and gender identity. PayPal lawyers apparently did not realize that this was the same law in effect on March 16. PayPal currently maintains its operations center and main office in Nebraska and has a technology center in Arizona as well as a data service office in Texas- all states with similar non-discrimination laws as North Carolina.

The problem for PayPal is that 28 other states (and the federal government) also lack those categories for extra special protection. So PayPal would be limited to 20 states:

California, Colorado, Connecticut, Delaware, Illinois, Iowa, Hawaii, Nevada, New Hampshire, New Jersey, New Mexico, New York, Maine , Maryland, Minnesota, Oregon, Rhode Island, Utah, Vermont, Washington, and Wisconsin

**But PayPal will need to narrow its list further.**

In the publication *Rich States Poor States*<sup>7</sup> and the publication by the *National Tax Foundation on Tax policy*<sup>8</sup>, the following states are in the bottom 15 in economic or tax climate. PayPal would certainly want to avoid these states.

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<sup>5</sup> <http://www.bizjournals.com/charlotte/news/2015/05/08/north-carolina-is-no-3-for-business-climate-ceo.html>.

<sup>6</sup> Petition by the American Family Association. Available at <https://www.afa.net/action-alerts/sign-the-boycott-target-pledge/>.

<sup>7</sup> Rich States, Poor States, Alec-Laffer State Economic Competitiveness Index, 9<sup>th</sup> Edition 2016.

<https://www.alec.org/publication/rich-states-poor-states/>.

<sup>8</sup> 2016 State Business Tax Climate Index, November 17, 2015.

<http://taxfoundation.org/article/2016-state-business-tax-climate-index>.

**The 15 worst state rankings for fostering business development include:**

<i>2016 Rich States Poor States</i>	<i>National Tax Foundation on Tax Policy</i>
36) Washington	36) South Carolina
37) West Virginia	37) Louisiana
38) Maine	38) Arkansas
39) Pennsylvania	39) Georgia
40) Montana	40) Iowa
41) Oregon	41) Maryland
42) Hawaii	42) Ohio
43) Illinois	43) Wisconsin
44) Delaware	44) Connecticut
45) Minnesota	45) Rhode Island
46) California	46) Vermont
47) Connecticut	47) Minnesota
48) New Jersey	48) California
49) Vermont	49) New York
50) New York	50) New Jersey

**Now PayPal is down to only 5 states:**

Colorado, Nevada, New Hampshire, New Mexico, and Utah

But PayPal has another problem: It does business in 25 nations where homosexual acts are a crime.<sup>9</sup> So it would certainly want to reduce its footprint there. It would also want to stop its plans to expand to Cuba and would want to eliminate its operations in the People's Republic of China. Each have brutal communist dictatorships.

Hopefully this research will be helpful to PayPal in its search for a new location more compatible with its principles.

**Legend 15:** The NBA, NCAA, ACC & the PGA will force North Carolina to back down. False.

The **TRUTH** is that these organizations are themselves NOT in compliance with Title VII or Title IX as defined by President Obama. If they get into compliance they would destroy almost half of their own industry.<sup>10</sup> To understand the practical ramifications of this section, read the footnoted article which recounts a High school track meet in Alaska. A high school BOY identifying as a girl won All-State honors in a GIRLS Track and Field event.<sup>11</sup>

<sup>9</sup> See Press Release from Congressman Robert Pittenger, *Pittenger on PayPal Decision to Cancel Charlotte Project*, April 6, 2016.

<http://pittenger.house.gov/media-center/press-releases/pittenger-on-paypal-decision-to-cancel-charlotte-project>

<sup>10</sup> On June 2, 2016, NBA Commissioner Adam Silver said it was not the changing room provision that was the issue but rather the failure to protect LGBT rights. But that makes little sense. See Legends 2, 3 and 4.

<sup>11</sup> Hasson, Peter. The Daily Caller. "High School Boy Wins All-State Honors in Girls Track And Field." Retrieved on June 3, 2016 at 2:29PM Available at

<http://dailycaller.com/2016/06/03/high-school-boy-wins-all-state-honors-in-girls-track-and-field/?print=1>.

## WHY is President Obama trying to end women's competitive sports?

On May 13, 2016, the United States Departments of Justice and Education issued a joint letter to public schools nationwide, attempting to explain a school's obligation under Title IX regarding transgender students.<sup>12</sup> It came with an implicit threat of denial of Title IX funding.

### THE PROBLEM

The letter claimed to rely on Title IX of the Education Amendments of 1972 and stated:

“[g]ender identity refers to an individual's internal sense of gender. A person's gender identity may be different from or the same as the person's sex assigned at birth...Under Title IX, a school must treat students consistent with their gender identity even if their education records or identification documents indicate a different sex...Under Title IX, there is no medical diagnosis or treatment requirement that students must meet as a prerequisite to being treated consistent with their gender identity.” (*emphasis added*)

This test is purely subjective. It is left to the individual to determine whether he or she identifies as female or male on any particular day or time.

Title IX requires that, “[N]o person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance.”<sup>13</sup> Title IX requires that schools treat females and males equally with respect to participation, opportunities, athletics scholarships and treatment of male and female teams.<sup>14</sup> Title IX athletic regulations were extensively debated by Congress and became law in June of 1975, giving high schools and colleges three years and elementary schools one year to comply.<sup>15</sup> A three part test was issued by the Office of Civil Rights in 1979.<sup>16</sup> Under this test schools will be in compliance with Title IX if:

“(1) males and females participate in athletics in numbers substantially proportional to their enrollment numbers; or (2) the school has a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of members of the underrepresented sex; or (3) the institution's existing programs fully and effectively accommodate the interests and abilities of the underrepresented sex.”<sup>17</sup>

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<sup>12</sup> Available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf> (Referred to as *The Letter*).

<sup>13</sup> Title IX of the Education Amendments, 20 U.S.C. Â§1681 (1972).

<sup>14</sup> Id.

<sup>15</sup> Pub. L. 93-380, H.R. 69, Elementary and Secondary Education Amendments, introduced Jan. 3, 1973, passed Aug. 21, 1974. “[D]irected Secretary to prepare and publish, not more than 30 days after Aug. 21, 1974, proposed regulations implementing the provisions of this chapter regarding prohibition of sex discrimination in federally assisted programs, including reasonable regulations for intercollegiate athletic activities considering the nature of the particular sports.” See The Library of Congress at <http://thomas.loc.gov/cgi-bin/bdquery/z?d093:HR00069:>.

<sup>16</sup> 34 C.F.R. Part 106 and 44 Fed. Reg. 71413 et. Seq (1979).

<sup>17</sup> Id.

**The Departments of Justice and Education's Solution for Athletes**

According to the Department of Justice (DOJ) and the Department of Education (DOE), the solution is simple:

“Title IX regulations permit a school to operate or sponsor sex-segregated athletics teams when selection for such teams is based upon competitive skill or when the activity involved is a contact sport.”<sup>18</sup> However, a school may not “adopt or adhere to requirements that rely on overly broad generalizations or stereotypes about the differences between transgender students and other students of the same sex (i.e., the same gender identity) or others’ discomfort with transgender students”<sup>19</sup>

One of the purposes of Title IX was to create the same opportunity and equality of treatment for male and female student-athletes.<sup>20</sup> The regulation requires that any member of the "underrepresented sex" (the sex that has the fewest opportunities) must have an opportunity to play on the team of the overrepresented sex if that player is not provided with a team of the player's own sex.<sup>21</sup> Since males have more opportunities than females, a male playing on a female's team would take away a participation opportunity for an underrepresented sex (female). Thus, in the interest of the "class" (all females), males are not allowed to take spots on a female's team even though the reverse is permitted. Males have no right to try out for a female's team *if* there are more males playing sports at that particular school than females.

There is little research on the impact of students' participation based on age-appropriateness, and, as the letter notes, the policies needed at the collegiate level may not be the same at the high school or even middle school level of competition.<sup>22</sup> “[P]olicies that may be appropriate at the college level may ‘be unfair and too complicated for [the high school] level of competition.’”<sup>23</sup>

States and school districts have previously used discretion to enact their own policies concerning transgender students on school teams. Some have allowed transgender students to play on teams consistent with their gender identity regardless of their sex assigned at birth. Others evaluate the student's eligibility for gender-specific school activities by considering their school records, medical history or the student's gender-specific advantage of their participation. The North Carolina High School Athletic Association, adopted a rule that, “A Student's gender is denoted by what is listed on the birth certificate.”<sup>24</sup> In North Carolina and in 46 states, the birth certificate can be changed under medical certification.<sup>25</sup>

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<sup>18</sup> 34 C.F.R. § 106.41(b). “Nothing in Title IX prohibits schools from offering coeducational athletic opportunities.”

<sup>19</sup> See *The Letter*.

<sup>20</sup> Available at <http://www.ncaa.org/about/resources/inclusion/title-ix-frequently-asked-questions#benefit>.

<sup>21</sup> Department of Education's “Three-Part Test,” Policy Interpretation by Office of Civil Rights, 1979. Available at <http://www.womenssportsfoundation.org/home/athletes/for-athletes/know-your-rights/athlete-resources/mythbusting-what-every-female-athlete-should-know>.

<sup>22</sup> See *The Letter. On the Team: Equal Opportunity for Transgender Student Athletes* (2010) by Dr. Pat Griffin & Helen J. Carroll (*On the Team*), [https://www.ncaa.org/sites/default/files/NCLR\\_TransStudentAthlete%2B\(2\).pdf](https://www.ncaa.org/sites/default/files/NCLR_TransStudentAthlete%2B(2).pdf). See NCAA Office of Inclusion, *NCAA Inclusion of Transgender Student-Athletes 2*, 30-31 (2011), [https://www.ncaa.org/sites/default/files/Transgender\\_Handbook\\_2011\\_Final.pdf](https://www.ncaa.org/sites/default/files/Transgender_Handbook_2011_Final.pdf).

<sup>23</sup> See *The Letter*, footnote 18.

<sup>24</sup> NCHSSA, Attachment # 9, Birth Certificate & Gender, adopted April 28, 2014. Available at <http://www.nchsaa.org/file/1610>.

<sup>25</sup> N.C. Gen. Stat. § 130A-118(b)(4): Amendment of Birth and Death Certificates.

The NCAA's Response

In April 2010, the National Collegiate Athletic Association<sup>26</sup> Executive Committee adopted policies to include transgender student-athletes. The NCAA Office of Inclusion “encourages thoughtful development of policies and practices that provide fair participation opportunities for all student-athletes, including transgender individuals.”<sup>27</sup> The two bylaws affected were 1) **mixed team status** and 2) the **use of banned substances**.<sup>28</sup> So long as the student is receiving hormone therapy, transgender students are permitted to participate in sex-segregated sports consistent with their gender identity.

**There are problems with these bylaws under the President's interpretation of Title IX:**

- The “mixed team status” rules violate President Obama’s new “law.”
- Students may be forced by NCAA schools to show their medical records for proof of hormone therapy. This violates President Obama’s new law.

**NCAA “MIXED TEAM STATUS” POLICIES**

*1. A trans male (Female to Male) student-athlete who has received a medical exception for treatment with testosterone for diagnosed Gender Identity Disorder or gender dysphoria and/or Transsexualism, for purposes of NCAA competition may compete on a men's team, but is no longer eligible to compete on a women's team without changing that team status to a mixed team.*<sup>29</sup>

*2. A trans female (Male to Female) student-athlete being treated with testosterone suppression medication for Gender Identity Disorder or gender dysphoria and/or Transsexualism, for the purposes of NCAA competition may continue to compete on a men's team but may not compete on a women's team without changing it to a mixed team status until completing one calendar year of testosterone suppression treatment.*<sup>30</sup>

If either of the above occurred, colleges and universities would see a decrease in the number of women's collegiate sports teams. Once a team is changed to “mixed-team status,” that team is no longer able to compete against females nor is that team classified as a female team.<sup>31</sup> As of 2011, the number of female athletes was still far behind the number of male athletes (see chart below).<sup>32</sup> The NCAA reported that the gap seems to be narrowing from its 2014-15 data with the average NCAA institution having approximately 437 student-athletes, 247 males and 190 females.<sup>33</sup> However, if the Departments of Justice and Education prevails on their purely subjective gender identity policy, there WILL be a decrease in the number of women's collegiate teams since they will become “mixed teams” under NCAA rules.

<sup>26</sup> NCAA, which oversees competitive sports at over 1,000 colleges & universities.

<sup>27</sup> Inclusion of Transgender Student-Athletes- Bylaws, page 7 (August 2011)  
[https://www.ncaa.org/sites/default/files/Transgender\\_Handbook\\_2011\\_Final.pdf](https://www.ncaa.org/sites/default/files/Transgender_Handbook_2011_Final.pdf)

<sup>28</sup> Id. at 12.

<sup>29</sup> Id. at 13.

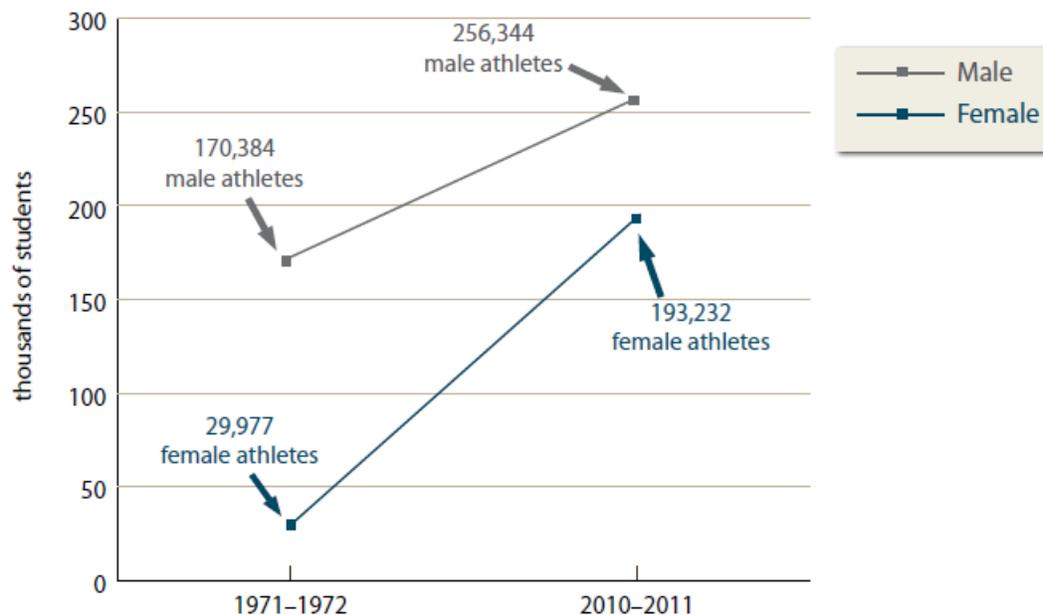
<sup>30</sup> Id. at 13.

<sup>31</sup> “A mixed team is a varsity intercollegiate sports team on which at least one individual of each gender competes. A mixed team shall be counted as one team. A mixed team shall count toward the minimum sponsorship percentage for men's championships... Once a team is classified as a mixed team, it retains that status through the remainder of the academic year without exception.” <http://www.smith.edu/admission/studygroup/docs/NCAA-Policy-on-Transgender-Student.pdf>.

<sup>32</sup> NCAA Sports Sponsorship and Participation Report, 1971-72 – 2010-11.

<sup>33</sup> Student-Athlete participation, 1981-82-2014-15; NCAA Sports Sponsorship and Participation Rates Report, available at <http://www.ncaa.org/sites/default/files/Participation%20Rates%20Final.pdf>.

### Male and Female Participation in College Sports, 1972–2011



SOURCE: NCAA Sports Sponsorship and Participation Report, 1971-72–2010-11.

In order to comply with Title IX funding, women and men must be provided *equitable* opportunities to participate in sports.<sup>34</sup> There is no requirement to offer identical sports but rather an equal opportunity to play.<sup>35</sup> **If more teams transition to mixed teams, female athletes will suffer.** Mixed teams are permitted to play all-male teams and compete in the men’s championships, but mixed teams are NOT permitted to play against all female teams nor are they permitted to participate in the women’s NCAA Championship.<sup>36</sup> If there is a team of 30 females and 1 male, the team must compete in the men’s championship. Female teams will ultimately suffer from a lower level of competition.<sup>37</sup> Some very talented female athletes will be less likely to join athletic teams since they will only be playing other mixed teams or all male teams.

Institutions must also demonstrate a history and continuing practice of program expansion for the underrepresented sex.<sup>38</sup> However, where more female teams transition to mixed teams, this will no longer be expanding opportunities for the underrepresented sex: female. Eventually, no schools will be in compliance with the rules required under President Obama’s new law on Title IX.

<sup>34</sup> 34 CFR 106.41 – Athletics.

<sup>35</sup>Id. *See also* <http://www.ncaa.org/about/resources/inclusion/title-ix-frequently-asked-questions#how>

<sup>36</sup> *Supra*, NCAA Inclusion of Transgender Student-Athletes, 12. *see also*

<http://www.smith.edu/admission/studygroup/docs/NCAA-Policy-on-Transgender-Student.pdf>.

<sup>37</sup> 34 CFR 106.41(c)(1) – Athletics. “In determining whether equal opportunities are available, the Director will consider [several] factors...(1) whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes[.]”

<sup>38</sup> Id.

## **USE OF BANNED SUBSTANCES**

The NCAA's bylaws states that,

*“Any transgender student-athlete who is not taking hormone treatment related to gender transition may participate in sex-separated sports activities in accordance with his or her assigned birth gender.*

- ***A trans male (FTM) student-athlete who is not taking testosterone related to gender transition may participate on a men's or women's team.***
- ***A trans female (MTF) transgender student-athlete who is not taking hormone treatments related to gender transition may not compete on a women's team.*”<sup>39</sup>**

The provisions in these bylaws are in direct conflict with President Obama's new law.

In 2010, a female identifying as a male was allowed to play on a women's collegiate NCAA basketball team because the individual had not undergone hormone treatments.<sup>40</sup> If this player had undergone hormone treatment or the transgender athlete was a biological male identifying as a woman who wanted to play on the women's team, the player could not have participated.

A transgender student-athlete in track and field won many honors and a national championship in women's hammer throw but identified as a male.<sup>41</sup> The athlete was allowed to continue competing in the women's category because the athlete had not undergone reassignment surgery or hormonal treatment which is consistent with NCAA regulations. If this athlete *had* undergone hormonal treatment, the student would have had to compete in the men's division according to NCAA policies.

The NCAA provides additional considerations for the student-athlete when transitioning to the other sex. The student must submit a letter of request to participate on a sports team to the director and include with that letter a note from the student's physician documenting the transition status and identifying the hormonal treatment and documenting of the student's testosterone levels if relevant.<sup>42</sup> This NCAA requirement is in direct conflict with President Obama's new law on Title IX.

### **The Effect on Women and Title IX Funding**

According to the Department of Justice “there is no medical diagnosis or treatment requirement that students must meet as a prerequisite to being treated consistent with their gender identity.”<sup>43</sup> The Department of Justice's interpretation of Title IX concludes that these athletes should have been able to participate on *either* team that their self-determined gender aligned with, regardless whether they had taken hormones or sex reassignment surgery. No medical diagnosis or treatment should be required since “requiring students to produce such identification documents in order to

<sup>39</sup> *Supra*, NCAA Inclusion of Transgender Student-Athletes, 13.

<sup>40</sup> [http://www.nytimes.com/2010/11/02/sports/ncaabasketball/02gender.html?\\_r=1](http://www.nytimes.com/2010/11/02/sports/ncaabasketball/02gender.html?_r=1)

<sup>41</sup> <http://www.usatoday.com/story/sports/college/2015/08/03/ncaa-transgender-athlete-guidelines-keelin-godsey-caitlyn-jenner/31055873/>.

<sup>42</sup> *Supra*, NCAA Inclusion of Transgender Student-Athletes, 14.

<sup>43</sup> See *The Letter*, page 2.

treat them consistent with their gender identity may violate Title IX when doing so has the practical effect of limiting or denying students equal access to an education program or activity.”<sup>44</sup>

According to the DOJ’s analysis of Title IX, the 1000 member schools of the NCAA WILL BE IN VIOLATION OF TITLE IX and will lose federal funding if they do not amend their policies concerning athletes and sex-reassignment surgery and hormone treatments. BUT THEN, if they do comply, what would be the effect on competition? A male could self-identity as a female and demand a position on the team. In addition to the competitive issue, will women put up with having an anatomically correct male in their shower rooms after practice and in their hotel rooms on travel days? Some will; most will not.

## **TITLE VII**

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the basis of race, color, religion, sex and national origin.<sup>45</sup> Under Title VII, an employee may sue on the basis of disparate treatment, disparate impact and retaliation. Private schools can be sued under Title VII if they employ over 15 employees and are not “controlled” by a religious institution.<sup>46</sup> Most private schools are not “controlled” by a religious institution, even if they have a religious mission. Examples of those who can sue under Title VII in competitive sports include professional athletes, coaches, referees, and all others who are classified as an “employee.”<sup>47</sup> The WNBA<sup>48</sup> and the National Women’s Soccer League will have to employ males as athletes who self-identify as female athletes or be sued by the Equal Employment Opportunity Commission under Title VII. That will be the end of women’s professional sports.

## **Olympic Athletes**

In 2004, the International Olympic Committee released rules for transgender-athletic competition.<sup>49</sup> The athlete must have (1) had gender reassignment surgery, (2) have legal recognition of the assigned gender, and (3) have at least two years of hormone therapy.<sup>50</sup> In November 2015, the Committee proposed new guidelines that mirror the NCAA policies concerning transgender guidelines.<sup>51</sup> These guidelines will permit those who transition from female to male eligible to compete in the male category without restriction.<sup>52</sup> Those who transition from male to female will have conditions for competition in the female category.<sup>53</sup> However, the committee stated in the same letter that, “To avoid discrimination, if not eligible for female competition the athlete should be eligible to compete in male competition.”<sup>54</sup>

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<sup>44</sup> See *The Letter*, page 2.

<sup>45</sup> 42 U.S.C. § 2000(e)(2) (1994).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> Women’s National Basketball Association.

<sup>49</sup> <http://edition.cnn.com/2004/SPORT/05/17/olympics.transsexual/>.

<sup>50</sup> <http://www.dailymail.co.uk/news/article-3412969/Olympics-change-policies-allow-transgender-athletes-compete-without-having-gender-reassignment-surgery.html>.

<sup>51</sup> [http://www.olympic.org/Documents/Commissions\\_PDFfiles/Medical\\_commission/2015-11\\_ioc\\_consensus\\_meeting\\_on\\_sex\\_reassignment\\_and\\_hyperandrogenism-en.pdf](http://www.olympic.org/Documents/Commissions_PDFfiles/Medical_commission/2015-11_ioc_consensus_meeting_on_sex_reassignment_and_hyperandrogenism-en.pdf)

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* Some exceptions include: if the athlete declares its gender identity as female, she is prohibited from changing it for a minimum of four years. The athletes’ testosterone level must be below 10 nmol/L at least 1 year prior to competition.

<sup>54</sup> *Id.* In response to the interim award dated 24 July 2015 in *Chand v AFI and IAAF CAS 2014/A/3759*, the IOC Consensus Meeting.

It is unclear whether Title VII would apply to the US Olympic Team. It would be ironic if the Olympic Team for the United States was only able to compete this summer because it was NOT subject to President Obama’s new law. But the effect on future Olympic competitions for women would be catastrophic as the collegiate and professional pipeline would dry up.

**CONCLUSION**

If the letter of the Departments of Justice and Education is converted into a law by the Federal Courts then the days are numbered for high school, collegiate, and professional women’s sports. Of course, this will not apply to sports like gymnastics where women outperform men.

Title IX was conceived as a boon to women in sports but, in the hands of President Obama, will be used as a weapon against them.

**<sup>i</sup> Sexual Orientation Related Bills Applicable to Local or State Government**

Session	Bill No.	S. L. No.	Short Title
1999	<a href="#">H844</a>		Orange County Civil Rights
2001	<a href="#">H941</a>		County Antidiscrimination Ordinances
2001	<a href="#">S864</a>		County Anti-Discrimination Ordinances
2009	<a href="#">H459</a>	2009-74	Rocky Mount/ Fair Housing Ordinance
2009	<a href="#">H721</a>	2009-115	Carrboro/Housing Discrimination
2011	<a href="#">S305</a>		Carrboro/Housing Discrimination
2011	<a href="#">H478</a>		Nondiscrimination in State/Employment
2013	<a href="#">H429</a>		Nondiscrimination in State/ Employment
2013	<a href="#">H647</a>		Nondiscrimination in State/Teacher Employment
2015	<a href="#">H443</a>		Nondiscrimination in Public Employment
2015	<a href="#">S180</a>		Carrboro/Housing Discrimination

**<sup>ii</sup> Protected Classes (N.C. Gen. State. Ann. § 143-422.2)**

<p><i>Suspect Class</i></p> <ol style="list-style-type: none"> <li>1. Race</li> <li>2. Religion</li> <li>3. Color</li> <li>4. National origin</li> <li>5. Sex (quasi-suspect)</li> </ol> <p><i>Non-comprehensive list of others in US states including North Carolina:</i></p> <ol style="list-style-type: none"> <li>6. Disability (N. C. Gen. Stat. 168A) (See Legend #9)</li> <li>7. Age (N.C. Gen. Stat. § 143-422.2)</li> <li>8. Victim of domestic/sexual violence status (N.C. Gen. Stat. §50B-5.5)</li> <li>9. AIDS/HIV status (N.C. Gen. Stat. § 130A-148(i))</li> <li>10. Sickle cell trait (N.C. Gen. Stat. § 95-28.1)</li> <li>11. Hemoglobin C trait (N.C. Gen. Stat. § 95-28.1)</li> <li>12. Genetic testing (N.C. Gen. Stat. §95-28.1A)</li> <li>13. Genetic counseling (N.C. Gen. Stat. §95-28.1A)</li> <li>14. Genetic information (N.C. Gen. Stat. §95-28.1A)</li> <li>15. Enlisted military (N.C. Gen. Stat. §127A-202.1)</li> <li>16. Jury Service (N.C. Gen. Stat. §9-32(a))</li> <li>17. Pregnancy (Vermont, Utah, West Virginia, Missouri, Kentucky, Hawaii, Alaska)</li> <li>18. Veteran status (See Legend #10)</li> <li>19. Marital status (Oregon, Virginia, Illinois, Florida)</li> <li>20. Familial status (North Dakota, Minnesota, North Carolina)</li> </ol>	<ol style="list-style-type: none"> <li>21. Sexual orientation (21 states)</li> <li>22. Gender identity (20 states)</li> <li>23. Gender expression (20 states)</li> <li>24. Arrest history (Wisconsin, Delaware)</li> <li>25. Convict status (Wisconsin, Hawaii)</li> <li>26. Incarceration history (New York, Illinois)</li> <li>27. Credit history (Oregon, Vermont, Hawaii, Delaware)</li> <li>28. Source of income (New York, Michigan)</li> <li>29. Caregiver status (D.C.)</li> <li>30. Occupation (Oregon)</li> <li>31. Ancestry (Rhode Island)</li> <li>32. Weight (Michigan)</li> <li>33. Height (Michigan, Kansas)</li> <li>34. Place of birth (Vermont)</li> <li>35. Homelessness (Connecticut)</li> <li>36. Political affiliation</li> <li>37. Student status (Michigan)</li> <li>38. Public benefit status (North Dakota, Minnesota,</li> <li>39. Refusal to perform abortion or sterilization (many states)</li> <li>40. Use of service animal (Washington)</li> <li>41. Off the job use of tobacco (Wyoming)</li> <li>42. Medical marijuana (New York, Nevada, Minnesota, Maine, Illinois)</li> <li>43. Black lung disease (Kentucky)</li> </ol>
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**Declaration of Paul M. Smith  
June 20, 2016**

**EXHIBIT G**

**JA680**

## The University of North Carolina at Greensboro

# Student Affairs

## Student Policy Handbook

### Student Code of Conduct

The University of North Carolina at Greensboro

(Last Revised by the Dean of Students, July 1, 2015)

*This policy may be updated from time to time to reflect changes in departmental practices and/or required mandates. The revised date will be updated and a notice will be placed on the site notifying you of such modification.*

#### **Section 1: Purpose**

Members of the University community embrace fundamental principles to ensure a campus environment conducive to peaceful and productive living and study. These principles include five values: honesty, trust, fairness, respect, and responsibility. Members of the community who adopt these principles will seldom have need of the Student Code of Conduct (the Code). When members of the University community fail to observe these principles, the Code is used to affirm these values through adjudication of allegations involving violations of these values. Allegations made against individual students or student groups/organizations include reference to the general principle that is at risk as well as the specific conduct alleged to be a violation of the Code.

#### **Section 2: Scope**

1. The Code is one of three formal policies governing student conduct at UNCG. The Code addresses general student conduct, usually excluding academic responsibilities. The Code details the fundamental fairness and process requirements for student conduct proceedings; it does not duplicate or replace the purposes of the Academic Integrity Policy or of other graduate or professional policies related to schools, departments, or professions.
2. The Academic Integrity Policy (the AIP) governs student conduct directly related to the academic life of the University. The AIP is applicable to any academically related experience involving UNCG students (or alumni in cases where violations are discovered after graduation) whether occurring on the campus or at host institutions or sites. All alleged violations of the AIP must be resolved in accordance with the AIP and under the direct authority of a UNCG faculty member or the Dean of Students Office.
3. Graduate or professional schools within the University may initiate charges against students for alleged violations of professional standards or ethics as a separate issue or as an extension of alleged acts of academic dishonesty or violations of the Code. Double jeopardy is not implicated since the student is simultaneously accountable to multiple and separate jurisdictions—institutional standards of academic dishonesty and/or general conduct, or a departmental conduct officer in cases of alleged violations of departmental policies.[\[1\]](#)

#### **Section 3: Authority**

By action of the Board of Governors of The University of North Carolina, the Chancellor is responsible for all matters of student conduct. This responsibility is normally delegated to the Vice Chancellor for Student Affairs for the purpose of implementing approved policies and procedures. However, the Chancellor's ultimate authority in the regulation of student conduct, including direct intervention by the Chancellor when deemed appropriate, is presumed by this Code. Students play a major role through the Student Government Attorney General and the Dean of Students offices in the formulation of rules for student conduct and in the adjudication of cases involving alleged breach of those rules.

#### **Section 4: Interpretation and Revision**

**JA681**

Any questions of interpretation regarding the Code shall be referred to the Dean of Students Office for final determination. The Code shall be reviewed annually under the direction of the Dean of Students Office. Students and other University community members may make policy suggestions directly to the Dean of Students Office.

### Section 5: Jurisdiction Over Student Conduct

1. The Code and the processes for its administration and enforcement exist for the protection and advancement of the University community's particular institutional interests. The Code applies to individual students and student groups/organizations and is used to enforce University policies and regulations. Regardless of how it is handled by the court system, a violation of law may also be treated as a violation of University regulations.
2. Conduct proceedings on campus are designed to deal developmentally with student behavior in the University community that is prohibited or is deemed unacceptable to the University community. When the behavior is aggravated or presents a continuing danger to the University community, students found responsible for a violation of the Code are subject to separation from the University.
3. Conduct action is not a substitute for judicial mechanisms of the larger community. Criminal prosecution in the court system is designed to be punitive and to provide social consequences for convicted offenders. Student offenders may be charged under either or both systems. University sanctioning power, therefore, applies only to instances of student misconduct that are basic to its appropriate interests, as follows:
  1. The opportunity of all members of the University community to attain educational objectives;
  2. The protection of the health, safety, welfare, and property of all persons in the University community; or
  3. The protection of the University's integrity and its property.
4. Each student is responsible for their conduct even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of enrollment (and even if the conduct is not discovered until after a degree is awarded). The Code applies to a student's conduct even if the student withdraws from school while a disciplinary matter is pending.
5. The University's jurisdiction extends to all students while they are present on premises owned by the University, on city streets running through or adjacent to the campus, and in off-campus buildings occupied by students by virtue of their association with a group/organization given formal recognition by the University or at a host institution or other site for an academic or extracurricular University-related experience. In addition, this Code may also be invoked against students whose off-campus behavior:
  1. Potentially harms the institutional educational interests of the University. This standard is fulfilled when the behavior creates general and negative public opinion of the University or its students or employees; or
  2. Threatens the well-being of its students or employees. This standard is fulfilled when the behavior has already threatened a member or members of the general public and there is reason to believe that such behavior might threaten or endanger students or employees if not addressed in the institutional community.
6. On occasion, instances of student misconduct may constitute offenses against the larger community. Students are responsible for knowing and observing all federal and state laws, and local ordinances. Under agreement with the City of Greensboro, the University Police will notify the Greensboro Police Department of incidents involving felony level offenses and may choose to report other offenses. The fact that a student is or has been prosecuted in criminal court for a violation of law or the dismissal of criminal court charges does not preclude University jurisdiction over the misconduct. Civil or criminal authorities are not precluded from taking action against students for on-campus violations of public laws and ordinances.

### Section 6: Violations of the Code

Specific violations of the Code are listed as examples only. Individual students and student groups/organizations are expected to exercise good judgment and discretion in their actions at all times. [\[2\]](#)

## 1. Honesty

An academic community of integrity advances the quest for truth and knowledge by requiring intellectual and personal honesty in learning, teaching, research, activities, and service. Cultivating honesty lays the foundation for lifelong integrity, developing the courage and insight to make difficult choices and accept responsibility for actions and their consequences, even at personal cost.<sup>[3]</sup> Violations of Honesty may include but are not limited to: furnishing false information to any member of the University community; falsification; forgery; fraud; or misuse of documents, keys, identification cards, and parking permits.

## 2. Trust

An academic community of integrity fosters a climate of mutual trust, encourages the free exchange of ideas, and enables all to reach their highest potential. Only with trust can members of the University community believe in and rely on others and move forward as a community. Only with trust can the community believe in the social value and meaning of an institution's scholarship and degrees.<sup>[4]</sup> Violations of Trust may include but are not limited to: misuse of access privileges to University premises; violation of a position of trust or authority; misuse of University or organization names and images; possession of stolen property; theft; misuse of restricted areas, misuse of University computing facilities, passwords, accounts, or information.

## 3. Fairness

An academic community of integrity establishes clear standards, practices, and procedures and expects fairness in the interactions of students, groups/organizations, faculty, and staff. For students and groups/organizations, important components of fairness are predictability, clear expectations, and a consistent and just response to dishonesty. Faculty and staff also have a right to expect fair treatment from students and from colleagues.<sup>[5]</sup> Violations of Fairness may include but are not limited to: disruption of University operations; obstruction of freedom of movement of community members or visitors; interference, or failing to comply in University processes including Conduct and Academic Integrity hearings.

## 4. Respect

An academic community of integrity recognizes the participatory nature of the learning process and honors and respects a wide range of opinions, ideas, and cultures.<sup>[6]</sup> Violations of Respect may include but are not limited to: threatening or causing physical harm or harassment; hazing; acts of sexual misconduct; conduct which disturbs the peace of the community; trespass on University property or premises; conduct which is disorderly; infringement on the rights or property of members of the University community; failure to comply with directions of University officials; hate crimes, violation of a No Contact Order; any act or omission that a reasonable college student knows, or should know, infringes on the rights or property of members of the University community.

## 5. Responsibility

An academic community of integrity upholds accountability and depends upon action in the face of wrongdoing. Every member of an academic community—student, group/organization, faculty member, and staff—is responsible for upholding the integrity of the community.<sup>[7]</sup> Violations of Responsibility may include but are not limited to: violation of University policy or law regarding alcohol<sup>[8]</sup>; violation of University policy or law regarding firearms or other weapons; attempted or actual damage to property; violation of University policy or law regarding drugs (possession, knowledge, use, or transfer of a controlled substance); facilitating or accepting improper behavior; violation of the fire code; assisting in the violation of University policies or public laws; violation of University policies; violations of federal or state laws, or local ordinances which affect the interests of the University community; the knowledge of or unintentional failure of any organized group to exercise preventive measures relative to violations of this Code by its members.

## 6. Threats, Coercion, Harassment, Intimidation, or Hostile Environments

The University embraces and strives to uphold the freedoms of expression and speech guaranteed by the First Amendment of the U.S. Constitution and the North Carolina Constitution. The University has the right under appropriate circumstances to regulate the time, place, and manner of exercising these and other constitutionally

protected rights. All students are responsible for conducting themselves in a manner that helps enhance an environment of learning in which the rights, dignity, worth, and freedom of each member of the academic community are respected. Violations of University policies, rules or regulations, or federal state, or local law may result in a violation of the Code and imposition of student discipline. The following provisions addressing specific student conduct that could lead to disciplinary action shall be included:

1. No student shall threaten, coerce, harass or intimidate another person or identifiable group of persons, in a manner that is unlawful or in violation of a valid University policy, while on University premises or at University sponsored activities based upon the person's race, color, religion, sex, sexual orientation, gender identity, national origin, political affiliation, genetic information, veteran status, disabling condition, or age.
2. No student shall engage in unlawful harassment leading to a hostile environment. Unlawful harassment includes conduct that creates a hostile environment by meeting the following criteria: It is:
  1. Directed toward a particular person or persons;
  2. Based upon the person's race, color, religion, sex, sexual orientation, gender identity, national origin, political affiliation, genetic information, veteran status, disabling condition, or age;
  3. Unwelcome;
  4. Severe or pervasive;
  5. Objectively offensive; and
  6. So unreasonably interferes with the target person's employment, academic pursuits, or participation in University-sponsored activities as to effectively deny equal access to the University's resources and opportunities.
3. In determining whether student conduct violates these provisions, all relevant facts and circumstances shall be considered. Care must be exercised in order to preserve freedoms of speech and expression, as articulated in current legal standards. Legal advice should be sought from the Office of the General Counsel, as appropriate.

## Section 7: Notification of Conduct Allegations

1. Allegations concerning violations of this Code must be brought in writing to the attention of the Dean of Students Office within 120 days of discovery of the alleged offense. Violations alleged to have occurred more than 120 days earlier will be considered "stale" and normally will not be subject to conduct action. Exceptions to this policy will be made at the sole discretion of the Vice Chancellor for Student Affairs or designee. Such exceptions may involve allegations that are still under investigation or cases in which the safety of individuals or the University community is deemed by that official to be at risk.
2. Allegations of Code violations will be presented to respondent(s) by means of written notification from the Dean of Students Office or designee. This notice will contain the substance of the allegations and refer the student to the Dean of Students Office. Prior to meeting with and formally charging the student, the Dean of Students Office, in consultation with appropriate offices, will proceed based upon one of the following procedures:
  1. In instances when action is either pending or completed against a student in a state or federal court and when the University's interests are at issue, the Dean of Students Office in consultation with appropriate officials will determine whether action is required by the University to protect its interests regardless of whether the student withdraws from the University. If the Dean of Students Office believes that the University's interests have been affected, the student will be formally charged, or
  2. Receive and review allegations as described below:
    1. Allegations shall be prepared in writing and directed to the Dean of Students Office. Such allegations shall be submitted as soon as possible after the incident takes place, preferably within thirty (30) days of the discovery of the violation.
    2. The conduct officer will conduct a preliminary screening of the allegations to determine whether (1) the

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allegations, if proven, would constitute a violation under the Code; and (2) based upon the allegations, there is reasonable belief that such a violation may have occurred. This screening may involve reading of the description of the alleged conduct, or discussion with the individual(s) making the allegations, as appropriate to the situation. The University may decide to proceed with charges without the complainant/accuser's consent, if in the professional judgment of the Dean of Students Office, the University community's interests are best served by proceeding with the conduct process.

3. All correspondence regarding conduct processes are communicated via email to the student's UNCG email address. Students are responsible for checking their email account. Conduct processes may proceed whether or not the student appropriately responds to email communication.

### Section 8: Fundamental Fairness Guarantees

Students are guaranteed the following elements of fundamental fairness throughout the student conduct process:

1. In cases involving a hearing before a hearing panel or conduct officer:

The respondent shall be afforded a fair and timely hearing to respond to the allegations;

1. Both the respondent and the complainant shall have the opportunity to challenge for cause the conduct officer, or panelists, or composition of any hearing panel;
2. The respondent shall be informed of the accusations and the evidence;
3. Both the respondent and the complainant shall be afforded adequate time to prepare for the hearing;
4. Both the respondent and the complainant shall be able to offer relevant evidence and witnesses who can provide direct information; and to question witnesses present at the hearing;
5. The respondent may be represented, at their own expense, by a licensed attorney or non-attorney advocate of their own choosing in non-academic misconduct matters in accordance with the Guidelines for Attorney/Non-Attorney Advocates (<http://sa.uncg.edu/dean/attorney-advocate-guide/>). In cases involving an alleged act(s) of sexual misconduct and/or interpersonal violence, a complainant may also be represented by a licensed attorney or non-attorney advocate of their own choosing. The attorney/non-attorney advocate may fully participate only to the extent and in the same manner afforded to the student(s) they represent, The attorney/non-attorney advocate may not provide testimony.
6. The respondent shall have the opportunity to consult with a Student Conduct Advisor.
7. The complainant shall have the opportunity to consult with a Student Case Coordinator.
8. The respondent shall receive in writing the outcome of the hearing. In cases involving sexual misconduct or interpersonal violence, both the respondent and the complainant shall receive in writing the outcome of the hearing;
9. The respondent may appeal the outcome of the hearing. In cases involving sexual misconduct or interpersonal violence, both the respondent and the complainant may appeal the outcome of the hearing;
10. Both the respondent and the complainant shall be afforded confidentiality in the handling of the conduct process in accordance with applicable policy and law.

2. The following considerations apply equally to the complainant and respondent:

1. The University will not voluntarily release the complainant's/respondent's name to the public or media except as required by law.
2. Further, University staff will, upon request by the complainant/respondent:
  1. meet at a reasonable place, to discuss the situation in a confidential manner;
  2. treat the complainant/respondent with courtesy, understanding, and professionalism; assist in privately contacting counseling, advising, and other available resources should the individual so choose;
  3. arrange that the complainant/respondent or any persons acting on their behalf not have contact with

- the other in the form of a No-Contact Order;
4. continue to be available to answer questions, explain the systems and processes involved, and be a willing listener; keep him/her informed on the progress of the case as allowed by law and policy;
  5. provide assistance regarding University residential housing, including a request to change housing assignments or to leave University housing;
  6. assist with requests for academic relief or other exceptions to current academic regulations;
  7. in cases involving allegations of sexual misconduct or interpersonal violence, arrange at the discretion of the conduct officer, an alternative to giving a statement in a face-to-face setting; and
  8. arrange for the opportunity to make a statement concerning the impact of the incident on his or her life in the hearing.

### **Section 9: Alternative Dispute Resolution**

Except in cases involving sexual misconduct or interpersonal violence, upon mutual request and agreement of the respondent(s) and the complainant(s), and with the consent of the conduct officer, alternative dispute resolution, including negotiated settlements between the parties, mediation or similar forums, may be pursued in lieu of the normal conduct process outlined below.

### **Section 10: Enrollment**

Respondents who are not students at the time of the conduct proceeding may be subject to a Student Affairs Hold on their records which prevents further registration at the University pending resolution of outstanding conduct allegations. The University may adjudicate the charges against the respondent(s) regardless of whether the respondent is currently a student. In addition, the Student Affairs Hold can be extended to prevent release of transcripts and/or diplomas. The conduct records of students attempting to transfer to another institution are subject to disclosure to the transfer institution.

### **Section 11: Student Conduct Conference**

1. Once allegations are brought to the attention of the Dean of Students Office, the respondent will be contacted in writing via the student's UNCG email address regarding the scheduling of a Student Conduct Conference (SCC). The University has no further obligation to notify the respondent. The SCC provides the respondent with:
  1. Opportunity to discuss the allegations and provide information;
  2. Opportunity to review fundamental fairness guarantees/procedures (see Section 8);
  3. Notice of formal charges resulting from allegations;
  4. Notification of the process for resolving formal charges through conduct proceedings; and
  5. Opportunity to accept or deny responsibility for formal charges.
2. A conduct officer will discuss with the respondent the facts of the allegations and other related information and will explain the procedures to be followed.
3. Following this conference, the conduct officer will inform the respondent as to whether a formal conduct charge will be pursued to resolve the allegations.
4. If the respondent is formally charged with a conduct violation, the conduct officer will inform the student of his/her rights, options available for resolution, and procedures in cases of failure to respond or withdrawal from the University in the face of conduct charges.
5. The respondent will be asked to select one of the following options in response to the charge:
  1. Plead "Not Responsible" to the charge and have a hearing before a hearing panel or conduct officer where a determination of responsibility will be made through procedures described in the Conduct Hearings section. If the student is found Responsible by the conduct officer/hearing panel, appropriate sanctions will also be

imposed.

2. Plead "Responsible" to the charge and waive a hearing on the question of responsibility. An appropriate sanction(s) will be imposed by the conduct officer/hearing panel.
  3. Enter a "Postponement of Plea" during the Student Conduct Conference which allows the student up to two business days (48hrs.) to enter a plea.
6. A respondent who fails to respond to a charge letter by attending the SCC or who at any time fails to respond to notification regarding the conduct process or refuses to abide by the conduct procedures, forfeits the right to have a SCC and waives their right to a hearing. The hearing officer will conduct the SCC in absentia of the respondent and make a determination of responsibility based on the information available. The respondent will be notified by a certified letter via hand-delivered mail, US mail, or e-mail of a scheduled review with a hearing officer or hearing panel. At the review, the hearing officer or hearing panel will assign appropriate sanctions. This scheduled review hearing will proceed whether or not the respondent is present. Written notification of the decision and sanctions will be sent to appropriate University parties (including the complainant when applicable) and to the respondent by email to the student's UNCG email address. The written notification shall include a description of the student's appeal rights, if any, and the deadline for exercising those rights.

## Section 12: Conduct Reviews

Following the SCC, the conduct officer will hold a conduct review of the allegations as follows:

1. Meet with the respondent(s) to seek information relevant to the circumstances of the alleged offending conduct prior to assigning a sanction(s).
2. At the discretion of the conduct officer in cases where there is an admission of responsibility and the respondent or complainant requests the opportunity to present new information concerning aggravating or mitigating factors in the case, a modified review may be conducted. In this review, parties will be permitted to offer relevant information, documents or other evidence, including character evidence prior to the sanction decision by the conduct officer.
3. In cases where the respondent requests an immediate decision on sanctions, the conduct officer may deem further review unnecessary and proceed with sanctioning.

## Section 13: Conduct Hearings

1. Respondent(s), who plead "Not Responsible" to the charge(s) or fail or refuse to enter a plea, for whatever reason, will be scheduled for a conduct hearing with either the conduct officer or with a hearing panel.
2. The respondent(s) may request a hearing before a hearing panel and the conduct officer may, at his/her discretion, grant this request if, in his/her professional judgment, the complexity or seriousness of the allegations support this request. The request is normally granted if the sanctions of suspension or expulsion are likely.
3. After the SCC occurs, or was scheduled to occur, hearings are scheduled within a reasonable time, with written notice to the parties no fewer than five (5) calendar days prior to the date of the hearing.
4. At the discretion of the conduct officer, a one-time postponement for cause in the scheduled hearing date may be granted upon request of any party to the hearing action. This postponement for cause, when granted, will not exceed ten (10) calendar days in the absence of extraordinary circumstances, to be determined by the conduct officer.
5. Cases occurring during summer sessions for which a hearing is granted present special problems due to the brief term and the limited availability of hearing panelists. Such hearings shall be conducted, when necessary, through ad hoc hearing panels appointed by the Dean of Students Office. Carryovers of hearings may also be utilized for students, other than students nearing graduation, when there is not sufficient time remaining in the regular academic year to arrange for the hearing process.
6. Hearings are closed to the public, subject to applicable policy and law. In addition to the conduct officer and/or members of the hearing panel, only the following normally are allowed to attend: a support person for the respondent

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or the complainant (a support person shall be a silent observer and may not have an active role in the hearing); attorney/non-attorney advocate; the respondent; the Student Conduct Advisor of the respondent, if engaged; the Student Case Coordinator who advises the complainant; witnesses or persons who have been asked to provide a statement by either the respondent or complainant. In hearings involving allegations against student groups/organizations, the president or chief officer of the charged group/organization will be expected to participate in the hearing on behalf of the group/organization. The conduct officer or hearing panel may also recommend charges be brought against individual members of the group/organization as a result of information obtained in the course of the hearing.

7. Such witnesses or persons asked to provide a statement and the complainant shall be present only for the portion of the hearing that involves their statement and questions arising from that statement. In keeping with federal law, complainants of violence, whose status is determined by the conduct officer, may be present for the duration of the hearing and provided the results of the hearing. The conduct officer will preside over the hearing. Admission of any additional persons to the hearing shall be at the sole discretion of the conduct officer.
8. Hearings, whether held before a conduct officer or hearing panel, are unlike courts. These conduct processes engage in a full discussion of charges and circumstances. Rules of evidence, procedures, and involvement of attorneys differ from proceedings before criminal or civil authorities as follows:
  1. The conduct officer has sole discretion to decide what evidence and witnesses are allowed. Evidence will be allowed if, in the judgment of the conduct officer, it bears on the facts of the case.
  2. Evidence relevant to both the issue of responsibility and appropriate sanctions is normally allowed.
  3. Written statements by witnesses or others having knowledge of the allegations may be allowed in the absence of a personal appearance at the hearing by the author of the statement. Such signed statement must be delivered in person to the Dean of Students Office by the author accompanied with matching picture identification. If the author is unable to deliver the statement in person to the Dean of Students Office, the statement must be notarized. Statements by a sworn law enforcement officer or professional or student employee of the University do not have to be notarized. Such statements may be considered by the hearing panel/conduct officer on the basis of their content and relevance.
  4. The testimony of a witness will be heard if the conduct officer deems that it is offered in good faith, bears upon the facts of the case, and is not merely cumulative, i.e. does not simply repeat prior statements. The testimony of two (2) character witnesses may be heard, but only for decisions of sanctions and cannot be used to draw conclusions about the responsibility of the respondent for the charges. Character witnesses are permitted to testify only if a finding of responsibility occurs.
  5. Information that is not from a firsthand source may be considered in the course of a hearing under certain conditions; the legal rules of hearsay evidence do not apply. The conduct officer will rule on whether such information is appropriate and may be admitted in the hearing. In no case should the hearing outcome be decided solely on such information.
  6. In some cases, the conduct officer may issue a notice to appear as indicated below. Such internal notices are not issued unless the expected statements would be clearly relevant, and will not be issued with the intent to embarrass or harass a potential witness.
    1. All University students are expected to comply with notices to appear. University students who, absent good cause, fail to respond to such notices are in violation of this Code. Third parties not subject to the Code who may be requested to appear in a Conduct Hearing are expected to make every effort to assist the conduct process. The unavailability of such third parties to a hearing procedure will be treated as set forth below.
    2. If the conduct officer determines that a fair hearing cannot be held without the testimony of a particular witness, and if after good faith attempts are made, the witness either fails to or refuses to appear, the

hearing may be postponed until the witness agrees to appear or provide a written statement; or the charges may be dismissed, at the sole discretion of the conduct officer.

7. In an effort to ensure that conduct hearings provide equal opportunity to the respondent and the complainant and so that the University will be prepared for the hearing, the following procedures apply:
  1. The parties must submit to the conduct officer a written list of the names of all witnesses they intend to present at the hearing and the expected subject matter of the witnesses' statements no later than noon (12:00 p.m.) three (3) business days prior to the hearing date for approval by the conduct officer.
  2. The parties must submit to the conduct officer a written list of the written evidence they intend to present at the hearing no later than noon (12:00 p.m.) three (3) business days prior to the hearing date for approval by the conduct officer. The parties shall at the same time deliver two (2) copies of all written evidence identified in their list, except for written evidence that both the other party and the conduct officer already have.
  3. The parties may contact the Dean of Students Office after noon (12:00 p.m.) two (2) business days prior to the hearing to review the opposing party's witness list, and to review all written evidence, as applicable.
  4. If, at the time of the hearing, either the complainant/Student Case Coordinator or the respondent/Student Conduct Advisor calls a witness or presents written evidence that was not previously identified, either party may challenge the admissibility of the witness testimony or written evidence. Such challenges will be reviewed by the conduct officer and affirmed or denied in his/her sole discretion.
8. The following procedures apply to conduct hearings:
  1. The conduct officer will facilitate introductions of those present and will explain the hearing procedures to the parties.
  2. The respondent and the complainant will be given the opportunity to challenge a hearing panelist or conduct officer on the grounds of conflict with, bias about, or interest in, the case. It is at the conduct officer's discretion to support or refuse the challenge, unless the conduct officer is the subject of the challenge, in which case an official within the Dean of Students or designee shall be brought in to hear the challenge and make the final determination. If a challenge is granted and a hearing panelist or conduct officer is disqualified then the hearing may be postponed as necessary in the discretion of the conduct officer/Dean of Students or designee.
  3. The conduct officer will state the charge(s) against the respondent.
  4. The complainant or Student Case Coordinator will be provided the opportunity to make an opening statement. This opening statement is limited to no more than five (5) minutes.
  5. The respondent or Student Conduct Advisor will be provided the opportunity to make an opening statement. This opening statement is limited to no more than five (5) minutes.
  6. The complainant/Student Case Coordinator will present evidence in support of the charge(s) and may also present written evidence and witnesses.
  7. The hearing panel/Conduct Officer will be provided access to copies of all written evidence submitted by the Student Case Coordinator.
  8. The hearing panel/Conduct Officer may directly question the complainant/Student Case Coordinator and witnesses. The respondent/Student Conduct Advisor has the right to question the complainant/Student Case Coordinator and the witnesses who appear. However, in cases involving allegations of sexual misconduct (rape, sexual assault, and sexual harassment) or interpersonal violence (dating violence, domestic violence, and stalking), the complainant and the respondent may not directly question one another. All questions, including those directed to any witnesses, must be

- asked through the Case Coordinator for the complainant and through the Student Conduct Advisor for the respondent. The complainant may be visually screened during questioning.
9. The respondent may respond to the charge(s) and may present evidence in the form of written evidence or testimony of the respondent or other witnesses.
  10. The hearing panel/Conduct Officer will be provided access to copies of all written evidence submitted by the respondent.
  11. The hearing panel/Conduct Officer may then question the witnesses presented by the respondent and may also question the respondent. The complainant/Student Case Coordinator may then question the witnesses, including the respondent/Student Conduct Advisor.
  12. The complainant or Student Case Coordinator will be provided the opportunity to make a closing statement. This closing statement is limited to no more than five (5) minutes.
  13. The respondent or Student Conduct Advisor will be provided the opportunity to make a closing statement. This closing statement is limited to no more than five (5) minutes.
  14. The conduct officer will conclude the evidentiary portion of the hearing and set a time for deliberations to begin at the earliest possible time.
  15. The University will be responsible for preparing a transcript or other verbatim recording of all hearings conducted by hearing panels, but not conduct officers. The transcript or recording shall not include the deliberations of the hearing panel.
  16. During conduct hearings, deliberations about responsibility of the respondent are conducted by the hearing panel/conduct officer in a closed session. Other parties are excused from the hearing room during this time. Once begun, the deliberations normally will continue until a decision as to responsibility has been reached. Recesses will be granted at the sole discretion of the conduct officer.
9. All issues before hearing panels/conduct officers must be decided according to the preponderance of evidence standard (whether it is "more likely than not"). In finding responsibility of the respondent under this standard of proof, the hearing panel/conduct officer must be convinced, based solely upon the information presented in the course of the hearing, that the conduct alleged is more likely than not to have occurred.
  10. Except in those cases where the respondent has already plead Responsible as charged, hearing panels shall decide whether the respondent is Responsible or Not Responsible by simple majority vote of the panelists present. In the case of hearings before a conduct officer, the decision of the officer will determine whether the respondent is found Responsible or Not Responsible for the violation.
  11. The hearing will reconvene and the parties will be advised of the decision on responsibility.
  12. In the event of a finding of responsibility, recommendations for sanctions shall then be heard from the Student Case Coordinator, the respondent/Student Conduct Advisor, and up to two (2) character witnesses. The conduct officer may introduce past student conduct records and/or precedent cases. Deliberations about sanctions are then conducted by the hearing panel/conduct officer in a closed session. Other parties are excused from the hearing room during this time.
  13. In assigning appropriate sanctions, the hearing panel/conduct officer may consider relevant precedents and the conduct history of the respondent. Consideration may also be given to aggravating or mitigating circumstances including but not limited to:
    1. intent to act in the manner described, regardless of motive;
    2. intent to violate the policy or regulation described;
    3. prior experience, age, and understanding;
    4. prior violations or related behavior;
    5. other personal circumstances that might have affected the respondent student at the time of the violation; and

6. how the conduct violation impacted or potentially impacted or still has the potential to impact others.
14. Repeated violations of the Code may result in the imposition of progressively more severe sanctions, although any sanction may be imposed as appropriate under the circumstances.
15. If an appeal follows a student conduct review or hearing, all sanctions resulting from the review or hearing may be held in abeyance pending the outcome of the appeal at the sole discretion of the conduct officer.
16. The hearing will reconvene and the parties advised of the decision concerning sanctions.

At the conclusion of the conduct process, the conduct officer will provide verbal and written notification of the decision and sanctions to the respondent and, if applicable the complainant, in cases involving sexual misconduct or interpersonal violence. The written notification shall include a description of the appeal rights, if any. In all cases, written notification of the decision and sanctions will be sent to the student's UNCG email account.

#### **Section 14: Dean of Students Office-Level Hearings**

1. A representative from the Dean of Students Office designated by the Vice Chancellor for Student Affairs will serve as the conduct officer.
2. All cases that may result in expulsion or suspension from the University shall be referred to the Dean of Students Office designee.
3. In cases referred to hearing panels, the Dean of Students Office designee will assemble a hearing panel which will normally consist of six trained persons: three (3) students, and three (3) members of the faculty/staff. In no case shall a panel consist of less than four (4) nor more than six (6) members with students and faculty/staff equally represented. At least one (1) panelist may be the Student Government Attorney General or his/her designee. In sexual misconduct or interpersonal violence cases, the hearing panel will consist of entirely faculty and staff. This panel will hear appropriate cases as brought by University officials or students.

#### **Section 15: Adjudication in Other Departments of Student Affairs**

The designated departmental conduct officers outside the Student Affairs Division Office may hear cases which will not result in separation or interim suspension from the University. Reviews of allegations in which the respondent student(s) plead Responsible may be conducted in accordance with procedures described in this Code. Administrators of such other departments have discretion to refer adjudication of any violation to the Student Affairs Division conduct officer.

1. Office of Housing and Residence Life
  1. Violations of the student Housing Contract constitute violations of the Code and shall be processed as regular violations under the Code. The Director of Housing and Residence Life shall designate a staff member to serve as the conduct officer in such cases.
  2. Other minor offenses of this Code occurring in the residence halls will be subject to reviews by the Office of Housing and Residence Life and be resolved under policies as stated by each residential area.
2. Campus Recreation and the Office of Campus Activities and Programs
  1. Campus Recreation and the Office of Campus Activities and Programs review most cases involving alleged violations by students or student groups/organizations of departmental policies and regulations. (Exceptions are noted above, in addition to cases where the alleged violations, if true, would likely result in revocation of the group's charter which may be referred to the conduct officer in the Student Affairs Division Office.)
  2. The administrative head or designee of each office will serve as the conduct officer in conducting an administrative review of the alleged violation. Following such review, an organization held Responsible for violations of the Code or of departmental regulations shall receive appropriate sanctions.
3. Other Departments
 

Other departments are required to consult with the Dean of Students Office before the hearing in the following cases:

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1. Requests for referrals for assessment or treatment not included in this Code; or
2. Actions under the [University Drug Policy](#).

## Section 16: Sanctions

### 1. Sanctions for Individual Students

The primary purpose of sanctions in the University setting is to provide incentive and opportunity for education of the student as well as due consideration of the needs of the larger University community. Except in some specified offenses, such as drug violations, sanctions under this Code may be tailored to suit the circumstances of each violation. Though maximum sanctions are identified by this Code, lesser sanctions may be selected, depending on the circumstances. Alcohol and/or drug usage may be considered an aggravating factor in determining sanctions. Referral for assessment may be required prior to sanctioning or as a sanction. Sanctions of suspension and expulsion affect the student's academic enrollment at the University. In order that students under expulsion, suspension, or limited participation in daily campus life not contravene the terms of the sanction, the Offices of Athletics, Undergraduate Studies, Cashier, Financial Aid, Graduate School, Parking Services, Registrar, Housing and Residence Life, and University Police will be notified in writing. Other offices may be notified based upon "the need to know" as defined in applicable law and policy. When a student returns to the University following a period of suspension, that student must reapply to the University and, if readmitted shall be placed on mandatory probation for a minimum of one semester (Fall or Spring). Information about suspension or expulsion is maintained permanently in the student's conduct record. Current suspensions and all expulsion information are maintained on the University of North Carolina System suspension/expulsion database which is accessible to the admissions officers of the 16 public universities. In cases involving student groups/organizations that have been suspended, the group/organization will be placed on social probation for a minimum of one (1) year following the end of the suspension period. Sanctions for Minor Violations under the Code range from warning to probation with conditions. Sanctions for Major Violations under the Code may range from warning with conditions to expulsion from the University. Lack of intent or knowledge may be a mitigating factor in determining sanctions but does not excuse harm to persons or property. Any one of the following sanctions or their combinations, or others, as appropriate, may be imposed at the discretion of the conduct officer/hearing panel:

1. **Disciplinary Expulsion:** Permanently severs the relationship of the student with the University. In addition, the student may not attend any of the other University of North Carolina institutions. Expulsion therefore is reserved for the most severe violations where the student's conduct has shown him/her to be unfit to continue or ever return as a member of the University Community and/or where the student likelier than not constitutes a continuing danger to the physical safety or well-being of members of the University Community and/or property, which danger cannot be adequately mitigated through lesser sanctions such as suspension. The sanction of expulsion comes to the Associate Vice Chancellor for Student Affairs as a recommendation that is not effective until approved.
2. **Disciplinary Suspension:** Severs the relationship of the student with the University for a finite period, the terminal date of which coincides with the official ending of an academic semester or summer session. Suspension is imposed when other sanctions are deemed ineffective to deal with the severity of the conduct committed and/or in cases of aggravated or repeated violations of the Code. Suspension is appropriate where the student's conduct has shown him/her to be unfit to continue as a member of the University Community for a set period of time and/or where it is believed that the student will be fit to return if certain conditions are satisfied. Suspension may carry conditions that must be satisfied prior to future re-admission to the University and/or probationary conditions following re-enrollment. Students should contact the Office of Admissions to determine the re-enrollment process after the suspension period is complete.
3. **Disciplinary Probation:** Permits continuation as a student at the University, but imposes certain requirements on the student for a specified period of time, the terminal date of which coincides with the official ending of an

academic semester or summer session. Any further proven violations by the student under probation will likely result in the student's suspension or expulsion from the University.

4. Disciplinary Warning: The warning period provides a time for the student to reflect upon the violation and to consider the responsibilities of a University citizen. A warning gives notice that any subsequent violation of the Code may result in more serious consequences because of the warning.
5. Miscellaneous: In addition to the above, any one or a combination of the following may be imposed concurrently by a hearing panel or conduct officer. Such sanctions listed below are only examples and do not limit the discretion of hearing panels/conduct officers: restitution, cancellation of future registration, community service hours, administrative room change or removal, restriction of privileges (e.g., attendance at events, use of library, use of computer facilities, use of UNCG bookstore, parking, etc.), loss of computer network privileges, reflection or research projects, SMART Planning, No Contact Orders, Trespass orders, prohibition from being in or around specific areas of campus and/or individuals, prohibition from participation in organized student or University groups or activities, required counseling, counseling assessment, substance abuse assessment, anger management assessment, behavioral contracts, drug screens, behavioral or educational programs or classes, warning, probation, suspension, etc. A copy of the sanction letter is contained in files of the Dean of Students Office and will be available as evidence of relevant past behavior to hearing panels/conduct officers.

## 2. Sanctions for Student Groups/Organizations

1. Disciplinary Expulsion: Permanently severs the relationship of the student group/organization with the University. Expulsion therefore is reserved for the most severe violations where the group/organization's conduct has shown them to be unfit to continue or ever return as a member of the University Community and/or where their presence likelier than not constitutes a continuing danger to the physical safety or well-being of members of the University Community and/or property, which danger cannot be adequately mitigated through lesser sanctions such as suspension. The sanction of expulsion comes to the Associate Vice Chancellor for Student Affairs as a recommendation that is not effective until approved.
2. Disciplinary Suspension: Severs the relationship of the student group/organization with the University for a finite period, the terminal date of which coincides with the official ending of an academic semester or summer session. Suspension is imposed when other sanctions are deemed ineffective to deal with the severity of the conduct committed and/or in cases of aggravated or repeated violations of the Code. Suspension is appropriate where the group/organization's conduct has shown them to be unfit to continue as a member of the University Community for a set period of time and/or where it is believed that the group/organization will be fit to return if certain conditions are satisfied. Suspension may carry conditions that must be satisfied prior to future re-admission to the University and/or probationary conditions following re-enrollment. Student groups/organizations should contact the Office of Campus Activities and Programs to determine the re-affiliation process after the suspension period is complete. Suspension for groups/organizations carries the immediate revocation or restriction of University Affiliation.
3. University Affiliation Revocation: The removal of University affiliation until such time, if ever, that the group/organization is able, in the discretion of the University, to meet stated conditions for reconsideration of affiliation. Affiliation revocation may be imposed upon any group, club, society, or organization. It is appropriate where the group/organization's conduct has shown it to be unfit to continue as a member of the University Community for a set period of time and/or where it is believed that the group/organization will be fit to return if certain conditions are satisfied. This action carries a recommendation to any National/International Headquarters for charter revocation.
4. Restriction of University Affiliation: The temporary restriction of University Affiliation. Typically, the minimum time period for restrictions will be no less than one (1) full academic semester. While under restriction the group may continue, but it may not seek or add members, it may not hold or sponsor events in the University

community, and it may not enjoy any of the privileges removed as a result of the Social Probation described below.

5. Social Probation: Imposed for a specific period of time but for not less than four (4) weeks of a regular academic semester. This action prohibits the group/organization from sponsoring or participating in any organized social activity, party, or function, including philanthropy events.
6. Social Warning: An official reprimand. Any subsequent violation of the same nature by the group/organization within a period of two (2) years may result in suspension as a minimum penalty.
7. Other: In addition to the above, any one or combination of the following may be concurrently recommended by a hearing panel or review process provided that the time period not exceed the term of the major sanction:
  1. Exclusion from intramural competition
  2. Restitution
  3. Denial of use of University facilities for meetings, etc.
  4. Recruitment Probation
  5. Task Assignment/Community Service

### Section 17: Referrals

In cases where a hearing panel or conduct officer believes additional information is needed prior to decision or sanction, the respondent(s) may be referred for assessment or evaluation by internal or external agencies for psychological or substance abuse concerns. In such cases, the hearing shall be deferred until such time as the requested assessment, evaluation and/or treatment is completed.

#### 1. Psychological Evaluation/Counseling

Requests for psychological evaluation may be made by a conduct officer or hearing panel through the conduct officer if, in their judgment, the behavior of the respondent, as shown by evidence, is unexplained or appears beyond the actions of a reasonable person informed of policies of the University, or if the behavior of the respondent suggests a threat to the University community. Such consultation or evaluation is undertaken with the following conditions:

1. Conduct action may involve prior consultation between the staff of the Counseling Center and the conduct officer concerning questions related to student conduct so long as such consultations are held in keeping with confidentiality protections of the student if the student is a client of the Counseling Center.
2. Students presenting such behavior may be referred for assessment or other intervention in consultation with the Director or designee of the Counseling Center.
3. Following adjudication and the imposition of sanctions, students suspended from the University as a result of such sanctions may be required by the conduct officer to submit evidence of psychological evaluation and recommendation as to their readiness to re-enroll at the University under existing conduct and academic conditions. Such evaluation shall be at the expense of the student and through agencies external to the University, subject to the approval of the conduct officer. The University retains the right to have a separate evaluation conducted at the University's expense if the University desires a second opinion or has any concern about the documentation provided by an external entity.
4. All primary documents related to psychological evaluation will be retained by the evaluative agency and, as such, do not become part of the student's educational record under FERPA.
5. Responsibility for violations of the Code is based on inappropriate behavior and will not be excused based upon any potential cause of such behavior including, but not limited to, the diagnosis of behavioral or psychological disabilities. However, such a diagnosis may be considered as a mitigating factor for purposes of the imposition of sanctions.
6. A student suffering from a mental disorder who is respondent of a Code violation may or may not be diverted

from the disciplinary process unless, as a result of the mental disorder, the student lacks the capacity to respond to the charges. In such case, the student will be subject to the Student Involuntary Medical Withdrawal policy. (<http://sa.uncg.edu/handbook/policies/>)

## 2. Substance Abuse Assessment/Treatment

Students found Responsible for any first or subsequent alcohol or other substance related violation which suggests a history of substance abuse or related behavioral problems with potential harm to others may, at the discretion of the hearing panel/conduct officer, be placed, at minimum, on disciplinary warning and be referred to an appropriate agency for an alcohol or other substance abuse screening, at the expense of the student, as follows:

1. A student appearing before either a conduct hearing panel or officer who exhibits a possibility or history of substance abuse or behavioral problems may be referred to the Vacc Counseling and Consulting Clinic or a licensed agency or therapist that is acceptable to the University for an assessment. The student shall be required to:
  1. complete a consent to share information from the office of the appropriate conduct officer;
  2. contact the Vacc Counseling and Consulting Clinic to schedule an appointment;
  3. provide a written consent to the Vacc Counseling and Consulting Clinic for the purpose of providing information concerning this screening to the conduct officer, and;
  4. complete the screening process with the Vacc Counseling and Consulting Clinic in a timely manner as directed.
2. A summary of treatment recommendations, based upon this evaluation, will be provided by the Vacc Counseling and Consulting Clinic to the appropriate conduct officer, noting any recommendation for further evaluation or treatment.
3. The hearing panel/conduct officer shall consider the findings of the hearing, past conduct record, and recommendation of the Vacc Counseling and Consulting Clinic in deciding on sanctions appropriate to the behavior.
4. Treatment of a diagnosed substance problem may constitute grounds for deferral of some conduct sanctions, pending successful resolution of the problem. Where further alcohol or other substance related assessment or treatment is indicated, the first referral shall be identified in consultation with the Vacc Counseling and Consulting Clinic, a professional in the Counseling Center, or a physician in the Student Health Services for further assessment or long-term intervention. Other professional resources may be utilized at the discretion of the hearing panel/conduct officer and with appropriate information and consultation with other members of the University community. Costs of treatment programs are the responsibility of the student.
5. All records concerning conduct actions under this procedure shall be maintained in the Dean of Students Office. Medical or other assessment related records and materials (other than summary assessments or recommendations) shall remain in the files of the agency professional responsible for assessment procedures. All student records shall be protected in accordance with the University's FERPA Policy located at <http://www.uncg.edu/reg/Policy/Ferpa/>.

## Section 18: Appeals

1. Each student who has received a disciplinary sanction shall be notified in writing of his or her appeal rights. This notice must be given no later than the date the written decision is delivered, whether emailed or by hand. Only the student who has been found responsible for a violation under the Code may appeal, except as allowed in cases involving relationship violence, sexual misconduct, or stalking, where the complainant also has the right to file an appeal.
2. Any disciplinary decision resulting in sanctions less than suspension, except where the respondent has waived his or

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her right to appeal, may be appealed to the Dean of Students or designee whose decision is final, and no further appeal of the decision is permitted.

3. Any disciplinary decision resulting in suspension, except where the respondent has waived his or her right to appeal, may be appealed to the Vice Chancellor for Student Affairs or designee, whose decision is final, and no further appeal of the decision is permitted.
4. Expulsion decisions may be appealed to the Vice Chancellor for Student Affairs or designee. This decision on appeal shall be the final decision at the university. A further appeal may be made to the UNC Board of Governors. Appeals to the Board of Governors should be sent by certified mail, return receipt requested, to the President of the University of North Carolina within ten (10) calendar days after the student receives the final University decision. The mailing address for appeals to the Board of Governors is: c/o Vice President and General Counsel, Office of the President, University of North Carolina, P.O. Box 2688, Chapel Hill NC 27515-2688. A copy of the written notice of appeal to the Board of Governors must also be delivered to the Dean of Students Office.
5. Under the appeal rights set by the UNC Board of Governors and applicable at the University of North Carolina at Greensboro, an appeal of a disciplinary decision is limited to allegations that the decision violates due process rights, meaning there has been a material deviation from the procedural and/or substantive due process standards adopted by the UNC Board of Governors. Therefore the appeal must allege a violation of
  1. Procedural Standards; and/or
  2. Substantive Standards.
6. On appeal, a respondent has the burden of showing that the disciplinary decision violates Procedural and/or Substantive Standards.
  1. Violation of Procedural Standards means that the respondent was not provided the required notice or an opportunity for a fair hearing due to specified procedural errors, or errors in interpretation of University policies or regulations, that were so substantial as to effectively deny the respondent a fair hearing. Reasonable deviations from the procedures set out in this regulation will not invalidate a decision or proceeding unless the respondent can show that, but for the deviation or error, there likely would have been a different outcome in the case.
  2. Violation of Substantive Standards means there is a lack of information in the record that could support the decision or sanction(s). This last ground for appeal does not mean the information presented at the hearing can be re-argued on appeal; rather, it requires a showing that no reasonable person could have determined the respondent was responsible or could have imposed the sanction that was issued.
7. In all cases resulting in an appeal, the decision, the complete record of the proceeding (including documentary evidence and any recording or transcript of testimony), the appeal materials filed by the student, and any other relevant information, will be compiled by the Dean of Students Office and delivered to the person designated to review the appeal.
8. Written notice of appeal must be submitted by the respondent or the complainant to the Dean of Students Office within three (3) business days of the date of written notification of the decision of the hearing panel or the conduct officer provided at the time of the decision. Failure to submit the appeal within this time limit will render the original decision final and conclusive. Appeals that fail to cite one or more criteria as listed in Section 18.5., or to allege facts supporting at least one of the above criteria, shall be dismissed without further action. When a student group/organization makes an appeal, that group's/organization's president or chief officer will be required to submit the notice of appeal.
9. The appeal must be delivered in person to the Dean of Students Office and must contain the following:

1. A copy of the decision being appealed;
  2. A statement of the grounds for appeal, which at a minimum should contain a list of alleged errors in the decision or procedure and statement of why the decision or sanctions are in error;
  3. A requested remedy; and
  4. The signature of the appellant and date the appeal is being submitted.
10. The imposition of sanctions will go into effect immediately, but may be deferred during the pendency of appellate proceedings, at the discretion of the person(s) reviewing the appeal, upon written request of the respondent. Where sanctions are deferred during the pendency of the appellate proceedings and the student's appeal is ultimately unsuccessful, students may fail to receive grades or credit for courses or assignments already completed while awaiting a decision, or, in cases resulting in the sanction of suspension or expulsion, cause a student to pay back previously received financial aid for the semester completed.
11. Appeals will be decided on the record of the original proceedings. New hearings will not be conducted on appeal.
12. Following their review, the official reviewing the appeal may:
1. Uphold the original decision;
  2. Overturn the original decision;
  3. Modify the sanction (s); or
  4. Remand for a new hearing. (In all remanded cases, the conduct officer may elect to dismiss the case rather than re-hear it).
13. A student group/organization aggrieved by a decision covered by this section of the Code may appeal to the Vice Chancellor for Student Affairs or designee by giving written notice within three (3) business days after the decision of the hearing panel/conduct officer is announced. The decision of the Vice Chancellor for Student Affairs or designee shall be final, and conclusive, and the sanction(s) will be imposed as directed if previously held in abeyance.

## Section 19: Interim Measures

### 1. Interim Suspensions

#### 1. Individual Students

A student whose presence, in the opinion of the conduct officer, poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process may be immediately interim suspended by the Vice Chancellor for Student Affairs or designee. The student will be notified by the Vice Chancellor for Student Affairs or designee in writing to the student's UNCG email address of the intent to suspend effective immediately, and the opportunity to respond within a specified time period. The following procedures apply to interim suspensions of student:

1. Any appeal of the intent to suspend must be made within twenty-four (24) hours of delivery to the student.
2. A respondent wishing to oppose such suspension must provide a written response or request a personal interview within the above-specified time to the Vice Chancellor for Student Affairs or designee.
3. After such an appeal has been reviewed, the Vice Chancellor for Student Affairs or designee will notify the student in writing of action on the suspension.
4. Following such suspension, an expedited hearing process will be held to resolve all matters related to the interim suspension.
5. During the interim suspension, students may be denied access to the residence halls and to the

campus (including classes) and all other activities or privileges for which the student might otherwise be eligible.

6. The interim suspension may be extended through the completion of the appeal process. The regular conduct process will resume after this interim suspension as soon as practical.

## 2. Student Groups/Organizations

In the event of serious allegations, a student organization may be suspended on an interim basis pending the outcome of the conduct process. Interim suspension mandates the immediate cessation of all organization activity including recruitment, meetings, social gatherings, programs, etc. This decision will be communicated to the President of the organization by the Campus Activities and Programs conduct officer or designee. The President of the organization may appeal the interim suspension by requesting a personal meeting or delivering a written request within twenty-four (24) hours of receipt of the letter to an Associate Vice Chancellor for Student Affairs as designated by the Vice Chancellor for Student Affairs.

## 2. Interim Removal from University Residence Halls

In the event of serious allegations, a student may be removed from University housing immediately, pending the outcome of the conduct process. Such removal will be imposed when, in the opinion of the Director of Housing and Residence Life or the conduct officer, the allegations against the student constitute such serious violations of the Code as to create a danger to the larger residential community. The conduct process will follow this interim removal as soon as practical. The student will be notified in writing by the Director of Housing and Residence Life or University conduct officer of the interim removal from housing and the opportunity to appeal within a specified time period. The time period for such appeal will be no more than twenty-four (24) hours. A respondent wishing to oppose such removal will provide a written response or request a personal interview within the specified time to the Director of Housing and Residence Life. If the Director upholds the interim removal, the student may appeal the decision to the Vice Chancellor for Student Affairs or designee. After such response has been reviewed, the Vice Chancellor for Student Affairs or designee will send written notification to appropriate University parties and to the student at their UNCG e-mail address.

## Section 20: Other Actions

### 1. Parental Notification

Student misconduct involving violence, alcohol, or drugs normally leads to a minimum sanction of probation. Because probation advises the student that further misconduct is likely to lead to separation from UNCG and as consistent with federal law, parents or legal guardians of dependent students under the age of 21 may be advised by the Dean of Students Office of such misconduct involving crimes of violence, alcohol, or drugs when it results in a sanction of probation or separation from the University. This notification may occur once the appeal process is complete and the sanctions are final.

### 2. Conduct non-compliance

If a student fails, without good cause, to comply with the requirements of the conduct process, a University administrative officer may seek sanctions against the student under the section on Sanctions for failure to comply with directives of University officials. Sanctions may include but are not limited to: cancellation of pre-registration, a Student Affairs Hold being placed on the student's record, suspension from the University, and/or preventing the awarding of a degree due to noncompliance with conduct directives, and potential loss of up to 100% of tuition and fees. Failure to comply with the requirements of the conduct process may include failure to submit a statement, failure to attend a meeting/hearing, or failure to fulfill a sanction. A Student Affairs Hold may prevent, among other things, registration, enrollment, or the awarding of a degree.

## Section 21: Confidentiality and Records

**JA698**

1. Pursuant to the Family Educational Rights and Privacy Act (FERPA), conduct proceedings will be closed in order to protect education records and information from such records. Conduct proceedings are considered to be confidential and, therefore, are not to be divulged outside the hearing, subject to applicable policy and law. Violation of the confidentiality of a hearing is a violation of this Code.
2. Records generated by the hearing procedure are maintained in the Dean of Students Office. These are considered part of the student's educational record under FERPA. These records are accessible only to the student and others as provided by that Act and University policy. These records are also used to follow progress of students under assigned sanctions, including warning, probation, or for assessment/evaluation requirements. Such records are created and purged according to the Student Records Policy (FERPA at <http://sa.uncg.edu/handbook/policies/>). Information about expulsion and Academic Integrity violations are maintained permanently in the student's conduct record.
3. Students who wish to contest information contained in the record, including a request for removal of information from the record, must address such requests in writing to the Vice Chancellor for Student Affairs or designee, who shall review the request and notify the student of any actions related to the contention or request pursuant to FERPA and University policy.
4. All transcripts or recordings of each panel hearings shall be preserved in accordance with the University's Record Retention Policy ([http://policy.uncg.edu/electronic\\_records/](http://policy.uncg.edu/electronic_records/)). Following this period, the transcript or recording shall be destroyed. The transcript or electronic recording and any written record pertaining to the hearing process shall remain the property of the University and may be reviewed by the parties, by appointment. Reasonable conditions for this review will be established by the Dean of Students or designee.

## Section 22: Definitions

1. Case Coordinator: Student representative of the Dean of Students Office who advises the complainant of the conduct process and will assist in the preparation and presentation of information to the conduct officer or hearing panel.
2. Complainant: Person(s) bringing forth an alleged violation of the Student Code of Conduct.
3. Conduct Advisor: Student representative of the Student Government Attorney General's Office who advises the respondent of the conduct process and is available to assist in the preparation and presentation of information to the conduct officer or hearing panel.
4. Conduct Which is Disorderly: any conduct that creates a disturbance or endangers the values, health, or safety of the university community. Some examples may include but are not limited to: vulgar and obscene language, public drunkenness, loitering, violent or seriously disruptive behavior, or unreasonable noise.
5. Consumption: Ingesting of substances orally or by injection or inhalant devices.
6. Facilitating or Accepting Improper Behavior: Choosing not to confront a person violating the Code, choosing not to leave such a situation, or choosing not to tell a University staff member about the Code violation. Making this choice is an ethical interpersonal communication issue. As such, the typical sanction is a warning and/or a workshop that teaches students how to confront others in difficult situations, decision-making skills, and interpersonal communication. Facilitating or Accepting Improper Behavior is a violation that can be adjudicated only once. The University expectation is that students who are found Responsible for this violation will learn from it and not repeat it. In cases where students are accused of Facilitating or Accepting Improper Behavior a second time, additional charges beyond Facilitating or Accepting Improper Behavior (e.g. possession) will usually be incurred with their resulting sanctions.
7. Good Conduct Standing: A student or organization in Good Conduct Standing with the University is regarded as having no prior conduct violations imposed or has complied with all required educational sanctions and is no longer on warning, probation, suspension, or expulsion.
8. Hate Crime: Physical or verbal conduct directed at an individual or their property on the basis of race, color, religion, sex, sexual orientation, gender identity, national origin, political affiliation, genetic information, veteran status,

- disabling condition, or age that is sufficiently severe or pervasive so as to substantially interfere with the individual's employment, education, or access to university programs, activities, and opportunities...and detrimentally affects the individual in question and would also detrimentally affect a reasonable person under the same circumstances.
9. Major Violations: Violations which involve conduct which could result in criminal charges at the felony level or which, in the discretionary judgment of the conduct officer, presents an unreasonable danger to self or others, or aggravated or repeat violations. Where the sanction is not specified or the circumstances of the plea may subject the student to separation from the institution, the conduct officer may choose to review the consequences of a Responsible plea with the respondent or refer the matter to a hearing panel.
  10. Minor Violations: Violations which do not involve conduct which may result in criminal charges at the felony level and which, in the discretionary judgment of the conduct officer, involve no unreasonable danger to self or others.
  11. No Contact Order: The Dean of Students Office may issue a "No Contact Order" to any member of the University community if, in their professional judgment, a member of the University feels threatened or unsafe in that individual's presence. The No Contact Order will continue until a conduct resolution is reached, or the Dean of Students Office rescinds the Order. Typically, a No Contact Order will include the prohibition of direct or indirect contact with an individual. This includes, but is not limited to, phone calls, text messages, e-mails, instant messaging, Facebook, Twitter, all forms of social media, letters, verbal conversations or having others contact the individual, or being within 100 feet of the individual. Violation of the No Contact Order is a violation of Respect under the Code. If individuals who have a dispute must be in each other's presence (i.e. same class or residence hall) then decisions about how to mediate that situation will be made on a case by case basis. Failure to comply with a No Contact Order directive may result in suspension from the University.
  12. Not Responsible: The student does not accept responsibility for conduct allegations and agrees to appear before a conduct officer or hearing panel for resolution. If there is a finding of Not Responsible, no further action will be taken. A finding of responsibility by the conduct officer or hearing panel will lead to sanctions.
  13. Possession: Possession as used in this Code is defined as having actual knowledge of a substance or property, consumption, and/or being in such close proximity to the substance or property that it is a reasonable presumption that one had knowledge of the substance or property. For example, those in a room where a controlled or prohibited substance is present would be presumed to be in Possession of the substance absent compelling evidence to the contrary. Note: A student in the presence of a policy violation and who is not actively involved, has three choices: 1) leave the situation; 2) ask the student(s) to stop the behavior and/or take it out of the room; or 3) seek assistance from a University staff member (for example: Resident Advisor or UNCG Police). A student, who does not do any of the above, can be held Responsible for the policy violation.
  14. Respondent: A student accused of a violation of the Student Code of Conduct.
  15. Responsible: Student acknowledges responsibility for conduct allegations and agrees to appear before a conduct officer or hearing panel for sanctioning or a finding determined by a hearing panel or conduct officer based on the preponderance of the evidence.
  16. Student: Any person from the time he or she accepts admission to UNCG up through the date of graduation. This includes, but is not limited to, new students at orientation, persons not currently enrolled but who are still seeking a degree from UNCG, and any other person enrolled in a credit earning course offered by UNCG. For purposes of exercising jurisdiction for University discipline, it also includes any person who has graduated from UNCG if the university determines that his/her graduation or receipt of credit may have involved misconduct while he/she was working toward a degree.
  17. Student Affairs Hold: Placed on accounts of students who have been suspended or expelled or have been found under this Code to be in non-compliance of directives by a university official, without reasonable cause for being in non-compliance. Holds prevent students from being able to do such things as register for classes or pay account balances. Typically, a hold will be removed once a student is back in Good Conduct Standing or may temporarily be

removed for a student previously enrolled to receive records such as transcripts.

18. Trespass: Being found in or having been in an area of controlled access, without regard to condition of doors or locks controlling access to the area. Controlled access may be implied by fences or other barriers or directly conveyed by signage or policy. A student found in such an area may be considered in Trespass if a reasonable person could have been expected to perceive fences, barriers, signage, or usage to be limited to permission of the facility management. Trespass also includes remaining upon or returning to premises where the student has been told by the Police or another person in authority over the premises to not be present upon the premises.

#### ENDNOTES:

[\[1\]](#) Affiliated organizations for students are registered with the Office of Campus Activities and Programs under affiliation policies.

[\[2\]](#) Adapted from the Center for Academic Integrity's Fundamental Principles project, 2000.

[\[3\]](#) Adapted from the Center for Academic Integrity's Fundamental Principles project, 2000.

[\[4\]](#) Adapted from the Center for Academic Integrity's Fundamental Principles project, 2000.

[\[5\]](#) Adapted from the Center for Academic Integrity's Fundamental Principles project, 2000.

[\[6\]](#) Adapted from the Center for Academic Integrity's Fundamental Principles project, 2000.

[\[7\]](#) Information in this section was adapted from language used in Gehring, D. and Pavela, G. (1986) Issues and Perspectives on Academic Integrity, second edition, Washington: National Association of Student Personnel Administrators.

[\[8\]](#) The Amnesty Protocol ensures that a student's safety and health comes first in cases of underage possession and/or consumption of alcohol. The Dean of Students Office and Housing and Residence Life will not pursue conduct action if: (1) The intoxicated student reports the incident, and/or (2) If the intoxicated or other student(s) involved is actively seeking medical and/or health assistance from a university official or medical provider. This Protocol does not exempt students from being charged criminally by any law enforcement agency.

UNCG students cannot be covered under the Protocol if one of the following conditions is met:

- An intoxicated student and/or other students involved allegedly committed any other violation(s) of the student code of conduct (i.e., sexual assault, vandalism, etc.) during the incident in which they are seeking amnesty.
- An intoxicated student and/or other students involved have been previously found responsible for possession of alcohol and/or drugs.
- An intoxicated student and/or other students involved have already been covered by the Amnesty Protocol for a previous underage possession and/or consumption of alcohol charge while a student at UNCG.

**JA701**

The Dean of Students Office will decide on a case by case basis if conduct action will be pursued for those seeking assistance for others on more than one occasion.

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**Division of Student Affairs**  
**The University of North Carolina at Greensboro**  
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**VOICE** 336.334.5099  
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**Declaration of Paul M. Smith  
June 20, 2016**

**EXHIBIT H**

**JA703**

*The*  
Instrument of  
STUDENT JUDICIAL  
GOVERNANCE



*Amended May 11, 2015*

*The University of North Carolina at Chapel Hill*

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THE INSTRUMENT IS SUBJECT TO CHANGE

**JA704**

**JA705**

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*The*  
Instrument of  
STUDENT JUDICIAL  
GOVERNANCE

*The University of North Carolina at Chapel Hill*

Effective August 1, 2014

**I. PREAMBLE**

This *Instrument* of Student Judicial Governance for the University of North Carolina at Chapel Hill ("*Instrument*") is adopted in furtherance of the University community's shared commitment to the pursuit of truth, and the dissemination of knowledge to succeeding generations of citizens devoted to the high ideals of personal honor and respect for the rights of others. These goals can only be achieved in a setting in which intellectual honesty and personal integrity are highly valued; other individuals are trusted, respected, and fairly treated; and the responsibility for articulating and maintaining high standards is widely shared.

**A. Premises.** This *Instrument*, including the Honor Code and the stated means for its enforcement, is adopted based on the following premises:

1. **Students' Commitment.** Ideals of academic honesty, personal integrity, and responsible citizenship are essential to the performance of all academic work and all other activities of students while members of the University community. These ideals are embodied in the Honor Code set forth in this *Instrument*, with the support of students, faculty, and staff. Application by a student for admission and subsequent enrollment in the University presupposes a commitment to the principles embodied in the Honor Code. Such action also represents consent to be bound by its terms at any time between a student's application for enrollment and the granting of his degree or other termination of enrollment, including the period between academic semesters.
2. **University Interests.** In keeping with its nature and purpose, the University endeavors to instill in each student a love of learning, a commitment to fair and honorable conduct, and respect for the safety and welfare of others. It also strives to protect the community from those who, for whatever reason, do not embody these values in their conduct, and to protect the integrity of the University and its property for the benefit of all.

3. **Educational and Other Activities.** The activities of students, as well as other members of the University community outside the classroom, influence the educational process and learning environment, just as the intellectual atmosphere of the campus contributes to students' growth and development. Many forms of nonacademic conduct, as well as all facets of the academic process, are therefore areas of proper concern and regulation by the University community.
4. **Responsible Exercise of Freedom.** The guiding principle of University regulation of conduct should be that of the responsible exercise of freedom. Members of the University community should be accorded the greatest possible degree of self-determination correlative with the acceptance of the full responsibility for their conduct and the consequences of their actions.
5. **Chancellor's Responsibilities.** The Chancellor remains solely responsible for all matters of student discipline, in accordance with the expectations of the Board of Governors of the University of North Carolina. Nevertheless, the Chancellor has traditionally shared the responsibility of setting basic policy concerning student conduct and applying overarching requirements in individual cases with students and the faculty in order to achieve the University's underlying goals.
6. **University and Broader Community.** The University has a special interest in assuring that students refrain from academic misconduct, respect the safety and welfare of members of the University community, and protect its institutional integrity and resources. The standards for student conduct and the means of enforcement set forth in this *Instrument* are adopted in furtherance of University interests and serve to supplement, rather than substitute for the enforcement of the civil and criminal law applicable at large. Therefore it is not double jeopardy for the University to sanction conduct that is also sanctioned under local, state or federal law.

#### **B. Allocation of Responsibility between Faculty, Students, and Administrative Personnel**

1. **Responsibilities of Students and Faculty.** In order to ensure effective functioning of an honor system worthy of respect in this institution, specific responsibilities of students are set forth in this *Instrument* and elaborated upon in Appendix A. Responsibilities of faculty members are articulated by the Faculty Council and embodied in Appendix B. These responsibilities are the minimum expected of members of the student body and the faculty. They are not mutually exclusive, and the failure of a student or a faculty member to live up to the stated expectations does not lessen or excuse any failure of the other to comply with relevant requirements.
2. **Location of Conduct and Reservation of Discretion.** Conduct by students on University premises or the premises of groups affiliated with the University, as well as conduct that occurs elsewhere, may give rise to offenses prohibited by this *Instrument* if University interests are implicated. Violations of campus or University policies, rules or regulations, or federal, state, or local law may result in a violation of the student code of conduct and imposition of student discipline. Determinations of whether such conduct should be addressed pursuant to this *Instrument* in instances in which University interests are implicated are reserved to the discretion of the Student Attorney General and campus authorities with associated responsibilities.

3. **Action Outside of this *Instrument*.** This *Instrument* is intended to govern the means for imposing disciplinary sanctions on any student for conduct covered under its terms, except to the extent other forms of redress or action are recognized herein. Such forms of redress include civil and criminal law as previously referenced; authority reserved to the Chancellor pursuant to policies established by the Board of Governors or Board of Trustees; and authority assigned by the Chancellor to particular administrative units (such as the Department of Transportation and Parking Services, Department of Housing and Residential Education or the University Cashier) or other appropriate authorities responsible for addressing emergency situations involving danger to members of the University community or other extraordinary circumstances.

## II. OFFENSES UNDER THE HONOR CODE

**A. General Responsibilities.** It shall be the responsibility of every student at the University of North Carolina at Chapel Hill to:

1. Obey and support the enforcement of the Honor Code;
2. Refrain from lying, cheating, or stealing;
3. Conduct themselves so as not to impair significantly the welfare or the educational opportunities of others in the University community; and
4. Refrain from conduct that impairs or may impair the capacity of University and associated personnel to perform their duties, manage resources, protect the safety and welfare of members of the University community, and maintain the integrity of the University.

Offenses proscribed by this section include, but shall not be limited to, those set out in Sections II.B. and II.C. Additional guidance concerning the interpretation of Section II of this *Instrument* may from time to time be issued by the Committee on Student Conduct as provided in Section V.E.

**B. Academic Dishonesty.** It shall be the responsibility of every student enrolled at the University of North Carolina to support the principles of academic integrity and to refrain from all forms of academic dishonesty including, but not limited to, the following:

1. **Plagiarism** in the form of deliberate or reckless representation of another's words, thoughts, or ideas as one's own without attribution in connection with submission of academic work, whether graded or otherwise.
2. **Falsification, fabrication, or misrepresentation** of data, other information, or citations in connection with an academic assignment, whether graded or otherwise.
3. **Unauthorized assistance or unauthorized collaboration** in connection with academic work, whether graded or otherwise.

4. **Cheating** on examinations or other academic assignments, whether graded or otherwise, including but not limited to the following:
    - a. Using unauthorized materials and methods (notes, books, electronic information, telephonic or other forms of electronic communication, or other sources or methods), or
    - b. Representing another's work as one's own.
  5. **Violating procedures pertaining to the academic process**, including but not limited to the following:
    - a. Violating or subverting requirements governing administration of examinations or other academic assignments;
    - b. Compromising the security of examinations or academic assignments;
    - c. Submitting an assignment that is the same as or substantially similar to one's own previously submitted work(s) without explicit authorization of the instructor; or
    - d. Engaging in other actions that compromise the integrity of the grading or evaluation process.
  6. **Deliberately furnishing false information** to members of the University community in connection with their efforts to prevent, investigate, or enforce University requirements regarding academic dishonesty.
  7. **Forging, falsifying, or misusing University documents**, records, identification cards, computers, or other resources so as to violate requirements regarding academic dishonesty.
  8. **Violating other University policies** that are designed to assure that academic work conforms to requirements relating to academic integrity.
  9. **Assisting or aiding another** to engage in acts of academic dishonesty prohibited by Section II.B.
- C. Student Conduct Adversely Affecting Members of the University Community or the University.** It shall be the responsibility of every student enrolled at the University of North Carolina to refrain from conduct that impairs or may impair the right of all members of the University community to learn and thrive in a safe and respectful environment; or the capacity of University and associated personnel to perform their duties, manage resources, protect the safety and welfare of members of the University community, and maintain the integrity of the University. To these ends, no student or student group shall engage in conduct, or assist another in conduct, that adversely affects or creates a substantial risk of adversely affecting University interests including but not limited to the following:

#### **1. Conduct Affecting Persons**

- a. **Fighting** or other conduct that unreasonably endangers or inflicts physical injury upon another.

- b. **Threats** that involve violation of restraining orders or no-contact orders imposed by government or campus authorities, stalking, or other activities that create a reasonable apprehension of physical or emotional harm to an individual following a request or order to desist.
- c. *[Effective May 11, 2015, this provision is reserved for future codification.]*
- d. **Hazing** that causes or permits an individual, with or without consent, to engage in activities that subject that individual or others to risks of physical injury, mental distress, or personal indignities of a highly offensive nature, in connection with recruitment, initiation, or continued membership in a society, fraternity or sorority, club, or similar organized group, whether or not recognized by the University.
- e. **Possessing or carrying any weapon or dangerous substance**, whether openly or concealed, unless expressly authorized by University policies.
- f. **Operating a motor vehicle:**
  - i. while impaired by alcohol, drugs, or other substances, and/or
  - ii. in a reckless manner so as to create a significant threat to members of the University community.
- g. **Engaging in recklessly dangerous, disorderly or obscene conduct** affecting University interests, students or other personnel.
- h. **Controlled Substances:**
  - a. Illegally possessing, manufacturing, selling, or delivering a controlled substance as defined by state or federal laws or applicable policies of the Board of Trustees or Board of Governors; **or**
  - b. Illegally possessing with intent to manufacture, sell, or deliver a controlled substance as defined by state or federal laws or applicable policies of the Board of Trustees or Board of Governors.
- i. **Engaging in violent, forceful, threatening, intimidating, or disruptive conduct, or inciting others to engage in such individual or collective conduct**, that willfully disrupts any normal operation, function, or activity of the University or any of its organizations, personnel, or guests.
- j. **Engaging in conduct, or inciting others to engage in conduct that improperly restrains freedom of movement, speech, assembly, or access to premises or activities** by any individual who is a member of the University community or guest of the University or of any of its organizations in connection with that individual's performance of legitimate activities or duties within or at the University.
- k. **Engaging in conduct within a University classroom that substantially disrupts the academic environment.**
- l. **Misrepresenting oneself as another** or otherwise adversely interfering with their credit, academic standing, privacy or personal information.
- m. **Misusing, removing, tampering with, or otherwise making less effective, equipment** (including but not limited to, fire extinguishers, fire alarms, smoke

detectors, and emergency call boxes) intended for use in improving or protecting the safety of members of the University community, either on University premises or on the premises of a student organization officially recognized by the University.

- n. **Assisting or aiding another** to engage in acts prohibited by Section II.C.1. of this *Instrument*.

## 2. Conduct Affecting Property

- a. **Stealing, destroying, damaging or misusing property** belonging to the University or another individual or entity.
- b. **Violating University policies regarding use or management of resources** including but not limited to computers, electronic resources, library resources, equipment, or supplies.
- c. **Forging, falsifying, or misusing** documents, records, identification cards, computers, data, library materials, or other resources created, maintained, or used by the University or members of the University community.
- d. **Trespassing** upon housing units, offices, classrooms, laboratories or other facilities or unauthorized intrusion into electronic records owned or managed by the University, an affiliated organization, or another member of the University community.
- e. **Assisting or aiding another** to engage in acts prohibited by Section II.C.2. of this *Instrument*.

## 3. Conduct Affecting the Integrity of the University

- a. **Knowingly abusing a position of trust** or responsibility within the University community.
- b. **Disregarding the Honor Code or interfering with the judicial procedures** established under this *Instrument* by refusing to identify oneself to a University official in pursuit of his or her duty, refusal to appear before University officials or disciplinary bodies when directed to do so, or lying to the Honor Court or judicial officials in the discharge of their duties.
- c. **Violating the terms of disciplinary proceedings** or of any sanction imposed pursuant to such proceedings.
- d. **Using the name of the University** or the names of members or organizations in the University community without authorization.
- e. **Knowingly misrepresenting academic standing, performance, or accomplishments** to members of the University community or others in order to gain an undue advantage.
- f. **Knowingly violating officially adopted University policies designed to protect the integrity and welfare** of the University and members of the campus community.
- g. **Deliberately furnishing false or misleading information** to University personnel acting in the exercise of their official duties.
- h. **Assisting or aiding another** to engage in acts prohibited by Section II.C.3. of this *Instrument*.

4. **Group Offenses.** Societies, clubs, or similar organized groups in or recognized by the University are subject to the same standards as are individual members of the University community. The commission of any offense within this section by such a group or its members acting in concert, or the failure of such a group to exercise preventive measures relative to violations of the Honor Code by its members shall constitute a group offense that may be sanctioned in addition to sanctions imposed for offenses by individual students.

**D. Application to Students Acting in Capacity of University Instructors or Employees.** Where conduct prohibited by provisions of Section II involves a student acting in the capacity of University instructor or employee, such conduct may be addressed under pertinent University policies such as those relating to sexual misconduct, discrimination, harassment, falsification of information, or misuse of University resources, rather than under this *Instrument*, if handling under such applicable University policies is deemed to be more appropriate by responsible University officials in their sole discretion.

### III. SANCTIONS

**A. Guiding Principles.** In keeping with the University's central mission, students who have violated the Honor Code should learn to take responsibility and learn from their mistakes. Student educational development should therefore play a central role in the development and imposition of sanctions pursuant to this *Instrument*. The imposition of sanctions should concern the shared interest of students, faculty, staff, and the greater University in academic integrity, maintenance of a safe and respectful environment conducive to learning, the protection of the University community, and protection of other University interests.

1. **Relevant Factors.** The Honor Court shall take into account the following factors in imposing sanctions:
  - a. **The gravity of the offense in question** including, but not limited to: intent and deliberation involved in committing the offense; implications for other members of the campus community; and University interests impacted by the offense.
  - b. **The value of learning through experience** so as to develop a greater sense of responsibility for one's actions and consequences to others, including, but not limited to: demonstrated sense of responsibility; demonstrated respect for the importance of academic and/or personal integrity; existence of plans to correct the offense and/or prevent future offenses; and any relevant recurring patterns of misconduct.
  - c. **The importance of equitable treatment for similar offenses** including the minimum and usual sanctions and sanctioning guidelines established in Section III of this *Instrument*.
  - d. **Other compelling circumstances.** In some cases, it is appropriate for the Honor Court to consider other factors that would render a sanction unduly punitive, including, but not limited, to, extraordinary personal circumstances of the student; the educational goals of the University; and University interests in a student's participation in the campus community.

2. **Instructor Recommendations.** In cases charged under Section II.B. of this *Instrument*, the course instructor's grade recommendation is binding upon the Honor Court. Instructors are encouraged to consult with relevant Honor System personnel and the sanctioning guidelines in Section III.D. when deciding a grade recommendation. If the instructor declines to make a grade recommendation or is otherwise unable to do so, the Honor Court shall select the grade penalty from within those available under Section III.B.1.a. of this *Instrument*.
3. **Flexibility and Available Sanctions.** The Honor Court may impose any combination of the available sanctions outlined in Sections III.B. or III.C., as well as other sanctions it deems appropriate, provided that the sanctions not conflict with other provisions of this *Instrument*.
4. **The Importance of Honesty.** The Honor Code values the importance of honesty within the University community. If the Honor Court, or any member of the Honor System staff, believes that a student has furnished false information in connection with any and all Honor System proceedings, the matter will be referred to the applicable Student Attorney General, who may charge the student with an additional violation under Section II.C.3.g. or Section II.B.6. of this *Instrument*.

**B. Available Sanctions: Individuals.** The following sanctions alone or in combination may be imposed in connection with offenses under this *Instrument*:

**1. Academic Sanctions including but not limited to the following:**

- a. **Failing Grade.**
  - i. **"XF" Grade.** Receipt of a failing grade in the course designated as an "XF" grade on the student's transcript. Any failing grade in a course that results from academic misconduct shall be designated as an "XF". No sooner than one full semester following assignment of the "XF", a student may petition to have the "X" notation removed from his or her transcript and the grade converted to an "F". The student's petition shall indicate satisfactory completion of a course of study or other educational requirement focusing on academic integrity and approved, in advance, by the Office of Student Conduct in coordination with the Committee on Student Conduct. A student need not be registered in classes in order to petition to have the "X" designation removed. The "X" designation may not be removed from any future "XF" grade received after the first.
  - ii. **Other Failing Grade.** Receipt of a failing grade in a component or aspect of a course or on an assignment.
- b. **Educational Assignment.** Satisfactory completion of an additional educational assignment, course, or program with or without credit.
- c. **Other Requirements.** Other requirements or conditions designed to assure that prior academic misconduct is remedied and does not recur in the future.
- d. **Implications for Academic Retention of Graduate or Professional School Students.** In the case of graduate or professional school students, the imposition of an academic sanction in the form of a failing grade in a course shall not in itself be grounds for terminating the affected student's enrollment in the academic

program in which he or she is enrolled, except when the pertinent academic authorities independently determine that such termination is warranted pursuant to pertinent academic rules and requirements.

**2. Conduct Sanctions including but not limited to the following:**

- a. **Drug or Alcohol Suspension** including completion of a drug or alcohol education and counseling program, participation in specified forms of community service, and acceptance of such other conditions and requirements as shall be approved by the Judicial Programs Officer.
- b. **Drug or Alcohol Probation** including completion of a drug or alcohol education and counseling program, participation in specified forms of community service, and acceptance of such other conditions and requirements as shall be approved by the Judicial Programs Officer. A refusal or failure to comply with the terms of a drug or alcohol program, as determined by the Vice Chancellor for Student Affairs, will result in suspension for the unexpired term of the probation.
- c. **Behavior Management.** Completion of projects, programs, or requirements designed to help the student manage behavior and understand why it was inappropriate.
- d. **“No Contact” Orders.** Compliance with orders of no contact that limit access to specific university areas or forms of contact with particular persons.
- e. **Community Service.** Completion of up to 60 hours of community service over a period not to exceed twelve weeks under guidelines established by the Judicial Programs Officer.
- f. **Restitution.** Where applicable, payment of restitution in an amount determined by the hearing board and paid under guidelines established by the Judicial Programs Officer.
- g. **Other Requirements.** Where applicable, taking necessary steps to inform affected parties, correct misrepresentations, or otherwise remedy the effects of misconduct.

**3. Loss of privileges including but not limited to those relating to the following:**

- a. **Participation** on or in:
  - i. Athletic teams (including intramural teams) as a member, coach or manager;
  - ii. Activities or organizations sponsored by or representing the University;
  - iii. Recruitment of new members, induction in, or continuing membership in any student organization (including but not limited to sororities or fraternities).
- b. **Attendance** at campus events or sports activities.
- c. **Use of University facilities or resources** including but not limited to the following:
  - i. **Parking** an automobile or driving an automobile on campus;
  - ii. **Residing** in University residence units;
  - iii. **Using privileges** relating to information technology, computers, or telecommunications.

- d. **Representation** of the University or its affiliated organizations as a tour guide, intern, researcher, or otherwise.
  - e. **Receipt of special recognition or distinction** including but not limited to the following:
    - i. Any award, prize or other recognition bestowed by the University;
    - ii. A fellowship or assistantship that permits the student to act on behalf of the University (including a teaching position or resident assistantship, but not forms of financial aid based on need or merit).
4. **Penalties of Record** that are reflected both on a student's academic transcript (during the period they remain in effect) and in a student's disciplinary records provided under governing policies, including the following:
- a. **Disciplinary Probation** for a definite or indefinite period, including probation with associated conditions or requirements. Probation means that a student may remain at the University but may be required to satisfy specified conditions or requirements, report regularly to the Judicial Programs Officer, and be barred from holding any office or participating in any activity in which the student represents the University or University-recognized student organizations either within or outside the University community. The sanction of probation prohibits graduation until the period of probation has ended and the student has complied with all requirements as established by the Honor Court and the Judicial Programs Officer.
  - b. **Disciplinary Suspension** including the following forms of suspension with associated conditions or requirements:
    - i. **Suspension for a Definite or Indefinite Period** means that the student is removed from good standing and must leave the University for a definite or indefinite period. Suspension anticipates that the student may eventually return if applicable conditions are satisfied. Academic work completed at another institution during a period in which a student is under suspension from the University may not be transferred toward the degree, but applicable health care or insurance benefits may be continued.
    - ii. **Permanent Suspension from the University of North Carolina at Chapel Hill** means that the student is removed from good standing and must leave the University permanently without an expectation that the student may eventually return to the Chapel Hill campus. A student permanently suspended from the campus is not barred from seeking admission to another UNC system university, if that university wishes to permit such application following disclosure of the student's disciplinary record at UNC-Chapel Hill. Permanent suspension may only be imposed with the concurrence of the Chancellor and will remain in effect until the Chancellor who imposed or approved the sanction or his or her successor concludes on the basis of the former student's petition and any supportive documentation that the individual should be given a new opportunity to pursue higher education at UNC-Chapel Hill.
  - c. **Expulsion** if approved by the Chancellor. Expulsion means that a student is removed from the University permanently and may not be admitted to any UNC system university, unless and until the Chancellor who imposed or approved the sanction or his or her successor concludes on the basis of the former student's

petition and any supportive documentation that the individual should be given a new opportunity to pursue higher education within the UNC system.

5. **Written warning** in the form of an official reprimand that is formally communicated by a letter giving the student notice that any subsequent Honor Code violation will carry more serious sanctions.

**C. Additional Sanctions: Group Violations.** In addition to the imposition of sanctions on individual students, where appropriate, the following group sanctions may be imposed in connection with violations of this *Instrument*:

1. **Written warning** in the form of an official reprimand that is formally communicated by a letter to the group, its advisers and members, giving notice and warning that any subsequent Honor Code violation will carry more serious sanctions.
2. **Conduct sanctions** including but not limited to the following:
  - a. **Educational activities** such as presentations or completion of projects, programs or requirements designed to understand the nature and implications of the misconduct and prevent similar misconduct from arising in the future.
  - b. **Community service** such as completion of specified service programs or projects on or off campus within a specified period.
  - c. **Payment of restitution**, if applicable.
  - d. **Other requirements.** Where applicable, taking necessary steps to inform affected parties, remedy the effects of misconduct, prevent similar conduct from arising in the future, or comply with other requirements or conditions.
3. **Loss of group privileges** including but not limited to the following:
  - a. **Activity restrictions** prohibiting the group from sponsoring any organized social activity, party, or function for a specified period of not less than four weeks of a regular academic term, or otherwise limiting group activities (other than seeking and adding members) for a specified period.
  - b. **Restrictions on participation** in intramural competitions or other activities or events sponsored by the University or University affiliated organizations.
  - c. **Restrictions on use** of University facilities for meetings or other activities.
  - d. **Loss of such other privileges as deemed appropriate** to deter future misconduct.
4. **Sanctions Affecting Group Status or Charter.** The following sanctions may be imposed:
  - a. **Group probation**, which restricts group activities and privileges (other than seeking and adding members) for a specified period of time, upon pain of immediate restriction or revocation of the group's charter or status as a University-affiliated or recognized organization in the event of repeated violations during the period of the sanction.

- b. **Restricted status**, which restricts a group's charter, temporarily removes a group's status as recognized or affiliated with the University, or imposes related restrictions on recruitment or addition of members, sponsoring or conducting events in the University community, or enjoyment of privileges other than the right to continue to occupy or hold property for a period of one semester in addition to the semester in which the offense occurred.
- c. **Revocation of group charter or affiliation** including permanent removal of University recognition for the group in question, if approved by the Chancellor.

#### D. Gravity of Offenses

1. **Usual and Minimum Sanctions.** In determining the appropriate sanction to be imposed in individual cases, consideration shall be given to usual and minimum sanctions specified in this section as well. For purposes of this *Instrument*, "usual" sanctions are those that are to be applied in individual cases except to the extent that relevant factors listed in Section III.A. provide a compelling basis for imposition of a lesser or greater sanction in order to do justice in a particular case. "Minimum sanctions" are the least serious sanction possible in light of the gravity of the conduct in question, although a more substantial sanction may be imposed in order to do justice in a particular case.
2. **Academic Dishonesty**
  - a. **For an initial instance of academic dishonesty**, the minimum sanction shall be a failing grade in the course, component or aspect of the course, or on that assignment as recommended by the instructor; an additional educational assignment or other requirements as appropriate; and a written warning that further academic misconduct will lead to more serious sanctions.
  - b. **For a second or subsequent instance of academic dishonesty**, the minimum sanction shall be disciplinary suspension for at least one full academic semester.
  - c. **Sanctioning Guidelines for Academic Dishonesty Cases.** The sanctioning chart below exists to provide a starting point for discussion during the deliberation of appropriate sanctions by the Honor Court. Because the Honor Court must consider all four relevant factors described in Section III.A.1. of this *Instrument*, this chart should not be viewed as an assurance or predictor of sanctions in individual cases. The Honor Court may deviate from any usual sanction described in the chart based on other aspects of the gravity of the offense, the value of learning, the importance of equitable treatment, or other compelling circumstances. Neither adherence to nor deviation from the usual sanctions established in this chart alone shall constitute grounds for appeal under Section I.1.b.ii. of Appendix C.
  - d. **Academic Sanctioning Chart – Usual Sanction.** For purposes of this section, "usual sanction" does not indicate the sanction that will be imposed in the majority of cases. "Usual sanction" refers to the sanction that will be imposed unless a majority of the hearing panel finds compelling reason to deviate from the usual sanction based on the Relevant Factors established in Section III.A.1. of this *Instrument*.

CATEGORY	DESCRIPTION	USUAL SANCTION
<b>Minimal</b>	The student committed academic dishonesty despite a clear intent and effort to produce honest work.	Instructor's recommended grade sanction, a written letter of warning, and an educational assignment or written apology.
<b>Reckless AND/OR Minor</b>	The student committed academic dishonesty whereby he or she did not desire to violate standards of academic honesty but foresaw or should have foreseen the risk of doing so and did not take requisite precautions to prevent it.  <i>AND/OR</i> The student committed academic dishonesty that did not have the potential to (a) give a substantial undue advantage over other students or (b) allow him or her to subvert a substantial amount of academic work.	Instructor's recommended grade sanction and one semester of disciplinary probation.
<b>Deliberate AND Substantial</b>	The student consciously acted in a way that he or she knew or should have known constituted a violation of the Honor Code.  <i>AND</i> The student committed academic dishonesty that had the potential to (a) give a substantial undue advantage over other students or (b) allow him or her to subvert a substantial amount of academic work.	Instructor's recommended grade sanction and one semester of disciplinary suspension.

### 3. Conduct Adversely Affecting Persons

- a. For **illegally possessing, manufacturing, selling, or delivering a controlled substance** as defined by state or federal law, sanctions established by relevant policies of the Board of Trustees, including as specified, drug probation, suspension, or expulsion, depending upon the gravity of the offense and prior history of misconduct.
- b. For **operating a motor vehicle while impaired by alcohol, drugs, or other substances**,
  - i. The **usual sanction** shall be drug or alcohol suspension for at least one full academic semester.
  - ii. The **minimum sanction** shall be probation for at least one full academic semester.

4. **Group Offenses.** In instances in which a group has committed a violation of the same type within a period of two years for which a written warning was issued, the minimum sanction shall be group probation.
5. **Repeat Offenses.** For offenses of the same or similar type for which a student has previously received at least probation, the minimum sanction shall be suspension for at least one academic semester with appropriate conditions.

#### **E. Administration of Sanctions**

1. **Duration and Effective Date.** The duration and effective date of sanctions shall be determined by the hearing panel. A sanction specified to extend over an academic semester means a semester within the academic year and does not include summer sessions. If a timely appeal is filed as provided in Appendix C, no sanction shall take effect until such time as the relevant appeal has been withdrawn or has been finally determined and a decision rendered by the University Hearings Board or, in applicable cases, by the Chancellor or his or her designee. When, because of an appeal, a sanction of suspension or expulsion becomes effective during the middle or at the end of a semester or term, the student shall receive no credit for any courses undertaken or completed in the semester or term in which the judgment of the hearing panel was initially rendered. Students who have been expelled or suspended from the University are granted 96 hours from the time the sanction becomes effective to depart from the campus. Sanctions of record (expulsion, suspension, and probation) shall be entered on the student's transcript by the Dean of Students following conclusion of any relevant appeals.
2. **Review.** A student who is placed on definite or indefinite probation or suspension may be required to meet periodically with the Judicial Programs Officer.
3. **Removal of Sanctions.** Upon completion of the requisite period, a student who has satisfied any pertinent conditions or requirements may submit a formal petition requesting removal of a probationary sanction or reinstatement following suspension. The petition shall be reviewed by the Judicial Programs Officer who shall prepare a recommendation, and submit the matter for determination by the appropriate court. The court shall consider the student's petition as soon as practicable.
4. **Records of Student Discipline.** Only disciplinary cases pending and currently active sanctions of probation, suspension, or expulsion shall be noted as part of a student's transcript. Records of all disciplinary actions and sanctions imposed pursuant to this *Instrument* shall be maintained by appropriate offices in the Division of Student Affairs as part of a student disciplinary record separate from the transcript and shall be retained for a period of 10 years from the date on which all appeal rights have expired or have been exhausted, and thereafter destroyed, unless destruction at the end of a lesser period shall be permitted in accordance with a disciplinary records retention policy adopted by the Chancellor upon recommendation by the Committee on Student Conduct as provided in Section V.E. Files on pending cases will be maintained indefinitely. Disciplinary files and records of cases that resulted in "not guilty" findings shall be destroyed immediately. Recordings or transcripts of judicial hearings in which an accused student is found guilty shall be retained for 12 months following the conclusion of any available appeal and then destroyed.

#### IV. Procedural Rights of Students and Complainants

**A. Rights of the Accused Student.** A student accused of a violation of the Honor Code under Section II of this *Instrument* shall have the following rights:

1. **Information and Informed Choices.** The right to examine this *Instrument*; to be advised of the charge, the character of the evidence against him or her, the alternatives for responding, the possible sanctions, their rights, and their responsibilities to appear for relevant proceedings; and to make choices of the student's own free will, including the choice to waive any rights provided by this *Instrument* after receiving an explanation of the possible consequences so long as any such waiver is made in writing.
2. **Presumption of Innocence.** The right to be presumed innocent until proven guilty, and to plead not guilty without fear that the plea itself (as distinct from any related lies or misrepresentations) may give rise to a charge of lying should the student be found guilty of violating the Honor Code.
3. **Counsel<sup>1</sup>.** The right to an assigned student counsel or a student counsel of his or her own choosing, provided that neither a licensed attorney nor a person who has passed a state bar examination may serve as the investigator or defense counsel or be present during proceedings. Only currently enrolled undergraduate students at UNC-Chapel Hill may serve as investigator or defense counsel in cases involving undergraduate students and only currently enrolled students, preferably from within the pertinent academic program, may serve as investigator or counsel to the accused student in cases involving graduate or professional students. However, in the event the offense charged is also the subject of criminal charges, the accused student may be accompanied to the hearing by a licensed attorney who may confer with the student during the hearing so long as the attorney does not address the hearing panel, those hearing the appeal, or other parties or witnesses, and so long as the attorney does not delay or disrupt the proceeding.
4. **Fair Hearing.** The right to a fair, impartial, and speedy hearing, including a separate hearing upon request.
5. **Self-Incrimination.** The right to refuse to respond to questions that would tend to be self-incriminating.

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<sup>1</sup>In accordance with N.C.G.S. 116-40.11, for allegations of misconduct received by the University on or after August 23, 2013, any student or student organization accused of violations outlined in section II.C. of the Instrument may be represented, at their own expense, by a licensed attorney or non-attorney advocate of their own choosing. This provision shall not apply to cases heard by a student Honor Court (i.e., a board or panel that is composed entirely of students). Students or student organizations that choose to have a licensed attorney or non-attorney advocate represent them must notify the Office of Student Conduct, in writing, of the attorney's or non-attorney advocate's participation in the Honor System process at least five business days prior to any hearing. The notice must specify (a) the identity of the licensed attorney or non-attorney advocate; (b) whether the individual is a licensed attorney or a non-attorney advocate; and (c) current contact information (e.g., address, email, and phone) for the attorney or non-attorney advocate. In addition, the student or student organization must complete and submit a written authorization that meets the requirements of a valid consent as specified by the

6. **Evidence and Witnesses.** The right prior to the hearing to review written evidence and obtain a list of anticipated witnesses; to hear or face witnesses testifying against him or her and question any material witnesses; to challenge and rebut any evidence or written testimony; to present material and character witnesses; and to testify and present evidence in his or her own behalf provided that such evidence is relevant to the charge or other evidence presented and does not otherwise infringe the rights of other students.
7. **Proof that is Clear and Convincing.** The right to have an alleged offense proven by evidence that is clear and convincing, where “clear and convincing” means that the evidence is substantially more likely to be true than not and that the panel has a firm belief or conviction in it.
8. **Appeals and Rehearing.** The right to pursue a subsequent appeal to the extent specified in this *Instrument* and to be free from rehearing under this *Instrument* for the same offense after being found not guilty, except to the extent that a new hearing may be required on an original charge pursuant to Appendix C.

**B. Rights of the Complainant.** A complainant who asserts that an accused student has violated the Honor Code shall have the following rights:

1. **Notification.** In accordance with the Federal Family Educational Rights and Privacy Act (FERPA), in cases of alleged academic misconduct, the complainant has the right to be notified of the outcome of the case if the complainant has a legitimate educational interest in the outcome. A complainant who is an alleged victim of an offense that involves the use, attempted use, or threatened use of physical force against the person or property of another, or is a felony that, by its nature, involves a substantial risk that physical force may be used against the person or property of another in the course of committing the offense, has the right to be notified of the following matters, pursuant to FERPA and policies of the University Board of Governors: the name of the student assailant, the violation charged or committed, the essential findings supporting the conclusion that the violation was committed, the sanction if any imposed, the duration of the sanction, and the date the sanction was imposed.
2. **Privacy.** The right to have his or her name or other personally identifiable information withheld from release to the public, the press, or others who are not directly involved in the case, by members of the Student Attorney General’s

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Family Educational Rights and Privacy Act (FERPA). At least five business days prior to any hearing, the attorney or non-attorney advocate shall provide a signed certification affirming that they have read and understand (1) The Instrument of Student Judicial Governance, (2) Section 700.4.1 of the UNC Policy Manual, and (3) Information for Attorneys and Non-Attorney Advocates Participating in the Honor System. All documents are available from the Office of Student Conduct ([studentconduct.unc.edu](http://studentconduct.unc.edu)).

A student or student organization that chooses to be represented at any hearing by a licensed attorney or non-attorney advocate may also be assigned a trained student counsel to serve in an advisory capacity. However, unless otherwise provided in the Instrument, the student or student organization may be accompanied to the hearing and represented by only one individual (licensed attorney, non-attorney advocate, or student counsel).”

staff, any student court or University Hearings Board, or the Office of the Vice Chancellor for Student Affairs.

3. **Comments and Recommendations.** The right to challenge or to request the Student Attorney General's office to challenge the qualifications of any member of a student court or University Hearings Board to hear the case; the right to recommend the forum in which the case should proceed as specified in Appendix C; the right to make a written or oral statement during the sanctioning phase of a hearing; and the right to notice and an opportunity to make an oral or written statement in any proceeding for the removal of a sanction of indefinite suspension or indefinite probation in a case involving a student against whom the complainant filed a complaint.
  4. **Presence.** The right to be present during court proceedings except during court deliberations, the announcement of the judgment, the sanctioning phase or any appellate proceedings as provided in Appendix C.
  5. **Additional Rights in Certain Cases.** In certain types of cases, the complainant shall have additional rights as stated below.
    - a. **Academic Dishonesty.** The right of an instructor to recommend a failing grade (from within the options set forth in Section III.B.1. of this *Instrument*), and to have the recommended penalty imposed in the event that the accused student is found guilty as charged.
    - b. **Other Conduct Involving Injuries to Persons.** In offenses involving other forms of conduct resulting in injuries to persons under Section II.C.1., the right to be present, except for any court deliberations (during an original hearing, evidentiary proceeding, or appellate proceeding), to the extent permissible under pertinent state and federal law.
- C. **Additional Student Rights.** From time to time, additional student rights may be created or recognized by the University, including rights to privacy and free expression set forth in Appendix D.

## V. HONOR SYSTEM OFFICERS, RESPONSIBILITIES, AND STRUCTURES

### A. Student Honor System Officers

#### 1. Undergraduate Honor System

##### a. Undergraduate Student Attorney General

- i. **Appointment and Qualifications.** The Office of the Undergraduate Student Attorney General shall be led by the Undergraduate Student Attorney General, who shall be appointed by the Student Body President, with the approval of the Student Congress, during the spring semester and shall serve a term of 12 calendar months from date of appointment or until a successor has been appointed. Only undergraduate students who have attained at least second

semester sophomore status and who have at least two semester's experience on the Student Attorney General's staff shall be eligible for appointment.

- ii. **Duties.** The Undergraduate Student Attorney General, and, as he or she may determine, members of the Attorney General's staff, shall be responsible for performing the following functions:
    - 1) **Recruitment, appointment, training, certification, and oversight of members of the Undergraduate Student Attorney General's Staff.** The staff of the Undergraduate Student Attorney General shall be responsible for investigating all alleged violations of the Honor Code by undergraduate students, providing defense counsel as requested, and presenting matters to the Honor Court for resolution. In making staff appointments, the Undergraduate Student Attorney General should endeavor to assemble a staff whose diversity reflects that of the student body as a whole. In the event of disagreement between the Attorney General and the Vice Chancellor for Student Affairs concerning training or certification, the issue shall be decided by the Committee on Student Conduct.
    - 2) **Review and investigation of alleged violations of the Code of Student Conduct.** The Undergraduate Student Attorney General (or his or her designee) shall receive complaints of all alleged violations by undergraduate students; investigate such complaints to determine whether there is sufficient evidence to refer the incident to the Honor Court; formulate and bring charges; advise students to be charged concerning their rights, the availability of counsel, and procedures to be employed; bring charges to the Honor Court; and respond to appeals as necessary.
    - 3) **Contribution to cooperative efforts to strengthen the campus Honor System.** In cooperation with other members of the Honor System Outreach Coordinator Search Committee, the Undergraduate Student Attorney General shall recommend to the Undergraduate Student Body President one or more qualified candidates to serve as Honor System Outreach Coordinator. The Undergraduate Student Attorney General shall also serve as an appointed or ex officio member of the Committee on Student Conduct, foster cooperation between the Student Attorney General's Office and the Office of the Undergraduate Honor Court, work closely with the Faculty Advisory Panel on the Honor System, and advise the Judicial Programs Officer, Vice Chancellor for Student Affairs, Chancellor, and Chair of the Faculty about matters relating to the Honor System and Honor Code.
- b. **Office of the Undergraduate Honor Court**
- i. **Appointment and Qualifications**
    - 1) **Undergraduate Honor Court Chair.** The Office of the Undergraduate Honor Court shall be led by the Undergraduate Honor Court Chair, who shall be appointed by the Undergraduate Student Body President, with the advice of the outgoing Chair and Vice Chairs, and shall be confirmed by Student Congress, during the spring semester to serve for a term of 12 calendar months or until a successor has been named. The Chair shall have attained at least second semester sophomore status and have at least a full two semester's experience on the Undergraduate Court prior to selection in the Spring semester.
    - 2) **Undergraduate Honor Court Vice Chairs.** The Honor Court Chair may be assisted by a minimum of two vice chairs or additional vice chairs as the

Committee on Student Conduct determines to be necessary for it to conduct its business. Vice Chairs shall have attained at least second semester sophomore status and have at least a full semester's experience on the Undergraduate Court prior to selection. Vice Chairs shall be selected by election among the members of the Undergraduate Honor Court during the spring semester and serve for a period of 12 months or until successors have been named.

- 3) **Members of the Undergraduate Honor Court.** The Undergraduate Honor Court shall be composed of a minimum of 25 undergraduate students (including the chair and vice chairs) or a larger number recommended by the Committee on Student Conduct as necessary to conduct the Court's business. Members shall be appointed by the Student Body President, and approved by Student Congress. Members of the Court shall be recommended during the spring semester by a nominating committee composed of the outgoing and incoming Chair and Vice Chairs, from among a pool of candidates who have been members of the academic community for at least a full semester (or two summer sessions). In reaching its recommendations, the nominating committee shall consider the candidacy of any interested undergraduate student; endeavor to recruit candidates whose diversity reflects that of the student body as a whole; conduct interviews and evaluate personal qualifications using criteria designed to assure effective operation of the Court. Members shall be appointed for a 12-month term and shall serve until successors are named.
- ii. **Duties of the Chair and Vice Chairs.** The Chair of the Undergraduate Honor Court and, as he or she may determine, Undergraduate Honor Court Vice Chairs shall be responsible for the following duties:
    - 1) **Recruitment, nomination, training, certification, and oversight of members of the Undergraduate Honor Court.** Members of the Honor Court may not sit on a hearing panel until they have been found to be knowledgeable concerning the regulations, provisions, procedures, sanctions, and functioning of the Honor System as delineated in this *Instrument*, and accordingly certified as "qualified" by the Chair of the Undergraduate Honor Court and the Vice Chancellor for Student Affairs. In the event that the Chair and the Vice Chancellor for Student Affairs disagree over procedures for certification, the issue shall be decided by the Committee on Student Conduct.
    - 2) **Administration of the Honor Court.** The Chair shall assign hearing panels composed of the Chair or a Vice Chair (as presiding officer) and the requisite number of Court members to conduct hearings and to serve on University Hearings Boards. The Chair shall make such assignments by random selection using a separate presiding officer pool (composed of the Chair and Vice Chairs) and a panel member pool (composed of the remaining members of the court). The Chair shall also perform such other duties as may be appropriate consistent with this *Instrument*.
    - 3) **Contribution to cooperative efforts to strengthen the campus Honor System.** In cooperation with other members of the Honor System Outreach Coordinator Search Committee, the Chair of the Undergraduate Honor Court shall recommend to the Undergraduate Student Body President one or more qualified candidates to serve as Honor System Outreach Coordinator. The Chair of the Undergraduate Honor Court shall also serve as an appointed or ex officio member of the Committee on Student Conduct, foster cooperation between the Student Attorney General's Office and the Office of the Undergraduate Honor

Court, work closely with the Faculty Advisory Panel on the Honor System, and advise the Judicial Programs Officer, Vice Chancellor for Student Affairs, Chancellor, and Chair of the Faculty about matters relating to the Honor System and Honor Code.

- iii. **Summer School: Special Provisions.** During summer session, the authority of the Undergraduate Honor Court shall be exercised by a Summer School Court composed of members, who shall meet the minimum qualifications and be chosen by the procedures set forth in Section V.A.1.b.i.(3). and shall serve for the duration of the summer session. Vacancies that exist at the beginning of or during the summer session may be filled by appointment of the Student Body President and confirmation by Student Congress. The Chair of the Summer School Honor Court shall be appointed by the Student Body President with the advice of the Chair and Vice Chairs of the Undergraduate Honor Court and shall be confirmed by Student Congress. Two vice chairs shall be elected by the members of the Summer School Honor Court, with preference for students who have attained at least second semester sophomore status and who have with at least a full semester's experience. Hearing panels during summer session shall be composed of a presiding officer who is selected by random drawing from a pool of the Summer School Chair and Vice Chairs, and members selected by random drawing from a pool composed of the remaining members of the Summer School Court.

c. **Honor System Outreach Coordinator**

i. **Appointment and Qualifications.**

- 1) **Appointment.** The Office of Honor System Outreach shall be led by the Honor System Outreach Coordinator, who shall be appointed by the Student Body President, with the advice of the Honor System Outreach Coordinator Search Committee, and with confirmation by Student Congress. Candidates for this position may be drawn from the general student body and from students who have served in the Honor System, and shall have extensive knowledge of the Honor System. Candidates from the undergraduate student body shall have attained at least a second semester sophomore status, and candidates from the graduate and professional student body shall have completed at least one full academic year of study. Among candidates otherwise equally well-qualified for the position, preference shall be given to candidates who have at least two semesters' experience as members of the Office of Honor System Outreach. The Honor System Outreach Coordinator shall serve a 12-month term or until a successor is selected.
  - 2) **Honor System Outreach Coordinator Search Committee.** The Honor System Outreach Coordinator Search Committee shall be chaired by the outgoing Honor System Outreach Coordinator, and shall additionally include the outgoing Undergraduate Student Attorney General, the outgoing Graduate and Professional Student Attorney General, the outgoing Undergraduate Honor Court Chair, the outgoing Graduate and Professional Court Chair, the outgoing Graduate and Professional Student President, and a member of the Office of Student Conduct. The member of the Office of Student Conduct will serve as an ex officio member of the committee.
- ii. **Duties.** The Honor System Outreach Coordinator, and, as he or she may determine, members of the Honor System Outreach Staff, shall be responsible for performing the following functions:

- 1) **Recruitment, appointment, training, and oversight of Honor System Outreach Members.** The Honor System Outreach Coordinator shall make staff appointments of Honor System Outreach members, and shall oversee the recruitment, training, and outreach efforts of Honor System Outreach members. In making staff appointments, the Honor System Outreach Coordinator should endeavor to assemble a staff whose diversity reflects that of the student body as a whole.
- 2) **Coordination and Promotion of Outreach Activities.** The Honor System Outreach Coordinator shall coordinate and promote outreach activities by the Office of the Honor System; work with the Faculty Honor System Advisory Committee to improve information and education relating to academic integrity issues; work with the student government and other student organizations to foster information and education regarding student conduct issues; and such other related coordination and outreach activities as may be appropriate after consultation with the Undergraduate Student Attorney General, Office of the Undergraduate Honor Court, the Graduate and Professional Attorney General, the Graduate and Professional Honor Court Chair, the Graduate and Professional Honor System Outreach Officer, the Judicial Programs Officer, the Dean of Students, and the Committee on Student Conduct. The Honor System Outreach Coordinator shall also serve as an appointed or ex officio member of the Committee on Student Conduct.

## 2. Graduate and Professional Honor System

- a. **Graduate and Professional Honor System.** The graduate student governance agency shall appoint a Graduate and Professional Attorney General and Graduate and Professional Honor Court Chair in accordance with its governance and judicial structures. The Graduate and Professional Honor System shall be responsible for charges against students enrolled in a degree program in the University's Graduate or Professional Schools or any course in post baccalaureate study except as provided in Section V.A.2.b. Except as provided in Appendix C, all other sections of this *Instrument* shall apply.
- b. **Graduate and Professional Attorney General.** Only Graduate or Professional students in good standing at the University who have at least one semester of experience on the Graduate and Professional Attorney General's staff shall be eligible for appointment to the Graduate and Professional Attorney General position. The Graduate and Professional Attorney General shall also serve as an appointed or ex officio member of the Committee on Student Conduct; foster cooperation between the Graduate and Professional Attorney General's Office and the Office of the Graduate and Professional Honor Court; work closely with the Faculty Advisory Panel on the Honor System; and advise the Judicial Programs Officer, Vice Chancellor for Student Affairs, Chancellor, and Chair of the Faculty about matters relating to the Honor System and Honor Code.
- c. **Graduate and Professional Honor Court Chair.** Only Graduate or Professional students in good standing at the University who have at least one semester of experience on the Graduate and Professional Honor Court staff shall be eligible for appointment to the Graduate and Professional Honor Court Chair position.
- d. **Graduate and Professional Honor System Outreach Officer.** The incoming Honor System Outreach Coordinator, with advice from the Graduate and Professional Honor System Outreach Officer Search Committee, shall appoint a graduate or professional student candidate to serve as Graduate and Professional Honor System Outreach Officer. Among candidates otherwise equally well-qualified for

the position, preference shall be given to those candidates who have served for at least one semester in the Office of Honor System Outreach. The Graduate and Professional Honor System Outreach Officer shall work closely with and shall report to the Honor System Outreach Coordinator in working to address the unique needs of the graduate and professional student body as related to Honor System Outreach. The Graduate and Professional Honor System Outreach Officer shall serve a 12-month term or until a successor is selected.

- i. The Graduate and Professional Honor System Outreach Officer Search Committee shall be chaired by the incoming Honor System Outreach Coordinator, and shall additionally include the incoming Graduate and Professional Student Attorney General, the incoming Graduate and Professional Court Chair, the incoming Graduate and Professional Student President, and a member of the Office of Student Conduct. The member of the Office of Student Conduct will serve as an ex officio member of the committee.”

e. **Honor Systems for Graduate Students Enrolled in Designated Professional Schools**

- i. The student government agencies and academic authorities of designated professional schools may request authorization to appoint a professional school attorney general and the chair and members of a professional school honor court and to operate a judicial system responsible for operation of the Honor System as it applies to students enrolled in post-baccalaureate programs, within the requesting professional school. A professional school requesting such authority must file a proposal with the Committee on Student Conduct describing the proposed judicial system, arrangements for its operation, and the need for its establishment. After consultation with the affected parties, the Dean of Students, and the graduate student governance agency, the Committee on Student Conduct may recommend that this *Instrument* be amended to authorize the establishment of the proposed professional school honor court, in accordance with procedures set forth in Section VII.B. of this *Instrument*. Except as provided in Appendix C, all other sections of this *Instrument* shall apply to all professional school judicial systems applicable to post-baccalaureate students. Designated professional schools include the Schools of Dentistry, Law, Pharmacy, Business, and Medicine.

**B. Faculty Honor System Advisory Committee**

1. **Appointment.** The Chair of the Faculty shall appoint a five-member Faculty Honor System Advisory Committee, drawn from faculty members with interest and experience concerning the campus Honor System. In making the requisite appointments, the Chair of the Faculty shall take into account recommendations by the Undergraduate Student Attorney General, the Chair of the Undergraduate Honor Court, and the Graduate and Professional Attorney General. In making appointments, the Chair of the Faculty should strive to maintain a committee that is broadly representative (in terms of academic units and faculty rank) and possesses relevant expertise (such as experience with legal systems, knowledge of undergraduate and graduate-level issues, experience with instructional development, and awareness concerning the operation of the Honor System). Members of the advisory committee shall serve for overlapping three-year terms or until their successors have been appointed.

2. **Duties.** The Faculty Honor System Advisory Committee shall have the following duties: providing advice when appropriate to the Undergraduate Attorney General and Graduate and Professional Attorney General regarding difficult academic charge decisions; communicating to student judicial officers information regarding faculty concerns or suggestions for improvement of the Honor System; assisting the student judicial officers with outreach and educational activities to involve academic departments and the greater campus community in discussion of issues of honor and integrity; assisting in the development of training materials for use in the Honor System; serving as a source of expertise and advice on educational sanctions; and such other duties as may be appropriate to bolster the effectiveness and smooth operation of the Honor System.

**C. Faculty Hearings Boards Panel.** The Chair of the Faculty, in consultation with the Chair of the Committee on Student Conduct, shall establish a standing panel of at least 50 faculty members, whose interest and expertise qualifies them for service on University Hearings Boards charged with responsibilities to hear original or appellate matters and on Honor Court panels as described in Section E.1.a. of this *Instrument*. The Faculty Hearings Boards Panel should be drawn from a cross-section of departments, disciplines, and ranks of faculty in order to provide a diverse and representative pool of faculty who are known and respected by their peers. Graduate students at the University who also act in undergraduate instructor roles are eligible for membership on the faculty panel. Appointments to the Faculty Hearings Board Panel shall be for three years. After selection, all members of the Faculty Hearings Boards Panel must meet the qualifications of Student Honor Court members as described in Section V.A.1.b.ii.1. shall be provided relevant training concerning the operation of the campus honor system and other related matters.

**D. Judicial Programs Officer.** The Vice Chancellor for Student Affairs shall provide requisite resources and appoint necessary personnel to support the Honor System, including a Judicial Programs Officer who shall perform the following functions:

1. **Coordinator.** Serve as the designate of the Vice Chancellor for Student Affairs in coordinating and advising the Honor System.
2. **Adviser.** Provide reports, monitor data, evaluate and apprise the Vice Chancellor for Student Affairs, the Committee on Student Conduct, and other University officers of matters regarding student conduct and the Honor System.
3. **Supervisor.** Supervise compliance with conditions and requirements imposed upon students and groups subject to disciplinary sanctions, including, as appropriate, scheduling mandatory conferences with students placed on probation and with student officers of organizations with an active sanction, overseeing compliance by students and student organizations with the terms of disciplinary sanctions, and providing reports and recommendations to the courts concerning removal of sanctions.
4. **Trainer.** Provide support and oversight of training of Court members, Student Attorney General's staff, and faculty members serving as members of the Honor System Advisory Committee and University Hearings Boards.

5. **Outreach and Program Planner.** Work with students, faculty, and staff, to develop strategies, materials, resources, and programs to inform members of the University community about the Honor Code and Honor System.

#### E. Committee on Student Conduct

1. **Appointments and Terms.** The Committee on Student Conduct (“COSC”) shall be composed of three persons appointed by the Chancellor, three members of the faculty selected by the Chair of the Faculty, and six students (four undergraduate and two graduate/professional students who are representative of their student constituencies as well as the diversity of the student community). Student members shall be selected through an application process by the Student Body President, or designee, and by the President of the Graduate and Professional Student Federation, or designee, respectively. All Attorneys General, Court Chairs, and Outreach Coordinators shall serve as non-voting ex officio members. In no case shall a member’s term of appointment be less than one year or more than three years. Although it is not mandatory, the Chair of COSC shall usually be a member of the University faculty or a Chancellor’s appointee who has been a member of COSC for one or more years or who has experience in student judicial matters. The Chair shall be elected for a one-year term at the beginning of the fall semester by a majority of committee members.
2. **Procedures.** COSC shall meet regularly, or upon call by the Chair, or by a petition from a majority of the members of the committee presented to the Chair. A quorum shall consist of four students, two faculty members, and two appointees of the Chancellor. A quorum is not required for committee action. Action taken without a quorum, however, shall not become effective until five calendar days have elapsed following the transmittal of the committee minutes describing such action. If within the five-day period any committee member files with the Chair a request for review of the action taken, the action will be held in abeyance until reviewed by the committee when a quorum is present. A majority vote of those present at the meeting shall be determinative of any issue.
3. **Responsibilities.** COSC shall have the following responsibilities:
  - a. **Overseeing** the operation of this *Instrument* and the Honor System;
  - b. **Developing, promulgating, and monitoring policies and guidelines** regarding operational procedures for implementation of this *Instrument* and the Honor System as provided in Section VI;
  - c. As necessary and appropriate, **interpreting this *Instrument*** and developing guidelines and policies regarding its meaning and operation, including but not limited to designation of offenses as “minor” or “serious” as provided under policies of the University Board of Trustees or Board of Governors;
  - d. **Advising student judicial officers, the Judicial Programs Officer, the Vice Chancellor for Student Affairs, and the Chancellor** regarding this *Instrument* and the Honor System as appropriate;
  - e. **Proposing, reviewing, and coordinating** action on amendments to this *Instrument* appropriate to its increased effectiveness;

- f. **Performing such other duties** as specified in this *Instrument*; and
- g. **Reporting to the Chancellor, Faculty Council, and Student Congress** annually in writing.

## VI. OPERATIONAL PROCEDURES

The Committee on Student Conduct shall develop policies and guidelines relating to the implementation and operation of the Honor System including, but not limited to, policies and guidelines regarding reports of violations, initiation of charges, authority of the courts, procedural protections relating to evidence and witnesses, proceedings of student courts and the University Hearings Board, expedited hearing panels, appeals, and other specific arrangements for the effective operation of the Honor System. All such guidelines and policies shall be promulgated as part of Appendix C to this *Instrument* in accordance with the procedures for amendment set forth in Section VII.

## VII. AMENDMENTS

**A. Proposed Amendments.** Amendments to any provision of this *Instrument* may be proposed by the Chancellor, the Faculty Council, the Student Congress, or the Committee on Student Conduct.

### B. Approval of Amendments

1. **Amendments to Sections I-VII of this *Instrument*.** Amendments to this *Instrument* will become effective when approved by the Student Congress, the Faculty Council, and the Chancellor.
2. **Amendments to Appendix C.** Amendments to Appendix C may be proposed from time to time by the Committee on Student Conduct as a means of improving the operational performance of the Honor System or providing additional guidance to its meaning and interpretation. Amendments to Appendix C will become effective when approved by the Chancellor, upon the recommendation of the Committee on Student Conduct, without formal action by Student Congress and the Faculty Council, provided that the Committee on Student Conduct provides Student Congress and the Faculty Council with written notice of any such proposed amendment and that Student Congress and the Faculty Council are afforded at least 30 calendar days during the academic year in which to advise the Chancellor of their views prior to any action by the Chancellor to approve or reject a proposed amendment.

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

JOAQUÍN CARCAÑO, et al.,

*Plaintiffs,*

v.

PATRICK MCCRORY, et al.,

*Defendants and  
Defendants-Intervenors.*

No. 1:16-cv-00236-TDS-JEP

**DECLARATION OF PAYTON GREY MCGARRY**

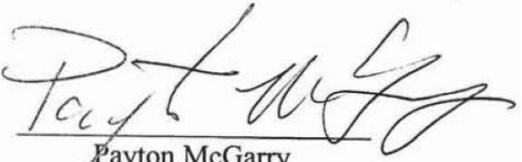
I, Payton Grey McGarry, declare as follows:

1. Attached as Exhibit A is a true and correct copy of an email that I received to my UNC email address on April 15, 2016 from Chancellor Franklin Gilliam, Jr. regarding H.B. 2.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on June 20, 2016.

By:

  
Payton McGarry

**Declaration of Payton Grey McGarry  
June 20, 2016**

**EXHIBIT A**

**JA734**

**From:** [university\\_messages@uncg.edu](mailto:university_messages@uncg.edu)  
**Date:** April 15, 2016 at 10:30:52 AM EDT  
**To:** [uncgstaff-l@uncg.edu](mailto:uncgstaff-l@uncg.edu), [uncgstudent-l@uncg.edu](mailto:uncgstudent-l@uncg.edu)  
**Subject:** Update on HB 2

A Message from  
the University



THE UNIVERSITY of NORTH CAROLINA  
**GREENSBORO**

In the spirit of continuing to keep you informed, I want to provide a brief summary of recent policy and guidance related to [HB 2](#). This week, Governor McCrory issued [Executive Order 93](#) clarifying his position on HB 2. The Executive Order does not change the obligations or policy of UNC Greensboro or the UNC System. As specified in [guidance issued by General Administration](#) last week and affirmed in a [letter issued by President Spellings](#) on Friday:

- Neither UNC Greensboro nor the UNC System has changed or will change existing non-discrimination policies that apply to all students and employees. We affirm our commitment to providing an educational and work environment that is free of harassment or discrimination of any sort.
- UNC Greensboro and the UNC System are committed to the following fundamental values: diversity, inclusion, academic freedom, free speech, free expression, and the pursuit of free inquiry.
- The law does not confer authority to the University or any other public agency to undertake enforcement actions.

It is likely that information regarding HB 2 will continue to evolve over the coming weeks, particularly given the legislative short session that begins the end of this month. We know this has generated, and will continue to generate, concern and concrete consequences for our students, faculty, staff, and larger community. We have shared with UNC General Administration the negative impact this law has already had on our campus. We will continue to keep you informed to the best of our ability on this volatile and quickly moving topic.

In conclusion, let me say that the senior leadership team and I are deeply committed to serving the best interests of the University – and more specifically to serving the people who make it what it is. In these complex times, we want to ensure that our campus is a welcoming and safe place for students, staff, and faculty of all backgrounds, beliefs, and identities.

Franklin D. Gilliam, Jr.  
Chancellor

*This email is an official communication from The University of North Carolina at Greensboro. You may verify official university emails by checking the [Verified Campus Communications Repository](#). If you have questions about the VCCR or the authenticity of an email message you have received, please contact the sender of the message or [search the UNCG website for "VCCR."](#)*

**JA735**

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

JOAQUÍN CARCAÑO, et al.,

*Plaintiffs,*

v.

PATRICK MCCRORY, et al.,

*Defendants and  
Defendants-Intervenors.*

No. 1:16-cv-00236-TDS-JEP

**DECLARATION OF PAYTON GREY MCGARRY IN SUPPORT OF REPLY**

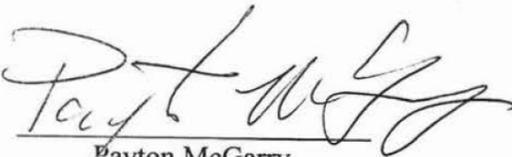
I, Payton Grey McGarry, declare as follows:

1. The enactment of H.B. 2 has impacted and continues to impact my daily life, including through recent health problems that have stemmed from avoiding use of the restroom.
2. Prior to the enactment of H.B. 2, I often used the men's restrooms on the UNC-Greensboro campus, as I have publicly discussed.
3. Shortly after the enactment of H.B. 2 on March 23, 2016, I generally avoided using men's restrooms on the UNC-Greensboro campus.
4. In May 2016, after avoiding use of the men's restroom on the UNC-Greensboro campus as noted, or having to seek out single-user restrooms, which were not often readily or equally accessible, I experienced significant pain during urination.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on June 27, 2016.

By:



Payton McGarry

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

JOAQUÍN CARCAÑO, et al.,

*Plaintiffs,*

v.

PATRICK MCCRORY, et al.,

*Defendants and  
Defendants-Intervenors.*

No. 1:16-cv-00236-TDS-JEP

**REPLY DECLARATION OF LUKE C. PLATZER**

1. I am a member of the bars of the State of New York and of the District of Columbia and have been specially admitted to this Court pursuant to L.R. 83.1(d). I am a partner in the law firm Jenner & Block LLP, counsel for Plaintiffs in this action. I make this declaration on personal knowledge, in further support of Plaintiffs' Motion for Preliminary Injunction (ECF No. 21).

2. Attached as Exhibit A to this declaration is a true and correct copy of *G.G. v. Gloucester Cty. Sch. Bd.*, No. 4:15-cv-00054 (E.D. Va. June 23, 2016) (ECF No. 69) (order on remand from Fourth Circuit, granting preliminary injunction).

3. Attached as Exhibit B to this declaration is a true and correct copy of Emily Martin, *Title IX and the New Spending Clause*, American Constitutional Society Issue Brief (Dec. 2012), available at [https://www.acslaw.org/sites/default/files/Martin\\_-\\_Title\\_IX\\_and\\_the\\_New\\_Spending\\_Clause\\_1.pdf](https://www.acslaw.org/sites/default/files/Martin_-_Title_IX_and_the_New_Spending_Clause_1.pdf).

4. Attached as Exhibit C to this declaration is a true and correct copy of Order, *G.G. v. Gloucester Cty. Sch. Bd.*, No. 4:15-cv-00054 (E.D. Va. Sept. 4, 2015) (ECF No. 53) (order denying preliminary injunction), *rev'd in part and vacated in part*, *G.G. ex rel. Grimm v. Gloucester Cty. Sch. Bd.*, No. 15-2056, -- F.3d --, 2016 WL 1567467 (4th Cir. Apr. 19, 2016).

5. Attached as Exhibit D to this declaration is a true and correct copy of Transcript, Kelly File, *Cruz Reacts to Boehner's Attacks: 'I Don't Know the Guy'; NC Governor Responds to 'Bathroom Bill' Backlash*, Fox News (April 28, 2016), <http://www.foxnews.com/transcript/2016/04/28/cruz-reacts-to-boehner-attacks-dont-know-guy-nc-governor-responds-to-bathroom/>.

6. Attached as Exhibit E to this declaration is a true and correct copy of Ann Doss Helms, *CMS: Transgender Students Can Choose Identity and Bathroom*, Charlotte Observer (June 20, 2016), available at <http://www.charlotteobserver.com/news/local/education/article84889307.html>.

7. Attached as Exhibit F to this declaration is a true and correct copy of Rebecca Tippett, *Non-NC Native Population by County*, UNC Carolina Population Center: Carolina Demography (Aug. 4, 2014), <http://demography.cpc.unc.edu/2014/08/04/non-nc-native-population-by-county>.

\* \* \*

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 27th day of June, 2016.



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Luke C. Platzer

**Declaration of Luke C. Platzer  
June 27, 2016**

**EXHIBIT D**

**JA741**

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KELLY FILE

# Cruz reacts to Boehner's attacks: 'I don't know the guy'; NC governor responds to 'bathroom bill' backlash

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12 1



NOW PLAYING

Cruz reacts to Boehner's attacks: 'I don't know the guy'

*This is a rush transcript from "The Kelly File," April 28, 2016. This copy may not be in its final form and may be updated.*

MEGYN KELLY, HOST, "THE KELLY FILE": Breaking tonight, presidential candidate Senator Ted Cruz firing back after taking a big hit from one of the best-known Republicans in the country.

Welcome to "The Kelly File," everyone. I'm Megyn Kelly. Just hours after Senator Cruz declared that Carly Fiorina would be his running mate, former House Speaker John Boehner single-handedly managed to upstage the Fiorina news with a very blunt interview at Stanford University. A no holds barred when it came to Boehner's former Congressional colleague. Watch.

(BEGIN VIDEO CLIP)

PROFESSOR DAVID KENNEDY: How about saying your opinions on some of the other people running for the highest people in the land? How about Ted Cruz?

REP. JOHN BOEHNER, R-OHIO, FORMER SPEAKER OF THE HOUSE: Lucifer in the flesh.

(LAUGHTER)

**JA742**

(APPLAUSE)

I have a, I have a great opinion along with almost everyone. I, I in Washington I have as many Democrat friends as I have Republican friends. I got along with almost everybody. But I have never worked with a more miserable son of a (bleep) in my life.

(APPLAUSE)

Over my dead body will he be president.

(END VIDEO CLIP)

KELLY: It is no secret that Speaker Boehner and Senator Cruz had their clashes on Capitol Hill, but that did not stop this headline from becoming the top story in the country today. And tonight we have Republican presidential candidate Senator Ted Cruz here to respond to that among other things. Senator, great to see you. Thanks for being here.

SEN. TED CRUZ, R-TEXAS, PRESIDENTIAL CANDIDATE: Megyn, it's always a pleasure to be with you.

KELLY: What do you make of Lucifer in the flesh? He's never worked with a more miserable son of a "b" and over his dead body will you be president?

CRUZ: Well, you know, I think that reveals everything that's wrong with Washington. Let's start with a little bit of facts. He claims he's never worked with anyone more miserable. I don't know John Boehner. He and I have never worked together. I've probably met him two, three, four times in my life. I'd be surprised if we've said 50 words to each other and everything we've ever said has been empty pleasantries, good to see you, Mr. Speaker. So, his claim that he's never worked with anyone more unpleasant, we've never worked together. In fact, during the government shutdown, I reached out and offered for Mike Lee and me to go over and sit down with the speaker and the majority leader and the response I got was, no interest.

There's no point in talking. We have nothing to say to you. So I don't know the guy. But you know what was striking, Megyn, in that same interview, Boehner reveals that he is texting and golfing buddies with Donald Trump. He thinks Donald Trump is terrific. He also praised Hillary Clinton. If you want to see what is wrong with the corruption in Washington with the Washington establishment and the system, John Boehner and Donald Trump and Hillary Clinton, they're all part of the same problem.

And the reason John Boehner so unhappy --

KELLY: I mean, they would argue that's you bond a little, you go out on the links. I don't know what I'm talking about. Links, that's what you do. And you bond. And that's how you get deals done.

CRUZ: Well, and there's a reason that Donald Trump gave \$100,000 to John Boehner's Super PAC that he texts back and forth with the speaker, that they're golfing buddies. If you think John Boehner is the kind of leader you want in the Republican Party, then Donald Trump is your guy. If you think Harry Reid and Nancy Pelosi are good leaders in Congress, then Donald Trump is your guy because Donald Trump has given big checks to Harry Reid and Nancy Pelosi and Hillary Clinton.

KELLY: Let me switch gears with you.

CRUZ: And you know what I find interesting real quickly, is that Donald is trying very hard and the media is trying very hard to paint him as somehow standing up to the system. Donald Trump and Hillary Clinton and John Boehner are the system.

KELLY: Got it.

**JA743**

CRUZ: And the reason John Boehner is mad at me is that I stood with the people who elected me and led the fight to repeal ObamaCare, to stop amnesty, to stop the debt. And there is nothing Washington hates more than-- it's not just that.

KELLY: I want to shift gears. That's enough time on John Boehner.

CRUZ: He doesn't like being held accountable by the voters.

KELLY: With all due to Mr. Boehner, we're giving him too much time. I want to talk about Carly Fiorina.

CRUZ: Absolutely.

KELLY: Because she is beloved by many Republicans, and yet a lot of people yesterday said, well, this is just a stunt. He's 400 delegates away from securing the nomination. Trump is way ahead of him in the popular vote, three million or so. What's he doing naming a running mate? What's your answer?

CRUZ: Well, listen, number one, Carly is fantastic. She's a strong leader. It illustrates the kind of team that will be in the administration if I'm elected president. But number two, this is an unusual year by any measure, and this nomination, naming her as my VP nominee, ensures that we have a clear choice in this election between Carly and me on the one side, a positive, optimistic, conservative, forward-looking campaign with real policy solutions to bring jobs back to America, to raise wages, to bring manufacturing jobs back to America, to defend the constitution and bill of rights and keep us safe versus on the other hand Donald Trump and Hillary Clinton which are flip sides of the same coin.

They are both the Washington establishment. They're both the system. Donald Trump and Hillary Clinton agree on Planned Parenthood. Donald Trump and Hillary Clinton agree in many respects on ObamaCare. They agree on being neutral between Israel and the Palestinians. And the contrast the voters in Indiana and going forward deserve a clear choice between Carly and me on the one hand, a positive, optimistic, conservative campaign, and Donald Trump and Hillary Clinton both of whom have gotten rich buying and selling influence in Washington, D.C.

KELLY: He denies that. But just for the record, he denies that he's for ObamaCare. He says he's very against it and so on. But I want to ask you about the delegate count because --

CRUZ: But let's be clear, Megyn. Megyn, hold on, hold on! Facts matter.

KELLY: I don't want to talk about ObamaCare.

(CROSSTAK)

He just for the record, he denies that, he says he's against ObamaCare and he wants to repeal it.

CRUZ: Megyn true or false, he said repeatedly he supports the individual mandate in ObamaCare.

KELLY: He said it once to Anderson Cooper and then he came and he took it back.

CRUZ: Okay, so that is a fact. That is a fact.

KELLY: Okay.

CRUZ: That is true. True or false, he said that the government should provide health care for everyone?

KELLY: He said that agreed.

CRUZ: I mean, facts matter.

**JA744**

KELLY: He said that to Scott Pelley, I got you. I got you. Listen, I'm just trying to -- just for the record --

(CROSSTALK)

CRUZ: The facts matter and we can't just dismiss it. Well, he says it's not true. Well, he said it multiple times on television looking in the camera.

KELLY: I got it. I got it. He said the government is going to pay for it. He wants to take care of everyone and the government is going to pay for it.

CRUZ: Okay. Now, that's the truth.

KELLY: I'm just saying he said, he doesn't want Obamacare.

CRUZ: But you know what Megyn, he'll say you're lying for repeating what he's saying.

KELLY: Okay. Let me ask you this.

CRUZ: But he wants to expand it. He doesn't like it because he thinks it doesn't go far enough.

KELLY: Okay.

CRUZ: I don't like it.

KELLY: I got it. I got your point.

CRUZ: I'm going to repeal every word of it as president.

KELLY: He likes some form of government health care is your point, whatever it's called.

CRUZ: He likes massive government health care. He invokes Scotland and Canada. And ObamaCare is the biggest job killer in America, if you're a small business owner, Donald Trump and Bernie Sanders are both going to increase the burdens on you. I'm going to repeal every word of it. And that's why we need a clear contrast. Donald Trump and Hillary are both pretending to be something they're not.

KELLY: You mentioned that. I'm trying to ask you -- I'm trying to ask you about something that is concerning to your supporters. Your supporters who understand how important Indiana is to your campaign.

CRUZ: Yes.

KELLY: But the polls are showing that people, some 65 percent of Republicans, even people who support Ted Cruz, believe the person who enters the convention with the most delegates and the most votes should likely emerge as the nominee, even if it takes, you know, even if he doesn't have a majority. And right now as I mentioned he has got 400 more delegates than you do, he's got 3.2 million more votes -- popular votes than you do. He won 27 states. You won 11. So, given that, how could you possibly unite this party coming out of a contested convention?

CRUZ: Well, let me answer it a couple of ways. Number one, nobody is going to get to 1237. Donald is not getting there.

I'm not getting there. Donald can't get there. It's why he's so desperately trying to convince everyone the race is over because he know --

KELLY: He can get there if he wins in Indiana and does very well in California.

6/27/2016 Cruz reacts to Boehner's attacks: 'I don't know the guy'; NC governor responds to 'bathroom bill' backlash | Fox News  
CRUZ: But he's not going to. He is not going to. And he's not going to get to 1237. And even when folks try to do all sorts of math he falls short. And we're going to a contested convention. And listen, the poll you cited, of course people say yes to that poll. If you called someone up and says, should the person with the most votes win? Anyone goes, duh, yes. How about asking the question that is really the relevant question. Should you have to earn a majority to be the nominee?

KELLY: Yes. That's a fair point.

CRUZ: I agree 60 to 70 percent will say yes to that as well. I mean, that's a poll question that's rigged. The Trumpsters pushes it out there because it suggests, I mean, if you ask anyone, should the person with the most votes win? Of course. But his argument is, he should be the nominee even though he can't win a majority. And let me tell you, we are headed to Cleveland. There will be a contested convention. Donald Trump won't get to 1237. And when that happens, the highest vote total Trump ever has will be the first vote total.

He will go steadily down. And I believe what we're seeing is the Republican Party uniting and Megyn that's one of the reasons people are so excited with my name and Carly as my VP. Because Carly is an incredible -- has an incredible ability to unify and bring this party together. It's why five of the 17 Republican candidates who started have endorsed my campaign including Carly, including Scott Walker and Jeb Bush and Lindsey Graham and Rick Perry. We are uniting the party. And we got to stand on something --

KELLY: But how can you say that? Because the critics say you're not uniting them. When they look at what happened on Tuesday. You lost five states, didn't even get 25 percent of the vote. I know it was the northeast, I know that wasn't a Ted Cruz tailor made election. But your critics say, Donald Trump may not be uniting them, given Never Trump and so on, but nor are you.

CRUZ: Well, Megyn, listen, Donald won his home state and he won several states that immediately are right next to his home state. That's terrific. He did well in the northeast. What I can tell you is right before that, we won five states in a row, five states in a row one after the other after the other from Utah to North Dakota to Wisconsin to Colorado to Wyoming.

KELLY: How confident are you in Indiana? How confident are you in Indiana?

CRUZ: I hope we will do well. We're campaigning and barnstorming. And we're working to earn the votes. Listen, I will say this. I have a great deal of confidence in the Midwestern good sense and good judgment of the Hoosiers state. And the people of Indiana are deciding, do we want to nominate a campaign that is based on yelling, screaming and cursing and insults? Or do we want a campaign with real solutions? You know it's been 48 days since the last Republican debate? I think the people of Indiana deserve a debate. And by the way, today Donald Trump gave a speech once again

screaming that I'm a liar because I did what you did earlier on the show. I actually pointed out his real record and what he says. And when you do that, when you tell the truth about Donald, he calls you a liar.

KELLY: Okay.

CRUZ: Donald, I've got a great idea. Let's have a debate in Indiana. And let's talk about what you believe and what I believe and in particular solutions to bring jobs back to America. I've got a real economic agenda to bring manufacturing jobs back to Indiana, to raise wages. Donald doesn't know how to solve these problems, which is why he's unwilling to debate.

KELLY: I have to leave it there, Senator.

CRUZ: By the way, we have a new website, it's CruzCarly.com. CruzCarly.com. CruzCarly.com.

KELLY: It's great to see you. Thanks for being here, Senator Cruz.

CRUZ: Always a pleasure, Megyn. Thank you.

**JA746**

KELLY: Well, coming up. A well-known magazine just published a controversial profile of Donald Trump's wife Melania Trump. And now she is firing back. Howie Kurtz on one of the first big fights from Melania.

Plus, ever since North Carolina passed the so-called bathroom law, protesters have slammed the state for what they call discrimination against transgender people. Tonight, the governor of North Carolina joins us live to respond to the critics.

KELLY: And then a must-see first for "The Kelly File." Anderson Cooper of CNN joins us for a revealing conversation about family and fame and more. Don't miss this.

(BEGIN VIDEO CLIP)

KELLY: Do you feel like looking back on your 48 years so far, it's been a charmed life? It's been a cursed life?

(END VIDEO CLIP)

KELLY: Breaking tonight, we are getting video just back from Trump Tower here in New York where emergency responders have been called for some sort of suspicious substance. Trace Gallagher is at the breaking news desk with the very latest in what we're learning. Trace.

TRACE GALLAGHER, FOX NEWS CORRESPONDENT: Megyn, the call came in about an hour and ten minutes ago. This is on Fifth Avenue, the high-rise Donald Trump, Trump Towers of course where his campaign office is. They found white powder. We see video right here from outside the building. White powder, unclear exactly where they found it in the building because the Police Department is not confirming that. A local report says it was found in the mail room. But now six people including a New York police officer have been isolated because in some capacity they were exposed to this suspicious white powder.

You can see a lot of people on scene right there. Donald Trump is not in New York. In fact, Trump is here in California. He speaks in about 45 minutes in Orange County. He won't be back in New York tomorrow either because he speaks at the GOP convention here in the state. Again, suspicious white powder found at Trump Tower where the campaign offices are on Fifth Avenue, unclear exactly what it is. In the process of being tested and the people have been isolated to make sure they are okay as we get more information on this, Megyn, we will get back to you.

KELLY: Trace, thank you.

(BEGIN VIDEO CLIP)

MELANIA TRUMP, WIFE OF DONALD TRUMP: He's a fighter, and if you elect him to be your president, he will fight for you and for our country. He will work for you and with you, and together we will make America strong and great again. Thank you.

(END VIDEO CLIP)

KELLY: Well, Melania Trump usually gets a warm welcome from her husband's supporters out on the campaign trail, but today she got a harsh lesson in the downside of the political spotlight. GQ Magazine publishing a controversial profile on Mrs. Trump that included some very personal details about her life from cosmetic procedures to revelations of a secret half-brother. And now she is firing back saying in part, quote, "There are numerous inaccuracies in this article including certain statements about my family and claims some personal matters." The author of the article is standing by her reporting.

(BEGIN VIDEO CLIP)

**JA747**

UNIDENTIFIED FEMALE: The piece went through thorough fact checking. It was also vetted by GQ's legal team. The things that -- I think what she's alluding to is the fact that we found her half-brother from -- her father impregnated another woman before he met her mother. And she has a half- brother living in Slovenia that she didn't know about.

(END VIDEO CLIP)

KELLY: Joining me now with more Fox News "MediaBuzz" host Howard Kurtz. Howie, good to see you. So was this a fair piece or not a fair piece?

HOWARD KURTZ, FOX NEWS HOST, "MEDIABUZZ": Another Trump disgusted by the media. Well, Melania has a point. I mean, why on earth is it necessary to publish a piece about Melanie's father back in Slovenia, back in 1965, back before he met Melania's mother, getting involved in a paternity lawsuit and having to pay child suit support to a son who everyone agrees Melania never met. What does this have to do with the potential first lady or with Donald Trump?

KELLY: Why do we care? Why do we care? How does this relate to the vote in 2016?

KURTZ: Exactly. I mean, it's an invasion of privacy. She asked the magazine not to publish it. The dad is hardly a public figure. And it feels like an attempt to get a busy headline. But you know Megyn, this piece kind of wreaks of condescension. There's the \$100,000 Dior wedding dress that the laborers --

KELLY: That piece didn't bother me. That's what her wedding dress cost. They had a fancy wedding. So what? It's a vision into the lifestyles of the rich and famous.

KURTZ: Okay. But then we have the supposed friend, blind quote, saying she is not a bimbo, but she's not especially clever.

KELLY: There you go. Now, the author of this piece makes the decision on whether or not to include a line like that. Go ahead.

KURTZ: With nobody's name attached. But there was some investigative reporting in the piece into whether or not Melania had had a boob job. Which she denies. So, we've gone from the size of the hands --

KELLY: Glad we have that figured out.

KURTZ: Yes.

KELLY: Glad we have that figured out.

And the other thing is, you know, I was reading the thing. I want to give the author the benefit of the doubt because, you know, the media especially in articles, they try to be more provocative a piece like this, GQ, they try to sort of be a little titillating. But man, it's clear because she talks about how when he met her he was 52, she was 28. A tall, shy brunette whose face had yet to acquire the taut plasticine squint that makes it look as if cameras are forever catching her a second before a sneeze. I mean, wow. You walk away thinking that the author does not like Melania Trump and we should not know that if that is how she feels.

KURTZ: Right. I mean, there was some, a lot of reporting in this, but I think here's the bottom-line which is Melania Trump who I've met a couple of times is somebody who is a mom, who has a traditional role in a traditional family who doesn't like the spotlight and doesn't particularly want to talk publicly about politics. And for that, this Manhattan elite magazine kind of portrayed her as a trophy wife with not much to offer and that he came back to me --

KELLY: That's exactly what the New York Times actually called her, Howie.

KURTZ: Yes.

**JA748**

KELLY: Months ago, the New York Times actually called her a trophy wife and called her a mannequin, given her successful career as a model. I mean, apparently, you know, I just have to wonder whether a piece like this had been written by a woman married to a Democrat with liberal stripes would have been accepted without question by so many.

KURTZ: Well, I don't want to impugn the author's motives but I will say I wonder if it hadn't been written about Donald Trump's wife or somebody who was more part of the political establishment, whether or not this kind of negative and frankly snarky tone would have been allowed to permeate this piece of journalism.

KELLY: Uh-hm. The blind quotes are a problem, and, you know, note to Melania Trump, don't sit for an interview if you can't get the writer to agree not to use blind quotes against you. Because that's dirty pool. There you go. That is free advice. No charge.

KURTZ: Good journalistic advice.

KELLY: She doesn't need my money. All right. Great to see you, Howie.

KURTZ: My pleasure.

KELLY: I could use some of theirs. I mean, who couldn't?

(LAUGHTER)

KELLY: We are continuing to track this breaking news here about the emergency responders at trump Tower. This is not the first time this has happened. I believe this happened a couple of few weeks ago involving one of Trump's sons. Reports of a suspicious substance at Trump Tower here in New York City. We're following it.

Plus, we have new details tonight on what happened when a man in an animal costume showed up at a TV station claiming to have a bomb. That's ahead.

And then Anderson Cooper is here on "The Kelly File" set next talking 2016, the rumors about a possible new job, and the powerful, compelling documentary and book about his famous mother and himself, next.

(BEGIN VIDEO CLIP)

UNIDENTIFIED FEMALE: When you were born, I was sure it was going to be a girl.

ANDERSON COOPER, CNN ANCHOR: You really wanted a girl.

UNIDENTIFIED FEMALE: Oh! I was meant to have daughters.

COOPER: I won't take it personally.

(END VIDEO CLIP)

KELLY: Welcome back to "The Kelly File" and an interview we've been wanting to do for a while. Over the last 12 months of campaign coverage, there have been more than 20 sanctioned political debates, dozens of political town halls and a countless number of candidate interviews. While all the best ones have been on the FOX News Channel and obviously "The Kelly File," one other political journalist has managed to hold his own from time to time. And here are a couple of his more memorable exchanges.

(BEGIN VIDEO CLIP)

DONALD TRUMP, R-PRESIDENTIAL CANDIDATE: I thought it was a nice picture of Heidi. I thought it was fine.

COOPER: Come on.

TRUMP: I didn't start it. I didn't start it.

COOPER: Sir, with all due respect, that's the argument of a five-year-old.

TRUMP: I didn't start it.

COOPER: Yes. The argument of a five-year-old is he started it.

HILLARY CLINTON, D-PRESIDENTIAL CANDIDATE: Look, I made speeches to lots of groups. I told them what I thought. I answered questions.

COOPER: But did you have to be paid \$675,000?

CLINTON: Well, I don't know. That's what they offered so --

CRUZ: Let's be clear. How many hours of free media does CNN and Fox and every other station you let them call in and for a year --

COOPER: Well, I've got to say we've asked you for interviews pretty much every day and you've declined every offer on my program.

CRUZ: Well, Anderson, I'm right here.

(END VIDEO CLIP)

KELLY: Joining me tonight for the first time, Anderson Cooper. He's the host of "ANDERSON COOPER 360" on CNN star of the new documentary "Nothing Left Unsaid" and co-author of the New York Times number one bestseller, "The Rainbow Comes and Goes: A Mother and Son on Life, Loss and Love." Great to see you, Anderson.

COOPER: Great to be here. Thanks for having us.

KELLY: Congratulations on the success of the book, number one New York Times.

COOPER: Yes. It debuted at number one. My mom is thrilled.

KELLY: Amazing.

COOPER: Yes. It's incredible. We invited Senator Cruz on last night. Didn't come either.

KELLY: He's coming here on "The Kelly File" tonight.

COOPER: I'm sure. I'm sure.

KELLY: I'll ask him some questions for you.

COOPER: Okay.

KELLY: I watched the documentary. And was riveted and was really moved by it. And my own take on it was, in a way it's a love letter to your mom.

COOPER: Yes.

KELLY: I mean, it's you getting to know her and helping us get to know her. And through that experience we get to know

you, too.

COOPER: Yes. You know, my dad died when I was 10, and I always had this fantasy growing up that he'd wrote me a letter and maybe that letter would show up when I turned 18, when I turned 21, he would tell me all about, you know, about his life, and what he wanted for my life. And of course there wasn't any letter. It turns out my mom had the exact same fantasy about her father because her father died when she was 15 months old. And I realized when my mom turned 91, I didn't want to have that fantasy about my mom when she's no longer here. So we started doing this project together of e-mailing each other and just me asking her questions, her asking me questions, and getting to know each other in a new way. And that's what the book is. The book comes and goes. And the documentary is sort of a representation of that as well.

KELLY: She's had such an incredible life. I mean, you go, obviously Anderson is a Vanderbilt.

COOPER: I consider myself a Cooper.

KELLY: Right. Right. But you've got it in the blood.

COOPER: Yes.

KELLY: And it goes through just how she was obviously born into a very wealthy family and shuffled around. She really didn't have parents. She was pulled from the only real parents she ever knew which was her nanny, her nurse.

COOPER: Right.

KELLY: And, you know, an abusive marriage and tumultuous divorces. And then came the loss of her husband, your dad.

COOPER: Right.

KELLY: And ultimately the loss of her son, your brother.

COOPER: Yes. Yes. My brother committed suicide in front of her when he was 23 and I was 21. But, you know, she has this incredible resilience. And I think that's one of the things that really comes out in the book and the film is that, you know, she has this drive and determination to survive. And she's not a tough person, but she's very strong. And I think there's a big difference. You know, she's incredibly vulnerable but she remains the most optimistic person I know. Despite all the thing that have happened to her, she still thinks the next great love is right around the corner at 92.

KELLY: You...

(CROSSTALK)

COOPER: Which I find the idea is exhausting.

KELLY: But she's known a lot of people.

COOPER: Yes.

KELLY: She's been open about that.

COOPER: Yes. Very open about that.

KELLY: Frank Sinatra among them.

**JA751**

COOPER: Frank Sinatra, Marlon Brando, Howard Hughes.

KELLY: But, yes. I've heard of them. But you also are very, you lay yourself bare in the documentary and in the book. And what's clear in learning more about you is that the death of your brother, in particular, seemed to send you into a spiral for a time.

COOPER: Yes.

KELLY: You were all over the place.

COOPER: It really propelled me into the world, and propelled me, and particularly to start going to combat zones and wars and places -- I was interested in survival and why some people survive, why two brothers growing up in the same family with the same circumstances, one survives and one doesn't.

And I started out of college I made a fake press pass, so I borrow a camera, I just started going to wars by myself and that's how I became a reporter.

KELLY: You were working something out there.

COOPER: I was. I wanted to be around places where the language of loss was spoken. You know, when you're grieving, it sometimes it's not so many people here and talk about that much.

And I found it in an odd way not comforting but understandable to be in places is where life and death was very much an issue. And where I could learn about how to survive.

KELLY: Talk about Carter. He was only a couple of years older than you were.

COOPER: Yes.

KELLY: And his terrible death and you go through it in detail, what happened that day. He seemed to be for the most part all right until -- but like a few months before he started acting out emotionally.

But did you ever wonder, since you also felt OK, do you wonder that what was inside of him that made him make that terrible decision that day is in you?

COOPER: Yes. You know, first of all, with the suicide, that's the thing, you often don't know what was in somebody's head or in their heart. And I in my -- I don't know that it was sort of a decision he made as more of an impulse that he couldn't stop.

But certainly, you know, look, studies have shown that if somebody commits suicide or dies by suicide in a family, you know, their relatives are more likely to -- someone else in the family is more likely to die that way as well.

So, I certainly had those concerns. And, you know, I think part of, you know, when my dad died when I was a kid, you know, I started setting about sort of a course of study on how to survive.

I started taking survival courses in the wilderness. I started, you know, left high school early, I rode in a truck across sub-Saharan Africa. You know, I was doing things just to sort of prepare myself to take care of myself. And I've been, you know, doing that for a very long time.

KELLY: Do you, obviously you were born into a wealthy family and had a loving mother although the relationship has been complicated. It's gotten great.

**JA752**

COOPER: Yes.

KELLY: Do you feel like looking back on your 48 years so far, it's been a charmed life, it's been a cursed life?

COOPER: Oh, no.

KELLY: Some place in between?

COOPER: I mean, I have a blessed life. I mean, look, you know, yes, I was born into a, you know, a great zip code and into a family with two parents who, you know, gave me a great sense of value in myself. And though, you know, there have been tragedies that have occurred, the death of my dad and my brother, you know, I wouldn't trade my life for anything.

You know, I think I feel just as you probably feel blessed to work in the profession that we work in and to be able to tell other people's stories and learn new stuff every single day, and ride the breaking wave of history and see things for ourselves.

KELLY: You know, I think it's interesting. You lost your dad when you were 10.

COOPER: Right.

KELLY: To heart disease.

COOPER: Right.

KELLY: You know, Savannah Guthrie of NBC News lost her dad when she was 16 years old.

COOPER: I didn't know that.

KELLY: Similar circumstances. I lost my dad to a heart attack when I was 15.

COOPER: I didn't know that either.

KELLY: Don't you think it's interesting that those three kids wound up in prominent positions in television news?

COOPER: Yes. Mary Gordon a writer my mom quotes in the book said, a fatherless girl -- she was talking about herself, but I think it applies to boys as well. A fatherless girl thinks all things possible, and nothing is safe.

And I think for any child when you lose a parent early on it does change the way you see the world. And it does make the world seem a very unsafe place. But also anything is possible.

Good things as well as terrible things. And I think for me certainly, it gave me a sense of anything is possible; there are limitless possibilities if you just work incredibly hard.

KELLY: Do you think we're looking to fill a void that is unfillable?

COOPER: I certainly think I'm never content. And I think it's something -- I realize one of the things in writing this book with my mom and sort of learning about my mom, I realize I'm following a pattern that she followed as well, which is this pattern of having this drive but nothing ever really makes you content.

You know, you want a house and the white picket fence. But when you have it, it's still not enough. And I think that's common for people who have lost at least one parent early on.

KELLY: Let's talk about the election. It's been such a crazy season.

**JA753**

COOPER: You think?

KELLY: Yes.

COOPER: Really?

KELLY: Yes. I saw. I've heard.

COOPER: Yes. Maybe a little crazier for you than for me.

KELLY: What was -- looking back so far, what's the moment that you were involved in that -- I know what mine was. What was your moment that stands out so -- that stands out in your mind looking back on the past 12 months?

COOPER: Oh, wow. Well, look, I think, first of all, that first debate you did, I mean, for everybody who was watching was just a remarkable moment. And, look, I give you great props for, you know, the dignity with which you have handled this and the strength which you have shown and asking completely legitimate questions both in that debate and sense.

KELLY: Thank you. But what do you think, you know, Campbell Brown has an interesting piece out right now.

COOPER: Right.

KELLY: Formerly of CNN.

COOPER: Yes.

KELLY: And NBC News, you know, laying into the media. I've made remarks on this publicly myself about the saturation of Trump coverage. And this is not to say that the media had any obligation to stop any particular candidate. It's just obviously you've heard the criticism.

COOPER: Sure.

KELLY: Of CNN, of Fox, of many other outlets that it's been just saturation.

COOPER: Yes.

KELLY: What do you think of that?

COOPER: Look, I think anytime you have a person who's as compelling as Donald Trump who is a new candidate, who hasn't been involved in the process, you know, there was the same criticism about overcoverage of Hillary Clinton or overcoverage of then-Senator Barack Obama or...

KELLY: Do you think it compares? I mean, the Trump coverage seems to be something special.

COOPER: I don't know. I mean, I haven't seen the direct analysis of it. But I think that Donald Trump is a candidate unlike any we've seen and he's new to the process and so well-known. But also, he did show up for interviews and he did return phone calls.

KELLY: You seriously tell me that you invited Ted Cruz on as much as you invited Trump on?

COOPER: We have invited Ted Cruz -- we had standing invitations out to Ted Cruz all the time. Never once did he sit down for an interview, not until we did -- I did a town hall with him. That's the first time I had ever talked to Ted Cruz.

KELLY: I want to ask you a question. You have an amazing career and you've traveled the globe and you're doing great reporting for CNN. But there is a question about whether you're planning to be taking a walk over to go sit next to your friend

Kelly Ripa.

COOPER: I haven't heard that question.

KELLY: On live with now I guess with Kelly and Anderson"? Is that true?

COOPER: Nothing. Nobody has talked to me. I haven't heard about that. I love Kelly Ripa. Everybody know she is a great friend of mine.

KELLY: Is that something you'd be interested in, because you have that fun side. You did a talk show, like you're not always the street news man.

COOPER: Look, I like learning new stuff every single day. But I'm very happy at CNN. I'm not going anywhere. I mean, I love CN, and, look, I mean, I'm always open to new opportunities, as are you, from what I hear.

KELLY: Well, Bill O'Reilly wanted me to ask you because he's hoping you're leaving the 8:00 time slot.

COOPER: I was that right. I was that right. Well, I think he's doing just fine. I don't think he's too worried, but...

KELLY: Thanks so much for being here.

COOPER: Thank you.

KELLY: Good luck with the boo. Good luck with the -- the documentary it's riveting. It's on HBO. It's going to be on CNN as well. Definitely check it out.

COOPER: Thanks so much. I appreciate it.

KELLY: He's a class act.

Well, we have new details tonight on a showdown at a Baltimore TV station where a man disguised in an animal costume was claiming to have a bomb.

Plus, after four weeks of protests over the so-called bathroom law, the governor of North Carolina joins us live tonight to respond to claims that his state has legitimized and legalized discrimination.

(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: The USA is watching North Carolina, and we don't need Bruce Springsteen to come here and tell us how to operate our country!

UNIDENTIFIED MALE: Government of (Inaudible), this bill does not represent equality for all mankind!

(END VIDEO CLIP)

(COMMERCIAL BREAK)

KELLY: Well, a little over a month ago, North Carolina enacted the so-called 'bathroom law' which critics were quick to call discrimination against transgender people.

Demonstrators descended on the state capitol. Companies like PayPal called off plan expansions. Some celebrities canceled appearances and then politicians weighed in.

In moments, North Carolina Governor Pat McCrory is here to respond to some of these folks. But first, Trace Gallagher is

**JA755**

live in our West Coast newsroom to explain what caused the uproar. Trace?

TRACE GALLAGHER, FOX NEWS CORRESPONDENT: Megyn, when the City of Charlotte passed an ordinance allowing transgender people to use the restrooms and changing rooms of whichever gender they identify with, the State of North Carolina rushed to stop it.

The legislature controlled by republicans was called in special session and in one day HB-2 or the Bathroom Bill passed both houses and was signed by the governor.

Supporters of the law say it prevents men who may be sexual offenders from pretending to be a woman and entering a woman's restroom or changing room. Opponents call HB-2 discriminatory saying, there are no known instances of predators dressing up as women and committed sex crimes.

So far, the state has taken a financial hit from the loss of conventions and concerts like Bruce Springsteen and Pearl Jam. Others stars like Jimmy Buffet who opposes HB-2 decided to perform anyway.

American Airlines and Bank of America want the law repealed and PayPal even canceled a North Carolina expansion project, although PayPal makes no mention of doing business in dozens of countries where homosexuality is illegal in some cases, punishable by death.

In the presidential race, Ted Cruz supports the law, Donald Trump first opposed it, then backtracked. Here's both.

(BEGIN VIDEO CLIP)

TRUMP: I think that local communities and states should make the decision, and I feel very strongly about that. The federal government should not be involved.

CRUZ: If Donald Trump dresses up as Hillary Clinton; he still can't use the girls' restroom.

(END VIDEO CLIP)

GALLAGHER: And because there's of the controversy, some top North Carolina GOP state lawmakers are now proposing to let voters decide if the law lives or dies.

KELLY: Trace, thank you. Joining me now, North Carolina Governor, Pat McCrory. Governor, thank you so much for being here. So, let's start with this.

PAT MCCRORY, NORTH CAROLINA GOVERNOR: Thanks.

KELLY: What was the fear that led to the enactment of this law?

MCCRORY: Let me just correct the introduction story. The Charlotte ordinance was a mandate on all private businesses that have public facilities to require them to allow gender identification as the tool on which restroom an individual should use.

So, basically what we did in the State of North Carolina was overturn a local mandate on private businesses. I do not want government to be able to tell private businesses what their bathroom policy should be.

I have no desire to be the bathroom police for private business. So, one of the great misinterpretations from the New York Times and the Huffington Post and others, is that we passed a bathroom law on private businesses. It's just the opposite. We reversed the bathroom law.

(CROSSTALK)

**JA756**

KELLY: But with respect to government businesses -- but with respect to government businesses you have passed a law that requires people to use the gender that aligns with their biological gender at birth.

MCCRORY: That's correct. With regards to rest stops on the highway, with regards to universities, with regard to high schools and junior highs and elementary schools, we do require the...

(CROSSTALK)

KELLY: But why? What was the concern specifically? What was the evidence that led you to believe this was a problem?

MCCRORY: It was a -- it was a respect for privacy. It was an expectation of privacy that individuals have, especially our youth have when they go into a locker room, a shower or a restroom. They expect only people of their gender to be there in that shower, locker room or restroom.

KELLY: Let me just ask you about that.

MCCRORY: It's a tradition that we've had for many years.

KELLY: Let's me ask you that. Locker room, let's take locker room and dressing room out of it for now. Let's talk about bathroom for a second.

MCCRORY: That's a part of it, though.

KELLY: I know. But a law can be drafted narrowly or broadly.

MCCRORY: Right.

KELLY: And this one encompasses all three. And so, I want to ask you about bathrooms because I've been in women's bathrooms my whole life. And we don't have the urinal situation. We've got like the stalls.

And we get to go in, we go to do our business and like we don't -- it's not-- we don't see each other. So, why are you concerned about, you know, young girls exposing themselves or seeing somebody else exposed in a woman's bathroom?

MCCRORY: Well, first of all, I can't believe we're talking about this. This is not an issue that I started. This is an issue that the left started, not the right. And it's not just women's bathroom, it's boys' bathrooms.

In fact, the Obama administration now is putting requirements on state -- on federal money given to states that they also have to have this gender identification requirement for our schools. And this case is being tested in Virginia and Illinois. And I just think we...

(CROSSTALK)

KELLY: If you could just get back to my question, though.

MCCRORY: What we ought -- what we ought to do is for those people have these unique gender identification issues, which I empathize with, we ought to allow the schools to make special arrangements for those people.

But to all of a sudden change the basic commonsense rules that we've had in our restrooms at our rest stops, at our schools especially at our universities, this is the way we've been doing it for years. And I think it's common sense.

(CROSSTALK)

KELLY: The schools I know is an issue, too. Because it's children and maybe the parents haven't had that talk yet. But the public restrooms that you know are provided in public at **JA757**

06/27/2016 Cruz reacts to Boehner's attacks: "I don't know the guy"; NC governor responds to 'bathroom bill' backlash | Fox News  
public restrooms that, you know, are provided in public places, they are maintained by the state, the question that many have is, what is your fear?

Because as you know, there is a misconception that transgendered are somehow molesters or more -- and they're not. That's not true.

MCCRORY: I don't use that term.

(CROSSTALK)

KELLY: You know, typically, male molesters are heterosexual and if they want to sneak into a bathroom they'll do it. But 90 percent of the cases of molestation happen with someone you know. So, what is the fear about the transgender situation and the bathrooms?

MCCRORY: Mine is not a fear. I'm not doing it -- I don't like the rhetoric that's often used on the right saying what the fear is. It's a basic expectation of privacy that I hear from mom and dads and families that when their daughter or son goes into a facility, a restroom, they expect people of that gender, of that biological sex or gender, to be the only other ones in that.

That's the expectations that we've had for many, many years as both you and I have grown up on.

KELLY: I got to go but I want to ask you a quick question. Can you believe PayPal is pulling under North Carolina, they're scaling back their expansion, even though they do business in Saudi Arabia where you can get killed if you're gay? I mean, hello?

MCCRORY: The selective hypocrisy -- yes, the selective hypocrisy is outrageous by PayPal.

KELLY: Yes.

MCCRORY: When they're doing business and headquartered in Singapore where you get arrested for chewing gum in public, I believe.

KELLY: They do business in Yemen but they don't want to expand business in North Carolina. Yemen is fine.

MCCRORY: Well, I think this is -- this is where the corporate elite have to be very careful about getting involved in politics is that its inconsistent outrage, its selective outrage.

And they might need to examine their own practices in other states which have the exact same rules that North Carolina does. Over 21 other states have the exact same rules that North Carolina does. And many of these businesses do a...

(CROSSTALK)

KELLY: We'll see if Bruce Springsteen cancels his concerts in every single one of those states where Demi Lovato and so on. Governor, it's good to see you.

(CROSSTALK)

MCCRORY: All they did was sort the hard work in men and people of North Carolina. And that's not the right thing to do.

KELLY: You're a standup guy for coming on and talking about it. Thank you, sir.

MCCRORY: Thank you very much.

KELLY: All of us here.

have a bomb.

(COMMERCIAL BREAK)

KELLY: Breaking tonight. We are getting new details at a standoff at a Baltimore TV station involving a man who claimed to have a bomb. Trace Gallagher has the report.

GALLAGHER: Megyn, it began when the suspect stuffed a rag into the gas tank of his vehicle lit it on fire and walked into our Baltimore Fox affiliate dressed in a onesie that resembled either a panda or a hedgehog. We think it's a hedgehog.

He was wearing a surgical mask and sunglasses and had some wires in his jackets that appeared to be an explosive device. The suspect threatened to blow up the building if he wasn't allowed inside, which he was not.

He told the news director he had information on a thumb drive that he wanted to get on the air comparing it to the Panama papers. That's the story of high profile American citizens using offshore accounts to skirt the U.S. tax system.

The news director told him to hand over the thumb drive but suspect refused and the building was evacuated. Then after a lengthy standup, the man walked out of the station and ended to a confrontation with police. He was shot three times. But he's in stable condition.

The device with the wires turned out to be chocolate bars wrapped in aluminum and the hard drive contained videos of the suspect ranting about a government conspiracy. Megyn?

KELLY: Trace, thank you. Don't go away. We'll be right back.

(COMMERCIAL BREAK)

KELLY: I get a lot of -- a lot of feedback about our Ted Cruz interview and about the last segment we did with the governor.

Let us know your thoughts. Go to facebook.com/thekellyfile. Follow me on Twitter @megynkelly. Let me know what you think. Thanks for watching everyone. I'm Megyn Kelly and this is the Kelly File right here. Here's Sean, coming up next.

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## More from Fox News



**JA759**

**Declaration of Luke C. Platzer  
June 27, 2016**

**EXHIBIT E**

**JA760**

EDUCATION JUNE 20, 2016 4:58 PM

# CMS: Transgender students can choose identity and bathroom

## HIGHLIGHTS

Charlotte-Mecklenburg Schools officials say the move is to follow a federal court ruling and is not in defiance of North Carolina's House Bill 2

Monday's training for principals aimed to make it clear: Students choose their own name and gender

Superintendent Ann Clark: 'This is about courage, understanding and compassion'



CMS: We'll honor transgender students' choices 3:03



1 of 2



BY ANN DOSS HELMS

[ahelms@charlotteobserver.com](mailto:ahelms@charlotteobserver.com)

Charlotte-Mecklenburg Schools sent a message to all principals Monday: When school opens in August, transgender students will be called by the name and pronoun they choose. That chosen gender identity will be honored in restrooms, locker rooms, yearbooks and graduation ceremonies, according to a new regulation released Monday.

Superintendent Ann Clark said CMS has been working on the regulation for a year, but the political furor over North Carolina's House Bill 2 left principals and teachers confused and wary.

JA761

“You’ve kind of had to feel your way through this,” Myers Park High School Principal Mark Bosco said at a news conference after the training.

[Watch the video CMS used in transgender training]

ADVERTISING

“

**THIS IS REALLY ABOUT OUR CHILDREN AND THEIR SAFE AND JOYFUL PASSAGE.**

CMS Superintendent Ann Clark

Clark said the goal of the CMS regulation is to allow all students to be safe and comfortable as they pursue an education. Although official transcripts must carry the name and gender on the student’s birth certificate, schools will be expected to create class rosters that use the student’s preferred identity. All students will have access to increased privacy, such as a screened area in the locker room or a single-stall restroom, on request.

And gender-based activities that have no educational purpose, such as having a girls’ and boys’ line to go to recess, will be phased out.

“

**UNTIL YOU REALLY TAKE SOME TIME TO UNDERSTAND WHAT IT IS TO BE TRANSGENDER, YOU’RE JUST GOING TO MISS SOME THINGS.**

Myers Park High Principal Mark Bosco

“This is about courage, understanding and compassion,” Clark said. “These are our children. These are the community’s children.”

Clark and CMS attorney George Battle III said the regulation follows the guidance of a federal appeals court ruling and was not designed as an act of defiance against HB2, which, among other things, requires students to use public school restrooms and locker rooms based on the gender on their birth certificates.

[READ MORE: Understanding HB2: North Carolina’s newest law solidifies state’s role in defining discrimination]

In April, a ruling from the 4th U.S. Circuit Court of Appeals in Richmond, Va., stated that transgender students must be allowed to use restrooms based on the gender they identify with, not the one on their birth certificate.

**JA762**

“That’s the law of the land for five states that are in the 4th Circuit, North Carolina being one of those states,” Battle said.

Regulations do not require a board vote, but board Chair Mary McCray said members stand unanimously behind the new plan. She plans to send a letter to elected officials representing Mecklenburg County to fill them in.

Clark said a student’s transgender status is confidential and the district has no way of tallying how many students fit that description. Experts estimate that only 0.3 percent of the population is transgender, but in a district with about 146,000 students that would come to more than 400 children and teens.

CMS has been dealing with transgender students on a case-by-case basis, starting in elementary schools and running through high school graduations, where there have been cases of the graduate wanting one name and gender used on the diploma and the parents wanting another. If students are 18, as most graduates are, the student’s choice will be honored next year, Clark said.

“This is about listening to our students, first and foremost,” she said.

Bosco said he has always tried to be sensitive to transgender students, but Monday’s training helped him understand how complex gender identity issues can be. “Until you really take some time to understand what it is to be transgender, you’re just going to miss some things,” he said.

*Ann Doss Helms: 704-358-5033, @anndosshelms*

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- CMS: We'll honor transgender students' choices



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**JA763**

**Declaration of Luke C. Platzer  
June 27, 2016**

**EXHIBIT F**

**JA764**

## Non-NC Native Population by County

Posted on [August 4, 2014](#) by [Rebecca Tippet](#)

*One hundred years ago, when North Carolina had a population of about 2.5 million people, more than nine out of 10 residents were native Tar Heels. Today's North Carolina, in contrast, approaches a population of 10 million, with more than 4 million residents born in another state or country.*

– Ferrel Guillory and Jessica Kennedy, "[Voters born elsewhere make up nearly half of N.C. electorate](#)," NC DataNet

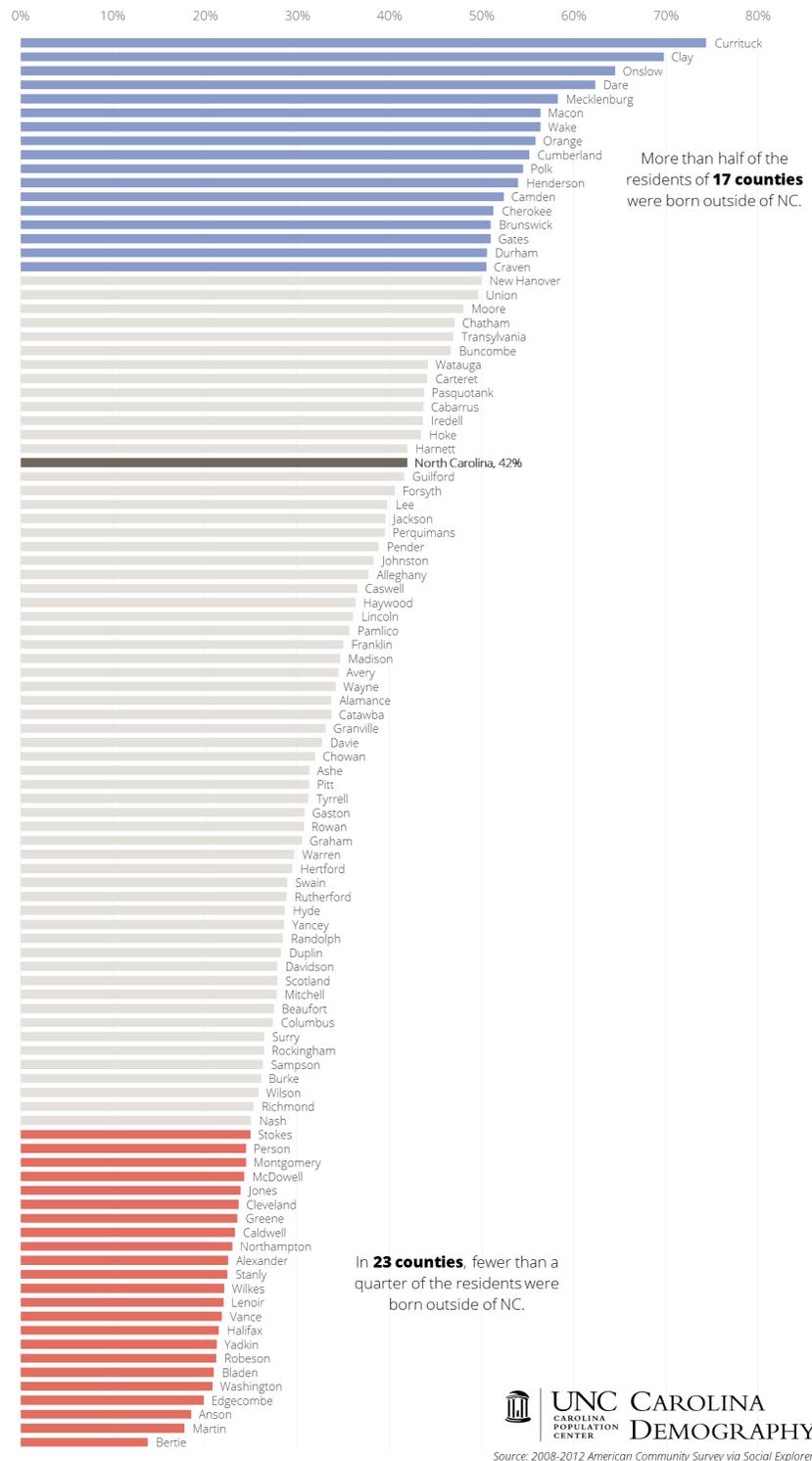
While 42% of North Carolina residents were born outside of the state, this proportion varies dramatically across the state's 100 counties.

In 17 counties, more than half of the residents were born outside of North Carolina. The county with the highest share is Currituck: 74% of all Currituck residents were born in another state or country; its proximity to the Virginia Beach metropolitan area is a likely factor in this high share.

At the other end of the spectrum, there are 23 counties where fewer than 25% of residents were born outside of the state. At 14% non-native born and 86% NC natives, Bertie County has the lowest share of residents born outside of North Carolina.

02/27/2016

### Percentage of County Population Born Outside of NC, 2008-2012 ACS



 **UNC CAROLINA**  
**CAROLINA POPULATION CENTER**  
**DEMOGRAPHY**

Source: 2008-2012 American Community Survey via Social Explorer.

**About Rebecca Tippett**

Rebecca Tippett is Director of Carolina Demography at UNC-Chapel Hill's Carolina Population Center.

[View all posts by Rebecca Tippett →](#)

This entry was posted in [Migration](#) and tagged [domestic migration](#), [international migration](#), [native born](#). Bookmark the [permalink](#).

**JA766**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

JOAQUIN CARCAÑO, et al., ) 1:16CV236  
 )  
 Plaintiffs, )  
 )  
 V. )  
 )  
 PATRICK McCRORY, in his )  
 Capacity as Governor of North )  
 Carolina, et al., )  
 )  
 Defendants, )  
 )  
 and )  
 )  
 PHIL BERGER, in his official )  
 Capacity as President Pro )  
 Tempore of the North Carolina )  
 Senate; and TIM MOORE, in his )  
 Official capacity as Speaker of )  
 The North Carolina House of )  
 Representatives. )  
 )  
 Intervenor-Defendants. )

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UNITED STATES OF AMERICA, ) 1:16CV425  
 )  
 Plaintiff, )  
 )  
 V. )  
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 STATE OF NORTH CAROLINA, et al. )  
 )  
 Defendants, )  
 )  
 and )  
 )  
 PHIL BERGER, in his official )  
 Capacity as President Pro )  
 Tempore of the North Carolina )  
 Senate; and TIM MOORE, in his )  
 Official capacity as Speaker of )  
 The North Carolina House of ) Winston-Salem, North Carolina  
 Representatives, ) August 1, 2016  
 ) 10:00 a.m.  
 Intervenor-Defendants. )

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TRANSCRIPT OF THE **PRELIMINARY INJUNCTION HEARING**  
BEFORE THE HONORABLE THOMAS D. SCHROEDER  
UNITED STATES DISTRICT JUDGE

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## P R O C E E D I N G S

1  
2           **THE COURT:** Good morning, everyone. We are here on  
3 the Carcano case, 1:16CVC236, Carcano versus Patrick McCrory.  
4 We also have the United States here today as well, even though  
5 they are not a party to that, and I have the Intervenors and  
6 other parties.

7           Let me ask you all to go ahead and make your  
8 appearances for the record, if you would, please.

9           **MR. SMITH:** Good morning, Your Honor. I'm Paul Smith  
10 from Jenner & Block in Washington, D.C., co-counsel with the  
11 ACLU and Lambda Legal for the Carcano Plaintiffs. With me at  
12 counsel table is my colleague Scott Wilkens from Jenner as  
13 well.

14           **THE COURT:** Good morning. Any other Plaintiffs?

15           **MS. STOUGHTON:** Your Honor, this is Corey Stoughton  
16 from the Department of Justice for the United States.

17           **THE COURT:** Welcome.

18           **MR. RAND:** Ripley Rand from the U.S Attorney's  
19 Office.

20           **MR. BOWERS:** Good morning, Your Honor, Butch Bowers  
21 here for the Governor, and I'll allow Mr. Francisco and  
22 Mr. Duncan to introduce themselves.

23           **MR. DUNCAN:** Good morning, Your Honor, Kyle Duncan  
24 here from Schaerr Duncan in Washington, D.C., and we're  
25 representing the Intervenor Defendants in this case.

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1           **MR. FRANCISCO:** Good morning, Your Honor, Noel  
2 Franciso of Jones Day for the University of North Carolina  
3 Defendants.

4           **THE COURT:** Good morning. I have, I believe, counsel  
5 for the Amici School Administrators. Who is here? Mr. Smith?

6           **MR. SIGMON:** Good morning, Your Honor, Mark Sigmon.  
7 I'm local counsel for Amici, and Mr. Smith is primary counsel.

8           **THE COURT:** Did we run out of room up front? You're  
9 welcome to sit up here, if you'd like.

10          **MR. SIGMON:** We're good, Your Honor. Mr. Smith will  
11 be doing all the real talking.

12          **THE COURT:** All right. Mr. Smith.

13          **MR. NATHANIEL SMITH:** Your Honor, Mr. Nathaniel  
14 Smith, Pillsbury Winthrop Shaw Pittman, for the School  
15 Administrator Amici.

16          **THE COURT:** All right. We're here on the motion for  
17 preliminary injunction raised by the ACLU and the Carcano and  
18 other Plaintiffs in that case; but as I've indicated, I'm also  
19 interested in hearing the views of the United States of  
20 America, so I would like to hear your views as well.

21                 There are a number of questions that I have. I've  
22 read the briefs. I have extensive briefing from everybody,  
23 including materials attached to that, and I've been through all  
24 the briefing in this case as well as in the DOJ case, to the  
25 extent it's been filed. I understand all the responses are in.

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1 So I would be happy to hear from the parties as to any argument  
2 you want to make, but, rest assured, I've read all the  
3 materials. I believe I understand your positions, but I do  
4 have some questions that I am going to be asking as we go  
5 along.

6 **MR. SMITH:** Your Honor, thank you very much for the  
7 opportunity to argue this motion on an expedited basis. We  
8 appreciate that.

9 Before we begin, I wonder, with the Court's  
10 indulgence, if I might introduce to you as well three of our  
11 individual Plaintiffs who are here in the front row: Joaquin  
12 Carcano, who is an employee at the University of North Carolina  
13 at Chapel Hill, next one over is H. S -- she is still in high  
14 school, so we are using her initials. She's a rising senior at  
15 the University of North Carolina School of the Arts here in  
16 Winston-Salem -- and Payton McGarry is a full-time student at  
17 the University of North Carolina in Greensboro.

18 **THE COURT:** Good morning.

19 **MR. SMITH:** Thank you for that, Your Honor.

20 We think the argument for a preliminary injunction  
21 returning to the status quo before March of 2016 in this case  
22 is, frankly, very strong for two basic reasons. The first,  
23 looking at the balance of the equities, is that we see this as  
24 a law that created problems rather than solving problems.  
25 There was no record prior to the passage of this law of

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1 problems being caused in North Carolina, or, frankly, anywhere  
2 else, by transgender people using restrooms and changing  
3 facilities consistent with their gender identity.

4 **THE COURT:** Is there any legislative record that was  
5 considered by the General Assembly?

6 **MR. SMITH:** Your Honor, I am not aware of any. My  
7 understanding is that the whole process consumed less than one  
8 day and that the bill was produced and voted on in a matter of  
9 minutes and hours on March 23. So I don't believe any evidence  
10 was developed, and certainly nothing has been cited to this  
11 Court, either from the legislative record or since, that would  
12 show that there is a real factual basis for the --

13 **THE COURT:** Was there a hearing?

14 **MR. SMITH:** A hearing on --

15 **THE COURT:** Were there any kind of hearings on the  
16 bill? I was looking for a transcript, and I have one page.

17 **MR. SMITH:** Your Honor, I believe, if I remember  
18 correctly from the briefs, there was a committee that convened  
19 and voted it out in a matter of minutes in one of the two  
20 houses. I imagine that my colleagues over here can probably  
21 give you more specifics on that. I apologize.

22 The second reason why we think that the case for a  
23 preliminary injunction is very strong is on the merits. We  
24 think that the legal arguments here are strong as well.

25 So these given those two, that there's -- really the

1 status quo was fine, this law created problems for a  
2 specifically targeted group of people who have really  
3 significant personal problems trying to figure out where they  
4 are supposed to go to the restroom and change their clothes to  
5 go to sports, and that the law is quite clearly on our side, at  
6 least I hope to convince you of that, this seems like a really  
7 easy case to go back and keep things under status quo, at least  
8 until we go to trial, which, after all, is only a few months  
9 away.

10 Let me start, if it makes sense, with the Title IX  
11 claim that the three individuals have --

12 **THE COURT:** And let me indicate I am familiar with  
13 that, and I am familiar with the *G.G.* case. I would be glad to  
14 hear your argument, but I am most interested in not the  
15 bathroom portion of your argument, but the remainder that was  
16 not directly addressed in the holding of *G.G.*, and that is  
17 showers and changing rooms.

18 **MR. SMITH:** Sure. It seems to me, though, given that  
19 there is no sovereign immunity issue on Title IX and given that  
20 the *G.G.* case is out there, at least as to restrooms, and we  
21 can talk about changing facilities in a minute, the only real  
22 issue that they've raised -- Mr. Francisco has raised is the  
23 argument that the University of North Carolina, although it has  
24 said it's compliant with the law, has not actually done enough  
25 to be subject to an injunction, that there is not a sufficient

1 degree of enforcement; and, therefore, my clients, when they  
2 are on the campuses of the University of North Carolina,  
3 somehow aren't being harmed by the conduct of the University to  
4 a sufficient degree.

5           It seems to me that the complete answer to that is in  
6 the documents that are in the record, the statements that have  
7 been made to my clients, to the world by the University of  
8 North Carolina, making it a very clear that it is the policy of  
9 the University of North Carolina, as state law mandates, that  
10 people only access these facilities consistent with what the  
11 law calls their biological sex, what we would say is their  
12 gender assigned at birth.

13           **THE COURT:** What is the enforcement mechanism of the  
14 law?

15           **MR. SMITH:** There is no specific provision in the  
16 law, as there isn't in many kinds of law --

17           **THE COURT:** Does the law -- does H.B. 2 expressly  
18 prevent a transgender person from entering a restroom of their  
19 choice?

20           **MR. SMITH:** No, it is a law specifically directed to  
21 the people who maintain and operate these facilities. What has  
22 happened then --

23           **THE COURT:** It directs the agency to ensure that the  
24 purpose of the law is carried out?

25           **MR. SMITH:** Right. So what's happened as a result of

1 that mandate is the University of North Carolina has done that,  
2 and I think it's important to look specifically at what  
3 President Spellings has said on multiple occasions, and it's  
4 also, I think, useful to consider what's actually happened to  
5 my clients, one of whom is now using, by the mandate of his  
6 employer, the University of North Carolina, a different  
7 restroom facility than the one he was using for a number of  
8 months or years before that without incident.

9           It's important I think to start with the April 5  
10 guidance that President Spellings put out, and, Your Honor, we  
11 have these in kind of loose forms, three or -- there's only  
12 four or five documents, but since they are attached to  
13 different motions and different parts of the record, I wonder  
14 if it would be more convenient simply to hand up a couple of  
15 copies.

16           **THE COURT:** You are welcome to. I am familiar with  
17 them, and I've read them; but if you want to refer to them, I  
18 would be happy to have a copy.

19           **MR. SMITH:** I would appreciate that opportunity, Your  
20 Honor. Thank you.

21           **THE COURT:** Sure.

22           **MR. SMITH:** This is the guidance that came out just  
23 about ten or eleven days after the bill was passed by President  
24 Spellings directed to all the chancellors of all the campuses  
25 at the University of North Carolina, and I think it's important

1 to start with obviously the guidance and paragraph that  
2 recognizes what the act requires, which is that  
3 multiple-occupancy bathrooms and changing facilities be  
4 designated for and only used by persons based on biological  
5 sex.

6 **THE COURT:** Doesn't the act require the agency to  
7 ensure that persons that are not permitted under the act to use  
8 restrooms don't use them?

9 **MR. SMITH:** Yes, the act mandates that there be  
10 enforcement by --

11 **THE COURT:** So is there anything in the University of  
12 North Carolina's correspondence that says we will not  
13 enforce -- we will not carry out our duty under the act?

14 **MR. SMITH:** Well, it's an interesting finesse they  
15 are trying to do because they try to say simultaneously they  
16 are in full compliance with the act, as they have assured  
17 people and told the students many times, but at the same time,  
18 they are not doing anything to enforce it.

19 **THE COURT:** Let me ask this: Does the University --  
20 I'll ask Mr. Francisco in a moment. Does the University of  
21 North Carolina through its various decision-makers have the  
22 authority under North Carolina law to decide not to enforce the  
23 act?

24 **MR. SMITH:** The only authority they would have, Your  
25 Honor, is if they were willing to say that they think that

1 paramount federal law requires them to disregard the provisions  
2 of the act. It's a statement they clearly have not been  
3 willing to make to date; and, instead, what Ms. Spellings said  
4 in this guidance on April 5 was that we're going to follow the  
5 act unless and until a court directs otherwise, and we are  
6 simply asking here, Your Honor, to direct otherwise.

7           It seems to us that, given what -- the other thing  
8 she said at the time, there is no problem with justiciability  
9 or with the suggestion that somehow no one is being harmed on  
10 campus by the implementation of the law by the campus. It says  
11 in answer to question Number 2, what are the University's  
12 obligations, Ms. Spellings says, "University institutions must  
13 require every multiple occupancy bathroom and changing facility  
14 to be designated for and used only by persons based on their  
15 biological sex." That's the answer to Number 2.

16           **THE COURT:** And she's passed that along to all of her  
17 constituent personnel in the University of North Carolina  
18 system?

19           **MR. SMITH:** What happens is this goes to each of the  
20 chancellors of all the various campuses, Greensboro and Chapel  
21 Hill. We have in the record emails that were email blasts out  
22 to the full staff and student body of the campus saying a  
23 variety of things. We can look at that them in a minute, but  
24 they basically say House Bill 2 is in effect. It is our  
25 obligation to carry it out. We apologize for the pain and

1 hardship this is causing you. There are some single-use  
2 facilities that you can use as accommodations.

3           So the message was directed out to the general public  
4 on these campuses that we are complying with the act, and that  
5 if you are a transgender person who has been using a men's room  
6 even as a transgender men, you better stop doing it. That is  
7 the message because that is the policy of the University of  
8 North Carolina.

9           It says if the sign on the men's room door now says  
10 men but not transgender men, that is the announced policy which  
11 has been communicated to my clients and other transgender  
12 individuals who are on the campus.

13           **THE COURT:** The University has raised issues of  
14 rightness and justiciability. Those turn, in part, on whether  
15 certain people have the authority to enforce a law. You have  
16 sued the people you've sued because I believe it's your  
17 position that they're the decision-makers and under *Ex Parte*  
18 *Young* would have the ability to be sued under the  
19 constitutional claims, and I know we're talking about Title IX,  
20 but my question that remains that I'm troubled with is who  
21 actually enforces the law and who has the discretionary  
22 authority to decide whether not to enforce the law? In other  
23 words, the face of the law seems to say it's your obligation  
24 not only to designate the men and women, but to ensure that  
25 they are, quote, used only by.

1           **MR. SMITH:** Correct, Your Honor.

2           **THE COURT:** And so it's unclear to me how any agency  
3 could defy that language without violating the law.

4           **MR. SMITH:** It's also noteworthy, Your Honor, if you  
5 recall the telephone conference you had in the United States  
6 case involving the Violence Against Women Act funding -- and I  
7 have a transcript here. We could hand it up if you are  
8 interested, but you will probably recall that Mr. Stephens,  
9 then speaking for the Governor -- you asked him, is it the  
10 position of the Governor that the University of North Carolina  
11 has the option of not enforcing House Bill 2, and he said very  
12 clearly at the time that it is the obligation of the University  
13 of North Carolina to enforce the law.

14           Frankly, while they have some things they've said to  
15 try to make people feel less concerned about the law on campus,  
16 the truth of the matter is they've said it is our policy that  
17 we are going to start dividing people up based on biological  
18 sex rather than based on gender identity. We are going to  
19 change our policy.

20           President Spelling says in her declaration in this  
21 case, We'd like to go back to the old policy of allowing people  
22 to use these facilities based on gender identity, but we can't  
23 because of House Bill 2 until some court tells otherwise.

24           What is somewhat puzzling to me about the  
25 University's position, Your Honor, frankly, is why they are

1 fighting so hard against allowing us to convince you to tell  
2 them otherwise so that the problems that they have been  
3 describing on campuses of the kinds of harms that have been  
4 caused would be ameliorated, at least in the interim.

5 **THE COURT:** Do you know -- maybe Ms. Stoughton will  
6 know. Do you know if -- the Charlotte school system, I think,  
7 has announced that it doesn't intend to follow the law. Do  
8 they have the authority to make that decision?

9 **MR. SMITH:** Well, Your Honor, in that same statement  
10 that I was phrasing, Mr. Stephens said they didn't have that  
11 authority either in that discussion about the Violence Against  
12 Women Act. I don't know whether that statement, or anything  
13 else that has occurred, has caused the Charlotte-Mecklenburg  
14 schools to change their position on that. I expect, at least  
15 since school is out at the moment, maybe the issue has less  
16 salience than it may have --

17 **THE COURT:** I understand your position on the  
18 University. You are welcome to argue as much as you want. I  
19 think I understand where you are. I'm interested in some  
20 fundamental questions about how the system worked before H.B.  
21 2. So before H.B. 2, transgender individuals were using  
22 various bathrooms and showers without incident apparently.

23 **MR. SMITH:** That's correct.

24 **THE COURT:** And there are various laws that seem to  
25 be in effect to protect the interests asserted by the State:

1 The privacy laws, trespass laws, peeping laws. So let me start  
2 with the fundamental question, and, that is, why do we have  
3 separate bathrooms for men and women?

4 **MR. SMITH:** Separate bathrooms are a custom that's  
5 existed for probably two centuries in this country based on a  
6 sense that that's more appropriate.

7 **THE COURT:** Why?

8 **MR. SMITH:** I think it goes to this country's  
9 feelings of -- that the two sexes, the two genders, should be  
10 separated except in marriage, I guess. That's the traditional  
11 -- the origin where it came from.

12 **THE COURT:** It doesn't appear to me that the  
13 Plaintiffs are challenging the notion of separate facilities  
14 between men and women, but, rather, the issue is who should be  
15 using them?

16 **MR. SMITH:** That's correct, Your Honor.

17 **THE COURT:** Okay. So is it fair to say that the  
18 State's argument that there's a privacy interest has some  
19 general basis to it as a reason for the separation of the  
20 bathrooms?

21 **MR. SMITH:** Well, Your Honor, I guess what I would  
22 say in response to that is that there is -- with transgender  
23 individuals using a bathroom consistent with their gender  
24 identity, the privacy concerns are very tenuous, if there are  
25 any at all. People in bathrooms use stalls.

1           **THE COURT:** I understand that. The way bathrooms are  
2 constructed in the modern era, it's unlikely people would be  
3 exposed to each other's personal nudity, if you will, but my  
4 question is just generally -- I am trying to figure out why we  
5 have separate men and women's rooms. We have all taken it as a  
6 given, I think, for a millennia, as the State says. I'm trying  
7 to figure out, well, what interest is it that the Plaintiffs  
8 say they acknowledge, and where does the line get drawn.

9           **MR. SMITH:** Well, Your Honor, I guess we haven't  
10 challenged it because we don't see any harm being done by it.  
11 We think that both -- probably everybody being used to that  
12 state of affairs is more comfortable with --

13           **THE COURT:** Well, it's definitely sex discrimination;  
14 true?

15           **MR. SMITH:** Well, there's definitely a distinction  
16 drawn between people based on gender; that's correct, but since  
17 there's no stigma to either side and everybody is happy with  
18 it, we have not -- we wouldn't even think that it needs to be  
19 subjected to heightened scrutiny, Your Honor.

20           **THE COURT:** Does a transgender person, someone who's  
21 transgender, have a privacy interest in a bathroom, and, if so,  
22 how would you articulate that?

23           **MR. SMITH:** Well, I would think everybody has a  
24 privacy interest in not being unwillingly exposed to people  
25 that they think should not -- they would prefer not to be

1 exposed to. People have some autonomy about that sort of  
2 thing. A transgender person has no more or less privacy  
3 interest in using the bathroom than anyone else, and the  
4 reality of how the world was until March 23, 2016, in the state  
5 of North Carolina was that when Mr. Carcano went into the men's  
6 room, he went into the stall, no one thought a thing about it,  
7 and no one's privacy was implicated in the slightest. However,  
8 what this law says is if you want to use a multiple-user  
9 restroom facility, you, Mr. Carcano, have to go in the women's  
10 room.

11 **THE COURT:** I understand that.

12 **MR. SMITH:** And that is going to cause a great deal  
13 of upset.

14 **THE COURT:** I fully understand that. I am just  
15 trying to get some baseline understanding of --

16 **MR. SMITH:** I understand, and I'm trying to respond,  
17 Your Honor.

18 **THE COURT:** I want to know where there's agreement,  
19 if any, between the folks and where there's disagreement, where  
20 it diverges.

21 **MR. SMITH:** I could address the --

22 **THE COURT:** Does a biological female have a privacy  
23 interest in being exposed to the genitalia of a biological male  
24 in a bathroom or in a shower or changing room?

25 **MR. SMITH:** I guess I would say that the State has a

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1 legitimate interest in shielding people, say in this case women  
2 or teenage girls, for example, from being exposed to male  
3 genitalia in a changing facility. I understand that interest.  
4 The question, though, is whether or not -- by allowing  
5 transgender women who have not yet had genital surgery to use  
6 that facility, is there any meaningful chance that anything  
7 like that will happen.

8 **THE COURT:** I don't disagree.

9 **MR. SMITH:** Okay.

10 **THE COURT:** My question is, first, this is the  
11 baseline of what the interests are, and then the rest might  
12 bear on what the factual record is. And so I assume, by the  
13 same token, a transgender would have a privacy interest, in  
14 your view, in being exposed to the genitalia of somebody that  
15 they don't identify with?

16 **MR. SMITH:** You know, Your Honor, I'm not sure that  
17 the transgender people are all that concerned about these  
18 issues. They are just trying to get through life; but in terms  
19 of exposure to genitalia, they are probably the people that are  
20 the least worried about it of anybody in the world.

21 **THE COURT:** Okay. Does a transgender female have a  
22 privacy interest that the State has an interest in protecting  
23 of being exposed to male genitalia in a shower or bathroom or  
24 changing facility?

25 **MR. SMITH:** Well, a transgender woman will have had

1 male genitalia or may still have male genitalia, so I think  
2 that whatever privacy concern there is --

3 **THE COURT:** But they identify as female?

4 **MR. SMITH:** Yes, I understand that.

5 **THE COURT:** So would they have a privacy interest in  
6 not being exposed to the sex opposite to which they identify?

7 **MR. SMITH:** I think they would have significant  
8 interest in not being forced into a male facility where they  
9 are being forced to act as if they were a male. That's the  
10 harm that it's caused, and it causes clinical harm to  
11 transgender women when you do, but not so much because they are  
12 going to see male genitalia. They, of course, either have that  
13 or have had that, and the law doesn't really purport to protect  
14 transgender people's privacy. It's really purporting to  
15 protect other people's privacy from their presence in the  
16 facility. So it seems to me that's more what the law is really  
17 about.

18 I don't know that you are going to get any complaints  
19 from the transgender community about privacy concerns if we go  
20 back to the status quo. The status quo was working for  
21 transgender people in that they could make these judgments.  
22 They could use common sense. In most instances, what happens  
23 in a changing facility when a transgender person is in there  
24 but doesn't have -- hasn't had surgical transition yet is that  
25 they are just extraordinarily unlikely to expose themselves and

1 that part of their anatomy to the other people in the  
2 environment precisely because it's not consistent with their  
3 gender identity and because they know it may upset people, and  
4 so they don't do that. There is no history, there is no record  
5 of transgender people going into, say, the ladies' locker room  
6 and flaunting male genitalia. It is not going to happen.

7 **THE COURT:** I appreciate that, and I understand that.  
8 I thought earlier you had said that transgender individuals,  
9 like everybody else, have privacy interests in the bathroom. I  
10 am just trying to figure out what's the nature of the interest.  
11 Is it the same for all people, or is it different?

12 **MR. SMITH:** It's the same, Your Honor.

13 **THE COURT:** Okay.

14 **MR. SMITH:** Everybody has the same privacy interest  
15 of not being observed going to the bathroom. That is not a --  
16 that's a natural, equal thing that everyone has.

17 **THE COURT:** Now, putting the law aside for a moment,  
18 does the State's interest in privacy with respect to bathrooms  
19 and changing rooms and shower facilitates -- does the State  
20 have any heightened interest if minors are involved?

21 **MR. SMITH:** I suppose that I could agree with that,  
22 Your Honor.

23 **THE COURT:** So prior to House Bill 2, North Carolina  
24 has and still has various laws, as far as I can tell, designed  
25 to protect people's privacy and safety?

1           **MR. SMITH:** Sure.

2           **THE COURT:** One would be we have a no-peeping law,  
3 General Statute 14-202. It applies to any, quote, room. Is  
4 there any dispute that that would include a bathroom?

5           **MR. SMITH:** A no-peeping law, Your Honor?

6           **THE COURT:** Yes, sir.

7           **MR. SMITH:** I have no doubt it's illegal for people  
8 to engage in that behavior in the state of North Carolina in a  
9 bathroom.

10          **THE COURT:** Or a changing facility?

11          **MR. SMITH:** Or a changing facility, yes.

12          **THE COURT:** We also have an indecent exposure  
13 statute, 14-190.9. How does that statute apply, if at all,  
14 with respect to transgender individuals in bathrooms?

15          **MR. SMITH:** Well, Your Honor, our position would be  
16 that under the constitution they need to be allowed to use the  
17 bathroom consistent with their gender identity, and that in  
18 that setting, they would not be subject to some claim of  
19 indecent exposure if they are in the bathroom consistent with  
20 their gender identity.

21                 It is certainly true that those laws are relevant  
22 here because of the alleged concern about sort of predatory men  
23 running into ladies' facilities and showing themselves and that  
24 sort of thing. This law is certainly not going to do anything  
25 to prevent that kind of predatory behavior, which has existed

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1 for a long time and will continue to exist, but it is certainly  
2 illegal; and this law doesn't do anything to undermine the  
3 enforcement ability of the State with respect to that kind of  
4 conduct.

5           **THE COURT:** All right. And then the last set of laws  
6 appears to be a trespass law. In fact, there is a purported  
7 case of I think a young man or boy of going into a girl's  
8 restroom or shower or something in school, and it has a sign  
9 that says ladies' or girls' room, and kids went in there and  
10 they were charged with trespass.

11           Does that law apply in this context? How is that  
12 going to apply with respect to -- first, I assume it applies to  
13 biological nontransgender individuals. If a man goes into a  
14 ladies' room, technically, they are trespassing.

15           **MR. SMITH:** I have no dispute with that, Your Honor,  
16 and both the Governor and Speaker Pro Tem Stam have said that  
17 violators of House Bill 2, including transgender violators of  
18 House Bill 2, would be committing trespass, that trespass is  
19 the way in which the separation of genders in these facilities  
20 is enforced by the police and others in the state. And so one  
21 of the things that my clients and others in the state face is  
22 the threat that as transgender individuals they are going to be  
23 punished with trespass. Even if the University of North  
24 Carolina says we are not really all that interested in  
25 enforcing this law, that threat of a trespass prosecution hangs

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1 over them because this law now says we are not going to let you  
2 go use your judgment and follow your gender identity; we are  
3 going to only look at the sex you were assigned at birth and  
4 what your birth certificate says as a result.

5 **THE COURT:** Does the State of North Carolina have  
6 police jurisdiction over the constituent university system  
7 campuses?

8 **MR. SMITH:** My understanding is there are university  
9 police, but certainly that the state police can go in -- and  
10 university police can arrest people. As well, I think the  
11 state police could go on campus if there was a violation of  
12 state law. I don't know that it's insulated in some way from  
13 general jurisdiction of the state police.

14 **THE COURT:** All right. Let me give you a  
15 hypothetical. Under the indecent exposure statute, if a  
16 transgender female goes into a shower, and let's say it's a  
17 girl's shower in a high school and a 17-year-old transgender  
18 female is also for some reason showering with a 12-year-old  
19 group of girls, would they be subject to the indecent exposure  
20 statute in North Carolina which says, "any person who shall  
21 willfully expose the private parts of his or her person in any  
22 public place...except...where the same sex exposure is  
23 incidental to permitted activity," et cetera, is in violation?  
24 Is that a threat of prosecution?

25 **MR. SMITH:** I'm not familiar with the details of how

1 that statute applies here, Your Honor. I do think that the  
2 person -- that the transgender woman needs to be allowed access  
3 to that facility, but that some common sense guidance to the  
4 student saying we think that you ought to, when you are  
5 changing your clothes, use the stall over here is the way that  
6 this has, in fact, worked out, and that this is, therefore, a  
7 really hypothetical question, which, of course, you are  
8 entitled to ask. Hypothetical questions are the stuff of what  
9 we do in oral arguments, Your Honor.

10 I think it's a hard question for that result because  
11 you've got 12-year-old girls who are not familiar with male  
12 anatomy and somebody older who's showing that to them, a mature  
13 adult. I think that hypothetical is both entirely hypothetical  
14 and that the law is so much broader that it covers, you know,  
15 situations involving adults and situations involving pure  
16 restrooms and things like that, that what we're talking about  
17 is an extraordinarily unusual event that they used to sort of  
18 whip up concern.

19 I understand that that is a legitimate concern in  
20 many ways; where people who have a 12-year-old daughter who is  
21 going to junior high that think that that might happen, it  
22 would be a legitimate concern, but I just don't think that  
23 that's really a justification for what this law does or  
24 certainly a justification with respect to the narrow question  
25 that we're dealing with right now, which is what should the

1 status quo -- should the status quo be restored just for the  
2 next two months.

3           And given that there is no indication that such an  
4 event has ever happened or will ever happen, I just don't see  
5 that it's ultimately a basis for avoiding the kind of relief  
6 we're asking for today and the kind of harm -- we're inflicting  
7 the kinds of everyday harms that the transgender community is  
8 feeling, as Mr. Carcano has to go to a service elevator to go  
9 down to the housekeeping area of his building to find a  
10 restroom he is allowed to use, or as others have to go across  
11 campus to go find a restroom that they can use, and it's not  
12 just on campus, of course. If you go to the Department of  
13 Motor Vehicles, do they have a single-user bathroom that you  
14 can use?

15           Certainly, the option of going back into the bathroom  
16 that's assigned to the same people -- the sex that you were  
17 assigned at birth, once you've transitioned, it's not a  
18 feasible alternative. You freak out people when you do that,  
19 and it will cause harm to you medically to be forced to do  
20 that. So they are essentially left with no option, and those  
21 are real problems that are happening every day. The kind of  
22 hypothetical that you mentioned, which I think is a really good  
23 way to test the limits here, is so --

24           **THE COURT:** All I am trying to do is figure out what  
25 are the parameters that we're dealing with.

1           **MR. SMITH:** I appreciate that, Your Honor.

2           **THE COURT:** That's really all I am trying to do.

3           So is there any way a user of a restroom, changing  
4 facility, or bathroom can under H.B. 2 be charged with  
5 anything?

6           **MR. SMITH:** Well, as I think we were just discussing,  
7 I don't think there is any doubt that you -- I mean, if you're  
8 talking about a transgender --

9           **THE COURT:** No, just under H.B. 2 --

10          **MR. SMITH:** Yeah --

11          **THE COURT:** -- not the trespass. The reason I talked  
12 about trespass and others was those are separate laws. Does  
13 H.B. 2 provide any kind of way to charge somebody if they want  
14 to use the different restroom?

15          **MR. SMITH:** Not the statute itself. So it's only a  
16 question of what consequence do you have either as a result of  
17 breaking some university policy as a student or perhaps as a  
18 person arrested for trespass. Those are the kinds of threats  
19 that are out there.

20                 Of course, the other thing that happens in the real  
21 world is people know H.B. 2 is out there. They may know in  
22 your environment that you're a transgender individual. If you  
23 continue to try to use the restroom consistent with your gender  
24 identity, people are going to call you on it, like  
25 Mr. Carcano's employer said, well, sorry, we can't let you do

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1 that anymore. We know it wasn't causing any trouble, but we  
2 have to follow the law. So that's the -- we're all stuck in  
3 this together, and that's what happens.

4 **THE COURT:** Now, get to the changing rooms and  
5 showers. The *G.G.* case dealt with, and its holding, the  
6 bathrooms because that was a facility in Virginia.

7 **MR. SMITH:** Right.

8 **THE COURT:** Judge Niemeyer points out that the  
9 reasoning may very well be hard to distinguish if you want to  
10 try to draw lines elsewhere.

11 **MR. SMITH:** I agree with that. There was very little  
12 I agree with in --

13 **THE COURT:** I thought you might. So my question is  
14 explain to me why that is.

15 **MR. SMITH:** Well, first of all, as a matter of Title  
16 IX law, the same interpretive guidance that was used by the  
17 Fourth Circuit to analyze the regulation in which then becomes  
18 the binding obligation under Title IX refers both to restrooms  
19 and changing facilities. So the Department of Education has  
20 made the determination, as a matter of Title IX policy, it is  
21 not appropriate to exclude students from changing facilities  
22 that are consistent with their gender identity, that that's a  
23 violation of Title IX; that is a form of sex discrimination.

24 And that is a sensible outcome precisely because, as  
25 the University of North Carolina's various publications and

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1 statements make clear, in practice that works out fine. I  
2 mean, the University of North Carolina says, Margaret Spellings  
3 says, we never prevented anybody from using a changing facility  
4 based on their gender identity. We would like to go back and  
5 do that right now, and the reason is people have common sense.

6 Mr. McGarry says in his declaration that he was using  
7 lockers rooms routinely at the University of North Carolina in  
8 Greensboro, and he goes in there and what he does is he changes  
9 his gym shorts in the stall. That's what people do. As a  
10 result, he's not excluded from the environment where male  
11 students are supposed to be, and he is allowed to have full  
12 enjoyment of the facilities of the University of North  
13 Carolina.

14 **THE COURT:** The reason I was asking about the  
15 exposure laws and other things was one of the concerns the  
16 State raises is the privacy concern.

17 **MR. SMITH:** Sure.

18 **THE COURT:** And I think you indicated that the State  
19 has some interest in that. There may be a dispute over where  
20 to draw the line. As a practical matter, if people change in  
21 private areas where nobody will see them, then the other laws  
22 that arguably could apply, indecent exposure -- you can  
23 disagree whether it applies, but it's one that somebody could  
24 argue applies.

25 **MR. SMITH:** Exactly.

1           **THE COURT:** Then they don't come into play because as  
2 a factual matter it won't occur. I appreciate that. There is  
3 a lot of accommodation that seems to made, and I want to hear  
4 from the School Administrators about that.

5           My question, I guess, is the State's interest is one  
6 of privacy. We've talked about people of various ages. I am  
7 trying to figure out whether that indecent exposure law would  
8 probably apply or not apply in a situation like that if  
9 somebody changes -- they're biologically different from the  
10 people they're around, and so they change in a private  
11 facility. Let's say somebody decides they don't want to do  
12 that and they want to change out in the open. Would that be a  
13 problem under the law or not, under the exposure law?

14           **MR. SMITH:** Your Honor, I don't think so. Let me try  
15 to differentiate between two things. The first is the privacy  
16 interests of the other students in the environment. I don't  
17 think that there is any significant privacy concern over a  
18 bunch of male students being observed by a transgender male  
19 student in that environment who has -- who has, in fact, got a  
20 male gender identity. That concern is very attenuated, I would  
21 submit, and --

22           **THE COURT:** I thought earlier you told me that people  
23 generally have a privacy interest in not being exposed to the  
24 genitalia that's biologically different.

25           **MR. SMITH:** That's the second half. I was talking

1 about the privacy interests of the other users of the facility  
2 from not being observed by the transgender person.

3           Now, the question that you asked before, which is  
4 sort of the other side of the coin, is is there a State  
5 interest, I don't know whether it's privacy or something else,  
6 in shielding the other users who might be female from observing  
7 anatomical features of the transgender person who are not yet  
8 female or may never be. I think I conceded that that might be  
9 some interest at a certain age in theory if that ever happened,  
10 but as people get to be adults and people -- you know, I think  
11 that that interest becomes more and more attenuated as a matter  
12 of principle, even if it's always attenuated as a matter of  
13 practice simply because the problem doesn't arise.

14           I just wanted to differentiate between the two sides  
15 of the privacy coin. I don't really think that the State has  
16 much interest in protecting a bunch of men in a locker room  
17 from a transgender man walking in and seeing them in the  
18 shower. I mean, people see other people in the shower. If  
19 people want to be out in the locker room when they are getting  
20 showered, they are out in the locker room when they are getting  
21 showered. That's just -- they've made that choice.

22           **THE COURT:** Well, there is a host of cases in other  
23 contexts where they say people have a privacy interest in not  
24 only not exposing -- not being exposed to somebody else who is  
25 different, which is what we talked about, but also not having

1 to expose yourself to others of the opposite sex. They  
2 typically are in the prison context and otherwise where male  
3 guards are watching females go to the restroom and that kind of  
4 stuff.

5 I mean, is that not an interest that at some level  
6 there is a State interest in?

7 **MR. SMITH:** Well, you know, Your Honor, what we are  
8 talking about here is the transgender man entering a men's  
9 locker room. I don't think it's fair to equate that with a  
10 woman entering the men's locker room. That is just not what  
11 we're talking about here. This is a person who's got a male  
12 gender identity, has a male appearance, is living as a man, is  
13 a man for purposes of how life is going to be led for that  
14 person, and to protect others in that environment who choose to  
15 be naked and visible in a visible way, which some people do and  
16 some people don't in a locker room, from that seems to be a  
17 very attenuated interest, if there is an interest there at all.

18 **THE COURT:** I understand. Anything else on *G.G.*?

19 **MR. SMITH:** Your Honor, I do think *G.G.* controls here  
20 for the reasons that you explained, that the logic leads you  
21 directly to that, and the Department of Education says there's  
22 no problem. The University of North Carolina agrees with them,  
23 that we would like to go back to the old rules.

24 The School Administrators' brief and the Walker  
25 declaration, a lot of different materials we put in this record

1 suggest that the locker room thing is not a big deal, that it  
2 is not really a problem, and that the real problem is the kind  
3 of H.B. solution, which is to say we are going to legislate at  
4 the state level who gets to go in these places regardless of  
5 your gender identity, a problem which is kind of a problem the  
6 legislature created simply to send a message of disapproval of,  
7 I guess, Charlotte but also of transgender people. It's rather  
8 unfortunate they went well beyond preempting that statute to go  
9 out of their way and decide which transgender people are  
10 allowed in which facility at the state level when there was no  
11 record of any issue over that.

12           Now, we could talk about the constitutional claims  
13 against the State, if you'd like, Your Honor.

14           **THE COURT:** I do want to get into that because my  
15 impression is relief on Title IX is not going to give full  
16 relief in this case.

17           **MR. SMITH:** No, Your Honor. We are only asserting  
18 Title IX against the University of North Carolina as a  
19 corporate body. The other claims in the complaint are all  
20 constitutional claims, equal protection and due process claims,  
21 and they cover the rest of the public facilities in the state  
22 of North Carolina that are covered by House Bill 2.

23           And I would also note that we have an additional  
24 plaintiff on -- asserting those claims at the moment, which is  
25 the ACLU of North Carolina asserting associational standing on

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1 behalf of its member. So we have a broader array of people who  
2 are asking for both preliminary and permanent relief at the  
3 moment on the constitutional claims than we do on Title IX,  
4 although there is a very strong possibility we will be amending  
5 the complaint to add the ACLU of North Carolina as a Title IX  
6 plaintiff in the near future as well.

7 **THE COURT:** The letter you handed up a minute ago,  
8 the April 5th letter, I think it's in the record.

9 **MR. SMITH:** It certainly is, Your Honor. It was  
10 attached to an exhibit to the Spellings declaration, which was  
11 first filed when they were seeking a stay on behalf of the UNC,  
12 but it's been cited both -- in our reply brief a number of  
13 times.

14 **THE COURT:** In the event that there is any question  
15 about that, I am going to accept it and admit it for today as  
16 well so there's a record.

17 **MR. SMITH:** Thank you, Your Honor.

18 **THE COURT:** Okay. Well, let's turn to the  
19 constitutional claims.

20 **MR. SMITH:** Right. So on the constitutional equal  
21 protection claim, we have made a number of different arguments  
22 which we think are why that this form of discrimination, this  
23 law, which basically singles out one group of people,  
24 transgender people, and says we are going to treat you  
25 differently than everybody else -- why that needs to be

1 subjected to heightened, kind of intermediate, equal protection  
2 scrutiny of the kind that is given to gender discrimination.

3 **THE COURT:** So let me ask. You mentioned  
4 intermediate scrutiny. Is there any question but that this is,  
5 in fact, sex discrimination in some form and fashion?

6 **MR. SMITH:** We don't think so, Your Honor, but  
7 there's a number of the circuits out there that have held that  
8 discrimination against people because they changed their sex,  
9 because they are transgender is a form of sex discrimination.

10 **THE COURT:** Let me back up a minute. The law says we  
11 are going to separate bathrooms based on your gender, right,  
12 not necessarily your gender identity, just your gender?

13 **MR. SMITH:** Right.

14 **THE COURT:** Isn't that per se sex discrimination?  
15 The question is whether it's unlawful sex discrimination or  
16 lawful sex discrimination, but it is a form of discrimination  
17 based on sex?

18 **MR. SMITH:** Right, which is why they needed an  
19 exception in Title IX to allow them to have such things.

20 **THE COURT:** The case law seems to indicate that sex  
21 discrimination is entitled to -- or gets intermediate scrutiny.

22 **MR. SMITH:** Right.

23 **THE COURT:** And I heard you say "intermediate." Is  
24 that the argument of the Plaintiffs, that I should apply  
25 intermediate scrutiny?

1           **MR. SMITH:** Yes, Your Honor.

2           **THE COURT:** Okay.

3           **MR. SMITH:** And both because we think it's a form of  
4 sex discrimination going all way back to the *Frontiero* case --  
5 that's the intermediate scrutiny that is given to gender  
6 discrimination -- but also because if you look at it as a  
7 separate kind of discrimination, transgender discrimination,  
8 you want to see that as a separate thing.

9           If you apply the factors that the Supreme Court has  
10 enunciated for determining when heightened scrutiny should  
11 apply, those factors all apply here in a very -- they're not  
12 difficult to apply. Basically, what the Supreme Court has said  
13 is when we have a law that singles out a group of people, and a  
14 that's group of people that have a long history of  
15 discrimination against them, they are not politically powerful  
16 enough to protect themselves in the political process, it's not  
17 a characteristic that interferes with your ability to  
18 contribute to society, and it's not a characteristic that you  
19 can easily change, in those situations, the courts need to take  
20 a closer look at whether the Government has a real interest in  
21 what it's doing and has to sort of apply some skepticism, which  
22 is essentially what intermediate scrutiny is, to the law.

23           So we can get there that by calling this sex  
24 discrimination. It is obviously a form of sort of enforced  
25 sex -- gender conformity to say to people because you were born

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1 and assigned the gender of male, we are never going to let you  
2 change or at least recognize that change for these purposes.

3 **THE COURT:** The law technically seems to distinguish  
4 based on birth certificate, which is a proxy for your  
5 biological sex. Is that your view?

6 **MR. SMITH:** It is in North Carolina a proxy because  
7 in order to your change your birth certificate, you have to  
8 have had --

9 **THE COURT:** Right, but that's the focus of the law,  
10 that it distinguishes based on sex, based on your birth  
11 certificate, which is a proxy for your gender.

12 **MR. SMITH:** Right, your gender, meaning what they  
13 call biological --

14 **THE COURT:** Biological.

15 **MR. SMITH:** -- I would say is your sex assigned at  
16 birth, which is what somebody decided you were the minute you  
17 were born.

18 **THE COURT:** I understand. Help me understand this.  
19 I understand how it's affecting your clients. I appreciate  
20 that, but the law seems to distinguish not based on gender  
21 identity. It doesn't say if you have a certain gender  
22 identity, you have to do this or do that. It simply says we  
23 are going to separate bathrooms and changing facilities and  
24 showers based on biological sex, period.

25 **MR. SMITH:** Correct.

1           **THE COURT:** So help me understand how that is  
2 anything more than just sex discrimination based on biological  
3 sex.

4           **MR. SMITH:** Well, it is more than that because we  
5 have a population of people who have a gender identity  
6 different from what the law calls biological sex, and they are  
7 the only people that such a law has harmed because if you  
8 happen to be assigned male at birth and your gender identity  
9 for the rest of your life is male, House Bill 2 doesn't do  
10 anything to you. House Bill 2 only has a meaningful impact on  
11 your life if what they call biological sex is not, in fact, a  
12 gender identity and the identity that you are living your life  
13 out as.

14           So there is a very specific group of people that  
15 necessarily are the only people harmed and affected by this  
16 law. It is discriminating against that narrow and  
17 discriminatory group of people in saying we are not going to  
18 let you live your life consistent with your gender identity, at  
19 least for purposes of access to these facilities. Of course,  
20 you can't go back to the old facilities either because you are  
21 a guy now. You know, you can't go in the women's room or vice  
22 versa. You know, H. S. is not going to go in the men's room  
23 when she goes to high school. That is not going to work.

24           So what does this law do? It says to these people --  
25 everybody else is completely unaffected. To these people, they

1 have no good option in life and are put in a situation where  
2 both their health -- in terms of the recovery from gender  
3 dysphoria, their urinary health, lots of things are going to go  
4 wrong for them.

5           **THE COURT:** What are your best cases -- or case or  
6 cases on the proposition that when a law purports to  
7 distinguish on what's otherwise a ground like sex, biological  
8 sex, which may have justification -- I think earlier you said  
9 you weren't challenging the fact that we have separate  
10 bathrooms for men and women. So what are the cases that say  
11 when it has the effect of -- even though that wasn't the  
12 expressed statement of the law, when it has the effect of  
13 discriminating against others, in this case transgenders, then  
14 that's an equal protection violation. What is the best  
15 authority for that?

16           **MR. SMITH:** I would have to think about that.  
17 Obviously, I would point to *G.G.* as the case where the same  
18 basic recognition is that --

19           **THE COURT:** That's Title IX, though, of course.

20           **MR. SMITH:** It is, but, of course, Title IX is an  
21 implementation of the Fourteenth Amendment and has much the  
22 same logic --

23           **THE COURT:** There is a little bit of an issue there  
24 because that's the interpretation by the Department of  
25 Education as opposed to a court's interpretation, but I don't

1 want to bog down into that.

2           **MR. SMITH:** The other thing I could point to, Your  
3 Honor, is the marriage case that said everybody was free to  
4 marry in this country. The only people who were singled out  
5 prior to *Obergefell*, though, were the people who wanted to  
6 marry people of the same gender because of their sexual  
7 orientation. So while such a law could be viewed as just  
8 having a -- as not singling out any population, all of the laws  
9 that regulated both sodomy and marriage ended up being targeted  
10 at the gay community in much the same way.

11           **THE COURT:** That's the answer I was looking for.

12           **MR. SMITH:** Your Honor, there are certainly cases  
13 about transgender discrimination that I would point to.  
14 Perhaps the best one is the *Glenn* case from the Eleventh  
15 Circuit in which the Court unanimously said that if you fire  
16 somebody, because this was an employee of the Georgia  
17 legislature, who was a man, came to work the following week  
18 having transitioned to the female gender identity, was fired as  
19 a result of that, that's a violation of the Fourteenth  
20 Amendment.

21           **THE COURT:** Right. That's why I asked what I asked,  
22 though, because I understand in those cases, if you fire  
23 somebody because they are transgender, that's a violation. And  
24 in this case, the State's argument is, well, we're not doing  
25 that; we are separating you because of your biological

1 conditions.

2           **MR. SMITH:** Right. The answer I hope I was clear on  
3 is that the focus on sex assignment at birth or birth  
4 certificate or biological sex, or whatever you want to call  
5 that, is a problem only for one discrete community and  
6 everybody else it's not a problem, and it's perfectly clear  
7 what they were trying to do when they passed this law; they  
8 were trying to send a message of disapproval of transgender  
9 people coming into these facilities consistent with their  
10 gender identity. I don't think you can view this law as  
11 anything other than an attack on that community.

12           **THE COURT:** Okay. So that's an intent argument. I  
13 mean, are you also arguing that the intent of the law was to  
14 discriminate directly against transgenders?

15           **MR. SMITH:** Well, there are plenty of things that we  
16 put in in the form of clippings that show, I think, a fair  
17 degree of animus, as the term is used in *Romer* and *Lawrence* and  
18 other cases. It is not a lynchpin, I don't think, of our  
19 argument here because I would read this law on its face as  
20 discriminatory in its focus on so-called biological sex. You  
21 don't need to look at animus to decide that that was the  
22 purpose of the law because everybody reading the terms of the  
23 law would understand that.

24           **THE COURT:** All right. So if intermediate scrutiny  
25 applies, then the State needs to demonstrate important State

1 interests and a substantial relationship between those  
2 interests and the law. Do you agree that's the framework?

3 **MR. SMITH:** Yes, sir.

4 **THE COURT:** So tell me why they have not done that.

5 **MR. SMITH:** Well, we have -- first of all, we have no  
6 effort to put any evidence in this record at all to support  
7 those justifications at this point, and so as the motion stands  
8 now, you are basically supposed to kind of assume things for  
9 their purposes that they haven't even tried to support.

10 On the issue of safety that the -- there is a  
11 reference to various incidents that have occurred around the  
12 country when men have proceeded into women's facilities and  
13 either have been peeping Toms or predators in some other way.  
14 I would submit to you that the idea that this law would in any  
15 way affect the occurrence of those behaviors in the state of  
16 North Carolina is fanciful. It doesn't really make any sense,  
17 and so that, I think, is largely an emotional argument, not a  
18 logical argument, done to drum up support for a statute which  
19 really can't have had that as its purpose.

20 If people are determined wrongdoers, as the Supreme  
21 Court said last year -- this was in the *Whole Women's Health*  
22 network case, which we cite in our brief -- if there is a  
23 determined wrongdoer out there, this kind of regulation isn't  
24 going to prevent them. It's already illegal to do those  
25 things. I don't see that as an argument.

1           So then it really comes back down to privacy, the  
2 other justification that's been -- we've talked about that  
3 already.

4           **THE COURT:** We have, and this, I think, is going to  
5 get us back into our earlier discussion, which is why I am  
6 concerned about the existing laws that apparently are designed  
7 to ensure that the interests that the State says it has in this  
8 arena are properly protected; and that's why I asked the  
9 questions earlier about who can complain and who can't complain  
10 about it being exposed -- or exposing themselves to somebody in  
11 certain areas because those are the interests the State says,  
12 among others, that --

13           **MR. SMITH:** And if it was an ordinarily tailored law,  
14 there might be some arguments that could be --

15           **THE COURT:** How would they do that?

16           **MR. SMITH:** Well, if this was a law about what people  
17 do in junior high, that might be different from a law that  
18 covers every public facility in the state of North Carolina,  
19 including restrooms where everybody is using the stall. There  
20 is no meaningful privacy concern in that situation for a  
21 transgender woman to go into a women's facility. It's just not  
22 a meaningful concern.

23           **THE COURT:** In our society, there are some people  
24 that will just do whatever they want to do. That's why we have  
25 certain laws. Let's say that some male just decides I want to

1 go in and use the ladies' room because I don't think we should  
2 have gender-specific bathrooms. I'm personally opposed to it.  
3 So they go to the basketball game and decide they're going to  
4 go into the ladies' room. Presumably that would be a trespass  
5 because they are not supposed to go in there, everything else  
6 being equal; and if they then expose themselves in there,  
7 presumably the exposure laws might apply to them.

8           So my question is what happens if all those facts are  
9 the same, but we now found out that the male was actually a  
10 transgender male?

11           **MR. SMITH:** Your Honor, it's a women's room, and we  
12 are talking about a transgender woman going in or transgender  
13 male? I mean, I am trying to get --

14           **THE COURT:** I think the exposure law seems to suggest  
15 that you can't expose yourself knowingly in even a bathroom  
16 unless it's for a permitted -- incidental to a permitted  
17 purpose, I mean, if they just want to strip naked in a  
18 bathroom.

19           **MR. SMITH:** Well, I think that would be illegal in  
20 any bathroom. There is no purpose in being naked in the  
21 bathroom.

22           **THE COURT:** So that's really my question, and, that  
23 is, does that law on indecent exposure apply to anybody  
24 irrespective of their gender identity? And I thought I heard  
25 you say, well, it probably does.

1           **MR. SMITH:** Your Honor, I'm not sure I have been  
2 clear on this. Our position is that people should be able to  
3 access bathrooms and changing facilities consistent with their  
4 gender identity, even if their genitals don't yet conform to  
5 that gender identify. That's the issue --

6           **THE COURT:** I understand. And your argument is that  
7 the privacy concerns are well protected because people aren't  
8 going to go expose themselves?

9           **MR. SMITH:** Exactly, and then if they do, if they're  
10 loitering around the locker room or they're being peeping Toms  
11 or they're being predatory in some other way, it's not going to  
12 be the transgender people who are doing that, Your Honor, in  
13 reality; but they are subject to the law like everybody else,  
14 and if they are harassing others in that sensitive environment,  
15 and it is a sensitive environment, then they are going to be  
16 subject to the law, but the idea that somehow this law is going  
17 to help law enforcement address the other problem, which is  
18 with creepy guys who go into restrooms and do bad stuff, is  
19 simply a fantasy.

20           **THE COURT:** All right. I understand.

21           **MR. SMITH:** Your Honor, perhaps I should let others  
22 talk for a little while, but at the end, I might do some  
23 rebuttal.

24           **THE COURT:** All right. Thank you very much.

25 Ms. Stoughton, would you like to go next?

1           **MS. STOUGHTON:** Sure, Your Honor. Thank you for the  
2 opportunity to address the Court today.

3           **THE COURT:** Sure.

4           **MS. STOUGHTON:** We strongly urge the Court to find  
5 that H.B. 2 is irreconcilable with Title IX because it is  
6 discrimination on the basis of gender identity following the  
7 controlling precedent of *G.G.*

8           Rather than repeat anything Mr. Smith said, which I'm  
9 sure would please nobody, I would like to address a few points  
10 related to the specific questions that Your Honor raised,  
11 particularly as to privacy and also enforcement by the  
12 University of North Carolina.

13           The Court asked a fundamental question which I think  
14 pertains and relates to the debate about the indecent exposure  
15 law that was just occurring, which is why do we have separate  
16 facilities in the first place. I think the answer to that is  
17 clearly that we have a social convention that nondiscrimination  
18 laws like Title IX accommodate. That's reflected in the  
19 regulation that the Department of Education and the Department  
20 of Justice has put out, and we accommodate that because,  
21 although it is facially a sex-based classification, it causes  
22 no harm. I am not stigmatized because I am not permitted to  
23 use the men's room as a woman, but the exclusion of transgender  
24 people, as H.B. 2 does, is a classification that does cause  
25 harm. That's reflected in the Department of Justice and

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1 Department of Education interpretive guidance of the Title IX  
2 regulation, which says that if a funding recipient separates  
3 and has sex-separate facilities, they must provide access to  
4 that consistent with gender identity, and that relates back to  
5 the indecent exposure hypothetical that Your Honor offered. I  
6 think it's very clear from the text of North Carolina's  
7 indecent exposure laws that they would not apply to the mere  
8 presence of a transgender woman in a women's bathroom or locker  
9 room.

10 **THE COURT:** What do you mean mere presence?

11 **MS. STOUGHTON:** Well, the statute -- the misdemeanor  
12 statute, as I understand it, covers willful exposure and then  
13 exempts same-sex exposure that's incidental to legitimately  
14 being in that place. Both the term "willful" and that  
15 exemption would cover the presence of a transgender women in a  
16 women's locker room precisely because she -- a transgender  
17 woman is a woman and is changing in that facility just like any  
18 other woman would be changing in that facility, and any  
19 exposure of that body in that space wouldn't be any different  
20 from the routine exposure that happens in that place.

21 If it crossed the line -- as Your Honor pointed out,  
22 people do things, we have laws -- and became some sort of  
23 aggressive or willful exposure, and certainly if it rose to the  
24 level of exposure with the intent to provide sexual  
25 gratification of that person, it would become a felony under

1 North Carolina law, and those laws are fine and exist to cover  
2 the kind of behavior that I think motivated H.B. 2, but  
3 those -- the interest in constraining that behavior, as  
4 Mr. Smith pointed out, cannot justify a law that excludes, in  
5 violation of federal nondiscrimination law, transgender women  
6 from women's facilities and transgender men from men's  
7 facilities.

8           **THE COURT:** The law clearly allows no accommodation  
9 short of just a separate facility, and that's the only kind.  
10 There's no need to require that. It just says agencies may,  
11 but that's the only accommodation, and so I understand that  
12 practical accommodations of privacy curtains and other things  
13 are not an option currently that this law would permit; right?

14           **MS. STOUGHTON:** You mean H.B. 2 when you say the law?

15           **THE COURT:** Yes.

16           **MS. STOUGHTON:** Well, the law does not require those  
17 accommodations.

18           **THE COURT:** Right. It's the only one that's  
19 available, though, is a separate -- the only accommodation  
20 available under this law is a separate facility.

21           **MS. STOUGHTON:** Well, I do want to push back on the  
22 characterization there because that accommodation is available  
23 irrespective of Title IX. It's kind of -- the notion that --  
24 again, putting the issue of transgender people aside for the  
25 moment, in any given school or workplace or public building, if

1 a -- if the people in charge of the facilities in that building  
2 decided that to accommodate privacy interests in general, they  
3 wanted to create single-user facilities or they wanted to erect  
4 privacy curtains in a locker room, I think nothing prevents  
5 anyone from doing that ever.

6           What H.B. 2 does, though, is it starts with the  
7 premise that transgender women are no longer welcome in the  
8 women's room and men in the men's room and then acknowledges  
9 that, of course, a school, a public agency could construct  
10 single-user facilities, and there is nothing that stands in  
11 anyone's way of using those facilities. I think to assume, as  
12 the drafters of H.B. 2 did, that that accommodation could erase  
13 the discriminatory effect of the exclusion from the facility in  
14 the first place is not consistent with Title IX. It's not  
15 consistent with the Departments of Education and Justice's  
16 interpretation of Title IX, and as a practical matter, it  
17 doesn't actually do that because the harm from  
18 discrimination -- you know, some of the harm comes from can a  
19 person actually find a place to use the bathroom, but much of  
20 the harm comes from the stigma of exclusion.

21           Both the United States and, more relevant to this  
22 motion, the Carcano Plaintiffs have put in an extensive record  
23 on the nature of that stigma, both in the form of testimony  
24 from actual transgender people talking about that and in the  
25 form of expert testimony from people who have experienced

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1 treating transgender people and speak more generally about the  
2 interference that that kind of exclusion operates on the way  
3 that transgender people perform the social transition when they  
4 come to live as their gender identity in society.

5           So I think there can be no question that as an  
6 accommodation that that does not erase the discriminatory  
7 effect and the way in which H.B. 2 creates a conflict with  
8 federal nondiscrimination law.

9           **THE COURT:** I don't disagree. My only question was  
10 that was the only accommodation that the law would allow;  
11 right?

12           **MS. STOUGHTON:** Yes.

13           **THE COURT:** That was the only point I was trying to  
14 make sure I understood.

15           **MS. STOUGHTON:** And I apologize for the digression  
16 then.

17           **THE COURT:** That's all right.

18           **MS. STOUGHTON:** So I also wanted to address the  
19 question Your Honor asked -- you asked whether women have a  
20 privacy interest in not being exposed to, you know, male  
21 genitalia. I think the answer to that question is that there  
22 is not an interest there that can trump federal  
23 nondiscrimination law.

24           We have had and can have a discussion about the  
25 nature of that interest, but I think for purposes of the legal

1 discussion today, that is really all that matters, but I think  
2 it's also worth -- and there is case law that we have cited,  
3 you know, that suggests that that kind of interest, which has  
4 been present in the courts' application of nondiscrimination  
5 laws from the dawn of nondiscrimination laws, just simply is  
6 not an interest that permits discriminatory laws, but I think  
7 it's also worth noting that H.B. 2 doesn't actually prevent  
8 that. If a transgender woman changes her birth certificate --

9 **THE COURT:** I understand.

10 **MS. STOUGHTON:** -- it doesn't change that.

11 I think it's also in this context -- if the Court is  
12 engaged in that kind of balancing of privacy interests, you  
13 know, we would ask the Court to consider the interests of  
14 transgender people in not having their privacy violated by  
15 being outed.

16 Imagine the scenario where a transgender women is in  
17 her -- on her campus and all her women friends are walking into  
18 the women's bathroom, and she has to explain to them why she  
19 cannot go in with them and must go somewhere else. I think  
20 that is a privacy interest that also has to be considered.

21 **THE COURT:** What does the record show about whether  
22 there -- the only accommodation that the law -- H.B. 2 allows  
23 is a separate facility. What does the record show about the  
24 reasonable availability of separate facilities for bathrooms,  
25 changing rooms, and showers? Are they reasonably available, or

1 are they reasonably unavailable? What does our record show on  
2 that?

3 **MS. STOUGHTON:** The only record the Court has today  
4 on this motion is the record put in by the Plaintiffs, the  
5 Carcano Plaintiffs, where they have individual testimony from a  
6 number of their plaintiffs discussing the difficulties that  
7 those individuals have had in locating and reaching accessible  
8 facilities. So today, for purposes of this motion, the only  
9 record the Court has strongly suggests that those facilities  
10 are not readily accessible.

11 You know, I think when considering the broader legal  
12 question raised, I think it's important to note that H.B. 2  
13 does not require that accommodation.

14 **THE COURT:** I understand.

15 **MS. STOUGHTON:** At the end of the day, I think they  
16 are ultimately -- the notion that there is a transgender person  
17 out there who had this extra burden would be sufficient in and  
18 of itself to underscore that distinction between having  
19 sex-segregated bathrooms in the first place and segregating  
20 people from access to facilities consistent with their gender  
21 identity and the extra burden and harm that that places on  
22 them.

23 I also wanted to address specifically the question of  
24 locker rooms because I understand the Court to be focusing on  
25 that and I understand why, because it is true that the *G.G. v.*

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1 *Gloucester* decision, which I think we're in agreement with the  
2 Plaintiffs here unquestionably controls the question of  
3 likelihood of success on the merits on Title IX, did not  
4 address locker rooms. They addressed only bathrooms.

5 **THE COURT:** The opinion also seemed to, whether  
6 intentional or not, indicate that in the bathroom context there  
7 were partitions, and so their privacy interests seemed to be  
8 protected.

9 **MS. STOUGHTON:** Well, Your Honor, it did address  
10 that, but more fundamentally what the circuit -- the circuit's  
11 approach was to acknowledge that the balancing of these various  
12 interests is really in the realm of the agency's judgment, and  
13 what the circuit said is that in the context of this  
14 interpretive guidance of this Title IX regulation, that the  
15 circuit was persuaded that the Department of Education properly  
16 exercised its responsibilities as an agency to balance the  
17 varying interests that go into a requirement that  
18 sex-segregated facilities be available consistent with gender  
19 identity and concluded that the law requires that they must.

20 So the court really dismissed the privacy and  
21 security interests raised by the school district in that case,  
22 which are exactly the same as the interests the Defendants  
23 raise here, by saying that that -- in deferring -- that that's  
24 the agency's job to balance those things, and the agency did  
25 that, and the rule is still there, and it's entitled to the

1 deference that's required.

2           And, critically, for the purposes of locker rooms,  
3 that interpretive guidance and the regulation it was  
4 interpreting do not distinguish between bathrooms and locker  
5 rooms. It includes them in the same provision. It treats them  
6 identical. Not only, I think, does that effectively mean that  
7 *Gloucester* does control the question of locker rooms and  
8 changing facilities in addition to bathrooms, but I think it's  
9 also important to acknowledge the importance of consistent  
10 interpretation of the nondiscrimination mandate and the illogic  
11 that would and kind of regulatory chaos -- that's probably too  
12 strong a word, but it would be an odd regulatory environment  
13 for educational institutions to be in when they are required  
14 under nondiscrimination law to treat transgender girls as girls  
15 in the context of a bathroom but not in other contexts. That's  
16 not really a --

17           **THE COURT:** But they do draw lines; right? The  
18 Department of Education draws lines on sports; right? Aren't  
19 there certain areas -- even the guidance letter says you can  
20 draw a line. Isn't that why the word "generally" was used as  
21 the guidance from the Department of Education?

22           **MS. STOUGHTON:** Well, there's a couple of things in  
23 there that I want to address. First, the Departments of  
24 Education and Justice do not draw a line between bathrooms and  
25 changing facilities. When it comes to facilities access, the

1 line is the same. Those two things are equivalent. So whether  
2 there are lines drawn in sports teams I don't think pertains to  
3 the question of the line between bathrooms and changing  
4 facilities. The critical question is when the circuit requires  
5 controlling weight deference to this interpretive guidance,  
6 does the interpretive guidance draw the line, and it doesn't.

7 I think that's -- then a second thing is the word  
8 "generally." I mean, first, that word does not appear in all  
9 of the guidance that the Departments of Justice and Education  
10 have put out on this question, all of which guidance is equally  
11 entitled to *Auer* deference, but secondly --

12 **THE COURT:** Let me ask about that because one of the  
13 guidance letters is dated in May of this year, after the  
14 lawsuits were filed, I believe. Does that -- are you arguing  
15 that that letter is entitled to the same *Auer* deference as the  
16 January letter?

17 **MS. STOUGHTON:** Yes, Your Honor.

18 **THE COURT:** Even though it's been developed after the  
19 commencement of litigation?

20 **MS. STOUGHTON:** Yes, Your Honor. The law is very  
21 clear that under *Auer* deference whether -- the relationship  
22 between the regulatory and interpretive guidance and litigation  
23 is only relevant to the extent that it suggests that the  
24 Federal Government is developing a position solely for the  
25 purposes of litigation, but that guidance from May is merely a

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1 continuation of consistent guidance that's come from the  
2 Federal Government since as early as 2013, and so I don't think  
3 there's any question that that guidance would not be afforded  
4 the same deference by the Fourth Circuit as was afforded to the  
5 Department of Education's letter from earlier in the *Gloucester*  
6 decision.

7           So, Your Honor --

8           **THE COURT:** Can I ask this? What does the Department  
9 of Education and the Department of Justice say about how these  
10 rules apply to minors, particularly young people in the public  
11 school system? My impression is that through grades --  
12 kindergarten through some grade in elementary school, a lot of  
13 kids use a single bathroom in the classroom, or something like  
14 that. Then as they get into middle school, junior high, high  
15 school, there are multi-use bathrooms that are more prevalent.  
16 I don't know if that's, in fact, what it is, but I am now  
17 drawing back to my memory of many years ago, but I remember it  
18 being like that.

19           What is the Government's position on how these rules  
20 are going to be carried out in terms of transgenders in  
21 multi-use changing rooms and showers for young-aged children?

22           **MS. STOUGHTON:** Well, a couple of things, Your Honor.  
23 First, I am not going to dodge your question, but I do think  
24 it's worth pointing out that for purposes of deciding this  
25 motion, that question isn't directly relevant because H.B. 2's

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1 broad scope would still -- even if the answer to that is  
2 somehow problematic, H.B. 2's broad scope couldn't be  
3 justified.

4           But to answer your question, the Departments of  
5 Justice and Education have guidance suggesting that even in  
6 those facilities that nondiscrimination mandate applies and  
7 that facilities must be -- sex-segregated facilities must be  
8 made available consistent with gender identity. The Department  
9 of Education and the Federal Government generally have been  
10 involved in actions enforcing, in the high school context,  
11 Title IX's nondiscrimination mandate.

12           **THE COURT:** Okay. So are accommodations put in place  
13 to avoid young people from being exposed to people that are of  
14 a different biological sex or people of I would call  
15 impressionable years? I don't know what that is any more, but  
16 you can pick an age.

17           **MS. STOUGHTON:** Well, Your Honor, they can be. Your  
18 know, the Federal Government has put out -- the Department of  
19 Education put out an emerging practices document as part of the  
20 extensive guidance that it's provided to funding recipients  
21 that cites a number of educational institutions around the  
22 country that have confronted the question of providing  
23 gender-identity access to transgender students, and a lot of  
24 those emerging practices do involve those schools taking other  
25 steps to generally in a nondiscriminatory manner address

1 privacy concerns.

2 In this case, the record also provides evidence of  
3 that. The Carcano Plaintiffs put in an affirmation from a  
4 school administrator here in North Carolina. In the record for  
5 the United States' motion --

6 **THE COURT:** That's the Greensboro administrator?

7 **MS. STOUGHTON:** That's right, I think.

8 **MR. SMITH:** That's correct, Your Honor.

9 **MS. STOUGHTON:** Thank you. In the United States'  
10 motion, there's an affirmation from a woman named Janice Adams,  
11 who testified to extensive experience discussing with parents  
12 who actually raised concerns and reporting that actually in the  
13 end everything is fine, that there are ways that schools have  
14 to accommodate privacy interests while not discriminating  
15 against transgender children.

16 I think that really speaks to two things. One is the  
17 way in which the concerns that motivate laws such as H.B. 2 are  
18 really a shaking foundation on which to build a discriminatory  
19 law, but, secondly, the rightness of the Fourth Circuit's  
20 decision affording deference to the interpretive guidance and  
21 allowing the agency that is charged with enforcing Title IX to  
22 properly balance the concerns in the educational environment.

23 I also can't help but say, not that it's relevant,  
24 that my two young children, who are in pre-kindergarten,  
25 actually use an open bathroom. There are not individual

1 bathrooms. They actually -- they all use -- you know, mine are  
2 getting potty trained, but I think for supervisory purposes,  
3 they all just use this open bathroom area. I just raise that  
4 to show that every educational environment has to deal with  
5 these questions regardless of the presence of transgender  
6 students, and all that the nondiscrimination laws require that  
7 they do is that they do that in a way that doesn't discriminate  
8 in a way that, as the record demonstrates, causes enormous harm  
9 to transgender people while they sort those things out.

10 **THE COURT:** What's the percentage, if you know, of  
11 transgender students in the public school system who use or  
12 wish to use showers and changing facilities as opposed to  
13 bathrooms? Is it high? Low? I mean, do they tend not to? Do  
14 you have any idea?

15 **MS. STOUGHTON:** Your Honor, I just have no idea what  
16 the answer to that question is. I think relevant to that  
17 question there is record evidence suggesting that when  
18 transgender people do use these facilities, that -- I mean,  
19 there's record evidence from people who have enormous  
20 experience dealing with large numbers of transgender people and  
21 counseling them and having conversations about this topic with  
22 them and testifying that in the experience of those people,  
23 that when transgender people use these facilities, that they  
24 are not interested in exposing their bodies, that this notion  
25 that there will be this raft of exposure -- I mean, it's not

1 only belied by that testimony, but, frankly, as Mr. Smith  
2 indicated, by the fact that we have not had H.B. 2 in North  
3 Carolina, and indeed in many, many states and municipalities  
4 throughout this country, there are affirmative legal  
5 protections that allow transgender people to use facilities  
6 consistent with gender identity and, yet, despite all of that  
7 available record to draw from, the Defendants in this case have  
8 no record that there are a rash of privacy complaints, let  
9 alone security concerns, that demand the kind of response that  
10 H.B. 2 represents.

11 I would also, while I'm here, just want to address  
12 the questions of enforcement and enforceability with regard to  
13 the University of North Carolina that were raised earlier. I  
14 would first -- the Court asked the question of whether H.B. 2  
15 has an enforcement mechanism.

16 **THE COURT:** It's not clear to me how the law is  
17 supposed to work other than that the agencies are supposed to  
18 follow it.

19 **MS. STOUGHTON:** But I think that's enough. I mean,  
20 the enforcement mechanism is the power that a superior -- that  
21 form a -- or a level of government has over constituent  
22 government institutions to direct their policies and actions.  
23 I don't want to present as an expert in North Carolina law, but  
24 I think looking at the law and the governing structures of the  
25 University of North Carolina, it seems clear to us that the

1 University, through its Board of Governors, is beholden to the  
2 laws of the state of North Carolina.

3 **THE COURT:** So why wouldn't the Governor, as the  
4 chief law enforcement officer -- I guess that's a question --  
5 of the state -- why wouldn't he be covered? In other words,  
6 why do you need the University of North Carolina in this case?  
7 If I invalidate the law, Title IX, isn't the Governor a  
8 suitable defendant for that purpose, and do you need to have  
9 other defendants?

10 **MS. STOUGHTON:** Well, unfortunately, for purposes of  
11 your question, Title IX covers educational institutions. So  
12 Title IX is a requirement on UNC as a federal funding recipient  
13 to not discriminate in its educational programs and activities.

14 **THE COURT:** What is the relationship of the  
15 University to the state of North Carolina? It's an agency, is  
16 it not, an agency of the -- isn't the board treated as an  
17 agency, and isn't that part of the government of North  
18 Carolina?

19 **MS. STOUGHTON:** Well --

20 **THE COURT:** Maybe these are questions for the  
21 Defendants. It's not entirely clear to me why they are in the  
22 case other than it's abundantly clear to me the conduct that's  
23 involved, but if the Governor is the chief law enforcement,  
24 there must be more to it that the University has to be sued  
25 separately to get to the University. Otherwise, you can sue

1 all these various agencies in the state that have bathrooms  
2 that are not compliant with the law.

3 **MS. STOUGHTON:** Well, no, Your Honor. I think the  
4 right way to come out on this question is from the statute, and  
5 the statute is a requirement on the University not to  
6 discriminate, and so the question -- the question -- I mean,  
7 not to be too simplistic about it, but the question is is the  
8 University discriminating. That's separated from the question  
9 of why are they discriminating.

10 I think it's probably fair to say that the University  
11 is only discriminating because H.B. 2 was passed by the State  
12 of North Carolina, but that's not relevant to the question of  
13 are they, and I think they are for all the reasons that have  
14 been said.

15 I won't get into the Spellings memorandum. I mean,  
16 the Court is clearly very familiar with that, but this question  
17 of -- I think the critical question is what is the University  
18 of North Carolina's policy with regard to access to its  
19 bathrooms and changing facilities. The University, as  
20 Mr. Smith noted, has kind of been slippery about this. In  
21 certain contexts, it said, well, this is definitely not our  
22 policy, but it has nonetheless said that it is complying with  
23 H.B. 2. It's not only said that, but it's also said it's  
24 required by law to comply, and, in fact, it said that it will  
25 do so until a court orders otherwise. Those statements can't

1 be reconciled, Your Honor.

2 **THE COURT:** I understand that.

3 **MS. STOUGHTON:** So that's -- I mean, our position --  
4 again, it gets back to the question of what does Title IX  
5 require, and Title IX -- and the rightness questions also need  
6 to be viewed in the context of that statute because Title IX  
7 says that no student -- or no person shall be discriminated or  
8 denied the benefits of or subject to discrimination in an  
9 educational program. And to the extent that UNC's announced  
10 its intent to comply with H.B. 2, that is in violation of  
11 federal law, that in and of itself. Whether UNC is taking  
12 additional steps to enforce it is irrelevant.

13 This notion that has been offered in some of UNC's  
14 more recent submissions that it interprets H.B. 2 to only  
15 require it to take these, you know, three discrete steps which  
16 the University claims are not harmful, that doesn't work for  
17 two reasons. One is that is a nonsensical interpretation of  
18 H.B. 2. H.B. 2 says very clearly public agencies shall require  
19 that, et cetera, et cetera, and the notion that that -- all  
20 that means is that you send the law out and then you also stand  
21 up and say and we are not going to do anything about that, I  
22 don't think that can be reconciled with the statutory text,  
23 which takes us back to the circuit case law, *North Carolina*  
24 *Right to Life*, in which the circuit clearly said that when a  
25 statute kind of very clearly can be interpreted to cover

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1 certain behavior, a promise that a defendant will not interpret  
2 it or enforce it in a way that is clearly contrary to the text  
3 of the statute is really just the same as a litigation promise;  
4 it's not sufficient grounds to hold that a case is  
5 nonjusticiable.

6 **THE COURT:** All right. I appreciate --

7 **MS. STOUGHTON:** I'll stand down now and maybe let the  
8 other side have a chance.

9 **THE COURT:** I think what I am going to do is take  
10 about a 10-minute break, and then I would like to hear from the  
11 Defendants. I am going to finish before lunch. We tend to eat  
12 lunch a little later in the day here, so that might be a little  
13 later than for some folks. We'll take a 10-minute recess, and  
14 then we'll come back.

15 (The court recessed at 11:37 a.m.)

16 (The court was called back to order at 11:37 a.m.)

17 **THE COURT:** Before I start with the Defendants,  
18 Ms. Stoughton, the Department of Justice -- the United States  
19 has its own case. Is there any statutory relief in that case  
20 that, if granted, would reach all of the conduct in the state  
21 of North Carolina without having to get to a constitutional  
22 issue? Do you follow me on the question?

23 **MS. STOUGHTON:** Yes, Your Honor.

24 **THE COURT:** You have Title VII and the VAWA claim,  
25 but my question is that would not reach everybody.

1           **MS. STOUGHTON:** I think the answer to your question  
2 is, yes, there is conduct that would be reached by the  
3 constitutional claims that is broader than that which is  
4 covered by the three statutes.

5           **THE COURT:** That's what I thought. All right. Thank  
6 you.

7           Mr. Bowers.

8           **MR. BOWERS:** Thank you, Your Honor.

9           **THE COURT:** Tell me, what was the problem that this  
10 portion of Part I of H.B. 2 was remedying that preexisted for a  
11 millennia in North Carolina?

12           **MR. BOWERS:** I'm not sure I understand your question,  
13 Your Honor.

14           **THE COURT:** Well, I assume the statute was passed to  
15 make sure that there was some problem that was cured. What was  
16 the problem?

17           **MR. BOWERS:** It was in -- Your Honor, speaking solely  
18 on behalf of the Governor -- Mr. Duncan here, of course, is  
19 here to speak for the Legislature Intervenors -- the problem  
20 was simply the overreach by the City of Charlotte in their  
21 local ordinance.

22           **THE COURT:** But if you strike down that ordinance,  
23 which Part II of H.B. 2 effectively did, then why do you need  
24 Part I? What is it doing?

25           **MR. BOWERS:** It's clarifying what the public policy

1 of the state of North Carolina is, and it's also reaffirming  
2 the important government interests of ensuring privacy in the  
3 most intimate -- some of the most intimate segments in life.

4 **THE COURT:** Did the state have transgenders using  
5 restrooms that was of the sex they identified with prior to  
6 H.B. 2?

7 **MR. BOWERS:** I'm certain that's probably the case.

8 **THE COURT:** Was there any problem with that?

9 **MR. BOWERS:** I am not aware of any problem with that.

10 **THE COURT:** Is there any legislative record here that  
11 indicated that there was a problem that needed to be addressed?

12 **MR. BOWERS:** Your Honor, to my knowledge, though I  
13 will defer to Mr. Duncan on that, I know there were some  
14 legislative record, but I can't say that there was, as I stand  
15 here today.

16 **THE COURT:** Okay. So what's wrong with the State  
17 going back to the policy it had before the Charlotte ordinance  
18 was passed from a -- I don't mean wrong, I mean, from a point  
19 of protecting the interests that the State says it's seeking to  
20 protect?

21 **MR. BOWERS:** Your Honor, that's an interesting  
22 question, and I would say that -- I would turn that on its head  
23 actually, and I would say in the context of this preliminary  
24 injunction hearing, what's wrong with H.B. 2 on its face  
25 reaffirming the important government interests in ensuring

1 privacy in that setting?

2           **THE COURT:** Well, as I understand the argument from  
3 the Plaintiffs, the argument is, in part, that it doesn't do  
4 that, that it doesn't reaffirm the policy, that the protections  
5 in place in North Carolina were there with the various laws,  
6 trespass and others, which is why I asked about those, and that  
7 what this actually does is now exclude a certain group of  
8 people who previously were using restrooms and showers and  
9 changing facilities apparently without incident all the way up  
10 until the time Charlotte passed its ordinance. That's their  
11 position, I think. They can correct me, but --

12           **MR. BOWERS:** Right. Well, Your Honor, I'll just go  
13 back to Mr. Smith's arguments a little while ago -- or his  
14 statements, rather, is that there is a privacy interest in not  
15 being exposed to people, and that privacy interest applies to  
16 everyone, transgender or otherwise, and again H.B. 2 simply  
17 reaffirms and ratifies that that privacy interest --

18           **THE COURT:** Is that privacy interest protected by the  
19 indecent exposure and trespass and peeping laws and laws like  
20 that that I think you all pointed out to me as well in your  
21 briefing?

22           **MR. BOWERS:** Yes, Your Honor, I think that's true.

23           **THE COURT:** Why aren't those sufficient to protect  
24 those interests, or are they?

25           **MR. BOWERS:** Your Honor, I would say, like in the

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1 setting of traffic laws -- let's just use that as an analogy.  
2 You know, there are certain traffic laws that may, in fact, be  
3 duplicative or cover similar areas, but that doesn't mean that  
4 they are inappropriate. So, for example, speeding versus --  
5 speeding is -- exceeding the speed limit is against traffic  
6 laws, and also improper lane changes are against traffic laws,  
7 but they are all designed towards safety. So just because  
8 there are multiple laws doesn't mean that you can't have  
9 additional laws. So this is just an additional law to, again,  
10 confirm and reaffirm and ratify that --

11 **THE COURT:** How does this law make bathrooms and  
12 changing rooms and showers safer in North Carolina?

13 **MR. BOWERS:** Well, I will go back to your question  
14 that you asked I think it was at the start, maybe, you know,  
15 one of the top two or three questions -- the first two or three  
16 questions you asked, and, that is, haven't we, as a society,  
17 forever had separate facilities for men and women, and the  
18 answer is yes. And so is that an appropriate sex  
19 discrimination? And I haven't heard any dispute. I think the  
20 answer is, yes, that's -- a legitimate government interest is  
21 served, and H.B. 2 simply amplifies that and confirms that  
22 the -- again, the legitimate government interests of the  
23 safety -- I'm sorry -- of privacy rights of individuals from  
24 not having -- not being exposed to the genitalia of people of  
25 the opposite sex is --

1           **THE COURT:** Let's start with the bathrooms. But in  
2 the bathrooms, how are they ever going to be exposed to  
3 somebody with -- nudity of somebody of the opposite biological  
4 sex? They are in partitions generally.

5           **MR. BOWERS:** But not always, not always. Let's just  
6 use a hypothetical. If a transgender female goes into a  
7 women's public restroom, it's possible that --

8           **THE COURT:** How is that going to be possible? The  
9 last time I thought about it, there aren't any urinals in the  
10 ladies' room, are there?

11           **MR. BOWERS:** Not to my knowledge. I'll give you a  
12 perfect example.

13           **THE COURT:** I am at a loss as to what the  
14 circumstance would be, unless somebody strips down naked in the  
15 bathroom, which I think is in violation of the law, as I  
16 understand it.

17           **MR. BOWERS:** Your Honor, I am aware -- in military  
18 facilities, I am aware that there are public restrooms where  
19 there are stalls but not doors. That's one potential  
20 opportunity for the exposure.

21           **THE COURT:** All right. Are any of those involved in  
22 our case?

23           **MR. BOWERS:** They may be. We haven't developed the  
24 record yet.

25           **THE COURT:** So under the law, as I understand it, a

1 transgender female, who, from all outwardly appearances, lives  
2 the life as a female, dresses as a woman, is considered by  
3 everybody to be the gender to which they identify, now has to  
4 use the men's room, how on earth is that supposed to work? So  
5 we are now going to have people dressed like women using the  
6 men's room, as required by this law, particularly if there is  
7 no available accommodating single-use facility; and, vice  
8 versa, we are going to have people dressed like men who  
9 consider themselves male walking into the ladies' room. How is  
10 that going to work?

11 **MR. BOWERS:** I think you answered the question  
12 partially by talking about the single-occupancy restrooms.  
13 Admittedly, they won't always be available; but when they are,  
14 that's one way. Secondly, I mean -- and this is not argument.  
15 It's pure speculation on my part, but my guess is that some  
16 transgender individuals will continue to use the bathroom that  
17 they always used and nobody will know.

18 **THE COURT:** Yeah, but now they are violating the law.  
19 So what's the point?

20 **MR. BOWERS:** But there is no enforcement provision of  
21 the law.

22 **THE COURT:** Then why have it? I don't understand.

23 **MR. BOWERS:** Right. Your Honor, that might be a  
24 question better reserved for Mr. Duncan and the Legislature  
25 Intervenors, but from the Governor's perspective, we have the

1 law. He signed the law into effect, because it does stand for  
2 the proposition of protecting the privacy rights of  
3 individuals.

4 **THE COURT:** I understand. Hold on just a minute. I  
5 don't know if you had other information you wanted to --

6 **MR. BOWERS:** I do briefly.

7 **THE COURT:** Okay. Go ahead.

8 **MR. BOWERS:** Just very briefly, Your Honor, I wanted  
9 to talk about the Plaintiffs' equal protection claim. As Your  
10 Honor is aware, to state a claim for sex discrimination under  
11 the Equal Protection Clause, they must allege purposeful  
12 discrimination based on sex; and the core of their arguments,  
13 as I read it, is based on their belief that the *G.G.* case  
14 governs this Court's analysis under the Equal Protection  
15 Clause, and that argument appears on page 18 of their initial  
16 brief.

17 Well, Your Honor, unless I'm misreading *G.G.*, that  
18 can't be the case, because in Footnote 3, the Court  
19 specifically declined to reach the equal protection issue.

20 **THE COURT:** I think their argument, and they can  
21 speak for themselves, is that typically Title IX and Title VII  
22 and equal protection are all read in tandem, and, therefore,  
23 the analysis of the Title IX ought to, therefore, not be  
24 inconsistent with the others. The interesting question there  
25 is, of course, usually the courts will be determining the equal

1 protection analysis; whereas, the Department of Education has  
2 determined the analysis for Title IX. I understand that  
3 distinction.

4           **MR. BOWERS:** And, Your Honor, if I could follow up on  
5 that briefly. As you well know, they have a specific Title IX  
6 claim in addition to their equal protection claim, and so I  
7 think if we take the Fourth Circuit at face value with *G.G.*  
8 where they specifically declined to reach the equal protection  
9 issue, then I think because there's a separate Title IX claim,  
10 you have to go look at the Title VII case law, and Plaintiffs  
11 rely heavily on the *Price Waterhouse* case and its line of  
12 cases.

13           And, Your Honor, I think that it's instructive to  
14 look at those *Price Waterhouse* cases, and a close reading of  
15 those cases shows that the individual status as a transgender  
16 person is not relevant. The relevance is was there  
17 discrimination based on sex stereotyping; and maybe I missed  
18 the point, but in reading the Plaintiffs' briefs, it seems as  
19 though they are trying to mix and match sex stereotyping with  
20 transgender, but that's not the case.

21           And the best -- to me, the best case is from 2015,  
22 the *Johnston* case, where, you know, the courts said that sex  
23 stereotyping claims are based on behaviors, mannerisms, and  
24 appearances. And in the *Johnston* case, "Plaintiff has not  
25 alleged that Defendants discriminated against him because of

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1 the way he looked, acted, or spoke. Instead, Plaintiff only  
2 alleges that the University refused to permit him to use the  
3 bathrooms and locker rooms consistent with his gender identity  
4 rather than his birth sex." And then the Court went on to say,  
5 of course, "Such an allegation is insufficient to state a claim  
6 for discrimination under a sex stereotyping theory."

7 That's what we have here, Your Honor. I would just  
8 again emphasize that H.B. 2 is not based on sex stereotyping,  
9 and so, therefore, as a result, their equal protection claim  
10 must fail.

11 **THE COURT:** All right. Are you going to address the  
12 due process claim?

13 **MR. BOWERS:** I was going to let Mr. Duncan handle  
14 that, if that's okay?

15 **THE COURT:** Okay. Let me ask before you sit down.  
16 I'm not sure who knows the answer to this, but as a practical  
17 matter, how many single-use facilities for accommodation are  
18 available in North Carolina or how many -- what percentage?

19 **MR. BOWERS:** As a percentage?

20 **THE COURT:** Yes. Is there any record on that, that  
21 there is, in fact, the availability of them? I have record  
22 evidence from the Plaintiffs that they're not readily  
23 available. Is there anything else on that?

24 **MR. BOWERS:** As I stand here before you today, I'm  
25 not sure, but that might be something -- a number that we can

1 capture.

2 **THE COURT:** Let me ask, for example, all the roadside  
3 bathrooms along the highways, the interstates --

4 **MR. BOWERS:** Rest stops?

5 **THE COURT:** Rest stops, are they typically divided  
6 men/women and without a separate accommodating facility or not?

7 **MR. BOWERS:** Your Honor, again, I am not dodging the  
8 answer. Just anecdotally, based on my own personal experience,  
9 I really never noticed because I always go into men's room, but  
10 that's probably some information that we can gather, if it will  
11 be helpful to Your Honor.

12 **THE COURT:** All right. Thank you.

13 **MR. BOWERS:** I am not just sure as I stand here  
14 today.

15 **THE COURT:** Thank you. All right.

16 **MR. DUNCAN:** Good afternoon -- or it's almost the  
17 afternoon, Your Honor. May it please the Court, Kyle Duncan,  
18 representing the Intervenor Defendants, and we appreciate the  
19 opportunity to argue before you.

20 It was and is my intention to hit the Title IX and  
21 the due process argument, but I would like to take a crack  
22 first at some of the more basic questions that Your Honor was  
23 asking earlier. Let me start here. One of the basic questions  
24 you asked was why do we have separate bathrooms. I think by  
25 extension you could say, why do we have separate locker rooms?

1 Why do we have separate shower facilities?

2 I would like to give you two answers that I sort of  
3 view as anchor points on this, and the first one is from the  
4 Fourth Circuit, 1993, case called *Faulkner v. Jones*. The  
5 Fourth Circuit there talks about, quote, society's undisputed  
6 approval of separate public restrooms for men and women based  
7 on privacy concerns.

8 And then I would also like to give you Justice  
9 Ginsburg's answer from *Virginia v. United States*, 1996, which  
10 was, as Your Honor knows, about allowing women under the Equal  
11 Protection Clause to enroll at VMI. Here is what Justice  
12 Ginsburg said in that case: "Admitting women to VMI would  
13 undoubtedly require alterations necessary to afford members of  
14 each sex privacy from the other sex in living arrangements, and  
15 to adjust aspects of the physical training programs."

16 So just taking those two anchor points, I think with  
17 a very solid answer, we can get to Your Honor's question. One  
18 answer is physical privacy between the sexes that is  
19 inescapably rooted in biology. Otherwise, those two quotes  
20 that I just read don't make any sense.

21 Now, let me get to *G.G.* because I want to talk about  
22 *G.G.* in its Title IX context, and we know Your Honor has read  
23 carefully *G.G.* and must take it seriously because it's from the  
24 Fourth Circuit. Here is what *G.G.*, the majority, says at the  
25 end of its opinion. It says: "We agree that it has indeed

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1 been commonplace and widely accepted to separate public  
2 restrooms, locker rooms, and shower facilities on the basis of  
3 sex. We agree that an individual has a legitimate and  
4 important interest in bodily privacy such that his or her nude  
5 or partially nude body, genitalia, and other private parts are  
6 not involuntarily exposed." Of course, the dissent amplifies  
7 that point by citing cases about one having a constitutionally  
8 protected interest in not being exposed to the opposite sex.

9           So I think if you take those three ideas together, it  
10 provides a very clear and straightforward answer to Your  
11 Honor's question. We have separated those facilities because  
12 they are intimate facilities. We separated them not because of  
13 some kind of social convention, not because we just didn't  
14 think about it carefully enough, but because of real concrete  
15 interests in bodily privacy. That applies to anybody, no  
16 matter what their gender identity is, and it's rooted in  
17 biology.

18           One other point I would like to make. We've been  
19 talking a lot about the status quo and that H.B. 2 upset the  
20 status quo or did it return us to the status quo. I would  
21 submit this, Your Honor. If the Charlotte ordinance were  
22 accomplishing anything, it was to ensure that people could  
23 access restrooms, shower facilities, and changing rooms based  
24 on their gender identity. It thought it was accomplishing  
25 something obviously.

1           Now, if the status quo were that there was no problem  
2 accessing those facilities on the basis of gender identity  
3 alone, then I don't understand what the Charlotte ordinance was  
4 doing, and I submit this, that what was the true status quo.  
5 The true status quo is expressed -- and this will get me to  
6 Title IX and *G.G.* The true status quo is expressed by Title IX  
7 and the consistent understanding of that law and the  
8 regulations under it, that it existed until about January of  
9 2015. That consistent understanding was that facilities can be  
10 separated, meaning locker rooms, restrooms, and shower  
11 facilities as well as living arrangements and others, can be  
12 separated on the basis of sex.

13           We submit, Your Honor, that understanding was  
14 biological sex, and we don't need to speculate about that  
15 because it was only in January 2015 that the DOJ put forward  
16 the opinion letter that the *G.G.* Court thought it needed to  
17 defer to, and it said in the opinion, that is a "novel"  
18 understanding of the regulation. It is "perhaps not  
19 intuitive," I'm quoting, and it only came about through an  
20 opinion letter in January 2015.

21           Admittedly, the *G.G.* Court recognizes there were a  
22 couple of enforcement actions by the DOJ going back to 2014,  
23 but my point is this is a novel understanding of what Title IX  
24 requires in the separation of intimate public facilities. The  
25 status quo, based on Title IX and based on common expectations,

1 was that these facilities are separated on the basis of  
2 biological sex. The only reason --

3 **THE COURT:** Was part of the status quo, though, that  
4 people who were transgender were nevertheless using facilities  
5 that corresponded with their gender identity, and it was under  
6 the radar?

7 **MR. DUNCAN:** I submit to Your Honor the only way we  
8 know anything about that right now is because of the affidavits  
9 that the Plaintiffs have submitted in that case. Those  
10 affidavits, as Mr. Smith has stressed, are about those  
11 Plaintiffs' particular circumstances and what they were doing.  
12 Okay, so we may know that about them, but to take that and  
13 extrapolate it to this broad --

14 **THE COURT:** I have a little more than that, I think,  
15 because I have the School Administrators in these cases saying  
16 that, well, they have been dealing with these issues for at  
17 least a number of years, and they do what they can to  
18 accommodate transgender persons in the school system.

19 **MR. DUNCAN:** Well, this is something that Mr. Bowers  
20 said we are going to develop a much more robust evidentiary  
21 record on, but to even take these affidavits and extrapolate  
22 that the status quo was DOJ and ACLU's policy -- I guess that's  
23 my ultimate point. The policy being asserted by the Justice  
24 Department and by the ACLU is that anyone should be able to use  
25 restrooms, locker rooms, and shower facilities based on their

1 own internal self-understanding of their gender identity.

2 That's the policy, as I understand it, that is being  
3 put forth by the Justice Department and the ACLU. I think it  
4 stretches credibility to the breaking point to say that that  
5 was the status quo in North Carolina or anywhere else before  
6 H.B. 2 was passed. H.B. 2, as Mr. Bowers said, was clarifying  
7 the status quo.

8 **THE COURT:** Would it be more accurate, from your  
9 point of view, to say that the status quo before H.B. 2 was  
10 that biological men and women would use the bathrooms that  
11 corresponded biologically with their sex but that transgenders  
12 were also using the ones to which they identified, but we just  
13 had no incidents of anybody worrying about that?

14 **MR. DUNCAN:** I just don't think we have any basis in  
15 this record for making a broad statement like that.

16 **THE COURT:** Can't we assume that since we have 44,000  
17 or so transgender individuals in the state of North Carolina  
18 and that many of them are living the life of the gender that  
19 they identify with, that since we haven't seen lots of people  
20 appearing as men walking into ladies' rooms or vice versa, that  
21 they must have been doing that?

22 **MR. DUNCAN:** Honestly, Your Honor, I do not think you  
23 can generalize, and here is one reason why I don't think you  
24 can generalize. By the very nature of the claims that the  
25 Plaintiffs are making, this is a transition process in which

1 people will present as being more or less masculine or feminine  
2 along a continuum. I think that's perfectly illustrated by the  
3 named plaintiff in this case, who, until late 2015, was using  
4 the women's bathroom, if I understand the affidavit correctly.

5           So I don't think you can just say, at least I don't  
6 think the record supports it, that there is this population,  
7 this discrete population of people who are a certain way and  
8 who are doing a certain thing with respect to bathrooms, be it  
9 in men's or women's bathrooms. I think it is far, far more  
10 complex than that, which is one reason why we look forward to  
11 developing a more robust evidentiary record on this issue, but  
12 the one thing I do resist is the idea of the status quo before  
13 H.B. 2 is a DOJ policy. I don't think that's supported by the  
14 record, and I think it's belied by what the DOJ has been doing  
15 with its guidance documents. If that were the status quo, why  
16 do we need a January 2015 guidance document from DOE that says  
17 how people ought to be treated? I think the fairer thing to  
18 say is that this is an area in flux. The flux has been  
19 happening more and more rapidly. For what reasons, I don't  
20 know why, but it's an area in flux, which is why you see such  
21 rapid action by the DOJ.

22           As Your Honor pointed out, not a week after these  
23 lawsuits were filed, we have a "Dear Colleague" letter  
24 submitted by DOJ and DOE that expands on what the 2015 letter  
25 was doing, and it expands it not only to restrooms, locker

1 rooms, and shower facilities, but also to overnight  
2 accommodations, to housing facilities. It does stop short on  
3 sports, Your Honor. We do agree with Your Honor on sports.  
4 The guidance given in the DOE letter is confusing with respect  
5 to sports, but it's very clear with respect to showers, with  
6 overnight housing, and with dorm rooms or housing foundations.

7           So having said all that, let me address -- and I  
8 understand -- I want to be brief on this because I understand  
9 the time constraints. On Title IX, we've already briefed why  
10 we don't think *G.G.* compels success on the merits on Title IX,  
11 so I am not going to rehash that. I know Your Honor's read it.

12           Let me emphasize one specific point that we make. It  
13 seems to us clear that the *G.G.* Court said there were no  
14 constitutional objections raised to the agency interpretation.  
15 That seems clear to us. It also seems clear that both the  
16 Governor and the legislators are raising a number of  
17 constitutional claims to the agency interpretation. In other  
18 words, if Title IX and its implemented regulations mean what  
19 DOJ and ACLU say it means, we are raising constitutional  
20 objections.

21           Let me emphasize one in particular, and why? Because  
22 I think the *G.G.* decision paradoxically actually proves it for  
23 us, and that's the Spending Clause objection. Title IX is  
24 obviously a Spending Clause measure, and it is settled law,  
25 it's been settled since 1981 in the *Pennhurst v. Halderman*

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1 decision, also reiterated in *Arlington Central School District*  
2 *v. Murphy*, that when the Federal Government puts spending  
3 conditions on federal funds, they must be unambiguous. The  
4 spending recipient must have clear notice so that those  
5 conditions must be, quote, clearly understood by the recipient.

6           Now, we submit, Your Honor, the *G.G.* decision  
7 demonstrates that if Title IX means what the ACLU thinks it  
8 means, it's unconstitutional because there is no way that a  
9 funding recipient of Title IX funds could have anticipated that  
10 sex in Title IX and its implementing regulation includes gender  
11 identity, the self-assertion of an internal sense of gender.  
12 We don't need to speculate about that. If it were clear, why  
13 would DOJ have to issue a January 2015 letter followed by a  
14 "Dear Colleague" letter explaining it to everyone? It wasn't  
15 clear. Again, we don't need to speculate because the *G.G.*  
16 Court found that the regulation itself was ambiguous. That's  
17 why it applied *Auer* deference to begin with.

18           So if it found that it was ambiguous, Title IX cannot  
19 mean that gender identity discrimination is included because  
20 it's a funding mechanism that would violate the *Pennhurst*  
21 principle. So that's something that the *G.G.* Court did not  
22 consider, left it open. There you have a local school district  
23 policy. Here you have a state law, right, and you have  
24 enforcement action by the DOJ and an action by the ACLU,  
25 seeking to hold that unconstitutional and in violation of Title

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1 IX.

2           What's missing here is the idea that funding  
3 recipients could have possibly known about this. That's just  
4 something the *G.G.* opinion didn't address, and so we can take  
5 *G.G.* -- we disagree with *G.G.*, obviously. We don't need to  
6 hide the ball. We disagree with it, but we can take it at face  
7 value and still say it doesn't address the constitutionality of  
8 imposing that requirement on Title IX funding recipients under  
9 the *Pennhurst* principle.

10           I want to address due process very quickly.

11           **THE COURT:** So are you saying that I could find that  
12 *G.G.* doesn't apply to me because it's unconstitutional as  
13 applied in this case?

14           **MR. DUNCAN:** No, Your Honor. We're saying that *G.G.*  
15 left open the question of whether the agency interpretation of  
16 Title IX is constitutional. *G.G.* specifically said it didn't  
17 consider that question. Whether because it wasn't raised, I  
18 don't know, but it wasn't raised.

19           Here you have a different situation. You have a  
20 state law that has been passed, and you have a DOJ and ACLU  
21 action that says it violates Title IX. That inescapably puts  
22 into question the Title IX funding for the state. When the  
23 attorney general announced this lawsuit on May 9, she said --  
24 and I am not quoting; I'm paraphrasing. She said funding is  
25 not an issue yet. We reserve the right to make it an issue.

1 It's obviously an issue.

2           And by the way, Your Honor, we don't agree or admit  
3 that DOJ can strip funding. We would fight that tooth and  
4 nail, but what we're saying is if funding is an issue under  
5 Title IX, Title IX cannot mean what the ACLU and DOJ thinks it  
6 means because that would violate *Pennhurst*. I just don't see  
7 how one could argue that this requirement for a funding  
8 recipient is unambiguous under *Pennhurst*. The *G.G.* opinion  
9 itself said it was ambiguous and that there were two possible  
10 interpretations: One was biological sex and one was sex plus  
11 gender identity in some combination, biological sex plus gender  
12 identity. But the Fourth Circuit very clearly said we are not  
13 choosing between those two. They are both reasonable. We  
14 defer over here. So that's the Title IX --

15           **THE COURT:** Is that a timing issue, if I were to  
16 agree with that, that the -- if it's an issue in the case, is  
17 it a timing issue that for some next cycle of funding, then the  
18 State would be put on notice that that's the interpretation if  
19 you want to receive the funding?

20           **MR. DUNCAN:** I don't think so, Your Honor. I think  
21 it's an issue of pure statutory construction. In other words,  
22 you can't put -- I don't see how you could put funding  
23 recipients on notice through an agency letter like that. That  
24 would be a very strange way of putting an agency on notice.  
25 Let me make that more concrete.

1 I've got the agency letter right here. This is the  
2 January 2015 letter to which the Fourth Circuit deferred. It  
3 says, quote, on page 2, OCR refrains from offering opinions  
4 about specific facts, circumstances, or compliance with federal  
5 Civil Rights laws without first conducting an investigation.  
6 So that would be an awfully counterintuitive way of putting a  
7 whole state on notice that either all or part of its federal  
8 funding has been put at issue.

9 I think it's a straightforward application of  
10 *Pennhurst* here, and it's something that's -- quite frankly,  
11 it's just something that the *G.G.* opinion didn't consider.

12 **THE COURT:** So what does that mean at this stage of  
13 the litigation?

14 **MR. DUNCAN:** I think it means that they don't have a  
15 substantial likelihood of success on the merits on Title IX.  
16 It certainly means that *G.G.* doesn't compel that conclusion,  
17 which gets to some of our other arguments that I know Your  
18 Honor has read already about the limitations on *G. G.*

19 Let me just note very quickly. *G.G.* is limited to  
20 the specific policy at issue in Gloucester County. That policy  
21 does not have any provisions for people who have undergone  
22 sexual reassignment surgery. In fact, the opinion said that  
23 was a question that concerned the panel. H.B. 2 obviously does  
24 address that question. It's a policy decision by North  
25 Carolina to address it that way.

1           And the second thing is we've heard a lot of  
2 discussion about the limitations of *G.G.* to restrooms. It's  
3 difficult to understand how that could be in question because  
4 the *G.G.* majority opinion dropped a footnote that said -- sort  
5 of, and I'm paraphrasing here, waving its hands, saying we are  
6 only dealing with restrooms. We are only dealing with  
7 restrooms. How *G.G.* could stand for the proposition that the  
8 ACLU is specifically arguing here that it extends to locker  
9 rooms as well simply defies what the opinion says, and I think  
10 I heard the DOJ say that *Auer* deference per *G.G.* also extends  
11 to the "Dear Colleague" letter, and the "Dear Colleague" letter  
12 extends to showers and overnight accommodations and housing  
13 facilities. How *G.G.* solves those is -- well, it's not a  
14 mystery to me. It doesn't solve those questions.

15           **THE COURT:** Well, doesn't Judge Niemeyer in his  
16 dissent say he doesn't see any principal basis to distinguish  
17 between bathrooms and showers and locker rooms based on the  
18 majority's --

19           **MR. DUNCAN:** He's criticizing the majority's  
20 reasoning in showing that it's wrong, but I can't stand here  
21 and argue to you that it was wrong, but I can stand here and  
22 argue to you that the majority limited -- whether the  
23 limitation makes sense or not, the majority limited the reach  
24 of its opinion to restrooms, and, of course, locker rooms  
25 weren't at issue in *G.G.* because the --

1           **THE COURT:** Its holding is limited to the restroom  
2 because that's all *G.G.* was interested in; right?

3           **MR. DUNCAN:** That's correct, but, I mean, I assume  
4 that the footnote where it says this is limited to restrooms is  
5 part of the holding in the case.

6           **THE COURT:** Right.

7           **MR. DUNCAN:** If it goes beyond restrooms, then all  
8 the things that *G.G.* says about privacy and safety concerns are  
9 out the window because now we're talking about locker rooms,  
10 now we're talking about showers, now we're talking about  
11 overnight accommodations, and now we're talking about housing  
12 facilities per the "Dear Colleague" letter.

13           I want to make just a couple of brief points about  
14 due process, but before I do, because we've already talked  
15 about equal protection, if I may make one point about equal  
16 protection, and that's this. You know, it seems fairly clear  
17 that the ACLU's preliminary injunction motion relies heavily on  
18 the *Price Waterhouse* sex stereotyping theory.

19           You know, reading through all those cases, one comes  
20 away with a distinct impression about what sex stereotyping is,  
21 and what sex stereotyping is is a claim of sex discrimination  
22 where the discriminator has discriminated on the basis of  
23 mannerisms, or the appearance, the behavior of a person. Just  
24 to put it in plain terms, I've discriminated against a man  
25 because that man doesn't act enough like a man. He's not

1 masculine enough. I've discriminated against a woman because  
2 that woman doesn't act enough like my view of a woman, right.  
3 That's what *Price Waterhouse* was. It was a partner, somebody  
4 up for candidacy at Price Waterhouse, and the other -- all the  
5 male partners said, you know, you are too aggressive. Woman  
6 shouldn't act like that. Put on some lipstick, right. That  
7 was in the record. And the Court had no trouble finding that  
8 that was sex discrimination. As a matter of fact, when I read  
9 *Price Waterhouse* for the first time, I was surprised by how  
10 little discussion there was of the sex stereotyping theory.  
11 The *Price Waterhouse* case is about the burden of proof in those  
12 kind of claims. It's not really about sex stereotyping. There  
13 is not some grand disagreement about sex stereotyping. It is  
14 what it is.

15           Now, as Your Honor knows, there are a number of  
16 circuit cases that apply the *Price Waterhouse* sex stereotyping  
17 theory to claims by transgender individuals, and the other side  
18 has briefed them. Here's -- by and large, here is what those  
19 cases are all about. You have an employee who's been fired or  
20 being demoted or being discriminated against in some way  
21 because the employee has said I'm transitioning from male to  
22 female and my appearance is going to be changing, and the  
23 employer or colleagues of the employee say we are not okay with  
24 that, right. We don't think a man should look like that. We  
25 don't think a woman should look like that. So we take some

1 adverse employment action against you. You get fired, you get  
2 demoted, you don't get the promotion, that sort of thing. All  
3 those cases are about that.

4           Consider for a second whether that's what H.B. 2 is  
5 doing. I submit to you, Your Honor, H.B. 2 is doing the exact  
6 opposite of sex stereotyping. If H.B. 2 were sex stereotyping,  
7 here is what it would said. Mr. Smith said earlier, the sign  
8 on the bathroom. If H.B. 2 were sex stereotyping, here is what  
9 the sign on the bathroom would say. It would say, Only men can  
10 use this bathroom if they are sufficiently masculine; but if  
11 they are not sufficiently masculine, if they present as a  
12 woman, if they have a high voice, whatever, then they can't use  
13 the men's bathroom. They would have to use the women's  
14 bathroom. That's sex stereotyping.

15           Now, does that sound like an absurd law? Yes, it  
16 sure does. I can't imagine a law like that, but if H.B. 2 did  
17 that, it would be sex stereotyping. H.B. 2 does exactly the  
18 opposite. H.B. 2 says -- and I'm paraphrasing because it  
19 doesn't say this, but here's the gist of it. It doesn't matter  
20 how you present as a man, it doesn't matter how masculine you  
21 are, it doesn't matter how high your voice it, it doesn't  
22 matter. Men use the men's bathroom. The same for women.  
23 That's not sex stereotyping. That's the opposite of sex  
24 stereotyping. That's why they haven't stated a claim under  
25 *Price Waterhouse*, and that's why even if you accept all of

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1 those cases applying the *Price Waterhouse* theory, they don't  
2 get the Plaintiffs where they want to be. This is not a sex  
3 stereotyping case.

4 **THE COURT:** So even people who have sex reassignment  
5 surgery, if they can't get their birth certificate changed,  
6 would still have a problem under the current law, would they  
7 not?

8 **MR. DUNCAN:** Well, they might have a problem, but  
9 that goes to tailoring, Your Honor. That goes to tailoring.  
10 If, in fact, this is sex discrimination and you have to meet  
11 intermediate scrutiny -- we don't say that it is. We think  
12 it's rational basis, but if it's heightened scrutiny, then the  
13 fit of the law has -- you know, there has to be a good fit. It  
14 doesn't have to be perfect, right. There are cases in the  
15 Fourth Circuit that say you don't have to have a perfect fit to  
16 meet intermediate scrutiny.

17 **THE COURT:** How do you say it's rational basis? Is  
18 it not discrimination based on sex whether, even under your  
19 articulation, it's based on whether your biological male or  
20 biological female?

21 **MR. DUNCAN:** No, Your Honor, we don't agree with  
22 the -- we don't agree with the proposition that this is sex  
23 discrimination per se.

24 **THE COURT:** How are we discriminating against  
25 bathroom use?

1           **MR. DUNCAN:** Let me start with Title IX, Your Honor.  
2 I know we are on equal protection, but I think Title IX informs  
3 this. Title IX says no sex discrimination. That's what the  
4 statute says. Then in a regulation, it says, but you can  
5 provide sex-separated facilities as provided -- as long as they  
6 are comparable, as long as they are comparable.

7           I don't think that's an exception to Title IX sex  
8 discrimination here. The Plaintiffs characterizes it as an  
9 exception. That's puzzling to me. The regulation isn't stated  
10 as an exception, nor are there any of the parts of Title IX  
11 that allow separate living facilities for men and women. It's  
12 not an exception to sex discrimination. It's a recognition  
13 that sometimes you have to separate facilities by sex. So I  
14 don't think it's an exception to discrimination.

15           **THE COURT:** I'm not sure I follow. If we had  
16 bathroom signs that said everybody who's a citizen use this  
17 one, and everybody who is not a citizen use this one, there  
18 would be national origin or citizenship distinctions, and we  
19 would call that unlawful. If we had them that said if you're  
20 one race, use this, or another race -- one religion, use this,  
21 Catholics here, Protestants here, that would be based on  
22 religion. And so we are saying men here, women there. Why  
23 isn't that at least sex?

24           **MR. DUNCAN:** I think it is sex. I don't think it's  
25 discrimination.

1           **THE COURT:** All right. That's a different point, but  
2 it's discrimination based on sex. There's all sorts of  
3 discrimination every day, some of it's unlawful, some of it's  
4 not. I guess your position is it's not unlawful discrimination  
5 based on sex?

6           **MR. DUNCAN:** Well, also our position is that a claim  
7 based on gender identity discrimination is not sex  
8 discrimination for purposes of the Equal Protection Clause,  
9 which is a different point.

10           And Your Honor asked where are the cases that hold  
11 gender identity discrimination gets heightened scrutiny. There  
12 are precious few of those cases. The vast majority of cases,  
13 and these include cases that the Plaintiffs rely on, say that  
14 there's no gender identity theory in the Equal Protection  
15 Clause.

16           I point Your Honor to a few cases here. Mr. Bowers  
17 already cited the *Johnston* case from the Western District of  
18 Pennsylvania. That's a very recent case that surveys the  
19 landscape. One interesting thing that *Johnston* points out is  
20 even the *Price Waterhouse* cases from the Sixth Circuit and  
21 others that apply *Price Waterhouse* to sex -- to transgender  
22 claims, even those cases, such as the *Barnes* case and the *Smith*  
23 *v. City of Salem* case, those cases don't recognize that there  
24 is a protected class under Title VII of transgender  
25 individuals. So the *Johnston* case I think is the best example

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1 of the sort of surveying-the-waterfront kind of case.

2 **THE COURT:** You are talking about strict scrutiny?

3 **MR. DUNCAN:** No, they wouldn't get heightened  
4 scrutiny, Your Honor, because it's not sex discrimination. The  
5 *Etsitty* case from the Tenth Circuit makes the same point, but I  
6 think the most important point here is that there is a long  
7 line of cases out of the Seventh Circuit, the *Ulane*, U-L-A-N-E,  
8 line of cases. There are decisions that I can certainly cite  
9 to Your Honor that collect all of the cases that say the *Ulane*  
10 line of cases is still good law. *Ulane*, in an opinion by Judge  
11 Wood, surveyed the legislative history of Title VII -- this is  
12 relevant to the Equal Protection Clause as well -- surveyed the  
13 legislative history of Title VII and said there is absolutely  
14 no evidence that sex means anything other than biological sex.  
15 In other words, it excludes the idea of gender identity or what  
16 in that decision was called transsexualism.

17 So the Plaintiffs are saying that *Price Waterhouse*  
18 quote, unquote eviscerated that line of cases, and it's not so.  
19 *Price Waterhouse* is perfectly consistent with those cases.  
20 *Price Waterhouse* does not change the definition of sex with  
21 gender, or gender identity for that matter.

22 **THE COURT:** Well, for purposes of Title IX, I think  
23 that issue has been resolved by the Fourth Circuit. You are  
24 making a constitutional argument at this point?

25 **MR. DUNCAN:** Hard to say, Your Honor. We don't

1 think -- the Fourth Circuit starts out its opinion by saying,  
2 we are going to address Title IX, and then it doesn't. It  
3 addresses a regulation under Title IX, and it says that, well,  
4 the word can go either way, so we'll defer.

5 Now, is that an interpretation of Title IX? We doubt  
6 that it is, but in any event, the Title IX -- the *G.G.* opinion  
7 leaves totally open the Title VII. Well, of course, that would  
8 be for purposes of the DOJ motion, but also the Equal  
9 Protection Clause and the Due Process Clause.

10 Just three days ago, Your Honor, the Seventh Circuit  
11 reaffirmed the *Ulane* -- that *Ulane* is still good law and its  
12 decision of sex is still good law. That decision is called  
13 *Hively*. I'm sorry. It just came out so recently, and I've  
14 been traveling. I do not have a citation to that.

15 **THE COURT:** Can you spell it?

16 **MR. DUNCAN:** Mr. Bowers has it. *Hively v. Ivy Tech*  
17 *Community College*. It's Number 15-1720.

18 **THE COURT:** All right.

19 **MR. DUNCAN:** The opinion is, by and large, about  
20 whether sexual orientation discrimination is covered under  
21 Title VII. It says it's not, but in the course of that  
22 opinion, it reaffirms the *Ulane* precedent. So that's all I  
23 have.

24 **THE COURT:** Are you going to address the due process  
25 claim?

1           **MR. DUNCAN:** I will very briefly, Your Honor. I  
2 think the cases cited by the Plaintiffs in the due process  
3 sections show that this is not a -- they don't have a due  
4 process claim basically, and I know you've read the cases, but  
5 if I can just highlight a few things about the cases.

6           On the right-to-privacy issue, these cases generally  
7 involve a government official deliberately forcing somebody to  
8 reveal intimate public details, so, for example, a police  
9 officer threatens to divulge a suspect's sexual orientation to  
10 his family or a sheriff releases intimate details about a rape  
11 to retaliate against a woman who criticized his rape  
12 investigation or a job candidate for police officer is forced  
13 during a polygraph examination to reveal all sorts of  
14 inappropriate, irrelevant sexual details about her life. I  
15 think -- or, for example, the *Powell* case, a prison guard  
16 reveals to other prisoners a prisoner's transsexual status and  
17 HIV positive status.

18           What these cases are about is the government taking a  
19 deliberate targeted action against someone and saying, you will  
20 reveal this information, and the cases have recognized a  
21 right-to-privacy violation. You just don't have that situation  
22 here. You have the government having basically a common sense  
23 policy about bathrooms, and the allegation is, well, that will  
24 necessarily require me to reveal all sorts of personal  
25 information. Well, whether -- I mean, maybe in some particular

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1 case perhaps, but it's not the same kind of situation that's  
2 presented in all the due process cases that are cited. In  
3 fact, it's so far from them that those cases just don't apply.  
4 There is no case that says that requiring somebody to use a  
5 bathroom or a shower facility of their biological sex is a due  
6 process right-to-privacy violation. There is just no case that  
7 says that, and I think their claims go beyond the cases.

8           The same thing for the unwanted medical treatment  
9 case. They cite one case, *U.S. v. Charters*, that has to do  
10 with the forced administration of antipsychotic drugs by  
11 federal prison administrators. H.B. 2 is not doing that. I  
12 think it's obvious that it's not doing that. It is making a  
13 common sense distinction -- it's making a common sense link  
14 between the privacy concerns in restrooms and showers and  
15 lockers rooms and biology, and the biology is reflected on the  
16 birth certificate. That's what it's doing. It's not forcing  
17 anybody to have a surgery of any kind.

18           So with that, Your Honor, unless you have any further  
19 questions, that's all I have.

20           **THE COURT:** Thank you. Mr. Francisco.

21           **MR. FRANCISCO:** Good afternoon, Your Honor, Noel  
22 Francisco for the University of North Carolina Defendants.

23           Judge Schroeder, the University of North Carolina is  
24 an educational institution that's focused on educating  
25 students, much like the named Plaintiffs that we have here

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1 today. It had no role in enacting H.B. 2, and it certainly has  
2 no desire to be dragged into this contentious --

3 **THE COURT:** I got the impression you don't want to be  
4 here.

5 **MR. FRANCISCO:** Yes, Your Honor, we do not want to be  
6 here.

7 **THE COURT:** I also got the impression that you  
8 disagree with the law, your client does.

9 **MR. FRANCISCO:** Well, Your Honor, I think my client's  
10 position is that under the law there is no obligation that they  
11 enforce it. They are not currently enforcing it.

12 **THE COURT:** That's the part I don't understand.

13 **MR. FRANCISCO:** Sure.

14 **THE COURT:** It says that they shall make sure that  
15 the facilities are used by only those people that the law  
16 permits, Section 143-760(b), "Public agencies shall require  
17 that" multi-use "bathrooms or changing facilities be designated  
18 for and only used by...." So the first question is, are any of  
19 your clients a public agency?

20 **MR. FRANCISCO:** Your Honor, I think that the  
21 University of North Carolina is considered an agency of the  
22 State. It's not part of the executive branch, but it is an  
23 agency of the State. That being said, this is the case in  
24 every single case that comes before a court where there is a  
25 law on the books and that law is neither being enforced nor

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1 threatened to being enforced. Take, for example --

2 **THE COURT:** But does your client have the authority  
3 to say we choose not to enforce it?

4 **MR. FRANCISCO:** Your Honor, a couple of answers to  
5 that, and the bottom line is, yes, I think they have the exact  
6 same authority that the prosecutors in the *Doe v. Duling* case  
7 had when they stated that they were not enforcing nor was there  
8 an intention to enforce the anti-cohabitation laws that were in  
9 place in Virginia, the same authority that the Alabama State  
10 officials had when they said that they were not enforcing or  
11 threatening to enforce a law that required -- that prohibited  
12 certain employees from joining labor unions, and numerous other  
13 cases where you have the exact same fact pattern, a law on the  
14 books and a government official who is saying that they are  
15 neither enforcing nor do they intend to enforce that ordinance.  
16 That removes any justiciable controversy, and just as  
17 importantly, it undermines the allegation of any irreparable  
18 harm because when it comes to irreparable harm, not only must  
19 there be an incredible threat of enforcement in general, there  
20 must be a virtual certainty of immediate enforcement so there's  
21 actually something for you to enjoin.

22 **THE COURT:** Do any of your clients -- have they  
23 issued guidance to the students and faculty that say we do not  
24 intend to enforce this law on our campus?

25 **MR. FRANCISCO:** Yes, Your Honor, and we cite a lot of

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1 that in our briefs. One of the places that they said it was in  
2 the May 9 letter that the University of North Carolina sent to  
3 the Department of Justice: "The University has recognized that  
4 the Act does not address enforcement and therefore is not  
5 taking any steps to enforce the statute's requirements."  
6 President Spellings' declaration: "The University has not  
7 threatened to enforce the Act's requirement. I have no intent  
8 to exercise my authority to promulgate any guidelines or  
9 regulations that require transgender students to use restrooms  
10 consistent with their biological sex." And she's yet gone even  
11 further by making clear that "if any transgender student or  
12 employee does complain that they have been forced to use a  
13 restroom inconsistent with their gender identity, I will ensure  
14 that the complaint is investigated to determine whether there's  
15 been a violation of University policy."

16           So I think it's quite clear that whatever you think  
17 about H.B. 2 and whatever you think about the policy that it  
18 sets for the state, it's not a policy that's backed up by a  
19 concrete harm and enforcement at the University of North  
20 Carolina. And on this, I would like to say one very important  
21 thing. H.B. 2 is not the policy of the University of North  
22 Carolina, though it is a policy that the State has enacted at  
23 the statewide level; but even if it were a policy of the state  
24 of North Carolina, it would still not a create a justiciable  
25 controversy unless there was a threat of enforcing that policy

1 backed up by sanctions, disciplinary action, or something else  
2 to enforce that policy.

3 **THE COURT:** Can somebody else come on campus and  
4 enforce it? Can the local Chapel Hill police come on campus  
5 and enforce it?

6 **MR. FRANCISCO:** Well, Your Honor, I think there are a  
7 couple of things in that question. Could somebody come on to  
8 the campus and enforce it like the state police? It's  
9 possible. I don't actually know the jurisdictional authority  
10 of the state police; but if that were the case, then the state  
11 police would be the cause of any harm, and any remedy would  
12 need to be directed towards the state police in order to  
13 redress that harm. The University of North Carolina police, we  
14 do not believe, could enforce that because it doesn't violate  
15 any school policy, and it doesn't violate any criminal  
16 sanction. There's no criminal -- I think one thing we all have  
17 agreed on here is that H.B. 2 doesn't include any kind of  
18 criminal prohibition. So there would be nothing for University  
19 of North Carolina police to enforce, and to the extent that  
20 other police officials under the direction of the Governor or  
21 whomever else controls those other police forces, then that  
22 harm is caused by somebody else and that harm would be remedied  
23 by an injunction toward somebody else but not remedied towards  
24 the University of North Carolina.

25 So to go back to whether or not this is the policy of

1 the state of North Carolina or the University of North  
2 Carolina, in the *Doe v. Duling* case, again that Virginia case  
3 out of the Fourth Circuit, the policy of the state of Virginia  
4 was to prohibit cohabitation and to prohibit what the statute  
5 deemed fornication. Notwithstanding that policy, statewide in  
6 the books passed by the legislature, signed by the governor,  
7 that policy could not be challenged absent a credible threat of  
8 enforcement of the policy backed up by sanctions.

9           Here, not only do you have the University officials  
10 repeatedly saying that they are neither enforcing nor do they  
11 intend to enforce the ordinance, you also have a record in this  
12 case by the young men and women who have joined with the ACLU  
13 to bring this action, and they put forward some very compelling  
14 declarations, but what I would submit to you is the one thing  
15 that those declarations do not say is that any University of  
16 North Carolina official has taken any action to prohibit them  
17 from using a restroom consistent with their gender identity or  
18 to threaten that any adverse action would be taken whatsoever  
19 if they use a restroom consistent with their gender identity.

20           Absent that kind of enforcement or credible threat of  
21 enforcement, several things follow. First, there's no  
22 justiciable claim. Second, there's no irreparable harm caused  
23 by the University of North Carolina. Third, we would also  
24 assert that there's no likelihood of success on the merits as  
25 to the University of North Carolina because there's no ongoing

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1 conduct in which the University is engaged in that violates the  
2 law even if you accept the Plaintiffs' understanding of that  
3 law.

4           And, finally, Your Honor, even if you thought that  
5 there was an Article III justiciable controversy here, as a  
6 matter of prudential rightness, we believe it would be unwise  
7 to require the University of North Carolina to be dragged in  
8 this case when it does nothing other than undermine its ability  
9 to educate the good young men and women that are here with us  
10 today.

11           **THE COURT:** If the University system is opposed to  
12 enforcing the law and the Plaintiffs are asking for an order  
13 statewide that the law not be enforced, why didn't the  
14 University just file a one-page response saying, we don't like  
15 the law; we don't oppose an injunction?

16           **MR. FRANCISCO:** Because, Your Honor, it is the same  
17 position that every party is in when they are dragged into a  
18 proceeding where they are forced to undertake a very costly  
19 proceeding in a case where they are not doing anything that  
20 they believe violates the law.

21           **THE COURT:** I still don't understand. I have cases  
22 all the time where parties capitulate because they don't  
23 disagree with the relief sought, so they say enter -- tell us  
24 not to do this because we don't want to do it anyway is really  
25 what North Carolina's university system is saying. You could

1 have done that in one page.

2           **MR. FRANCISCO:** Well, I think, Your Honor, our  
3 position is we shouldn't be required to continue to participate  
4 in these proceedings at all when the dispute can be carried on  
5 because the parties who passed the law, the parties who  
6 arguably have the authority to enforce the law, and the parties  
7 who are being harmed by the law, those are everyone you need to  
8 resolve this case.

9           **THE COURT:** Well, the Plaintiffs say that the  
10 university system is a separate agency, and let's assume for a  
11 minute that the university system was enforcing the law.  
12 Contrary to what you are telling me, let's assume that. Would  
13 you agree then you would be a proper defendant, or are you an  
14 unnecessary defendant?

15           **MR. FRANCISCO:** If we actually were enforcing the  
16 law, so if President Spellings, for example, had issued  
17 counterfactually a set of guidance that said you can't the use  
18 the restroom, and if you do, you are going to be suspended for  
19 three days or some other sanction --

20           **THE COURT:** Correct.

21           **MR. FRANCISCO:** -- yes, I think that they could be  
22 brought, and if the other side prevailed on that case, they  
23 would be entitled under Section 1983 to get attorneys' fees  
24 from us, again, a costly resource that distracts the University  
25 from its ability to carry out its core mission. That's

1 precisely why the University doesn't believe it ought to be in  
2 the middle of this case where, amongst other things, it's  
3 subject to attorneys' fees and why the University thinks that  
4 since it's not doing anything, the case ought to be carried out  
5 by the parties who actually have joined one another in a live  
6 case or controversy.

7           **THE COURT:** So the University has issued the notice  
8 that the statute, H.B. 2, requires, which says, among other  
9 things, that "Public agencies shall require every multiple  
10 occupancy bathroom or changing facility to be designated for  
11 and only used by persons based on their biological sex;" right?  
12 They have given that notice?

13           **MR. FRANCISCO:** Coupled with several other things,  
14 Your Honor.

15           **THE COURT:** I've heard what you've said. The  
16 Plaintiffs say, well, you are walking a fine line. You haven't  
17 actually said we will not enforce that policy on campus, and,  
18 therefore, transgenders may use the facility with which they  
19 identify. What is the closest statement to that that you have?

20           **MR. FRANCISCO:** Two things, Your Honor. First, I  
21 think we have essentially said that when we say, "The  
22 University has not threatened to enforce the Act's requirement  
23 that the University require individuals to use the restroom or  
24 changing facility that corresponds with their biological sex,  
25 as listed on their birth certificate. In fact, I have

1 repeatedly cautioned the constituent institutions that the Act  
2 confers no enforcement authority on the University or any other  
3 entity," paragraph 13 of President Spellings's declaration.

4           **THE COURT:** That last part I don't understand because  
5 it does say agencies have the obligation to ensure that the  
6 bathrooms are used based on biological sex. Isn't that some  
7 enforcement authority?

8           **MR. FRANCISCO:** Well, no, Your Honor, because the  
9 first sentence is -- and I've got two responses to that. The  
10 first sentence is "the University has not threatened to enforce  
11 the Act's requirement."

12           **THE COURT:** Well, they wouldn't threaten if they  
13 didn't have the authority. I am confused by your position, I  
14 guess. On the one hand, you are saying we have no enforcement  
15 authority under the law, but we are not going threaten to  
16 enforce it. Why would they even make that statement if there's  
17 no enforcement authority?

18           **MR. FRANCISCO:** Well, Your Honor, because I think we  
19 need to clarify that we are not enforcing it, nor are we  
20 threatening to enforce it; but let me assume, for the sake of  
21 argument, that we actually did have the enforcement authority.  
22 It still wouldn't matter.

23           In *Doe v. Duling*, the state prosecutors clearly had  
24 the enforcement authority over the anti-cohabitation law. Just  
25 like in the Supreme Court's decision in *McAdory*, the state

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1 prosecutors and enforcement officials clearly had the authority  
2 to enforce Alabama's labor law, but the fact of the matter is  
3 they made crystal clear that they weren't enforcing it, nor did  
4 they intend to enforce it. So wholly apart whether they have  
5 -- whether somebody has the authority to enforce a law, you  
6 still don't have a justiciable controversy unless there is a  
7 credible threat of enforcement.

8           Let's suppose -- I've litigated a lot of cases  
9 against the Federal Government, and they often follow a very  
10 similar playbook. Suppose that Congress were to pass a law  
11 telling the Department of Education or the Department of  
12 Justice that they have to do X or they have to do Y, and the  
13 Department of Justice, whether because they disagreed with the  
14 law or because they had other things to do and just hadn't  
15 gotten around to it, had not yet put forth any kind of  
16 regulation implementing that law. I can you guarantee you that  
17 if I represented a client suing the Department of Justice or  
18 the Department of Education trying to challenge that law, the  
19 first answer out of their mouths would be that there's no  
20 credible threat of enforcement, there's no current enforcement,  
21 there's no live controversy.

22           That's exactly what we have here even if assume, for  
23 the sake of argument, that somehow the University of North  
24 Carolina does have the authority to impose penalties for  
25 somebody using a restroom consistent with their gender

1 identity. The fact of the matter is they haven't imposed  
2 penalties, they have not threatened to impose penalties, and  
3 they have said nine ways to Sunday that they have no intention  
4 of imposing any kind of penalties. That is more than  
5 sufficient under scads of case law to make clear that there is  
6 no justiciable controversy here, and there's certainly no  
7 irreparable harm flowing from any conduct that the University  
8 of North Carolina is not engaging in.

9 I come back to turning the question around that Your  
10 Honor put to me. What exactly is it that the University of  
11 North Carolina is doing that this Court is supposed to tell  
12 them to stop doing? They are not doing anything that violates  
13 the law even if you accept the Plaintiffs' understanding of  
14 that law.

15 **THE COURT:** One option would be for the University of  
16 North Carolina -- knowing that there's this discriminatory  
17 basis for distinguishing between restrooms now because it's  
18 based on biological sex and excludes transgender individuals,  
19 one option is to make all restrooms and bathrooms single use.  
20 I mean, it may not --

21 **MR. FRANCISCO:** That would be an extraordinary thing  
22 on a preliminary injunction, Your Honor.

23 **THE COURT:** It may not be a practical option, but you  
24 say there is nothing else they can do. It's a little bit like  
25 putting signs on the doors that distinguish based on religion

1 or race, and then saying, but we are not going to enforce that,  
2 but we are going to leave the signs on the doors.

3           **MR. FRANCISCO:** With one huge exception. Nobody here  
4 is claiming that designating one restroom as a men's restroom  
5 and one restroom as a women's restroom somehow constitutes  
6 discrimination, and that's all that the University of North  
7 Carolina has done here. Nobody is telling them, and I  
8 certainly heard nobody here say, that that general policy has  
9 to stop. The question is whether when Miss H. S. wants to use  
10 the women's restroom, the sign designated women's, is she being  
11 prevented from doing that. And as the record in this case  
12 makes clear, there is no nobody at the University of North  
13 Carolina that has threatened to impose any kind of sanction at  
14 all were she to undertake that conduct.

15           **THE COURT:** If I were to grant Title IX relief in  
16 this case with respect to the North Carolina public school  
17 system -- I assume Title IX covers the public school system as  
18 well in North Carolina, among other things -- does it matter if  
19 the University of North Carolina system is in the case?  
20 Wouldn't they -- would they be covered nevertheless by an  
21 injunction?

22           **MR. SMITH:** Your Honor, I'd have to see what it would  
23 have said, but if it was an injunction that says as to all  
24 educational institutions in the state, Title IX applies and it  
25 is not going to be in effect -- H.B. 2 will not be in effect

1 pending this case, that would certainly solve that problem.

2 **MR. FRANCISCO:** Your Honor, I can even take it a  
3 slight step further. I can guarantee you that if you were to  
4 issue that kind of ruling against the public school system, it  
5 certainly would not cause the University of North Carolina to  
6 start doing something that it's not been doing all along.

7 **THE COURT:** I understand. All right. Thank you.

8 **MR. FRANCISCO:** Thank you, Your Honor. Oh, may I  
9 make one small point?

10 **THE COURT:** Yes.

11 **MR. FRANCISCO:** We've filed motions to dismiss in  
12 both cases that largely overlap with the issues Your Honor and  
13 I just discussed. It should be fully briefed up by the end of  
14 this month. Given this hearing, we do not believe that another  
15 hearing is necessary on that and would be perfectly content  
16 with Your Honor to rule on the papers on those motions.

17 **THE COURT:** Thank you. Before you leave, let me ask  
18 you. It's been indicated somehow that the school system in  
19 Charlotte, the public school system, is intending not to  
20 enforce H.B. 2. Are you aware of that, and if so, is that  
21 situation any different from the University's situation?

22 **MR. FRANCISCO:** Your Honor, I don't have any personal  
23 knowledge of what's going on in the Charlotte school system, so  
24 I don't know precisely what their position is; but I would  
25 suggest that if there is no credible threat that they're

1 enforcing this against their schools, a lawsuit against that  
2 Charlotte system would have -- they would have similar  
3 arguments to the ones I am articulating today.

4 **THE COURT:** Okay. Thank you.

5 **MR. BOWERS:** Your Honor --

6 **THE COURT:** Give me just a minute. Let me make sure  
7 I didn't have anything else.

8 In the university system, there is a code of conduct,  
9 among other things, and I believe part of the code of conduct  
10 is if you violate a state law or something, then you can be in  
11 violation of the student code of conduct or honor code, et  
12 cetera. What's the school's position about whether any person  
13 who wished to use the restroom to which they identify would be  
14 in violation of any of those codes?

15 **MR. FRANCISCO:** Sure, two positions, Your Honor.  
16 First of all, I think, as there's been widespread agreement  
17 here, H.B. 2 doesn't directly regulate private conduct. So if  
18 a person uses a restroom consistent with their gender identity,  
19 they would not be directly violating H.B. 2. So for that  
20 reason, the code of conduct wouldn't apply; but let's put that  
21 aside.

22 Even assuming in theory the code of conduct could  
23 apply, Ms. Spellings has made clear that she has no intention  
24 of enforcing the code of conduct in this manner, and so there's  
25 no threat that the code of conduct will be applied in this

1 manner, and it won't be applied in this manner.

2           **THE COURT:** Thank you. Before I get back to you,  
3 Mr. Bowers, Mr. Duncan, I did have a question about what's the  
4 legislative record on this?

5           **MR. DUNCAN:** Yes, Your Honor. There are transcripts  
6 of both committee hearings and also the full General Assembly  
7 hearing in the matter, and we are prepared to put those in  
8 evidence as we compile an evidentiary record in this case.

9           **THE COURT:** How long did they meet on this; do you  
10 know?

11           **MR. DUNCAN:** It's two days, I think. I don't know  
12 the exact number of hours, but I believe it was two days.

13           **THE COURT:** Were there witnesses who testified?

14           **MR. DUNCAN:** I am not aware that there were witnesses  
15 testifying, but we have the transcripts. We are preparing the  
16 transcripts so that we can have them in evidence.

17           **THE COURT:** Do you agree that the statute, Part I,  
18 does not appear to directly tell people which bathroom they  
19 have to use?

20           **MR. DUNCAN:** Let me see if I understand the question,  
21 Your Honor, because I am looking at the statute right here.  
22 Your question is does the statute not tell people what  
23 bathrooms they have to use?

24           **THE COURT:** The statute itself doesn't tell me what  
25 bathroom I have to use, does it?

1           **MR. DUNCAN:** I don't think so, Your Honor. Let me  
2 just read from the statute where sort of the operative  
3 provision is. I'll read from the one -- the part of it dealing  
4 with public agencies. It says, "Public agencies shall require  
5 every multiple occupancy bathroom and changing facility to be  
6 designated for and only used by persons based on their  
7 biological sex." Then at the same time, it says, right above  
8 that -- sorry, let me just find the right part.

9           **THE COURT:** Well, I think that's the operative  
10 language. So my question is --

11           **MR. DUNCAN:** But then there's the single occupancy  
12 provisions as well.

13           **THE COURT:** So my question is what is the enforcement  
14 mechanism of the statute?

15           **MR. DUNCAN:** Well, I think -- let me answer it this  
16 way. So the first part of the statute is addressed to local  
17 boards of education. I do think that the statute would preempt  
18 any contrary policy of a local board of education. The parts  
19 addressed to public agencies -- and public agency is defined  
20 there as, you know, six or seven different kinds of agencies.  
21 The statute is a directive to those public agencies I think to  
22 implement policies.

23           I think we all agree, the statute doesn't have a  
24 standalone enforcement mechanism. The third thing I would say  
25 is -- this doesn't go to an enforcement mechanism, but I think

1 this goes to the purpose of the statute. The purpose of the  
2 statute is to clarify situations like the ones addressed by  
3 Your Honor in examples about the indecent exposure law or the  
4 trespass law or the peeping law. When there's an ambiguity in  
5 a situation caused by someone who is claiming to be a different  
6 gender identity than their biological sex, I do think the  
7 statute clarifies for whoever is enforcing that provision about  
8 how the indecent exposure law or the peeping law or the  
9 trespass law ought to apply. I do think the statute --

10 **THE COURT:** Can't those challenges, if you will, in  
11 enforcement mechanisms be used independent of House Bill 2? In  
12 other words, if the privacy concerns that the legislature says  
13 it's interested in raised their head and there's a problem,  
14 don't existing laws provide remedies for that?

15 **MR. DUNCAN:** Your Honor, not if the policy with  
16 respect to Title IX and the Equal Protection Clause is as the  
17 Justice Department and the ACLU believes it to be. In other  
18 words, not if the law is that someone may access, say, a shower  
19 facility based purely on their subjective gender identity.  
20 Then I think enforcing something like an indecent exposure law,  
21 and Your Honor's hypothetical is the perfect hypothetical for  
22 that, becomes extraordinarily difficult, if not possible,  
23 because of the nature of the DOJ policy, which is a pure  
24 assertion -- subjective assertion policy. H.B. 2, obviously  
25 not with respect to DOJ policy, but with respect to the

1 Charlotte ordinance, was intended to clarify what the status  
2 quo was with respect to all sorts of potential privacy  
3 violations.

4 **THE COURT:** What is the legislature's position on the  
5 University's claim that it's not going to enforce the statute?

6 **MR. DUNCAN:** I'm not sure we have a position on that,  
7 Your Honor. I mean, we represent to Your Honor that the law is  
8 a directive to public agencies to implement certain policies.

9 **THE COURT:** Well, it sounds like you may have a  
10 situation where everybody may say, well, that's great, but  
11 we're not following it because Charlotte is not going to follow  
12 it, Chapel Hill doesn't -- I say Chapel Hill, the UNC system  
13 doesn't want to follow it. What if everybody in the state  
14 says, well, this is great, and it's your law; we are not  
15 following it?

16 **MR. DUNCAN:** Well, I would submit to Your Honor, then  
17 that's a problem -- if that's indeed a problem, then that's a  
18 problem that we all need to deal with at the state level in  
19 terms of state government.

20 **THE COURT:** Well, that's why I am asking. Is it a  
21 problem or not? I mean, presumably the law had some importance  
22 because the legislature felt the need on an expedited basis to  
23 pass it, and now you have important institutions in the state  
24 saying we don't intend to follow it; and it seems a critical  
25 question of, well, is that a concern to the legislature and the

1 Governor or not? I don't see any threat letters that I am  
2 aware of to the university system or to the school system  
3 saying you are in violation of law, you need to follow this, et  
4 cetera.

5 **MR. DUNCAN:** I am not aware of anything like that,  
6 Your Honor. I will just repeat what I said and that this is a  
7 matter that would need to be taken up internally in terms of  
8 state government, without taking away anything from what  
9 Mr. Francisco said about the absence of the justiciable case  
10 with respect to UNC.

11 **THE COURT:** Okay. I understand. Mr. Bowers.

12 **MR. BOWERS:** Thank you, Your Honor, very briefly. I  
13 just want to follow up on the hypothetical that you proposed a  
14 few minutes ago, and you addressed it to Plaintiffs' counsel,  
15 regarding the notion that if you entered a preliminary  
16 injunction only on the Title IX claim, would the UNC Defendants  
17 be a necessary party. I wanted to follow up on that, Your  
18 Honor, and if, in fact, the Court is inclined to enter such a  
19 preliminary injunction, that we take the position that it  
20 should be very narrowly tailored. A, Plaintiffs have not  
21 brought a Title IX claim on behalf of a class of plaintiffs,  
22 and so we believe that if it is entered, it should be limited  
23 solely to not only the Title IX claim, but also solely to the  
24 three named Plaintiffs.

25 **THE COURT:** I've got the ACLU in the case. They've

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1 made a representational claim, have they not?

2 **MR. BOWERS:** I don't think they did, Your Honor. In  
3 Count Four, page 53, of their first amended complaint,  
4 Plaintiffs have not brought the Title IX claim on behalf of a  
5 class of plaintiffs. So we take the position --

6 **THE COURT:** Well, it's not a class action.

7 **MR. BOWERS:** It's not a class action; right. So we  
8 take the position that only the three named Plaintiffs would be  
9 covered, and also that consistent with *G.G.*, that it would be  
10 limited to public restrooms only.

11 Secondly, Mr. Duncan and I both referenced the  
12 *Johnston* case. If I may, I would like to put that in the  
13 record. It's *Johnston v. University of Pittsburg of the*  
14 *Commonwealth System of Higher Education*. That's a U.S.  
15 District Court for the Western District of Pennsylvania case,  
16 and the citation is 97 F. Supp. 3d 657, 2015.

17 **THE COURT:** Thank you.

18 **MR. BOWERS:** Thank you, Your Honor.

19 **THE COURT:** All right.

20 **MR. SMITH:** Your Honor, I am not going to take much  
21 time to reply here, but I do think, given the representations  
22 that Mr. Francisco made about how there is no harm being caused  
23 to anyone on the campuses of the University of North Carolina,  
24 I want to respond briefly to that.

25 First of all, he made the suggestion that none of the

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1 named Plaintiffs has claimed to have had anything changed in  
2 their lives on the campus. As I indicated before, Mr. Carcano  
3 was directed by his supervisors to stop using the only  
4 bathrooms on the floor where he works and to go down a service  
5 elevator to the housekeeping territory where he could use a  
6 single-occupancy bathroom. That's the University of North  
7 Carolina and Chapel Hill. It's described in paragraphs 20 and  
8 21 of his declaration where he describes being humiliated by  
9 having to stand in front of his coworkers at the service  
10 elevator whenever he needs to use the facilities and how he  
11 avoids going to the bathroom as much as possible to avoid that  
12 humiliation.

13 I would also think, given that representation, it  
14 would be useful if we could hand up two more documents to you,  
15 Your Honor. These are actual blast emails that went out at  
16 UNC-Greensboro and UNC-Chapel Hill to the students and  
17 employees of those institutions in which the chancellors of  
18 each of those institutions acknowledged the extreme amount of  
19 distress, unhappiness, and pain that was being caused to those  
20 people on these campuses by the fact that, as the University  
21 has had to acknowledge over and over again, House Bill 2 is, in  
22 fact, applicable to the University and is in effect on the  
23 University campuses.

24 So the first one, Your Honor, is the one with the big  
25 box on it on the first page. It is, in fact, an email that was

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1 sent out to Mr. Carcano and everybody else I believe on the  
2 campus at UNC-Chapel Hill on April 8, and it was Exhibit D to  
3 my declaration in opposition to the motion to stay, but it's  
4 also cited in our reply brief on the preliminary injunction  
5 motion.

6           If you look at page 2 of that email that went out  
7 from Chancellor Folt to the Chapel Hill community, the first  
8 full paragraph, the first thing that she acknowledges is "the  
9 memo from UNC General Administration," that's the Spellings  
10 memo, "also confirms that the law relating to public restrooms  
11 and changing facilities does apply to the University." This is  
12 what Mr. Carcano and everybody else there was told. Then she  
13 went on to say, "This is an issue that is deeply personal and  
14 involves some of our most basic and extremely private  
15 dignities." At the end of that paragraph: "We have added and  
16 will continue to add public gender-neutral single-use restrooms  
17 and changing facilities throughout our campus, and we will be  
18 adding additional signage," an obvious indication that they  
19 have changed the use of the multiple-user facilities on campus.

20           If you look two paragraphs further down, the second  
21 to last paragraph: "The University must do its best to comply  
22 with all laws that govern us while taking practical steps to  
23 lessen discomfort and distress."

24           If I could take you back to the first page, there are  
25 two more things that I would like to note on this document,

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1 this email, Your Honor. The last sentence of the first  
2 paragraph, quote, and many on our campus now feel excluded and  
3 unwelcomed here and in our state, unquote.

4           If you skip down to the third paragraph on the first  
5 page: "Although the policies on our campus remain, there is no  
6 question that many in our LGBTQ community and many others are  
7 feeling unwelcome, unsafe, and unhappy in the communities where  
8 they live and work."

9           The second document is the email that was sent out on  
10 UNC-Greensboro campus to the entire staff and student body, as  
11 attested to by the declaration of Mr. McGarry that was  
12 submitted in opposition to the UNC motion for a stay. This is  
13 from Chancellor Franklin Gilliam, Jr., and I would only point  
14 you to the paragraph that appears underneath the three bullet  
15 points and the sentence that says, "We know this has generated  
16 and will continue to generate concern and concrete consequences  
17 for our students, faculty, staff, and larger community."

18           So the reality of the matter is not only was  
19 Mr. Carcano's actual access to a multiple-user restroom cut off  
20 by his supervisor, but the chancellors of both of these  
21 campuses have acknowledged repeatedly the amount of harm and  
22 so-called concrete consequences that is occurring there because  
23 the University has acknowledged over and over again that it is  
24 bound to implement House Bill 2.

25           **THE COURT:** What if the University were to say, we

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1 understand that the statute could be interpreted to have an  
2 enforcement mechanism, and to the extent it does, we hereby  
3 inform you that we disagree with it, and, therefore, we will  
4 not enforce those provisions; we've put the signs on that we've  
5 always had on the bathrooms, and we will not enforce any of  
6 those -- seek to enforce use provisions? Would that be  
7 sufficient?

8           **MR. SMITH:** That wouldn't be sufficient for us, in  
9 part, because we have a governor in this state who has  
10 threatened to arrest people for trespass if they violate House  
11 Bill 2 or use the facilities --

12           **THE COURT:** But that would not be -- I mean, I'm  
13 looking at the University as a defendant. Maybe you can sue  
14 the Governor to do that, but would that provide the adequate  
15 assurance from the university system where they no longer are  
16 capable of being -- violating any rights?

17           **MR. SMITH:** It's difficult to answer a question about  
18 it promised that it's apparently going to be unenforceable, and  
19 it might be rescinded tomorrow if the Governor and the  
20 legislature go to Ms. Spellings and say you are violating the  
21 law, and you better stop. Hard to understand why --

22           **THE COURT:** Well, I guess what I'm confused about a  
23 little bit is there are cases that say if somebody chooses not  
24 to enforce the law, then there's no credible threat, and,  
25 therefore, the case may not be justiciable. That assumes that

1 the person who says they won't enforce it is the one who gets  
2 to make that decision, I think.

3           So in the cohabitation case, if the State of Virginia  
4 says we are not going to enforce this law, then that's the end  
5 of it because it's on the books. We have lots of laws on the  
6 books. Some of them are very curious, and you read them and  
7 nobody enforces them, and so that's the end of it.

8           Doesn't that beg that question of who gets to enforce  
9 this law, and if it's the University as an agency, do they then  
10 have the ability to say, well, we are not going to do that; in  
11 which case, that would be a nonjusticiable issue, at least for  
12 now? In which case, that's fine, that the University may have  
13 that view, but they don't get to make that call.

14           **MR. SMITH:** I think that in view of the language of  
15 Title IX, which it gives everybody the right to enjoy the equal  
16 benefits of the educational institution regardless of sex, that  
17 the University can avoid liability by simply saying, sure, we  
18 put up signs that say men and women, and we've told you that  
19 that means not transgender men and not transgender women, but  
20 because we are not going to enforce it, don't take it too  
21 seriously; you can still go in here and probably nothing bad  
22 will happen to you. That is essentially what the position is  
23 that they are taking.

24           If they want to put out an official pronouncement  
25 that says we will revert to the policy which we had before,

1 which we think was really great, we've already heard that from  
2 Ms. Spellings, that people make these decisions based on their  
3 own personal gender identity and that's the policy of the  
4 University, fine, but they are not doing that. I think it's  
5 very important to understand every time they put out one of  
6 these memos, they say, by the way, we're bound to implement  
7 House Bill 2. That's why all this distress and unhappiness --

8           **THE COURT:** Have you asked the university system  
9 whether they would issue such a statement that would satisfy  
10 you?

11           **MR. SMITH:** I don't believe that there's been  
12 separate conversations about that at this point. Our desire  
13 for such a thing was made fairly clear by all the documents we  
14 filed in the court.

15           **THE COURT:** I understand.

16           **MR. SMITH:** I am not going to deal with the Spending  
17 Clause argument, Your Honor, that Mr. Duncan made. I think the  
18 United States may have some words to say about that. I would  
19 just say, though, that the only defendant we currently have on  
20 a Title IX claim is the University of North Carolina, and they  
21 did not make that argument, and they are not making that  
22 argument. So I am not entirely clear whether or not that  
23 argument is even preserved --

24           **THE COURT:** I think it's raised in the other case, if  
25 I'm not mistaken.

1           **MR. SMITH:** That may be, Your Honor. I think -- the  
2 only thing I want to know is we have this gentleman in from San  
3 Diego, Mr. Smith, who is representing the School  
4 Administrators, that may have something to offer. You had sort  
5 of indicated through Ms. Engle that it might useful for him to  
6 be here.

7           **THE COURT:** I would hate to have him come all this  
8 way and not get an opportunity to speak, so I would be happy to  
9 talk with him. Let me do this first. Ms. Stoughton, did you  
10 have something else you wanted to add? And then I'll hear from  
11 Mr. Smith because I do have some questions.

12           **MS. STOUGHTON:** I do, Your Honor, thank you. Well,  
13 let me first address the Spending Clause issues since Mr. Smith  
14 invited me to do that. I think that's a red herring.  
15 *Pennhurst* is a problem when the United States seeks to use old  
16 money to coerce a funding recipient into abiding by --

17           **THE COURT:** That's why I was asking about a new  
18 policy.

19           **MS. STOUGHTON:** There's two reasons why that doesn't  
20 apply. One is that their funding has not been put at issue  
21 yet. There is no case that suggests that when the United  
22 States is enforcing Title IX in the way that it's enforcing  
23 here, which is to say -- or when a private plaintiff is seeking  
24 to enforce Title IX by way of an injunction to cease  
25 discrimination prospectively, that that creates a Spending

1 Clause problem.

2           The second reason it's not a problem is that this is  
3 not a new rule. The rule -- and this is why Mr. Duncan's  
4 Spending Clause argument runs straight into the wall of *G.G. v.*  
5 *Gloucester* because the upshot of that decision is that it's  
6 the -- the interpretive guidance is not the source of law.  
7 Title IX is the source of law, and that case rejected the  
8 premise of Mr. Duncan's argument, which is that Title IX, until  
9 the Justice Department suddenly said otherwise, meant  
10 biological sex in the sense that the Defendants are using that  
11 term here. It expressly rejected that argument. The Fourth  
12 Circuit rejected that and instead said that it would defer to  
13 the interpretive guidance because it did not find that guidance  
14 inconsistent with some clearer meaning of Title IX that existed  
15 prior to that guidance. So that is I think a fatal problem --  
16 both of those arguments are fatal problems.

17           This was not briefed, so I do think there's a couple  
18 of cases that, as tedious as it may be, I want to point the  
19 Court to as cases that underscore the arguments I've just made.  
20 They are both Supreme Court cases, and they are *Davis v. Monroe*  
21 *County*, which is 526 U.S. 629. That's a case that is about --  
22 it rejects the exact argument that Mr. Duncan is making here in  
23 the context of the interpretation of Title IX to extend to  
24 schools' obligations to prevent student-on-student sexual  
25 harassment. Schools in that context also made the argument

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1 that that was a new interpretation of Title IX, and the courts  
2 rejected that.

3           And the second case is *Bennett v. Kentucky Department*  
4 *of Education*, that's 470 U.S. 656, where the Court said that,  
5 you know, it may be that certain applications of the  
6 nondiscrimination funding condition are not immediately -- been  
7 in the front of people's mind, but that does not make the  
8 condition itself unenforceable, and that what's Mr. Duncan is  
9 asking the Court to find here, which would be contrary to that  
10 law.

11           I think that's probably sufficient. I mean, I would  
12 just add also that the newness that the Defendants ascribe to  
13 the Department's position is wrong. I mean, this did not  
14 appear as an interpretation in 2015. It was a consistent  
15 interpretation, and I will say, by the way, the circuit pointed  
16 that out. You only need to read the circuit's interpretation.  
17 There's a line in the Fourth Circuit's decision in *Gloucester*  
18 where they note that the Department has been enforcing this --  
19 the Departments of Education and Justice have been enforcing  
20 this interpretation of Title IX consistently since 2014.

21           Again, I guess to the Court's question about is this  
22 really a funding cycle problem, the truth is it's not a problem  
23 at all because no one is seeking to withdraw or claw back any  
24 money. The only question is, going forward, what does  
25 compliance with Title IX mean.

1           **THE COURT:** So in terms of remedy, the request is for  
2 an injunction, but the State, I presume, can choose not to  
3 participate in Title IX funding. So are you asking for me to  
4 declare what's required to continue to get Title IX funding, or  
5 are you asking me to enjoin conduct?

6           I noted in the *G.G.* case, I think, they just enjoined  
7 the conduct, but isn't there a question of whether the State  
8 can just choose to opt out?

9           **MR. SMITH:** Well, Your Honor, there is a private  
10 right of action under Title IX to enforce it and get injunctive  
11 relief if the State, in the face of such an injunction, says  
12 we're withdrawing from the program and we're not taking Title  
13 IX money -- any federal money for our university and our public  
14 school system, which doesn't seem very likely, frankly. In  
15 theory, I guess, they could then come back into court and ask  
16 for the injunction to be lifted, but we are entitled to  
17 injunction under case law that goes back to the 1970s.

18           **THE COURT:** Okay.

19           **MS. STOUGHTON:** Your Honor, the United States' answer  
20 isn't different from that. We are asking the Court to issue an  
21 injunction against the discriminatory behavior, and, again, I  
22 think that's right. If the State were to remove the  
23 jurisdictional predicate for that injunction by voluntarily  
24 disavowing the funds that subject it to Title IX, then I think  
25 the jurisdiction of that ongoing injunction would be gone.

1           **THE COURT:** So they can do it if they want to; they  
2 are just not going to get funding?

3           **MS. STOUGHTON:** That's right. And under the statute,  
4 as long as that jurisdictional predicate is there, the Court  
5 has authority to issue the injunction enjoining the  
6 discriminatory behavior. That's very clearly established under  
7 the law.

8           **THE COURT:** What is the status of *G.G.*? I know there  
9 was a request for Supreme Court review on an emergency basis  
10 and the briefing was filed last week.

11           **MR. DUNCAN:** Your Honor, since we also represent the  
12 Gloucester County School Board fairly recently, we have asked  
13 the Supreme Court --

14           **THE COURT:** Well, that's a helpful fact. If I had  
15 known that earlier, I might have had more questions.

16           **MR. DUNCAN:** I am happy to answer whatever questions  
17 you may have about it on behalf of our clients there and our  
18 clients here. We have asked the Supreme Court for recall and  
19 stay of the mandate as well as to stay the subsequently issued  
20 preliminary injunction. It has been briefed. I am not aware  
21 of an order coming -- it was briefed as of noon Friday. I am  
22 not aware of an order coming from the Supreme Court today, but  
23 I have been in this courtroom for quite some time. So a ruling  
24 could come at any time.

25           **THE COURT:** When does school start in Virginia; do

1 you know?

2 **MR. DUNCAN:** Early September. Well, it depends. In  
3 some places, early September and others, late August. In  
4 Gloucester County, it's September 6, I believe, and we'll be  
5 filing a petition for writ of certiorari in that case.

6 **THE COURT:** So you're asking for a stay of the  
7 mandate pending your ability to file a cert petition?

8 **MR. DUNCAN:** A recall and a stay of the mandate since  
9 the mandate issued already.

10 **THE COURT:** I understand. So the status is that --  
11 is that something -- it goes to the chief justice as the  
12 circuit justice?

13 **MR. DUNCAN:** That's correct.

14 **THE COURT:** Is that something that the chief justice  
15 can decide on his own, or does it have to be submitted to the  
16 court for review?

17 **MR. DUNCAN:** He could decide it on his own, or he  
18 could refer to it to court.

19 **THE COURT:** Do you have any idea about -- well, do  
20 you know when school starts in North Carolina for the public  
21 system?

22 **MR. DUNCAN:** I am not prepared to answer that right  
23 now, Your Honor.

24 **THE COURT:** Somebody here might know that answer.

25 **MR. RAND:** My son started school last week.

1           **THE COURT:** Is he an eager beaver, or are there other  
2 people there, too?

3           **MR. RAND:** It was compulsory on his part. He is not  
4 the only one there.

5           **MR. FRANCISCO:** Your Honor, I believe it's  
6 August 29th.

7           **MR. RAND:** There are many of the public schools in  
8 North Carolina that do operate on a different calendar from  
9 the, quote, traditional calendar. There are modified  
10 traditional, and there are year-round schools, and so my son,  
11 to his great dismay, is in one of the modified traditional  
12 calendars.

13           **THE COURT:** Summer is over for your son.

14           **MR. RAND:** It is definitively over in his mind, for  
15 sure.

16           **MR. FRANCISCO:** Your Honor, would you permit me just  
17 to very briefly respond to a factual assertion that I would  
18 like to clarify?

19           **THE COURT:** Sure.

20           **MR. FRANCISCO:** Mr. Smith suggested that  
21 Mr. Carcano's declaration established that his supervisor had  
22 directed him to use the single-use restroom. I just point Your  
23 Honor to paragraph 230 of that declaration where the relevant  
24 sentence doesn't say quite that. It says, "I was later told by  
25 administrative staff in the building where I work that they had

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1 learned of a single occupancy restroom based on building floor  
2 plans." So it looks like somebody was just providing  
3 information to him on where a restroom was. There's no  
4 suggestion in there that he was directed to use a single-use  
5 restroom by his supervisor. If that did happen, it would not  
6 have been authorized under UNC policy.

7           The other two things I point out is that both of the  
8 emails that Mr. Smith gave you included language that he didn't  
9 read to Your Honor that stated, the first one, "As noted in the  
10 memorandum, the law does not contain any provisions concerning  
11 enforcement," and in the second one, "The law does not confer  
12 authority to the University or any other public agency to  
13 undertake enforcement actions."

14           That's all I have, Your Honor.

15           **THE COURT:** All right. I understand. By the way, I  
16 don't know if those are in the record, but they are admitted as  
17 exhibits. Anything that's been submitted, I am admitting in  
18 the record as exhibits.

19           Ms. Stoughton?

20           **MS. STOUGHTON:** Your Honor, I would like to address  
21 also these issues about UNC's enforcement. You know, putting  
22 the details aside, I think the critical fact is that pursuant  
23 to H.B. 2, putting gender markers on the front door of the  
24 restrooms in the UNC system now signifies that transgender  
25 women must use the men's restroom and transgender men must use

1 the women's restroom, and that is discrimination.

2           **THE COURT:** Your point is there's nothing they can  
3 say, as long as they have "men"? And "women" on the doors.

4           **MS. STOUGHTON:** That's right. And I would link that  
5 specifically to one of the three things that UNC has admitted  
6 that it's done, which is that it has admitted it's complied  
7 with the mandate of H.B. 2 to put gender markers on the doors.  
8 Now, they said, well, we haven't changed the gender markers,  
9 but the point is what does that sign signify, and under H.B. 2,  
10 which the University has said, although we are not going to  
11 enforce it in the meaning of enforcement, like, you know,  
12 punishing somebody, we are complying with it. So what that  
13 means is that what that marker says is what's illegal under  
14 *Gloucester* and the Government's interpretation of the Title IX  
15 regulation, which says that generally those markers are not  
16 discrimination when they're just segregating men and women, but  
17 when you do not offer access to those facilities consistent  
18 with gender identity, it becomes discrimination, and that is  
19 the situation on campus on UNC today, and that violates Title  
20 IX.

21           That's really as far as -- these questions about  
22 exactly what are they doing and who gets to enforce are  
23 important and helpful, and, actually, I think when you dig into  
24 those for the reasons Mr. Smith said, UNC is still on the hook;  
25 but you don't even need to get beyond that for the very simple

1 fact to establish liability under Title IX, given what Title IX  
2 says, which is that UNC has an obligation to prevent  
3 discrimination and ensure that students have access to the  
4 benefits of its educational --

5 **THE COURT:** So what can the University of North  
6 Carolina system do to comply with not only -- I shouldn't say  
7 comply with the law. What can the university system do, in  
8 your view, to not be violating the law?

9 **MS. STOUGHTON:** Well, what we asked the University to  
10 do --

11 **THE COURT:** And not violating your clients' rights?

12 **MS. STOUGHTON:** Right. What we asked the University  
13 to do in the letters that led to the United States' enforcement  
14 action was to make it clear to the campus community that H.B. 2  
15 is not the policy governing access to facilities on campus, and  
16 UNC would not do that and has done the opposite in the, at  
17 best, definitely mixed and confusing messages.

18 Again, the record on this, I think, has been put  
19 forward clearly. One side of it has been presented by  
20 Plaintiffs, the other side by the University. All that it  
21 amounts to at the end of the day, at best for the University's  
22 position, is a kind of confusing jumble. And what the United  
23 States asked the University to do is to state very clearly,  
24 which included, you know, rescinding the parts of the Spellings  
25 memorandum, which were widely distributed, that said that

1 UNC -- that it is obliged to and will comply with the terms of  
2 H.B. 2 and make it very clear the other parts of the things  
3 they've said. They didn't do that. The best statements that  
4 UNC have made have really been in the course of this  
5 litigation, and that's really a post-litigation, at best,  
6 change, which does --

7 **THE COURT:** I suppose if they eventually, though, say  
8 what you want them to say, that's sufficient because then we're  
9 talking about preliminary and injunctive relief. So at some  
10 point, if they roll over and say uncle, then you have to say,  
11 okay, fine, there is no claim now, as long as they don't change  
12 their view.

13 **MS. STOUGHTON:** Your Honor, no, at this point, once  
14 litigation has ensued, the only remedy that will completely  
15 ensure no violation of Title IX is an injunction. It can be an  
16 injunction that's entered by --

17 **THE COURT:** What if Mr. Francisco stood up right now  
18 and said, you know something, I have the authority on behalf of  
19 the board and president to tell you that we repudiate the law,  
20 it's the worst thing that we've ever had, and we have no  
21 intention of enforcing it, and it's contrary to everything we  
22 believe in at the University system, we respect everyone's  
23 rights, et cetera, et cetera? How would I enter an injunction  
24 against them if they are not going to do anything? They are  
25 going to openly defy the law. Would I still enjoin them?

1           **MS. STOUGHTON:** Absolutely, you would, Your Honor,  
2 and that's the upshot of the *North Carolina Right to Life* case  
3 from the Fourth Circuit and all the lines of cases that follow,  
4 including a case from the Fourth Circuit that came out the same  
5 time day as *Doe v. Duling*, the case that UNC relies upon so  
6 heavily, which distinguished cases -- it distinguished a couple  
7 of things. One is cases where you are dealing with kind of  
8 moribund statutes where nobody is really clear if anyone ever  
9 will enforce it or how they would enforce it, and cases where  
10 you have a newly changed policy that there is every indication  
11 that the clear reading of it is that it should be followed, and  
12 then only kind of post-litigation a defendant offers an  
13 interpretation that would alleviate the harm. Even then, there  
14 is jurisdiction to enter an injunction because post-litigation  
15 changes could be reversed the minute we walk away.

16           In this case, that is a particularly troubling  
17 potential because the exchange that Mr. Duncan gave to the  
18 Court, when the Court asked Mr. Duncan what's the legislature's  
19 position on UNC's disavowal of a desire to enforce, was, well,  
20 he's not aware of any action taken, you know, as he said, as a  
21 matter of state government now, but now we're in a litigation  
22 posture. So, frankly, that makes some sense to me.

23           What's to say that -- if the Court were to release  
24 UNC from this case and, by doing so, eliminate the Title IX  
25 claim from both the United States' and the private Plaintiffs'

1 case, because UNC is the only proper defendant under the terms  
2 of the statute of Title IX, then there is no more restriction  
3 on what might happen.

4 **THE COURT:** If I enter an injunction under Title IX,  
5 does it not -- can I not enter one that covers the State of  
6 North Carolina and all constituent parties? I mean, I don't  
7 have before me, I don't think, every Title IX entity, do I?

8 **MS. STOUGHTON:** That's right; you do not.

9 **THE COURT:** So I presume, because they are not all  
10 before me, you all believe that if I enter an injunction,  
11 following *G.G.* across the board on Title IX, that that would  
12 cover all Title IX constituent agencies. If I do that for the  
13 school system, do you need the University system -- the public  
14 school system, do you need them as a defendant?

15 **MS. STOUGHTON:** Well, Your Honor, in this case the  
16 only Title IX defendant is UNC. For the purposes of a Title IX  
17 injunction -- I mean, I would love it to be otherwise, but I  
18 don't think --

19 **THE COURT:** The Governor on behalf of the State  
20 doesn't qualify to get the public school system?

21 **MS. STOUGHTON:** Your Honor, no, Title IX is a mandate  
22 directed at the educational institution. You know, my  
23 understanding, but maybe we'll need to follow up with the Court  
24 on this, is that the only proper defendant under Title IX is  
25 the educational institution. So it is our understanding of the

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1 scope of certainly the United Nations' Title IX claim, that  
2 notwithstanding that we have brought other claims against the  
3 Governor and the State of North Carolina itself, that those are  
4 not Title IX defendants because a proper Title IX claim would  
5 need to be directed at the school district as the educational  
6 institution to which the funding -- well, I should say it's not  
7 the educational institution; it's the funding recipient.

8           **THE COURT:** I would be interested in knowing, if you  
9 all can submit it by the end of the week, whether I have  
10 redundancy in parties for Title IX purposes and, if I do,  
11 whether there is any way to simplify this. I've had redundancy  
12 in actions. I am trying to simplify these cases, and I would  
13 love to not have redundancy in parties, if, for no other  
14 reason, for a cost point of view for everybody involved.

15           So if you all could brief that and let me know by the  
16 end -- I don't want a lot, please. I have plenty. Less than  
17 ten pages per side.

18           **MS. STOUGHTON:** Absolutely, Your Honor.

19           **THE COURT:** Just let me know whether you think that's  
20 the case, and you are free to say, even if it is the case, you  
21 think here is the reason not to dismiss them out or what have  
22 you, but -- and it may depend on which way I rule, but I would  
23 be interested in knowing your view.

24           **MS. STOUGHTON:** Absolutely, Your Honor. Thank you.

25           **THE COURT:** All right. It's late in the day -- it's

1 early in the afternoon, but late in the day. Who is the  
2 administrator? Is it, Mr. Smith; is that right?

3 **MR. NATHANIEL SMITH:** Yes, Your Honor.

4 **THE COURT:** First of all, thank you for coming. I  
5 understood that you're an Amici in the case. So what I am  
6 really interested in is what was happening and what happens in  
7 the school system to accommodate particularly changing rooms  
8 and showers for the interest of transgender people?

9 **MR. NATHANIEL SMITH:** Yes, thank you, Your Honor,  
10 Nathaniel Smith of the Pillsbury firm for the School  
11 Administrator Amici, also joined by Mark Sigmon, our local  
12 counsel. I appreciate your having us here today and accepting  
13 our brief.

14 Now, our brief is on behalf of nearly 30 school  
15 administrators from 20 states, including North Carolina,  
16 Kentucky, individual superintendents and --

17 **THE COURT:** So what North Carolina administrators are  
18 you appearing for here today?

19 **MR. NATHANIEL SMITH:** It was a board member of the  
20 Durham Public Schools.

21 **THE COURT:** Okay.

22 **MR. NATHANIEL SMITH:** We also have an administrator  
23 from a public school in Durham, New Hampshire, and Portland,  
24 Oregon, and Portland, Maine.

25 **THE COURT:** So maybe you ought to start with Durham.

1 So how does this play out in day-to-day practicality?

2 **MR. NATHANIEL SMITH:** In day-to-day practicality,  
3 what happens is there are concerns that are raised and fears  
4 raised by parents and not by the kids and not by the students.  
5 That was a consistent theme in all of the administrators that  
6 --

7 **THE COURT:** How are the students accommodated in  
8 showers and changing facilities? And, also, what is a changing  
9 facility? Is it basically a locker room?

10 **MR. NATHANIEL SMITH:** So in locker rooms, there is  
11 more privacy already in locker rooms than many of us recall  
12 from school days. You know, group showers have been replaced  
13 with stalls and curtains or at least having one private stall  
14 available for whatever reason, body image issues. These are  
15 educators who are familiar with students' concerns about  
16 privacy and body image, you know, completely apart from  
17 transgender and nontransgender students, and so they work with  
18 transgender students, just as they would with any other  
19 students, to say what can we do to create a more welcoming,  
20 easier environment for you --

21 **THE COURT:** Is there ever an instance where a  
22 transgender student's interest is not capable of being  
23 accommodated by including them in a shower or locker room so  
24 that a separate facility is really the answer that's provided?  
25 Does that ever occur?

1           **MR. NATHANIEL SMITH:** I can't say if it's ever  
2 occurred. Is there ever a situation where there is not a --

3           **THE COURT:** A practical accommodation that can keep  
4 them in the locker room or shower.

5           **MR. NATHANIEL SMITH:** None that I am aware of from  
6 the Amici that we spoke with, from the administrators that we  
7 spoke with.

8           **THE COURT:** For showers, for example, are there  
9 separate curtains that are put in, or what is done to give  
10 privacy if the privacy interest is trying to be respected?

11           **MR. NATHANIEL SMITH:** Well, in some schools, they  
12 already have the private shower stalls with a shower curtain,  
13 so nothing out of the ordinary is needed for a transgender  
14 student in that situation. Or the coach's office, they have a  
15 shower facility in there that, again, a transgender student or  
16 a nontransgender student who is just --

17           **THE COURT:** That's more along the lines of a separate  
18 facility to accommodate whoever wants it?

19           **MR. NATHANIEL SMITH:** Uh-uh.

20           **THE COURT:** All right.

21           **MR. NATHANIEL SMITH:** Also, I learned through this  
22 undertaking that actually students shower less now than --

23           **THE COURT:** I'm not sure that's a good thing.

24           **MR. NATHANIEL SMITH:** I'm not sure either. That  
25 probably raises other issues in late spring afternoons when you

1 are coming back to your English class, but, nonetheless, one of  
2 the things is that students will strip down to their boxers and  
3 undershirt, change into their PE shorts and PE shirt, go do PE,  
4 come back, reverse, again only getting down to boxers and  
5 undershirt.

6 **THE COURT:** What's the prevalence of students who  
7 want to use showers and changing rooms who are transgender; do  
8 you know?

9 **MR. NATHANIEL SMITH:** I really don't, Your Honor.

10 **THE COURT:** I'm assuming the bathroom issue is the  
11 most prevalent because it's a day-to-day issue, and that the  
12 showers and changing rooms are something less than that. Is  
13 that true?

14 **MR. NATHANIEL SMITH:** I think that's correct, locker  
15 rooms less than bathrooms. But also that there is another  
16 common theme, talking with these educators and administrators,  
17 was that transgender students are very discreet about their  
18 bodies. They are trying to blend in, not stand out, and so the  
19 concerns and fears that a transgender student would be exposing  
20 him or herself to other students is quite far from the mark.

21 **THE COURT:** Are there different accommodations in the  
22 school systems that are made depending on the age range of the  
23 students involved in order to respect privacy interests or have  
24 a safety issue?

25 **MR. NATHANIEL SMITH:** I don't know the answer to

1 that, Your Honor. I'm just thinking that probably locker rooms  
2 are more junior high and high school than elementary schools.

3 **THE COURT:** Are their showers and changing rooms in  
4 elementary schools; do you know?

5 **MR. NATHANIEL SMITH:** I don't know, but, again, the  
6 consistent experience from these Amici, again with policies  
7 that allow transgender students to use the bathroom that  
8 corresponds with their gender identity, is that it simply --  
9 you know, they've heard these fears, the same fears that  
10 sometimes are something being raised here, but in practice,  
11 they just don't play out. It brings to mind the line, I think  
12 misattributed but to Mark Twain, that "I am an old man and have  
13 known many troubles in my life, but most of them never  
14 happened." That's what we are hearing from the school  
15 administrators. We hear these fears, we hear these concerns  
16 again overwhelmingly from parents, not from the students,  
17 students are fine, and these fears simply don't not  
18 materialize.

19 **THE COURT:** Thank you for coming, if for no other  
20 reason to enlighten us with a little Mark Twain.

21 **MR. NATHANIEL SMITH:** I'm glad to offer whatever I  
22 can, Your Honor. We appreciate the Court's interest in  
23 subsequent briefing.

24 **THE COURT:** Sure. Unless anybody else has anything  
25 pressing, I know folks are hungry, I want thank you all for all

1 of your hard work. I have extensive briefing, and it's well  
2 done, so thank you all. I am going to endeavor to make a  
3 decision as soon as I can. I understand the school system is  
4 about to crank up. Apparently, for some unfortunate or  
5 fortunate children, they've already started, but I will do the  
6 best I can to issue a decision just as soon as I can, and we'll  
7 proceed from there.

8 All right. Thank you. Have a good afternoon.

9 (END OF PROCEEDINGS AT 1:29 P.M.)

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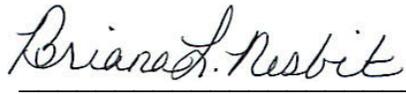
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1 UNITED STATES DISTRICT COURT  
2 MIDDLE DISTRICT OF NORTH CAROLINA  
3 CERTIFICATE OF REPORTER

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I, Briana L. Nesbit, Official Court Reporter,  
certify that the foregoing transcript is a true and correct  
transcript of the proceedings in the above-entitled matter.

Dated this 4th day of August 2016.

  
\_\_\_\_\_  
Briana L. Nesbit, RPR  
Official Court Reporter

Cite as: 579 U. S. \_\_\_\_ (2016)

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BREYER, J., concurring

**SUPREME COURT OF THE UNITED STATES**

No. 16A52

GLOUCESTER COUNTY SCHOOL BOARD *v.* G. G.,  
BY HIS NEXT FRIEND AND MOTHER,  
DEIRDRE GRIMM

ON APPLICATION TO RECALL AND STAY

[August 3, 2016]

The application to recall and stay the mandate of the United States Court of Appeals for the Fourth Circuit in case No. 15–2056, presented to THE CHIEF JUSTICE and by him referred to the Court, is granted and the preliminary injunction entered by the United States District Court for the Eastern District of Virginia on June 23, 2016, is hereby stayed pending the timely filing and disposition of a petition for a writ of certiorari. Should the petition for a writ of certiorari be denied, this stay shall terminate automatically. In the event the petition for a writ of certiorari is granted, the stay shall terminate upon the issuance of the judgment of this Court.

JUSTICE BREYER, concurring.

In light of the facts that four Justices have voted to grant the application referred to the Court by THE CHIEF JUSTICE, that we are currently in recess, and that granting a stay will preserve the status quo (as of the time the Court of Appeals made its decision) until the Court considers the forthcoming petition for certiorari, I vote to grant the application as a courtesy. See *Medellín v. Texas*, 554 U. S. 759, 765 (2008) (BREYER, J., dissenting).

JUSTICE GINSBURG, JUSTICE SOTOMAYOR, and JUSTICE KAGAN would deny the application.

Exhibit A

**JA910**

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

JOAQUÍN CARCAÑO, et al., )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 PATRICK MCCRORY, in his )  
 official capacity as Governor )  
 of North Carolina, et al., )  
 )  
 Defendants, )  
 )  
 and )  
 )  
 PHIL BERGER, in his official )  
 capacity as President Pro )  
 Tempore of the North Carolina )  
 Senate; and TIM MOORE, in his )  
 official capacity as Speaker )  
 of the North Carolina House of )  
 Representatives, )  
 )  
 Intervenor-Defendants. )

1:16cv236

**MEMORANDUM OPINION, ORDER  
AND PRELIMINARY INJUNCTION**

THOMAS D. SCHROEDER, District Judge.

This case is one of three related actions in this court concerning North Carolina’s Public Facilities Privacy & Security Act, 2016 N.C. Sess. Laws 3, commonly known as House Bill 2 (“HB2”). Although Plaintiffs challenge multiple portions of HB2, they presently seek preliminary relief only as to Part I, the so-called “bathroom bill” portion of the law, which requires public agencies to ensure that multiple occupancy bathrooms, showers, and other similar facilities are “designated for and only used by”

persons based on their "biological sex," defined as the sex listed on their birth certificate. 2016 N.C. Sess. Laws 3 §§ 1.2-1.3. Plaintiffs include two transgender<sup>1</sup> students and one employee (collectively, the "individual transgender Plaintiffs") of the University of North Carolina ("UNC"), as well as the American Civil Liberties Union of North Carolina ("ACLU-NC"), which sues on behalf of its transgender members. (Doc. 9 ¶¶ 5-7, 10.) The individual transgender Plaintiffs (in their individual capacities) claim that Part I violates Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. ("Title IX"). (Doc. 9 ¶¶ 235-43.) In addition, the individual transgender Plaintiffs and ACLU-NC claim that Part I violates the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution.<sup>2</sup>

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<sup>1</sup> Transgender individuals are persons who do not identify with their birth sex, which is typically determined on the basis of external genitalia. (Doc. 22-1 ¶¶ 12, 14; see also Doc. 9 ¶ 26.) According to the latest edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, some transgender individuals suffer from a condition called gender dysphoria, which occurs when the "marked incongruence between one's experienced/expressed gender and assigned gender" is associated with "clinically significant distress or impairment in social, occupational, or other important areas of functioning." (Doc. 22-5 ¶¶ 12-13.) In other words, gender dysphoria occurs when transgender individuals experience emotional, psychological, or social distress because "their deeply felt, core identification and self-image as a particular gender does not align" with their birth sex. (See Doc. 22-1 ¶ 19.) For purposes of the present motion, the court accepts Plaintiffs' un rebutted evidence that some transgender individuals form their gender identity misalignment at a young age and exhibit distinct "brain structure, connectivity, and function" that does not match their birth sex. (Id. ¶¶ 18, 22.)

<sup>2</sup> After the preliminary injunction hearing, ACLU-NC moved to file a second amended complaint to allege a Title IX representational claim.

(Id. ¶¶ 186-200, 220-34.)

It is important to note what is (and is not) in dispute. All parties agree that sex-segregated bathrooms, showers, and changing facilities promote important State privacy interests, and neither Plaintiffs nor the United States contests the convention. Further, no party has indicated that the pre-HB2 legal regime posed a significant privacy or safety threat to anyone in North Carolina, transgender or otherwise. The parties do have different conceptions, of how North Carolina law generally operated before March 2016, however, and whether "sex" includes gender identity.

Plaintiffs contend that time is of the essence, as HB2's impact will be most felt as educational institutions across the State begin a new academic year. As a result, the court has endeavored to resolve Plaintiffs' motion for preliminary relief as quickly as possible.

Ultimately, the record reflects what counsel for Governor McCrory candidly speculates was the status quo ante in North Carolina in recent years: some transgender individuals have been quietly using bathrooms and other facilities that match their gender identity, without public awareness or incident. (See Doc. 103 at 70 (speculating that, even if Part I remains in force, "some

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(Doc. 116.) Briefing on that motion is incomplete, so the court only considers Title IX relief for the individual transgender Plaintiffs at this time.

transgender individuals will continue to use the bathroom that they always used and nobody will know.”).) This appears to have occurred in part because of two factors. First, the record suggests that, for obvious reasons, transgender individuals generally seek to avoid having their nude or partially nude bodies exposed in bathrooms, showers, and other similar facilities. (See Doc. 103 at 140.) Second, North Carolina’s decades-old laws against indecent exposure, peeping, and trespass protected the legitimate and significant State interests of privacy and safety.

After careful consideration of the limited record presented thus far,<sup>3</sup> the court concludes that the individual transgender Plaintiffs have made a clear showing that (1) they are likely to succeed on their claim that Part I violates Title IX, as interpreted by the United States Department of Education (“DOE”) under the standard articulated by the Fourth Circuit; (2) they will suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities weighs in favor of an injunction; and

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<sup>3</sup> In response to Plaintiffs’ motion for preliminary injunction, Governor McCrory, Senator Burger, and Representative Moore requested a several-month delay. (Doc. 53 at 9-11; Doc. 61 at 27-29.) These Defendants claimed the need for extensive factual discovery to adequately address the issues presented in Plaintiffs’ motion. (Id.) They collectively submitted only six exhibits, however, each of which consists of a short news article or editorial. (See Docs. 55-1 through 55-6.) Moreover, during a scheduling conference held on July 1, 2016, they indicated that they did not intend to offer additional exhibits or live testimony and that any preliminary injunction hearing could be limited to oral argument. As a result, nearly the entire factual record in this case is derived from materials submitted by Plaintiffs.

(4) an injunction is in the public interest. Accordingly, the court will enjoin UNC from enforcing Part I against the individual transgender Plaintiffs until the court reaches a final decision on the merits in this case. Plaintiffs have not made a clear showing they are likely to succeed on their Equal Protection claim, and the court will reserve ruling on their Due Process claims pending additional briefing from the parties.

It is important to emphasize that this injunction returns the parties to the status quo ante as it existed in Title IX facilities prior to Part I's passage in March 2016. On the current record, there is no reason to believe that a return to the status quo ante pending a trial on the merits will compromise the important State interests asserted.

## **I. BACKGROUND**

Based on the record thus far, the court makes the following findings for the limited purpose of evaluating Plaintiffs' motion for preliminary injunction.

### **A. North Carolina Law Before 2016**

Like most States, North Carolina has long enforced a variety of public decency laws designed to protect citizens from exposing their nude or partially nude bodies in the presence of members of the opposite sex, as well as from being exposed to the nude or partially nude bodies of members of the opposite sex. With regard to the former, North Carolina's peeping statute, enacted in 1957,

makes it unlawful for any person to "peep secretly into any room occupied by another person," N.C. Gen. Stat. § 14-202(a), including a bathroom or shower, and penalties are enhanced if the offender does so for the purpose of sexual gratification, id. § 14-202(d). With regard to the latter, North Carolina's indecent exposure statute, enacted in 1971, makes it unlawful for any person to "willfully expose the private parts of his or her person in any public place and in the presence of any other person or persons." Id. § 14-190.9(a). Traditionally, the indecent exposure statute applied only to individuals who exposed themselves to members of the opposite sex. See State v. Fusco, 136 N.C. App. 268, 270, 523 S.E.2d 741, 742 (1999) (interpreting an earlier version of § 14-190.9(a)). In 2005, North Carolina removed the language that had previously limited the statute's application to situations in which individuals exposed themselves in the presence of members of the opposite sex. 2005 N.C. Sess. Laws 226 § 1 (modifying N.C. Gen. Stat. § 14-190.9). That same amendment, however, created an exception for situations in which "same sex exposure" occurs in a "place[] designated for a public purpose" and is "incidental to a permitted activity." Id.

In addition to these statutes, public agencies in North Carolina have also traditionally protected privacy through the use of sex-segregated bathrooms, locker rooms, showers, and similar facilities. Although this form of sex discrimination has a long

history in the State and elsewhere, the parties offer differing ideas of the justification for the practice. Plaintiffs acknowledge, as Defendants contend, that such segregation promotes privacy and serves important government interests, particularly with regard to minors. (See, e.g., Doc. 103 at 15-21.) Arguably, segregating such facilities on the basis of sex fills gaps not addressed by the peeping and indecent exposure statutes - for example, a situation in which a man might inadvertently expose himself to another while using a facility that is not partitioned. It is also possible that sex-segregated facilities protect against embarrassment from engaging in intimate bodily functions in the immediate vicinity of the opposite sex, regardless of whether one's body is subject to view.

Whatever the justification, the segregation of these facilities has traditionally been enforced through voluntary compliance, social mores, and, when necessary, criminal trespassing law. See In re S.M.S., 196 N.C. App. 170, 675 S.E.2d 44 (2009). For example, in S.M.S., a fifteen year old boy was adjudicated delinquent of second degree trespass after he was caught in the girls' locker room at his high school. Id. at 170-71, 675 S.E.2d at 44-45. Pursuant to N.C. Gen. Stat. § 14-159.13, it is a second degree trespass to enter the premises of another when reasonably conspicuous signs are posted to give the intruder "notice not to enter the premises." In upholding the boy's

conviction, the North Carolina Court of Appeals concluded, "The sign marked 'Girl's Locker Room' was reasonably likely to give respondent notice that he was not authorized to go into the girls' locker room." S.M.S., 196 N.C. App. at 173, 675 S.E.2d at 46.

For most, the application of the peeping, indecent exposure, and trespass laws to sex-segregated bathrooms and showers is straightforward and uncontroversial. For transgender users, however, it is not clearly so. While there are no reported cases involving transgender users, at the preliminary injunction hearing Governor McCrory, Senator Berger, and Representative Moore indicated their assumption that this was so because transgender users have traditionally been excluded (or excluded themselves) from facilities that correspond with their gender identity. The evidence in the current record, however, suggests the opposite. At least in more recent years, transgender individuals who dress and otherwise present themselves in accordance with their gender identity have generally been accommodated on a case-by-case basis, with educational institutions generally permitting them to use bathrooms and other facilities that correspond with their gender identity unless particular circumstances weigh in favor of some other form of accommodation.

For example, Plaintiffs submitted an affidavit from Monica Walker, the Diversity Officer for public schools in Guilford County, North Carolina, the State's third largest school district,

with over 72,000 students in 127 school campuses. (Doc. 22-19 ¶¶ 2-3.) Over the last five years, Ms. Walker has developed a protocol for accommodating transgender students as they undergo the social transition from male to female, or vice versa. (Id. ¶¶ 8-11.) This protocol emphasizes the importance of developing a "tailored" plan that addresses the unique needs and circumstances of each case. (See id. ¶ 11.) Based on her experience with four transgender students, Ms. Walker indicates that these students typically use bathrooms that correspond with their gender identity. (Id.) Ms. Walker has not received any complaints about this arrangement from students or parents, and although every school in Guilford County has single occupancy bathrooms available for any student with privacy concerns, no student has ever requested such an accommodation. (Id. ¶¶ 13-16.) This may be because all multiple occupancy bathrooms in Guilford County schools have separate stalls or privacy partitions, such that students are not exposed to nudity in bathrooms. (See id.) Although Ms. Walker has yet to deal with questions concerning access to locker rooms, she is confident that the privacy interests of transgender and non-transgender students alike could be accommodated through the same means used to accommodate any student with body image or shyness issues. (See id.) In sum, Ms. Walker reports that the practice of tailoring specific accommodations for transgender students on a case-by-case basis in Guilford County

has been "seamless." (Id. ¶ 12.) And according to an amicus brief filed by school administrators from nineteen States plus the District of Columbia - including Durham County Schools in North Carolina, another large school district - Guilford County's experience is typical of many school districts from across the country. (See Doc. 71.)

This conclusion is also consistent with the experiences of the individual transgender Plaintiffs in this action. All three submitted declarations stating that they used bathrooms, locker rooms, and even dormitory facilities corresponding with their gender identity beginning as early as 2014. (Doc. 22-4 ¶ 15; Doc. 22-8 ¶ 19; Doc. 22-9 ¶¶ 15, 19-20.) No one has reported any incident or complaint from their classmates or the general public. (See Doc. 22-4 ¶ 30; Doc. 22-8 ¶ 25; Doc. 22-9 ¶ 20.)

This evidence is admittedly anecdotal. It is possible that before Part I, some transgender individuals in North Carolina were denied accommodations and completely excluded from facilities that correspond with their gender identity due to privacy or safety concerns. Also, minors may have received different types of accommodations than adults, and practical considerations may have led to different arrangements for bathrooms as opposed to showers and other facilities. And, it may be that the practice of case-by-case accommodation is a more recent phenomenon, such that other norms prevailed for most of North Carolina's history until the

last few years. But Defendants have not offered any evidence whatsoever on these points, despite having four months between the filing of this lawsuit and the hearing on this motion to do so. Indeed, the court does not even have a legislative record supporting the law to consider.<sup>4</sup>

As a result, the court cannot say that the practices described by Ms. Walker, the school administrators, and the individual transgender Plaintiffs represent an aberration rather than the prevailing norm in North Carolina, at least for the five or more year period leading up to 2016. Rather, on the current record, it appears that some transgender individuals have been quietly using facilities corresponding with their gender identity and that, in recent years, State educational institutions have been accommodating such students where possible.

#### **B. The Charlotte Ordinance and the State's Response**

In November 2014, the Charlotte City Council began considering a proposal to modify that city's non-discrimination ordinances to prohibit discrimination on the basis of marital status, familial status, sexual orientation, gender identity, and

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<sup>4</sup> Defendants have since filed transcripts of the legislative record in a separate case. (Docs. 149-5 through 149-8 in case no. 1:16cv425.)

gender expression.<sup>5</sup> (Doc. 23-3 at 2.)<sup>6</sup> On March 2, 2015, the proposed ordinance was amended to include the following language: "Notwithstanding the forgoing [sic], this section shall not, with regard to sex, sexual orientation, gender identity, and gender expression, apply to rest rooms, locker rooms, showers, and changing facilities." (Id.) Shortly thereafter, the proposed ordinance failed by a vote of six to five. (Id.)

On February 22, 2016, the Charlotte City Council considered a new proposal to revise its non-discrimination ordinances. (Doc. 23-5 at 2-3.) Like the prior proposal, the new proposal added "marital status, familial status, sexual orientation, gender identity, [and] gender expression" to the list of protected characteristics. (Doc. 23-2 at 1.) Unlike the prior proposal, however, the new proposal did not contain any exceptions for bathrooms, showers, or other similar facilities. (See id. at 1-6.) In addition, the new proposal repealed prior rules that exempted "[r]estrooms, shower rooms, bathhouses and similar facilities which are in their nature distinctly private" from Charlotte's prohibitions against sex discrimination. (Id. at 5.)

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<sup>5</sup> Charlotte's existing non-discrimination ordinances prohibited discrimination on the basis of race, gender, religion, national origin, ethnicity, age, disability, and sex. (See Doc. 23-2 at 1, 6.)

<sup>6</sup> Not all of the exhibits in the record contain internal page numbers, and many include cover pages that were not part of the original documents. For clarity, all record citations in this opinion refer to the pagination in the CM/ECF version of the document.

The new proposal, which regulated places of public accommodation and businesses seeking to contract with Charlotte (id. at 2-6), passed by a vote of seven to four (Doc. 23-5 at 3)<sup>7</sup> and set an effective date of April 1, 2016 (Doc. 23-2 at 6).

The Charlotte ordinance provoked a swift response from the State. Governor McCrory and several members of the General Assembly strongly condemned the ordinance, which they generally characterized as an affront to both privacy and public safety, and they indicated their desire to see a legislative response to Charlotte's actions. (See, e.g., Doc. 23-7 at 2; Doc. 23-8 at 2.) The General Assembly was not scheduled to reconvene until April 25, 2016, however, and despite his opposition to the Charlotte ordinance, Governor McCrory declined to exercise his authority to call a special legislative session. (See Doc. 23-16 at 2-3; Doc. 23-18 at 4.) As a result, the General Assembly only reconvened after three-fifths of the members of the House of Representatives requested a special session. (Docs. 23-17 at 2.)<sup>8</sup>

On March 23, 2016, the General Assembly convened for the special session and moved quickly. (See Doc. 23-19 at 2.) The parties have offered little information on the legislative

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<sup>7</sup> All seven votes in favor of the ordinance were cast by Democrats, while two Democrats and two Republicans voted against the ordinance. (See Doc. 23-5 at 4-8.)

<sup>8</sup> The Governor may call special sessions of the General Assembly in response to unexpected or emergency situations. (See Doc. 23-18 at 4.)

process, but it appears that members of the House Judiciary Committee were given only a few minutes to read HB2 before voting on whether to send the bill back to the House for a full debate. (See id.) That afternoon, the House passed HB2 by a vote of eighty-four to twenty-five after three hours of debate. (Doc. 23-21 at 3.) All Republicans and eleven of the thirty-six Democrats present voted for the bill, while twenty-five Democrats voted against it. (Id.) HB2 then passed with unanimous support in the Senate after Democrats walked out in protest. (Id.) Governor McCrory signed the bill into law later that day. (Id.) The law became effective immediately. HB2 § 5.

### **C. HB2's Effect on North Carolina Law**

Despite sweeping rhetoric from both supporters and opponents, a few basic contours of HB2 are apparent.

#### **1. Nondiscrimination Standards Under State Law**

First, HB2 modified the State's nondiscrimination laws. Previously, the State had prohibited discrimination on the basis of race, religion, color, national origin, age, sex, and handicap. See id. §§ 3.1. Part III of HB2 modified this language to prohibit discrimination on the basis of "biological sex," rather than simply "sex." Id. (modifying N.C. Gen. Stat. § 143-422.2). It also extended these nondiscrimination protections, which had previously applied only to the State, to cover private employers and places of public accommodation. See id. §§ 3.1-3.3.

Part III also eliminated State common-law causes of action for violations of non-discrimination laws. See id. § 3.2 (modifying N.C. Gen. Stat. 143-422.3). This appeared to eliminate the State cause of action for wrongful termination in violation of public policy, although it did not prevent North Carolinians from filing actions under federal non-discrimination laws, whether in State or federal court. This provision has since been repealed. 2016 N.C. Sess. Laws 99 § 1(a).

## **2. Preemption of Local Ordinances**

Parts II and III of HB2 preempt all local ordinances that conflict with the new Statewide nondiscrimination standards, including the Charlotte ordinance that prompted HB2's passage.<sup>9</sup> Specifically, Part II preempts local non-discrimination requirements for public contractors to the extent that such requirements conflict with State law. HB2 §§ 2.1-2.3. Similarly, Part III preempts local nondiscrimination ordinances for places of public accommodation to the extent that such ordinances conflict with State law. Id. §§ 3.3. Collectively, Parts II and III effectively nullified the prohibitions in Charlotte's ordinance against discrimination on the basis of marital status, familial status, sexual orientation, gender identity, and gender

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<sup>9</sup> Part II also preempted local minimum wage standards. HB2 §§ 2.1-2.3. This portion of HB2 has not been challenged in these cases.

expression.<sup>10</sup>

### 3. Public Bathrooms and Changing Facilities

As discussed above, Parts II and III effectively nullified the controversial portions of the Charlotte ordinance, including its regulation of bathrooms, showers, and other similar facilities among contractors and in places of public accommodation. Part I goes a step further, however, explicitly setting rules for the use of similar facilities operated by State agencies.

Part I provides that all public agencies, including local boards of public education, shall "require" that every "multiple occupancy bathroom or changing facility"<sup>11</sup> be "designated for and only used by persons based on their biological sex."<sup>12</sup> Id. §§ 1.2-1.3. Part I defines "biological sex" as "[t]he physical condition of being male or female, which is stated on a person's birth certificate."<sup>13</sup> Id. Although Part I allows public agencies to

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<sup>10</sup> These are apart from the law's effect, if any, on the Charlotte ordinance's protections against discrimination on the basis of "gender," "ethnicity," and "handicap."

<sup>11</sup> The statute defines a "multiple occupancy bathroom or changing facility" as a "facility designed or designated to be used by more than one person at a time where [persons] may be in various states of undress in the presence of other persons. A multiple occupancy bathroom or changing facility may include, but is not limited to, a [restroom], locker room, changing room, or shower room." Id. §§ 1.2-1.3.

<sup>12</sup> This rule is subject to various exceptions that are not pertinent here. For example, Part I does not apply when individuals enter bathrooms for custodial or maintenance purposes, or to assist other individuals in using the facility. See id. §§ 1.2-1.3.

<sup>13</sup> Notwithstanding the reference to "the physical condition of being male

provide separate, single occupancy facilities as an accommodation for individuals who are uncomfortable with their assigned facility, the law does not require the option. See id. (stating that public agencies may provide “accommodations such as single occupancy bathroom or changing facilities upon a person’s request due to special circumstances” (emphasis added)). In addition, Part I prohibits agencies from accommodating individuals by permitting them to access multiple occupancy facilities that do not match the sex listed on their birth certificates. Id. (“[I]n no event shall [any] accommodation result in the public agency allowing a person to use a multiple occupancy bathroom or changing facility designated . . . for a sex other than the person’s biological sex.”). Because the law is limited to State agencies, there is no dispute that private businesses, places of public accommodation, and other persons throughout the State remain free to define “sex” and regulate bathroom and other facility usage as

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or female,” all parties agree that the law defines “biological sex” as the sex listed on the individuals’ current birth certificate. (See Doc. 22 at 6 (Plaintiffs, stating that Part I restricts access to facilities “based on the gender marker on one’s birth certificate”); Doc. 50 at 15 (UNC, stating that Part I requires individuals to use bathrooms corresponding with their “biological sex, as listed on their birth certificates”); Doc. 55 at 1 (Governor McCrory, stating that Part I “notes that [‘biological sex’] is ‘stated on a person’s birth certificate’”); Doc. 61 at 6 (Senator Berger and Representative Moore: “HB2 determines biological sex based on the person’s current birth certificate.”).) Notably, the law’s reliance on birth certificates necessarily contemplates that transgender individuals may use facilities consistent with their gender identity - notwithstanding their birth sex and regardless of whether they have had gender reassignment surgery - as long as their current birth certificate has been changed to reflect their gender identity, a practice permitted in some States.

they please, subject to other applicable law.

At the hearing for this motion, the parties offered differing interpretations of how Part I affects North Carolina law. As discussed below, UNC argues that, at least on its campuses, Part I means only that public authorities must maintain signs on their multiple occupancy bathrooms designated "men" or "women." Senator Berger and Representative Moore suggested that Part I functions as "a directive" to public agencies that they must "implement policies" on bathroom use. (Doc. 103 at 112.) Ultimately, the United States, Senator Berger, and Representative Moore all agree that, at a minimum, Part I dictates how the trespassing statute applies to transgender individuals' use of bathrooms.

Before Part I became law, North Carolina had no prohibition against public agencies determining on a case-by-case basis how best to accommodate transgender individuals who wished to use particular bathrooms, showers, or other similar facilities. In addition, transgender individuals who used facilities that did not match the sex listed on their birth certificate could presumably argue that they believed they had permission to enter facilities that matched their gender identity; indeed, as discussed above, a number of transgender students had actual permission from the agencies with authority over the facilities in question.

Part I forecloses these possibilities. Now, public agencies may not provide any accommodation to transgender individuals other

than the provision of a separate, single-user facility - though they are not required to do so. Thus, unless the agency that controls the facility in question openly defies the law, any person who uses a covered facility that does not align with his or her birth certificate commits a misdemeanor trespass. Similarly, unless school administrators like Ms. Walker wish to openly defy the law, they cannot give students permission to enter facilities that do not correspond with the sex on their birth certificates and presumably must discipline or punish students who disobey this directive.

#### **D. Procedural History**

Almost immediately, HB2 sparked multiple overlapping federal lawsuits. On March 28, 2016, ACLU-NC, Equality North Carolina, and the individual transgender Plaintiffs filed this action against Governor McCrory (in his official capacity), UNC,<sup>14</sup> and Attorney General Roy Cooper, alleging that various parts of HB2 discriminate against transgender, gay, lesbian, and bisexual individuals on the basis of sex, sexual orientation, and transgender status in violation of Title IX and the Equal Protection and Due Process Clauses of the Fourteenth Amendment.

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<sup>14</sup> Plaintiffs named UNC, the UNC Board of Governors, and W. Louis Bissette, Jr., in his official capacity as Chairman of the UNC Board of Governors, as Defendants. For convenience and clarity, the court refers to these and other related entities collectively as "UNC," except where otherwise indicated.

(Doc. 1.)<sup>15</sup>

On May 9, 2016, the United States filed a separate action against the State, Governor McCrory (in his official capacity), the North Carolina Department of Public Safety ("NCDPS"), and UNC, seeking a declaration that compliance with Part I constitutes sex discrimination in violation of Title IX, the Violence Against Women Reauthorization Act of 2013, 42 U.S.C. § 13925(b)(13) ("VAWA"), and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. ("Title VII"). (Doc. 1 in case no. 1:16cv425 (the "425 case").)

That same day, State officials filed two separate declaratory judgment actions in the United States District Court for the Eastern District of North Carolina. Governor McCrory and Frank Perry, Secretary of NCDPS, filed an action in their official capacities against the United States and the United States Department of Justice ("DOJ"), seeking a declaration that HB2 does not violate Title VII or VAWA (case no. 5:16cv238 (the "238 case")). Meanwhile, Senator Berger and Representative Moore filed a separate lawsuit against DOJ on behalf of the General Assembly, seeking a declaration that HB2 does not violate Title VII, Title IX, or VAWA, as well as declarations that DOJ had violated both the Administrative Procedure Act and various constitutional

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<sup>15</sup> Plaintiffs dropped Equality North Carolina and Attorney General Cooper in their first amended complaint on April 21, 2016. (Doc. 9.)

provisions (case no. 5:16cv240 (the "240 case")). Finally, on May 10, 2016, an organization called North Carolinians for Privacy filed its own action in support of HB2 in the Eastern District, seeking declaratory and injunctive relief against DOJ and DOE related to Title IX, VAWA, the Administrative Procedure Act, and the Religious Freedom Restoration Act (case no. 5:16cv245 (the "245 case")).

The 240 and 245 cases were subsequently transferred to this court and renumbered 1:16cv844 and 1:16cv845, respectively. This court also granted Senator Berger and Representative Moore's motion to intervene permissively in both this action (Doc. 44) and the 425 case (Doc. 64 in the 425 case). As a result, Senator Berger and Representative Moore dismissed their separate declaratory action as duplicative of the claims and defenses presented in the 236 and 425 cases, (Doc. 33 in case no. 1:16cv844), leaving three HB2 cases pending before this court. The 238 case remains pending in the Eastern District.

In the midst of all of this procedural fencing, Plaintiffs filed the instant motion for preliminary injunction on May 16, 2016. (Doc. 21.) The motion was fully briefed as of June 27, 2016 (see Doc. 73), and the court began discussions with the parties regarding an appropriate schedule for a hearing on and consideration of this motion. However, on July 5, 2016 - two months after filing its complaint and over three months after the

passage of HB2<sup>16</sup> - the United States filed its own motion for preliminary injunction in the 425 case. (Doc. 73 in the 425 case.) The United States' motion would not be fully briefed until mid-August 2016, and in light of the Defendants' request for preliminary discovery, consolidation of United States' motion with Plaintiffs' motion would likely delay a hearing on the present motion until at least September 2016.

As a result, despite the court's strong preference to avoid piecemeal litigation of the HB2 cases, the court held a hearing on Plaintiffs' motion on August 1, 2016, and the court permitted the United States to participate in light of the fact that the 425 case also contains a Title IX claim.<sup>17</sup> The motion is now ready for determination.

## **II. ANALYSIS**

Plaintiffs ask this court to enjoin Defendants from enforcing Part I until the court issues a final ruling on the merits. (Doc.

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<sup>16</sup> The United States also announced that it would not cut off Title IX funding during the pendency of its lawsuit and asked this court for relief from a provision in VAWA that requires it to suspend funding forty-five days after filing suit. (See Doc. 53 in the 425 case.)

<sup>17</sup> Defendants sought leave to conduct up to six months of discovery before responding to the United States' motion for preliminary injunction. (See Docs. 53, 61.) In response to these and other concerns, the court exercised its authority under Federal Rule of Civil Procedure 65(a)(2) to advance the trial in the United States' action and consolidate it with the hearing on the United States' motion for preliminary injunction, which is scheduled to begin November 14, 2016. (Doc. 104.)

22 at 44-45.) Before reaching the merits of Plaintiffs' motion, however, the court must first address threshold defenses raised by UNC.<sup>18</sup>

#### **A. Justiciability and Ripeness**

As UNC Board of Governors Chairman Louis Bisette has noted, "[UNC] is in a difficult position," in this case, "caught in the middle between state and federal law." (Doc. 23-28 at 2.) Neither embracing nor repudiating Part I, UNC argues that while it intends to comply with the law, it does not intend to enforce the law because Part I contains no mechanism to do so. UNC argues that Part I therefore has essentially no effect on its campuses and that this court should not consider the individual transgender Plaintiffs' Title IX claim for jurisdictional and prudential reasons.<sup>19</sup> For the reasons that follow, the court disagrees.

"Federal courts are principally deciders of disputes, not oracular authorities. We address particular cases or

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<sup>18</sup> UNC has also filed a motion to dismiss the claims against it. (Doc. 89.) The motion to dismiss raises similar issues, as well as additional issues not addressed in the briefing on the present motion. (See Doc. 90.) The court will issue a separate ruling on the motion to dismiss at a later date.

<sup>19</sup> UNC also argues that it is immune from the individual transgender Plaintiff's constitutional claims and that Chairman Bisette is not a proper party under Ex Parte Young, 209 U.S. 123 (1908). Because Plaintiffs have since moved to amend their complaint to drop Chairman Bisette and substitute UNC President Margaret Spellings as a Defendant (see Doc. 116-1 ¶¶ 11-12), and because the court will not grant relief on their constitutional claims at this time, see infra Section II.B.1.b, the court does not reach these issues.

controversies and may not arbitrate abstract differences of opinion.” Doe v. Duling, 782 F.2d 1202, 1205 (4th Cir. 1986) (citations and internal quotation marks omitted). This requirement stems from Article III, Section 2 of the United States Constitution and presents both jurisdictional and prudential limits on the exercise of federal judicial power. Warth v. Seldin, 422 U.S. 490, 498-99 (1975). As a jurisdictional matter, a plaintiff complaining about State conduct must show “some threatened or actual injury resulting from the putatively illegal action.” Id. at 499 (quoting Linda R.S. v. Richard D., 410 U.S. 614, 617 (1973)). For example, where the dispute concerns the validity of a criminal statute, the challenger must show a credible threat of prosecution in order to establish a live case or controversy. Duling, 782 F.2d at 1205-06.

Similarly, the prudential ripeness requirement is designed to prevent courts from “entangling themselves in abstract disagreements over administrative policies” until “an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.” Ohio Forestry Ass’n, Inc. v. Sierra Club, 523 U.S. 726, 732-33 (1998) (quoting Abbott Labs. v. Gardner, 387 U.S. 136, 148-49 (1967)). A case is ripe and fit for judicial decision when the “rule or action giving rise to the controversy is final and not dependent upon future uncertainties or intervening agency rulings.” Franks v. Ross, 313

F.3d 184, 195 (4th Cir. 2002). In determining whether a case is ripe, the court must consider both "the fitness of the issues for judicial decision" and the "hardship to the parties of withholding court consideration." Ohio Forestry Ass'n, 523 U.S. at 733 (quoting Abbott Labs., 387 U.S. at 149).

Here, UNC points to numerous statements from UNC President Margaret Spellings, including a guidance memorandum sent to the chancellors of all UNC constituent institutions, that Part I "does not contain provisions concerning enforcement" and that the university's non-discrimination policies, which generally prohibit discrimination on the basis of gender identity, "remain in effect." (See, e.g., Doc. 38-5 at 1-2.) The guidance memorandum also notes, however, that UNC must "fulfill its obligations under the law unless or until the court directs otherwise." (Id. at 2.) UNC therefore acknowledges that "University institutions must require every multiple occupancy bathroom and changing facility to be designated for and used only by persons based on their biological sex." (Id. at 1 (emphasis added).) President Spellings directed constituent institutions to take three specific actions under the law: (1) maintain existing single-sex signage on multiple occupancy bathrooms and other similar facilities, (2) provide notice of HB2 to campus constituencies as appropriate, and (3) share information about the locations of single occupancy bathrooms on campus. (See id. at 1-2.)

Despite the assertion that UNC does not intend to “enforce” Part I, UNC’s pronouncements are sufficient to establish a justiciable case or controversy. The university has repeatedly indicated that it will - indeed, it must - comply with State law. (Id. at 1-2.) Although UNC has not changed the words and symbols on its sex-segregated facilities, the meaning of those words and symbols has changed as a result of Part I, and UNC has no legal authority to tell its students or employees otherwise. In light of Part I, the sex-segregated signs deny permission to those whose birth certificates fail to identify them as a match. UNC can avoid this result only by either (1) openly defying the law, which it has no legal authority to do, or (2) ordering that all bathrooms, showers, and other similar facilities on its campuses be designated as single occupancy, gender-neutral facilities. Understandably, UNC has chosen to do neither.

As a result, although President Spellings promises to “investigate” instances in which individuals are excluded from bathrooms “to determine whether there has been a violation of the University nondiscrimination policy and applicable law” (Doc. 38-1 ¶ 15), this does not help UNC because it has not expressly given any student or employee permission to the use bathrooms, showers, and other facilities consistent with his or her gender identity. To the contrary, UNC has explicitly acknowledged that Part I “remains the law of the State” and that neither UNC nor its non-

discrimination policies has "independent power to change that legal reality." (Doc. 23-27 at 2-3.) Unless and until UNC openly defies the law, the signs that UNC posts on its bathrooms, showers, and other similar facilities render transgender individuals who use facilities that match their gender identities trespassers, thus exposing them to potential punishment (certainly by other authorities, if not by UNC). In addition, if the trespasser is a student, he or she is subject to discipline under one of UNC's student codes of conduct, which generally prohibit students from violating federal, State, or local laws. (See, e.g., Doc. 67-8 at 3.)

Thus, contrary to UNC's characterizations, this is not a case in which an arcane criminal law lingers on the books for decades with no threat of enforcement. See, e.g., Duling, 782 F.2d at 1206 (finding no justiciable case or controversy surrounding a fornication and cohabitation statute when there had been no arrests or prosecutions pursuant to the law for several decades). Nor is this a case in which public agencies do nothing more than "stand ready to perform their general duty to enforce laws." See id. Instead, UNC currently instructs the individual transgender plaintiffs that Part I is in effect on UNC's campuses. (See, e.g., Doc. 67-5 at 3 (memorandum from UNC Chancellor Carol Folt stating, "The memo from UNC General Administration also confirms that the law relating to public restrooms and changing facilities does apply

to the University.”).) That UNC has not articulated plans for administering a specific punishment for transgender individuals who violate its policy does not undermine the existence of a justiciable case or controversy. See G.G. ex rel. Grimm v. Gloucester Cty. Sch. Bd., 822 F.3d 709, 716-17 (4th Cir. 2016) (evaluating the merits of a Title IX claim involving transgender bathroom use without discussing whether the school board had threatened the student with any specific punishment for disobeying the policy), stay and recall of mandate granted, 136 S. Ct. 2442.

These considerations also dictate the ripeness analysis. President Spellings has indicated that she does not intend to take any further action, including promulgating any further guidelines or regulations with regard to Part I, until after this lawsuit concludes. (Doc. 38-1 at ¶ 16.) As a result, a delay will not render this case more fit for judicial review. See Ohio Forestry Ass’n, 523 U.S. at 733. In addition, for reasons discussed below, UNC’s exclusion of the individual transgender Plaintiffs from sex-segregated facilities that match their gender identity causes them substantial hardship each day the policy is in effect. See infra Section II.B.2. As a result, this case is prudentially ripe.

#### **B. Preliminary Relief**

In order to obtain a preliminary injunction, a party must make a “clear showing” that (1) it is likely to succeed on the merits; (2) it is likely to suffer irreparable harm in the absence

of preliminary relief; (3) the balance of equities tips in its favor; and (4) an injunction is in the public interest. Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 21 (2008). All four requirements must be satisfied in order for relief to be granted. Real Truth About Obama, Inc. v. Fed. Election Comm'n, 575 F.3d 342, 346 (4th Cir. 2009), vacated on other grounds, 559 U.S. 1089 (2010). A preliminary injunction is "an extraordinary remedy involving the exercise of a very far-reaching power, which is to be applied only in the limited circumstances which clearly demand it." Direx Israel, Ltd. v. Breakthrough Med. Corp., 952 F.2d 802, 811 (4th Cir. 1991) (citations and internal quotation marks omitted). Plaintiffs must show more than a grave or serious question for litigation; they must "clearly" demonstrate that they are "likely" to succeed on the merits. Real Truth About Obama, 575 F.3d at 346-47.

**1. Likelihood of Success on the Merits**

**a. Title IX**

To establish a claim under Title IX, the individual transgender Plaintiffs must show that (1) they were excluded from participation in an education program because of their sex; (2) the educational institution was receiving federal financial assistance at the time of their exclusion; and (3) the improper discrimination caused them harm. G.G., 822 F.3d at 718. UNC and its constituent institutions receive federal financial assistance

under Title IX. (See Doc. 23-27 at 2.) In addition, for the reasons explained below, UNC's enforcement of Part I has caused medical and other harms to the individual transgender Plaintiffs. See infra Section II.B.2. Thus, the primary question for the court is whether the individual transgender Plaintiffs are likely to show that Part I unlawfully excludes them from certain bathrooms, showers, and other facilities on the basis of sex.

Title IX provides: "No person . . . shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a). This prohibition against sex discrimination protects employees as well as students. N. Haven Bd. of Educ. v. Bell, 456 U.S. 512, 530 (1982). As a result, covered institutions may not "limit any person in the enjoyment of any right, privilege, advantage, or opportunity" on the basis of sex. 34 C.F.R. § 106.31(b)(7); see also id. § 106.31(b)(2) (prohibiting discrimination in the provision of "aid, benefits, or services"). Access to bathrooms, showers, and other similar facilities qualifies as a "right, privilege, advantage, or opportunity" for the purposes of Title IX. G.G., 822 F.3d at 718 n.4.

"Title IX is a broadly written general prohibition on discrimination, followed by specific, narrow exceptions to that broad prohibition." Jackson v. Birmingham Bd. of Educ., 544 U.S.

167, 175 (2005). Thus, “[n]ot all distinctions on the basis of sex are impermissible under Title IX.” G.G., 822 F.3d at 718. For example, the statute itself contains an exception that permits covered institutions to “maintain[] separate living facilities for the different sexes.” 20 U.S.C. § 1686. In addition, a DOE regulation states that covered institutions “may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.” 34 C.F.R. § 106.33.

Until very recently, little to no explicit authority existed regarding the application of Title IX and its related regulations to transgender students and employees. Around 2013, however, DOE began taking the position that covered institutions must treat transgender individuals consistent with their gender identity. (See Doc. 23-29 at 3 (citing Letter from Anurima Bhargava, Chief, U.S. Dep’t of Justice, and Arthur Zeidman, Director, U.S. Dep’t of Educ. Office of Civil Rights, to Dr. Joel Shawn, Superintendent, Arcadia Unified Sch. Dist. (July 24, 2013), available at <https://www.justice.gov/sites/default/files/crt/legacy/2013/07/26/arcadialetter.pdf>)).

On April 19, 2016, the Fourth Circuit concluded that courts must defer to DOE’s relatively recent position in the context of sex-segregated bathrooms. G.G., 822 F.3d at 723. In G.G., a high

school sophomore in eastern Virginia transitioned from female to male, living as a boy in all aspects of life. Id. at 715. School officials initially supported G.G.'s transition and took steps to ensure that teachers and staff treated the student as a boy. Id. School officials also gave G.G. permission to use the boys' bathrooms, although they made no decision with regard to locker rooms or showers because G.G. did not participate in physical education. Id. & n.2. G.G. used the boys' bathrooms without incident for several weeks. Id. at 715-16. At some point, however, parents and community members began contacting the local school board to complain about G.G.'s use of the boys' bathrooms. Id. at 716. In response, the school board implemented a policy limiting access to sex-segregated bathrooms and locker rooms based on "biological gender" and requiring its schools to provide "an alternative appropriate private facility" to accommodate students with "gender identity issues." Id. The school board also mandated a series of steps designed to improve privacy for all students, including adding partitions and privacy strips in bathrooms and constructing additional single occupancy bathrooms. Id.

Shortly after the school board adopted its new policy, G.G. requested an opinion letter from DOE regarding the application of Title IX to transgender students. See id. at 732 (Niemeyer, J., dissenting in part). On January 7, 2015, DOE responded with an opinion letter that states,

The Department's Title IX regulations permit schools to provide sex-segregated restrooms, locker rooms, shower facilities, housing, athletic teams, and single-sex classes under certain circumstances. When a school elects to separate or treat students differently on the basis of sex in those situations, a school generally must treat transgender students consistent with their gender identity.

(Doc. 23-29 (the "DOE opinion letter").) On June 11, 2015, G.G. sued the school board, claiming that the policy of excluding students from bathrooms on the basis of "biological gender" violated Title IX. G.G., 822 F.3d at 717.

The district court dismissed G.G.'s Title IX claim, concluding that the DOE opinion letter is not entitled to deference under the doctrine announced in Auer v. Robbins, 519 U.S. 452 (1997). See G.G., 822 F.3d at 717.<sup>20</sup> The district court concluded that 34 C.F.R. § 106.33, which permits schools to "provide separate toilet, locker room, and shower facilities on the basis of sex," unambiguously refers to a student's "birth or biological sex." 822 F.3d at 719. The district court also reasoned that, even if the meaning of the phrase "on the basis of sex" were ambiguous in this regulation, then DOE's interpretation would be clearly erroneous and inconsistent with the regulation because "'on the basis of sex' means, at most, on the basis of sex and gender

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<sup>20</sup> Under Auer, an agency's interpretation of its own ambiguous regulation is "controlling unless plainly erroneous or inconsistent with the regulation." 519 U.S. at 461 (citations and internal quotation marks omitted).

together, [so] it cannot mean on the basis of gender alone." Id.

The Fourth Circuit reversed. Id. at 727. The court first concluded that the phrase "on the basis of sex" in § 106.33 is ambiguous because the regulation "is silent as to how a school should determine whether a transgender individual is a male or female." Id. at 720. The court then determined that DOE's interpretation, while "novel" and "perhaps not the intuitive one," is not clearly erroneous because a dictionary from 1971 defined the word "sex" as encompassing "morphological, physiological, and behavioral" characteristics. Id. at 721-22.<sup>21</sup> Finally, the court concluded that the DOE opinion letter reflects the agency's fair and considered judgment on policy formulation, rather than a convenient litigating position. Id. at 722-23. As a result, the court remanded with instructions for the district court to give the DOE opinion letter "controlling weight" with regard to the meaning of § 106.33. Id. at 723, 727.

On remand, the district court entered a preliminary injunction requiring the school board to allow G.G. to use the boys' bathrooms. G.G. ex rel. Grimm v. Gloucester Cty. Sch. Bd., No. 4:15cv54, 2016 WL 3581852, at \*1 (E.D. Va. June 23, 2016). The Fourth Circuit denied the school board's request to stay that

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<sup>21</sup> The court noted that another dictionary defined "sex" as "the sum of those anatomical and physiological differences with reference to which the male and female are distinguished." Id. at 721. Neither of the dictionaries cited by the majority included gender identity as a component of "sex." See id. at 721-22.

injunction pending appeal. G.G. ex rel. Grimm v. Gloucester Cty. Sch. Bd., No 16-1733, 2016 WL 3743189, at \*2 (4th Cir. July 12, 2016). However, on August 3, 2016 - two days after the hearing on Plaintiffs' motion in the present case - the Supreme Court stayed the Fourth Circuit's mandate and the district court's preliminary injunction until it could rule on the school board's forthcoming petition for a writ of certiorari. Gloucester Cty. Sch. Bd. v. G.G. ex rel. Grimm, 136 S. Ct. 2442 (2016). Such intervention is granted where a lower court "tenders a ruling out of harmony with [the Supreme Court's] prior decisions, or [raises] questions of transcending public importance, or [presents] issues which would likely induce [the] Court to grant certiorari." See Russo v. Byrne, 409 U.S. 1219, 1221 (1972) (Douglas, J.).

In light of the foregoing, the fate of G.G. is uncertain. But, despite the stay and recall of the mandate, the Supreme Court did not vacate or reverse the Fourth Circuit's decision. See G.G., 136 S. Ct. at 2442. Thus, while other courts may reach contrary decisions, see Texas v. United States, No. 7:16cv54, 2016 WL 4426495, at \*14-15, (N.D. Tex. Aug. 21, 2016) (adopting the view advanced in Judge Niemeyer's dissenting opinion from G.G.),<sup>22</sup> at

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<sup>22</sup> The court also concluded that DOE's guidance violated the Administrative Procedure Act, and the court preliminarily enjoined DOJ from using or asserting DOE's position on gender identity in any litigation initiated after the entry of its order. Id. at \*11-\*14, 17. Because Texas is a district court opinion from outside the Fourth Circuit, however, and because the court's order was issued after the

present G.G. remains the law in this circuit. See United States v. Collins, 415 F.3d 304, 311 (4th Cir. 2005) (“A decision of a panel of this court becomes the law of the circuit and is binding on other panels unless it is overruled by a subsequent en banc opinion of this court or a superseding contrary decision of the Supreme Court.”); Friel Prosthetics, Inc. v. Bank of America, No. CIV.A.DKC 2004-3481, 2005 WL 348263, at \*1 & n.4 (D. Md. Feb. 9, 2005) (noting that a stay of a Fourth Circuit mandate in a separate case would not “prevent the Fourth Circuit decision from having precedential value and binding authority” in the present case); see also Abukar v. Ashcroft, No. 01-242, 2004 WL 741759, at \*2-3 (D. Minn. Mar. 17, 2004) (assuming that an Eighth Circuit opinion in a separate case retained its precedential value despite the Eighth Circuit’s subsequent decision to recall and stay its own mandate in light of impending Supreme Court review).

Consequently, to evaluate the individual transgender Plaintiffs’ Title IX claim, the court must undertake a two-part analysis. First, the court must determine whether Part I violates Title IX’s general prohibition against sex discrimination. See 20 U.S.C. § 1681(a). Second, if Part I violates Title IX’s general prohibition against sex discrimination, the court must then determine whether an exception to that general prohibition

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initiation of this case, this court remains bound by G.G. and the Texas order has no direct effect on this litigation.

applies. See Jackson, 544 U.S. at 175 (“Title IX is a broadly written general prohibition on discrimination, followed by specific, narrow exceptions to that broad prohibition.”). The only potentially applicable exception cited by the parties comes from a DOE regulation that allows schools to “provide separate toilet, locker room, and shower facilities on the basis of sex.” 34 C.F.R. § 106.33. However, in light of G.G., this court must give controlling weight to the DOE opinion letter, which states that schools “generally must treat transgender students consistent with their gender identity” (Doc. 23-29 at 3), when considering the scope of this exception during the second stage of the analysis.

Under this framework, the Title IX analysis in this case is relatively straightforward. Part I requires schools to segregate multiple occupancy bathrooms, showers, and other similar facilities on the basis of sex. HB2 § 1.2-1.3. Because the provision of sex-segregated facilities necessarily requires schools to treat individuals differently depending on their sex, Part I falls within Title IX’s general prohibition against sex discrimination. The only potentially applicable exception comes from § 106.33, which permits sex-segregated bathrooms and other facilities. But G.G. and the DOE opinion letter teach that, for the purposes of this regulation, a school generally must treat students consistent with their gender identity. (See 822 F.3d at

723; Doc. 23-29 at 3.) Part I, by contrast, requires schools to treat students consistent with their birth certificates, regardless of gender identity. HB2 §§ 1.2-1.3. Thus, although Part I is consistent with the DOE opinion letter when applied to most students, it is inconsistent with the DOE opinion letter as applied to the individual transgender Plaintiffs, whose birth certificates do not align with their gender identity. As a result, Part I does not qualify for the regulatory exception - as interpreted by DOE - and therefore appears to violate Title IX when applied to the individual transgender Plaintiffs.

Defendants raise a number of objections to the application of G.G. in this case, but none is sufficient at this time.

Defendants first argue that the Fourth Circuit's holding in G.G. is limited to bathrooms and does not extend to showers or other similar facilities. True, G.G. concluded that "the [DOE's] interpretation of its own regulation, § 106.33, as it relates to restroom access by transgender individuals, is entitled to Auer deference and is to be accorded controlling weight." 822 F.3d at 723. Further, the court noted that because G.G. did not seek access to other facilities, "[o]nly restroom use is at issue in this case." Id. at 715 n. 2. And as to the objections raised, the court commented, "We doubt that G.G.'s use of the communal restroom of his choice threatens the type of constitutional abuses present in the cases cited by the dissent." Id. at 723 n.10.

Consequently, the district court only ordered the school board to allow G.G. to use boys' bathrooms. G.G., 2016 WL 3581852, at \*1.

But the indispensable foundation of G.G.'s holding is that DOE's interpretation of "sex" in § 106.33, as outlined in the DOE opinion letter, is entitled to controlling weight. 822 F.3d at 723. As the dissent in G.G. aptly noted, "acceptance of [G.G.'s] argument would necessarily change the definition of 'sex' for purposes of assigning separate living facilities, locker rooms, and shower facilities as well. All are based on 'sex,' a term that must be construed uniformly throughout Title IX and its implementing regulations." Id. at 734 (Niemeyer, J., dissenting in part). In fact, the majority also agreed with this point. Id. at 723 ("In many respects, we are in agreement with the dissent. We agree that 'sex' should be construed uniformly throughout Title IX and its implementing regulations."). Moreover, the passage of the DOE opinion letter - which G.G. requires be accorded controlling weight - explicitly includes "locker rooms" and "shower facilities" among the "situations" in which students must be treated consistent with their gender identity. (Doc. 23-29 at 3.)<sup>23</sup>

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<sup>23</sup> Indeed, DOE has continued to issue expanded guidance well after the filing of this lawsuit and the 425 case against the State. DOE's newest guidance explicitly mandates transgender access to all facilities that are consistent with their gender identity. (E.g., Doc. 23-30 at 4 ("Restrooms and Locker Rooms. A school may provide separate facilities on the basis of sex, but must allow transgender students access to such

To be sure, the G.G. court did note that the bathrooms at the Virginia school were separately partitioned. 822 F.3d at 716. But it is difficult to find any articulation of how that fact was important to the court's reasoning. Although showers and changing rooms clearly present obvious practical concerns that differ from bathrooms, both the logic and holding of G.G. make no distinction between facilities. The court made this point clear by noting that in applying its analytical framework it would not weigh "privacy interests or safety concerns - fundamentally questions of policy" which it said was "a task committed to the agency, not the courts." Id. at 723-24.<sup>24</sup>

While district courts are often said to be the "front line experimenters in the laboratories of difficult legal questions," Hively v. Ivy Tech Comm. Coll., South Bend, --- F.3d ---, 2016 WL 4039703, at \*4 (7th Cir. 2016), they are bound to follow circuit precedent. To accept Defendants' argument - which is more an attack on G.G.'s reasoning than a legal distinction - would violate

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facilities consistent with their gender identity.".) This guidance does not include the qualifier "generally," which was included in the DOE opinion letter. (Id.) Plaintiffs contend that this document, which was not available at the time of G.G., is also entitled to Auer deference. (See Doc. 22 at 14.) The Texas court, which was not bound by G.G., concluded that this guidance is not entitled to Auer deference. 2016 WL 4426495, at \*15.

<sup>24</sup> Nor does it appear that the court or DOE considered the potentially significant costs associated with retrofitting some facilities to ensure privacy.

that obligation. Therefore, at this early stage on a motion for preliminary relief pending trial, it is enough to say that G.G. requires Title IX institutions in this circuit to generally treat transgender students consistent with their gender identity, including in showers and changing rooms. (Doc. 23-29 at 3.) Defendants do not deny that Part I bars Title IX institutions from attempting to accommodate such students in any fashion, except in the limited form of a separate facility that is optional in the State's discretion. See HB2 §§ 1.2-1.3. Thus, G.G. indicates that the individual transgender Plaintiffs are likely to succeed on the merits of their Title IX claim.

Even Plaintiffs accept that the State's interests are legitimate and seem to acknowledge that there may be practical limits to the application of DOE's guidance, especially where minors are involved. (See Doc. 103 at 15-21.)<sup>25</sup> At the hearing, counsel for the amici school administrators represented that public school showers and changing rooms - facilities in which students are likely to be partially or fully nude - today often contain partitions, dividers, and other mechanisms to protect privacy similar to bathrooms. (See Doc. 103 at 137-38.) This suggests that, as in G.G., other forms of accommodation might be

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<sup>25</sup> DOJ, however, argues that DOE's guidance makes no such allowance and that G.G.'s holding requires controlling weight across all facilities. (Doc. 103 at 54-57.)

available to protect privacy and safety concerns. See G.G., 822 F.3d at 723 (agreeing that “an individual has a legitimate and important interest in bodily privacy such that his or her nude or partially nude body, genitalia, and other private parts’ are not involuntarily exposed” and concluding that “[i]t is not apparent to us, however, that the truth of these propositions undermines the conclusion we reach” to grant DOE’s interpretation of its regulations controlling weight).<sup>26</sup> Ultimately, the question of determining the full scope of transgender users’ rights to these more intimate facilities under DOE’s interpretation – as to which the State has significant legitimate interests – is not before the court. For now, it suffices to say that Part I’s blanket ban that forecloses any form of accommodation for transgender students other than separate facilities likely violates Title IX under G.G.

Defendants also note that the school board policy in G.G. did not include any criteria for determining the “biological gender” of particular students. See 822 F.3d at 721-22. By contrast, Part I includes a simple, objective criterion – the sex listed on the individual’s birth certificate – for determining an individual’s “biological sex.” HB2 §§ 1.2-1.3. Defendants are correct on this point. But the holding of G.G. did not turn on

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<sup>26</sup> For example, Part I excludes some transgender users from showers and changing rooms that match their gender identity even if such facilities are fully partitioned or otherwise unoccupied.

any supposed ambiguity in the school board's policy. Instead, G.G. rested on the Fourth Circuit's determination that the DOE opinion letter is entitled to controlling weight under Auer. 822 F.3d at 723. The DOE opinion letter does not even remotely suggest that schools may treat students inconsistent with their gender identity so long as the school has clear criteria for determining an individual's "biological sex."

Defendants next argue that G.G. did not involve any constitutional challenges to DOE regulations or the DOE opinion letter. True, the Fourth Circuit noted the absence of such challenges in G.G., see id. at 723-24, whereas Defendants did raise such issues in their answer and counterclaims (see Doc. 54 ¶¶ 120-25). But Defendants have not raised any constitutional defenses in their responses to the individual transgender Plaintiffs' motion for preliminary injunction, and Plaintiffs therefore have not yet responded to these issues.<sup>27</sup> The court cannot ignore G.G. and simply assume that Defendants will prevail on constitutional defenses that they may or may not develop at some point in the

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<sup>27</sup> In fact, although Senator Berger and Representative Moore's brief incorporates some portions of their answer by reference, it does not incorporate the constitutional claims or defenses to the Title IX claim. (See Doc. 61 at 13 (referencing defenses to Plaintiffs' Equal Protection and Due Process claims).) At the hearing on Plaintiffs' motion, the legislators first raised the argument that enforcing DOE's interpretation of "sex" would constitute a Spending Clause violation under Pennhurst State Sch. & Hosp. v. Halderman, 451 U.S. 1, 15-16 (1981). (Doc. 103 at 81-85.) As Defendants have yet to develop this defense, it does not rise to the level of undermining the individual transgender Plaintiffs' showing of a likelihood of success on the merits.

future. See Native Ecosystems Council & All. for the Wild Rockies v. U.S. Forest Serv., No. 4:11-cv-212, 2011 WL 4015662, at \*10 n.10 (D. Idaho Sept. 9, 2011) (declining to consider claims not raised in a party's brief for the purposes of a preliminary injunction but preserving those claims for the remainder of the case); see also Carter v. Lee, 283 F.3d 240, 252 n.11 (4th Cir. 2002) (contentions not raised in a party's opening brief are generally considered to be waived). Of course, Defendants may ultimately develop successful constitutional defenses at a later stage of the proceedings.

Finally, Defendants argue that this case differs from G.G. because that case involved no major complaints or safety concerns from students. Defendants are correct, though community members certainly raised these kinds of objections. See G.G., 822 F.3d at 715-16. But on this record, Defendants have not offered sufficient evidence to distinguish Plaintiffs' factual circumstances, or those pertaining to anyone else in North Carolina for that matter, from those in G.G.<sup>28</sup> To the contrary, the current record indicates that the individual transgender Plaintiffs used bathrooms and

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<sup>28</sup> Defendants did present two news articles describing men in Seattle and Virginia who entered women's bathrooms or showers. (Docs. 55-1, 55-52.) Neither man claimed to be transgender; one was apparently protesting a local ordinance, while the other was arrested for peeping. (See id.) North Carolina's peeping and indecent exposure statutes continue to protect the privacy of citizens regardless of Part I, and there is no indication that a sexual predator could successfully claim transgender status as a defense against prosecution under these statutes.

locker rooms corresponding with their gender identity without complaint for far longer than G.G. used the boys' bathrooms at his school. (Compare Doc. 22-4 ¶¶ 15, 30 (approximately five months), and Doc. 22-8 ¶¶ 19, 25 (approximately eighteen months), and Doc. 22-9 ¶¶ 15, 19-20 (same), with G.G., 822 F.3d at 715-16 (seven weeks). Moreover, as noted above and like the situation in G.G., bathroom, shower, and other facilities are often separately partitioned to preserve privacy and safety concerns. (See Doc. 103 at 138; Doc. 22-19 ¶ 14.) Finally, the Fourth Circuit's analysis in G.G. did not rest on the specific circumstances of that case or the wisdom of DOE's position, but rather on the deference owed to the DOE opinion letter. Id. at 723-24 ("[T]he weighing of privacy interests or safety concerns – fundamentally questions of policy – is a task committed to the agency, not the courts. . . . To the extent the dissent critiques the result we reach today on policy grounds, we reply that, our Auer analysis complete, we leave policy formulation to the political branches.").

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G.G. compels the conclusion that the individual transgender Plaintiffs are likely to succeed on the merits of their Title IX claim. Part I's wholesale ban on access to facilities is inconsistent with DOE's guidance on Title IX compliance under G.G. and precludes educational institutions from attempting to

accommodate particular transgender individuals who wish such accommodation in bathrooms and other facilities.<sup>29</sup>

**b. Constitutional Claims**

In addition to their Title IX claim, Plaintiffs also seek access to sex-segregated facilities at public rest stops and other entities not covered by Title IX. As a result, despite granting relief under Title IX, the court must also consider Plaintiffs' constitutional claims. The constitutional claims in this case raise novel and difficult questions in a context underdeveloped in the law. As a practical matter, therefore, Plaintiffs' task of presenting the kind of "clear showing" necessary to justify preliminary relief, Winter, 555 U.S. at 22, is even more difficult in this case. Thus, this court is more cautious to act where the application of existing principles of law to new areas is uncertain and novel, particularly in the context of a preliminary injunction. See Capital Associated Indus. v. Cooper, 129 F. Supp. 3d 281, 288-89 (M.D.N.C. 2015) ("Where, as in this case, 'substantial issues

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<sup>29</sup> Plaintiffs argue in supplemental briefing that "broad relief" equivalent to a facial ban of HB2 is necessary to ensure protection of the individual transgender Plaintiffs' rights. (Doc. at 13.) But there is no class-wide claim presently pending, and ACLU-NC did not allege a Title IX claim. In light of UNC's insistence that it will not take any further action in response to Part I, broader relief is not necessary to ensure that the individual transgender Plaintiffs receive effective preliminary relief. Cf. Nat'l Org. for Reform of Marijuana Laws (NORML) v. Mullen, 608 F. Supp. 945, 964 (N.D. Cal. 1985) (ordering broad relief on individual claims where the individual plaintiffs were at "significant risk for repeated rights violations" because government actors could not effectively "distinguish the parties from the nonparties").

of constitutional dimensions' are before the court, those issues 'should be fully developed at trial in order to [e]nsure a proper and just resolution.'" (quoting Wetzel v. Edwards, 635 F.2d 283, 291 (4th Cir. 1980)); see also Gantt v. Clemson Agr. Coll. of S.C., 208 F. Supp. 416, 418 (W.D.S.C. 1962) ("On an application for preliminary injunction, the court is not bound to decide doubtful and difficult questions of law or disputed questions of fact.").

**i. Equal Protection**

The Fourteenth Amendment provides that no State may "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. However, this broad principle "must coexist with the practical necessity that most legislation classifies for one purpose or another, with resulting disadvantage to various groups or persons." Romer v. Evans, 517 U.S. 620, 631 (1996). As a result, the Supreme Court has "attempted to reconcile the principle with the reality" by prescribing different levels of scrutiny depending on whether a law "targets a suspect class." Id. Laws that do not target a suspect class are subject to rational basis review, and courts should "uphold the legislative classification so long as it bears a rational relation to some legitimate end." Id. By contrast, laws that target a suspect class, such as race, are subject to strict scrutiny. See City of Richmond v. J.A. Croson Co., 488 U.S. 469, 493 (1989).

It is well settled that classifications based on sex are subject to intermediate scrutiny. See United States v. Virginia, 518 U.S. 515, 532-33 (1996). Under intermediate scrutiny, the State must demonstrate that the challenged law serves “‘important governmental objectives and that the discriminatory means employed’ are ‘substantially related to the achievement of those objectives.’” Id. at 533 (quoting Mississippi Univ. for Women v. Hogan, 458 U.S. 718, 724 (1982)). Unlike strict scrutiny, the government is not required to show that the law is the “least intrusive means of achieving the relevant government objective.” United States v. Staten, 666 F.3d 154, 159 (4th Cir. 2011) (citations and internal quotation marks omitted). “In other words, the fit needs to be reasonable; a perfect fit is not required.” Id. at 162. Nevertheless, “[t]he burden of justification is demanding and it rests entirely on the State.” Virginia, 518 U.S. at 533. In addition, the justification must be “genuine, not hypothesized or invented post hoc in response to litigation.” Id. Finally, the justification “must not rely on overbroad generalizations about the different talents, capacities, or preferences of males and females.” Id.

Here, Part I classifies citizens on the basis of “biological sex” and requires that each sex use separate multiple occupancy bathrooms, showers, and other similar facilities. HB2 §§ 1.2-1.3. Because Part I facially classifies and discriminates among

citizens on the basis of sex, intermediate scrutiny applies.<sup>30</sup> See Virginia, 518 U.S. at 532-33.

There is no question that the protection of bodily privacy is an important government interest and that the State may promote this interest by excluding members of the opposite sex from places in which individuals are likely to engage in intimate bodily functions. See, e.g., Faulkner v. Jones, 10 F.3d 226, 232 (4th Cir. 1993) ("The point is illustrated by society's undisputed approval of separate public rest rooms for men and women based on privacy concerns. The need for privacy justifies separation and the differences between the genders demand a facility for each gender that is different."); Lee v. Downs, 641 F.2d 1117, 1119 (4th Cir. 1989) ("Most people, however, have a special sense of privacy in their genitals, and involuntary exposure of them in the presence of people of the other sex may be especially demeaning and humiliating."); see also Doe v. Luzerne Cty., 660 F.3d 169, 176-77 (3d Cir. 2011) (observing that several circuits have recognized "a constitutionally protected privacy interest in

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<sup>30</sup> The parties have devoted substantial time and energy to arguments regarding (1) whether transgender individuals qualify as a suspect class for Equal Protection purposes, and (2) whether Plaintiffs have established a sex stereotyping claim under the line of cases beginning with Price Waterhouse v. Hopkins, 490 U.S. 228 (1989) (construing Title VII). As Plaintiffs acknowledge, however, success on either of these theories in the context of their Equal Protection claim would result in the court applying the same intermediate level of scrutiny applied to laws that facially classify citizens on the basis of sex. (Doc. 103 at 35-36.) Thus, the court declines to consider these issues at this stage because Part I facially classifies individuals on the basis of sex.

[one's] partially clothed body"); Sepulveda v. Ramirez, 967 F.2d 1413, 1416 (9th Cir. 2012) (stating that "[t]he right to bodily privacy is fundamental" and noting that "common sense" and "decency" protect a parolee's right not to be observed by an officer of the opposite sex while producing a urine sample); York v. Story, 324 F.2d 450, 455 (9th Cir. 1963) ("The desire to shield one's unclothed figure from view of strangers, and particularly strangers of the opposite sex, is impelled by elementary self-respect and personal dignity."). This interest is particularly strong with regard to minors. See, e.g., Beard v. Whitmore Lake Sch. Dist., 402 F.3d 598, 604 (6th Cir. 2005) ("Students of course have a significant privacy interest in their unclothed bodies."); Doe v. Renfrow, 631 F.2d 91, 92-93 (7th Cir. 1980) (stating that it "does not take a constitutional scholar" to conclude that a strip search invades a student's privacy rights). At the hearing on this motion, Plaintiffs acknowledged that the practice of segregating bathrooms and other similar facilities on the basis of sex promotes this government interest. (See Doc. 103 at 15-19.)

All parties agree that bodily privacy qualifies as an important State interest and that sex-segregated facilities are substantially related to that interest.<sup>31</sup> But the relevant

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<sup>31</sup> Despite this concession, many of Plaintiffs' arguments in this case would, if accepted and taken to their logical conclusion, suggest that the time-honored practice of sex-segregated bathrooms and showers is unconstitutional. At the hearing on this motion, counsel speculated

authorities do not define "sex" or explicitly explain which differences between men and women give rise to the State's interest in separating the sexes for privacy purposes; generally, these cases simply observe that individuals of one sex have a privacy interest in being separated from "the other sex." See, e.g., Lee, 641 F.2d at 1119. Not surprisingly, then, the parties disagree about which definition of "sex" promotes the State's interest in bodily privacy. Defendants contend that bodily privacy interests arise from physiological differences between men and women, and that sex should therefore be defined in terms of physiology for the purposes of bathrooms, showers, and other similar facilities. Plaintiffs, by contrast, implicitly contend that bodily privacy interests arise from differences in gender identity, and that sex should therefore be defined in terms of gender identity for the purposes of these facilities.

To support their position, Plaintiffs submitted expert declarations stating that, from a "medical perspective," gender identity is the only "appropriate" characteristic for distinguishing between males and females. (See, e.g., Doc. 22-1

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that sex-segregated bathrooms are justified, if at all, (1) by virtue of the long history of providing such facilities, (2) to express society's belief that "the two sexes, the two genders . . . should be separated except in marriage," and (3) because no one has bothered to challenge the practice of providing sex-segregated facilities which, while separate, tend to be roughly equal in quality. (See id. at 16-21.)

¶ 23.) Defendants have indicated their strong disagreement with this position, though they have not yet offered any evidence on this point in this case.<sup>32</sup> But regardless of the characteristics that distinguish men and women for “medical” purposes, Supreme Court and Fourth Circuit precedent supports Defendants’ position that physiological characteristics distinguish men and women for the purposes of bodily privacy.

Although the Supreme Court has never had an occasion to explicitly explain which differences between men and women justify the decision to provide sex-segregated facilities, the Court has generally assumed that the sexes are primarily defined by their differing physiologies. In Virginia, for example, the Court rejected the notion that women were not suited for education at the Virginia Military Institute (“VMI”). See 518 U.S. at 540-46; see also id. at 533 (stating that laws “must not rely on overbroad generalizations about the different talent, capacities, or preferences of males and females.”). Even while rejecting stereotypical assumptions about supposed “inherent differences” between men and women, the Court acknowledged, “Physical differences between men and women . . . are enduring,” adding that the “two sexes are not fungible.” Id. The Court then linked these

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<sup>32</sup> As with legislative history, however, Defendants recently offered medical evidence in the 425 case. (See Docs. 149-9 through 149-12 in the 425 case.)

physiological differences to privacy considerations, adding, "Admitting women to VMI would undoubtedly require alterations necessary to afford members of each sex privacy from the other sex in living arrangements, and to adjust aspects of the physical training programs." Id. at 550 n.19.

Virginia is not the only Equal Protection case to distinguish between the sexes on the basis of physiology. In Tuan Anh Nguyen v. Immigration and Naturalization Serv., 533 U.S. 53 (2001), the Court upheld an Immigration and Naturalization Service ("INS") policy that imposed "a set of requirements on the children of citizen fathers born abroad and out of wedlock to a noncitizen mother that are not imposed under like circumstances when the citizen parent is the mother." Id. 59-60. The Court held that the government's "use of gender specific terms" is constitutionally permissible when the relevant law "takes into account a biological difference" between men and women. Id. at 64. The Court rejected the argument that the INS policy reflected stereotypes about the roles and capacities of mothers and fathers, stating that "the difference does not result from some stereotype, defined as a frame of mind resulting from irrational or uncritical analysis." Id. at 68. Instead, the Court found, "There is nothing irrational or improper in the recognition that at the moment of birth . . . the mother's knowledge of the child and the fact of parenthood have been established in a way not guaranteed in the

case of the unwed father. This is not a stereotype.” Id. Finally, the Court concluded:

To fail to acknowledge even our most basic biological differences . . . risks making the guarantee of equal protection superficial, and so disserving it. Mechanistic classification of all our differences as stereotypes would operate to obscure those misconceptions and prejudices that are real. The distinction embodied in the statutory scheme here at issue is not marked by misconception and prejudice, nor does it show disrespect for either class. The difference between men and women in relation to the birth process is a real one, and the principle of equal protection does not forbid Congress to address the problem at hand in a manner specific to each gender.

Id. at 73.

The Court’s decisions in Virginia (1996) and Nguyen (2001) are not merely relics of an earlier, less enlightened time when courts did not have the benefit of modern medical science. Rather, as recently as January 2016, the Fourth Circuit cited Virginia approvingly while concluding that physiological differences justified treating men and women differently in some contexts. See Bauer v. Lynch, 812 F.3d 340, 350 (4th Cir. 2016). In Bauer, a male applicant “flunked out of the FBI Academy after falling a single push-up short of the thirty required of male Trainees.” Id. at 342. The applicant sued, noting that his performance would have qualified him under the different physical fitness standards applied to female applicants. Id. The Fourth Circuit found that different standards for men and women arose from the FBI’s efforts to “normalize testing standards between men and women in order to

account for their innate physiological differences," such that an approximately equal number of men and women would pass the tests. Id. at 343. In light of this, the Fourth Circuit concluded that the FBI's policy was permissible because "equally fit men and women demonstrate their fitness differently." Id. at 351. In concluding that the FBI could distinguish between men and women on the basis of physiology, the court explained:

Men and women simply are not physiologically the same for the purposes of physical fitness programs. . . . The Court recognized [in Virginia] that, although Virginia's use of 'generalizations about women' could not be used to exclude them from VMI, some differences between the sexes were real, not perceived, and therefore could require accommodations.

Id. at 350.<sup>33</sup>

In light of the foregoing, it appears that the privacy interests that justify the State's provision of sex-segregated bathrooms, showers, and other similar facilities arise from physiological differences between men and women, rather than differences in gender identity. See Virginia, 518 U.S. at 533; Nguyen, 533 U.S. at 73; Bauer, 812 F.3d at 350. The Fourth Circuit has implicitly stated as much, albeit in dicta, noting:

When . . . a gender classification is justified by acknowledged differences [between men and women], identical facilities are not necessarily mandated. Rather, the nature of the difference dictates the type of facility permissible for each gender.

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<sup>33</sup> Bauer involved Title VII rather than the Equal Protection Clause. Id. Nevertheless, the Fourth Circuit stated that the same principles "inform [its] analysis" of both types of claims. Id.

The point is illustrated by society's undisputed approval of separate public rest rooms for men and women based on privacy concerns. The need for privacy justifies separation and the differences between the genders demand a facility for each that is different. Therefore, any analysis of the nature of a specific facility provided in response to a justified purpose, must take into account the nature of the difference on which the separation is based . . . .

Faulkner, 10 F.3d at 232. In fact, even Plaintiffs' counsel acknowledged the State's interest in, for example, ensuring that "12-year-old girls who are not familiar with male anatomy" are not exposed to male genitalia by "somebody older who's showing that to them, a mature adult." (Doc. 103 at 24-25.) As a result, it appears that the constitutionality of Part I depends on whether the law's use of birth certificates as a proxy for sex is substantially related to the State's privacy interest in separating individuals with different physiologies.

There is little doubt that Part I is substantially related to the State's interest in segregating bathrooms, showers, and other similar facilities on the basis of physiology. By Plaintiffs' own allegations, "The gender marker on a birth certificate is designated at the time of birth generally based upon the appearance of external genitalia." (Doc. 9 ¶ 26; see also Doc. 22-1 ¶ 14.) Plaintiffs contend that birth certificates are an "inaccurate proxy for an individual's anatomy" because some transgender individuals have birth certificates that do not reflect their

external physiology, either because (1) they were born in a State that permits them to change the sex on their birth certificates without undergoing sex reassignment surgery, or (2) they were born in a State that does not permit them to change the sex on their birth certificates, regardless of whether they undergo sex reassignment surgery. (Doc. 22 at 32-33.) But even if the court assumes (contrary to the evidence in the record) that no transgender person possesses a birth certificate that accurately reflects his or her external physiology, Part I would still be substantially related to the State's interest because, by Plaintiffs' own estimate, only 0.3% of the national population is transgender. (Doc. 23-37 at 2.) For the remaining 99.7% of the population, there is no evidence that the sex listed on an individual's birth certificate reflects anything other than that person's external genitalia. Without reducing the "reasonable fit" requirement to a numerical comparison, it seems unlikely that a law that classifies individuals with 99.7% accuracy is insufficient to survive intermediate scrutiny. See Staten, 666 F.3d at 162 ("In other words, the fit needs to be reasonable; a perfect fit is not required.").

Finally, the privacy interests discussed above do not appear to represent a post hoc rationalization for Part I. See Virginia, 518 U.S. at 533 (requiring that a justification be "genuine, not hypothesized or invented post hoc in response to litigation").

Plaintiffs contend that Part I “effectively seeks to define transgender individuals out of existence and shut them out from public life.”<sup>34</sup> (Doc. 22 at 35.) As a preliminary matter, it is hard to infer legislative intent based on the current record which, as noted above, contains little information about the legislative process leading to HB2’s passage. The preliminary record does contain a few examples of objectionable statements by some legislators in media outlets, though these statements generally express hostility toward “the liberal agenda” and the “homosexual community” rather than transgender individuals. (See, e.g., Doc. 23-7 at 2; Doc. 23-15 at 2.) But the record also contains many statements, some by these same legislators and others by legislative leaders and Governor McCrory, reflecting an apparently genuine concern for the privacy and safety of North Carolina’s citizens. (See, e.g., Doc. 23-7 at 2 (stating that the Charlotte ordinance “has created a major public safety issue”); Doc. 23-15 at 2 (“The Charlotte ordinance just violates, to me, all basic human principles of privacy and it just has so many unintended consequences.”); Doc. 23-16 at 2 (“While special sessions are costly, we cannot put a price tag on the safety of women and children.”); id. at 3 (“We need to respect the privacy of women

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<sup>34</sup> It should go without saying that Part I, which regulates access to public bathrooms, showers, and other similar facilities, neither defines transgender individuals “out of existence” nor prevents them from participating in public life.

and children and men in a very private place, and that's our restrooms and locker rooms.".) In light of the many contemporaneous statements by State leaders regarding privacy and the substantial relationship between Part I and the State's privacy interests, Plaintiffs have not clearly shown that privacy was an afterthought or a pretext invented after the fact solely for litigation purposes. Nor does the court infer improper motive simply from the fact that Part I negatively impacts some transgender individuals.<sup>35</sup> See Romer, 517 U.S. at 631 ("[M]ost legislation classifies for one purpose or another, with resulting disadvantage to various groups or persons.").

In sum, Supreme Court and Fourth Circuit precedent support the conclusion that physiological differences between men and women give rise to the privacy interests that justify segregating bathrooms, showers, and other similar facilities on the basis of sex. In addition, Plaintiffs admit that the vast majority of birth certificates accurately reflect an individual's external genitalia. Although the correlation between genitalia and the sex listed on a person's birth certificate is not perfect in every case, there is certainly a reasonable fit between these characteristics, which is what the law requires. See Staten, 666

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<sup>35</sup> Of course, not all transgender individuals are negatively impacted by Part I because some may be able to change the sex on their birth certificates, with or without sex reassignment surgery, and others may choose to use bathrooms or other facilities that accord with their biological sex, whether or not they suffer dysphoria as a result.

F.3d at 162 (“In other words, the fit needs to be reasonable; a perfect fit is not required.”). At this preliminary stage, and in light of existing case law, Plaintiffs have not made a clear showing that they are likely to succeed on their Equal Protection claim.

### **ii. Due Process**

The Fourteenth Amendment provides that no State may “deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1. The Supreme Court has long held that, in addition to requiring the government to follow fair procedures when taking certain actions, the Due Process Clause also “bar[s] certain government actions regardless of the fairness of the procedures used to implement them.” Daniels v. Williams, 474 U.S. 327, 331 (1986). As a result, a law that burdens a fundamental right is subject to strict scrutiny and cannot be upheld unless the State demonstrates that it is narrowly tailored to serve a compelling interest. See Carey v. Population Servs. Int’l, 431 U.S. 678, 686 (1977); Walls v. City of Petersburg, 895 F.2d 188, 192 (4th Cir. 1990). By contrast a law that does not burden a fundamental right is subject only to rational basis review, and a court must uphold such a law “so long as it bears a rational relation to some legitimate end.” Romer, 517 U.S. at 631.

For the reasons explained above, the court concludes that

Part I is substantially related to an important government interest. Because Part I passes intermediate scrutiny, the law necessarily clears the lower hurdle of rational basis review. See Outdoor Media Grp., Inc. v. City of Beaumont, 506 F.3d 895, 907 (9th Cir. 2007); Contest Promotions, LLC v. City and Cty. of San Francisco, 100 F. Supp. 3d 835, 849 (N.D. Cal. 2015). As a result, in order to warrant preliminary relief, Plaintiffs must make a clear showing that Part I burdens a fundamental right and therefore triggers strict scrutiny.

Plaintiffs argue that Part I burdens two separate fundamental rights. First, they argue that Part I burdens a fundamental right to informational privacy by forcing transgender individuals to use bathrooms in which they will appear out of place, thereby disclosing their transgender status to third parties. Second, they argue that Part I violates a right to refuse unwanted medical treatment because many States, including North Carolina, require transgender individuals to undergo sex reassignment surgery before changing the sex on their birth certificates. Each argument will be addressed in turn.

**(a) Informational Privacy**

The constitutional right to privacy protects, among other things, an individual's "interest in avoiding disclosure of personal matters." Whalen v. Roe, 429 U.S. 589, 599 (1977). "The right to privacy, however, is not absolute." Walls, 895 F.2d at

192. Instead, the constitutional right to privacy is only implicated when State action compels disclosure of information of a "fundamental" nature. Id. "The more intimate or personal the information, the more justified is the expectation that it will not be subject to public scrutiny." Id. The Fourth Circuit has held that, as a "first step" in determining whether a particular category of information is entitled to constitutional protection, courts should examine whether the information "is within an individual's reasonable expectations of confidentiality." Id.

Plaintiffs contend that a person's transgender status constitutes sensitive medical information and that this type of information is subject to constitutional protection. They cite various cases in which courts held that information qualifies for constitutional protection when it is of a sexual, personal, or humiliating nature, or when the release of the information could subject the person to a risk of bodily harm. See Powell v. Schriver, 175 F.3d 107, 111 (2d Cir. 1999) ("[T]he right to confidentiality includes the right to protection regarding information about the state of one's health.") (quoting Doe v. City of New York, 15 F.3d 264, 267 (2d Cir. 1994)); Love v. Johnson, 146 F. Supp. 3d 848, 853 (E.D. Mich. 2015). These courts concluded that an individual's transgender status qualifies for constitutional protection because such information is of a private, sexual nature and disclosure of this information could

subject a transgender person to ridicule, harassment, or even bodily harm. See Powell, 175 F.3d at 111 (“Like HIV status . . . transsexualism is the unusual condition that is likely to provoke both an intense desire to preserve one’s medical confidentiality, as well as hostility and intolerance from others.”); Love, 146 F. Supp. 3d at 856; see also K.L. v. Alaska, Dep’t of Admin., Div. of Motor Vehicles, No. 3AN-11-05341, 2012 WL 2685183, at \*6 (Alaska Super. Ct. Mar. 12, 2012) (concluding that an individual’s transgender status qualifies for privacy protection under Alaska law). In Love, for example, the court considered a Michigan law that prevented individuals from changing the sex on their driver’s license.<sup>36</sup> 146 F. Supp. 3d at 856–57. The court concluded that this policy burdened Due Process privacy interests because it forced transgender individuals to tacitly reveal their transgender status whenever they displayed their driver’s licenses to others. Id.; see also K.L., 2012 WL 2685183 at \*4–7 (same).

None of these cases applied Fourth Circuit law, however, and the Fourth Circuit’s decision in Walls casts doubt on the validity of these cases in this circuit. In Walls, a public employee was fired after refusing to complete a background check that included questions about her prior marriages, divorces, debts, criminal

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<sup>36</sup> Notably, the policy in Love only applied to individuals who sought to change the sex on an existing driver’s license; Michigan apparently did not require individuals to present a birth certificate to support their claimed sex when initially obtaining a license. Id. at 851–52 & n.2.

history, and sexual relationships with same-sex partners. 895 F.2d at 190. The employee brought an action under 42 U.S.C. § 1983 against her employer, claiming that the questionnaire violated her right to privacy. Walls, 895 F.2d at 189-92. The Fourth Circuit explained that the “right to privacy protects only information with respect to which the individual has a reasonable expectation of privacy.” Id. at 193. The court therefore concluded that the right to privacy did not protect the information sought in the agency’s questionnaire, including questions about prior marriages, divorces, and children, “to the extent that this information is freely available in public records.” Id.

Walls suggests that Part I does not burden a fundamental privacy interest, at least under current Fourth Circuit law. Plaintiffs argue that Part I discloses an individual’s transgender status to third parties by revealing the sex on their birth certificates through their choice of bathroom; when a stereotypically-feminine appearing individual uses a men’s bathroom, Plaintiffs argue, third parties will know that the individual has a male birth certificate and infer that the person is transgender. (See Doc. 9 at ¶¶ 223-24.) But pursuant to Walls, individuals have no constitutionally-protected privacy interest in information that is freely available in public records. 895 F.2d at 193. And although the parties have not addressed this issue, the sex listed on an individual’s birth certificate appears to be

freely available in public records, at least if the individual was born in North Carolina. See N.C. Gen. Stat. § 130A-93(b) (providing that all birth data collected by the State qualifies as public records except for the names, addresses, and social security numbers of children and parents); see also id. § 132-1(b) (providing that all public records "are the property of the people" and requiring that the public be given access to such information "free or at minimal cost unless otherwise specifically provided by law").

As a result, regardless of whether the court finds the reasoning in Love and K.L. persuasive, the sex listed on a person's birth certificate does not appear to qualify for constitutional protection under Walls. Plaintiffs cite general statements about privacy from Walls, but they overlook the obvious question of why the rule the court actually applied in that case should not govern this case as well. (See Doc. 22 at 36-38; Doc. 73 at 36-37.) It is possible that, with further development, Plaintiffs may be able to sufficiently distinguish Walls and demonstrate that the rule from that case should not apply outside of the employment context. For example, the policies at issue in Love and K.L. arguably have more in common with Part I than Walls, which dealt with an employment background check - a situation in which a third party can reasonably be expected to know the individual's name, address, and other identifying information that would make a public records

search more practicable. Walls, 895 F.2d at 193-95.

On the other hand, there are also significant distinctions between this case and the cases cited by Plaintiffs. Unlike Part I, most of Plaintiffs' cases involved State actors who intentionally revealed or threatened to reveal private information. See, e.g., Powell, 175 F.3d at 109-11 (prison guard openly discussed an inmate's transgender status in the presence of other inmates); Sterling v. Borough of Minersville, 232 F.3d 190, 192, 196 (3d Cir. 2000) (police officer threatened to tell an arrestee's family that the arrestee was gay). Even Love and K.L., Plaintiffs' most factually-analogous cases, challenged policies governing the modification of State documents rather than the circumstances in which a State may rely on those documents. Love 146 F. Supp. 3d at 856; K.L., 2012 WL 2685183 at \*4-8. Love held that Michigan must allow transgender individuals to change the sex on their driver's license so that they would not have to reveal their transgender status during traffic stops; plaintiffs did not argue, and the court did not hold, that the State should be enjoined from asking drivers for identification during traffic stops. See 146 F. Supp. 3d at 856; see also K.L., 2012 WL 2685183 at \*4-8 (same).

Unlike the plaintiffs in Love and K.L., Plaintiffs challenge North Carolina's ability to use birth certificates as an identifying document in the context of bathrooms, showers, and

other facilities, rather than its rules for altering the information contained in the birth certificate itself. This highlights a potential conceptual difficulty with Plaintiffs' Due Process theories. Even under Part I, an individual's choice of bathroom does not directly or necessarily disclose whether that person is transgender; it merely discloses the sex listed on the person's birth certificate. Part I does not disclose medical information about any persons whose gender identity aligns with their birth certificate, either because they are not transgender or because they have successfully changed their birth certificate to match their gender identity (with or without sex reassignment surgery). Nor does Part I disclose medical information about transgender individuals whose name, appearance, or other characteristics do not readily identify their gender identity. Part I could only disclose an individual's transgender status inasmuch as third parties are able to infer as much in light of the person's birth certificate and appearance. Thus, it is not readily apparent to what extent any Due Process concerns are attributable to Part I as opposed to the laws that govern the modification of birth certificates.

In light of the foregoing, Plaintiffs have not clearly shown that they are likely to succeed on the merits of their informational privacy claim. See Winter, 555 U.S. at 20-22 (stating that a preliminary injunction is "an extraordinary remedy

that may only be awarded upon a clear showing that the plaintiff is entitled to such relief" (emphasis added)). The law in this area is substantially underdeveloped, however, and the parties devoted relatively little attention to this claim both in their briefs and at the hearing on this matter. Although Plaintiffs have not demonstrated that they are entitled to preliminary relief on this claim, their arguments and authorities raise substantial questions that merit additional consideration. As a result, the court will reserve ruling on Plaintiffs' informational privacy claim at this time so that the parties may submit additional briefing according to the schedule outlined in Section III below.

**(b) Unwanted Medical Treatment**

Plaintiffs also contend that Part I violates transgender individuals' constitutional right to refuse unwanted medical treatment because North Carolina and many other States require sex reassignment surgery before the sex on a person's birth certificate may be changed. (Doc. 9 ¶¶ 228-34; Doc. 22 at 39.)

The parties' arguments on this issue are even less developed than those pertaining to informational privacy, with just three paragraphs devoted to the issue in the parties' principal briefs combined. (See Doc. 22 at 38-39; Doc. 55 at 18.) Plaintiffs rely almost exclusively on United States v. Charters, 829 F.2d 479 (4th Cir. 1987). In Charters, the Fourth Circuit held that a mentally ill prisoner had a Due Process interest in refusing the State's

efforts to medicate him with antipsychotic drugs against his will. Id. at 490-500. In reaching this decision, the court applied principles derived from the "rights to freedom from physical invasion and freedom of thought as well as the right to privacy protected by the Constitution and the common law." Id. at 490. From these principles, the court observed, "The right to refuse medical treatment has been specifically recognized as a subject of constitutional protection." Id. at 491.

Governments assuredly must meet heightened scrutiny before forcibly medicating prisoners, or any citizens for that matter, against their will. But Plaintiffs have not shown how this holding applies to Part I, which does not address medical treatment at all. True, Part I may require some transgender individuals (who otherwise do not benefit from the court's injunction as to Title IX facilities) to undergo potentially unwanted medical treatment if they wish to access public bathrooms, showers, and other similar facilities that align with their gender identity. But they are free to use facilities that align with their biological sex, and they may have access to single-user facilities. As much as one sympathizes with the plight of these transgender individuals, this degree of "compulsion" is far removed from the situation in Charters, where a captive prisoner was strapped down and forced to submit to medication against his will. See Charters, 829 F.2d at 482-84. If the Due Process Clause were implicated any time an

individual must undergo medical treatment in order to access a desired benefit or service, it would cast serious doubts on a wide variety of laws. See, e.g., N.C. Gen. Stat. § 130A-155 (requiring schools and child care facilities to ensure that children have received appropriate vaccines before accepting them as students); 19A N.C. Admin. Code § 3B.0201(a)(3) (requiring some individuals to wear corrective lenses in order to obtain a driver's license).<sup>37</sup>

At a minimum, further development of Plaintiffs' argument is necessary before the court can determine whether Charters prevents the State from enforcing Part I. As with Plaintiffs' informational privacy claim, the court will reserve ruling to give the parties an opportunity to submit additional briefing on this claim in accordance with the schedule outlined in Section III below.

## **2. Irreparable Harm**

A party seeking a preliminary injunction must also show that it is likely to suffer irreparable harm in the absence of preliminary relief. Winter, 555 U.S. at 20. Irreparable injury must be both imminent and likely; speculation about potential future injuries is insufficient. See id. at 22.

On the current record, the individual transgender Plaintiffs

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<sup>37</sup> Here, too, as with the informational privacy claim, Plaintiffs' real problem appears to be various States' inflexible rules for changing one's sex on a birth certificate, in so far as Part I permits transgender users who did not have any surgery to use facilities matching their gender identity as long as their birth certificate has been changed - an issue the parties have not adequately addressed.

have clearly shown that they will suffer irreparable harm in the absence of preliminary relief. All three transgender Plaintiffs submitted declarations stating that single occupancy bathrooms and other similar facilities are generally unavailable at UNC and other public agencies. (See Doc. 22-4 ¶¶ 18-20; Doc. 22-8 ¶ 27; Doc. 22-9 ¶¶ 24-25.) In fact, two of the individual transgender Plaintiffs indicate that they are not aware of any single occupancy facilities in the buildings in which their classes are held. (Doc. 22-8 ¶ 27; Doc. 22-9 ¶¶ 24-25.) Part I therefore interferes with these individuals' ability to participate in their work and educational activities. (See Doc. 22-4 ¶ 21; Doc. 22-8 ¶ 27; Doc. 22-9 ¶ 24.) As a result, some of these Plaintiffs limit their fluid intake and resist the urge to use a bathroom whenever possible. (Doc. 22-4 ¶ 21; Doc. 22-8 ¶ 32.) Such behavior can lead to serious medical consequences, such as urinary tract infections, constipation, and kidney disease. (Doc. 22-16 at 3-4.) This concern is not merely speculative; there is evidence that one of the individual transgender Plaintiffs has already begun to suffer medical consequences from behavioral changes prompted by Part I. (Doc. 73-1 at 1-2.)

In their response to Plaintiffs' motion, Defendants suggest that the individual transgender Plaintiffs' claims of irreparable harm are speculative and exaggerated, but Defendants have not presented any evidence to contradict Plaintiffs' evidence. (See

Doc. 61 at 22-26.) Therefore, on this record, the court has no basis for doubting Plaintiffs' assertions that they cannot use multiple occupancy facilities that match their birth certificates for fear of harassment and violence, that single occupancy facilities are not reasonably available to them, and that they are at a serious risk of suffering negative health consequences as a result.

Defendants also argue that Plaintiffs delayed in filing their motion for preliminary injunction seven weeks after the passage of HB2. (Doc. 61 at 23.) In some circumstances, a delay in requesting preliminary relief can be relevant to the irreparable harm inquiry. See, e.g., Static Control Components, Inc. v. Future Graphics, LLC, No. 1:06cv730, 2007 U.S. Dist. LEXIS 36474, at \*7-9 (M.D.N.C. May 11, 2007) (finding that an employer's eight-week delay in seeking to prevent a former employee from working for a competitor weighed against a finding of irreparable harm); Fairbanks Capital Corp. v. Kenney, 303 F. Supp. 2d 583, 590-91 (D. Md. 2003) (finding an eleven-month delay in bringing a trademark infringement suit to be reasonable under the circumstances). Here, however, HB2 was passed on an expedited schedule, and Plaintiffs doubtlessly needed some time to compile the more than sixty documents they submitted to support their motion, including exhibits, declarations from fact witnesses, and the opinions of expert witnesses. In addition, the legal landscape regarding HB2's enforcement remained in flux

immediately after the laws' passage. (See, e.g., Doc. 23-24; Doc. 23-28.) Under these circumstances, Plaintiffs' minimal delay in seeking preliminary relief does not undermine their claims regarding irreparable harm.

Finally, the court notes that similar facts were deemed sufficient to support a finding of irreparable harm in G.G. See G.G., 2016 WL 3581852 at \*1; G.G., 822 F.3d at 727-29 (Davis, J., concurring). The court therefore concludes that the individual transgender Plaintiffs have made a clear showing that they are likely to suffer irreparable harm in the absence of preliminary relief.

### **3. Balance of Equities and the Public Interest**

In addition to likelihood of success on the merits and irreparable harm, those seeking preliminary relief must also demonstrate that the balance of equities tips in their favor and that an injunction is in the public interest. Winter, 555 U.S. at 20. On the current record, both favor entry of an injunction.

The balance of equities favors the entry of an injunction. One noteworthy feature of this case is that all parties claim that they want to preserve North Carolina law as it existed before the law was enacted; they simply disagree about the contours of that pre-HB2 legal regime. (See Doc. 103 at 6, 15-21, 65-71, 74-90, 96-102; Doc. 9 ¶¶ 166-68.) For the reasons discussed above, the court concludes that Part I does not accurately restore the status

quo ante in North Carolina, at least as it existed in the years immediately preceding 2016. While Part I reiterates the male/female distinction for the vast majority of persons, it imposes a new restriction that effectively prohibits State agencies from providing flexible, case-by-case accommodations regarding the use of bathrooms, showers, and other similar facilities for transgender individuals where feasible.<sup>38</sup> See HB 2 §§ 1.2–1.3. Because Defendants do not claim to have had any problems with the pre-2016 regime (Doc. 103 at 65–71, 74–90, 96–102), the entry of an injunction should not work any hardship on them. By contrast, the failure to enjoin Part I would cause substantial hardship to the individual transgender Plaintiffs, disrupting their lives.

For similar reasons, the court concludes that an injunction is in the public interest. Of course, every individual has “a legitimate and important interest in [ensuring] that his or her nude or partially nude body, genitalia, and other private parts are not involuntarily exposed.” G.G., 822 F.3d at 723 (citations and internal quotation marks omitted). The dispute in this case centers on facilities of the most intimate nature, and the State

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<sup>38</sup> For this reason, the preliminary injunction in this case is a prohibitory injunction and is not subject to the heightened standard that applies to mandatory injunctions. See Pashby v. Delia, 709 F.3d 307, 319 (4th Cir. 2013) (“Prohibitory preliminary injunctions aim to maintain the status quo and prevent irreparable harm while a lawsuit remains pending.”).

clearly has an important interest in protecting the privacy rights of all citizens in such facilities. See, e.g., Virginia, 518 U.S. at 550 n.19 (stating that separate facilities in coeducational institutions are "necessary to afford members of each sex privacy from the other sex"); Faulkner, 10 F.3d at 232 (noting "society's undisputed approval of separate public restrooms for men and women based on privacy concerns"). The privacy and safety concerns raised by Defendants are significant, and this is particularly so as they pertain to the protection of minors. See, e.g., Beard, 402 F.3d at 604 ("Students of course have a significant privacy interest in their unclothed bodies."). At the hearing on the present motion, Plaintiffs acknowledged that the State has a legitimate interest in protecting the privacy of its citizens, particularly minors and students, and that sex-segregated bathrooms, showers, and other similar facilities serve this interest. (See Doc. 103 at 15-19.)

But transgender individuals are not exempted from such privacy and safety rights. The current record indicates that many public agencies have become increasingly open to accommodating the interests of transgender individuals as society has evolved over time. (See, e.g., Doc. 22-19 ¶¶ 8-9.) This practice of case-by-case accommodation, while developing, appears to have gained acceptance in many places across North Carolina over the last few years. (See, e.g., Doc. 22-4 ¶ 15; Doc. 22-8 ¶ 19; Doc. 22-9

¶¶ 15, 19–20.) And the preliminary record contains uncontested evidence that these practices allowed the individual transgender Plaintiffs to use bathrooms and other facilities consistent with their gender identity for an extended period of time without causing any known infringement on the privacy rights of others. (See Doc. 22-4 ¶ 30; Doc. 22-8 ¶ 25; Doc. 22-9 ¶ 20.)

In fact, rather than protect privacy, it appears at least equally likely that denying an injunction will create privacy problems, as it would require the individual transgender Plaintiffs, who outwardly appear as the sex with which they identify, to enter facilities designated for the opposite sex (e.g., requiring stereotypically-masculine appearing transgender individuals to use women's bathrooms), thus prompting unnecessary alarm and suspicion. (See, e.g., Doc. 22-9 ¶ 28 (describing one student's experiences being "screamed at, shoved, slapped, and told to get out" when using bathrooms that did not match the student's gender identity.) As counsel for Governor McCrory candidly acknowledged, even if Part I remains in effect, "some transgender individuals will continue to use the bathroom that they always used and nobody will know." (Doc. 103 at 70.)

Finally, the argument for safety and privacy concerns proffered by the State as to transgender users are somewhat undermined here by the structure of Part I itself. Unlike the policy in G.G., which contained no exceptions, Part I permits some

transgender individuals to use bathrooms, showers, and other facilities that do not correspond with their external genitalia. This is so because some States do not permit transgender individuals to change their birth certificates even after having sex reassignment surgery, see, e.g., Tenn. Code Ann. § 68-3-203(d), while others allow modification of birth certificates without such surgery, see, e.g., Md. Code, Health-Gen § 4-211. In this regard, Part I's emphasis on birth certificates elevates form over substance to some degree as to some transgender users.

As for safety, Defendants argue that separating facility users by biological sex serves prophylactically to avoid the opportunity for sexual predators to prey on persons in vulnerable places. However, the individual transgender Plaintiffs have used facilities corresponding with their gender identity for over a year without posing a safety threat to anyone. (See Doc. 22-4 ¶¶ 15, 30; Doc. 22-8 ¶¶ 19, 25; Doc. 22-9 ¶¶ 15, 19-20.) Moreover, on the current record, there is no evidence that transgender individuals overall are any more likely to engage in predatory behaviors than other segments of the population. In light of this, there is little reason to believe that allowing the individual transgender Plaintiffs to use partitioned, multiple occupancy bathrooms corresponding with their gender identities, as well as UNC to seek to accommodate use of similar showers and changing facilities, will pose any threat to public safety, which will

continue to be protected by the sustained validity of peeping, indecent exposure, and trespass laws. And although Defendants argue that a preliminary injunction will thwart enforcement of such safety laws by allowing non-transgender predators to exploit the opportunity to cross-dress and prey on others (Doc. 55 at 4-5), the unrefuted evidence in the current record suggests that jurisdictions that have adopted accommodating bathroom access policies have not observed subsequent increases in crime, (see Doc. 22-10 at 6-10; Doc. 22-13).

Finally, the court acknowledges that “any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.” New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co., 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers). In this case, however, this concern lessened by the continued validity of Parts II and III of HB2, which serve the State’s ostensible goal of preempting the Charlotte ordinance and maintaining the law as it existed before March 2016. The State acknowledges that it had no problems with that pre-2016 legal regime. (Doc. 103 at 65-71, 74-90, 96-102.)

In sum, the court has no reason to believe that an injunction returning to the state of affairs as it existed before March 2016 would pose a privacy or safety risk for North Carolinians, transgender or otherwise. It is in the public interest to enforce

federal anti-discrimination laws in a fashion that also maintains long-standing State laws designed to protect privacy and safety. On this record, allowing UNC to permit the transgender Plaintiffs to use multiple occupancy, partitioned restrooms corresponding to their gender identity, and to seek flexible accommodation for changing rooms and other facilities, therefore serves the public interest.

### **III. CONCLUSION**

Plaintiffs' motion seeks to preliminarily enjoin Defendants "from enforcing Part I of House Bill 2." (Doc. 21 at 3; see also Doc. 22 at 44-45.) As a result, the issue currently before the court is whether Title IX or the Constitution prohibits Defendants from enforcing HB2's exclusion of transgender individuals from multiple-occupancy bathrooms, showers, and other similar facilities under all circumstances based solely on the designation of "male" or "female" on their birth certificate.

For the reasons stated, applicable Fourth Circuit law requires that DOE's guidance defining "sex" to mean gender identity be accorded controlling weight when interpreting DOE's Title IX regulations. Because Part I of HB2 prevents transgender individuals from using multiple-occupancy bathrooms and similar facilities based solely on the gender listed on their birth certificate, it necessarily violates DOE's guidance and cannot be enforced. As for Plaintiffs' constitutional claims, Plaintiffs

have not made a clear showing they are likely to succeed on their Equal Protection claim, and the court reserves ruling on the Due Process claims pending further briefing from the parties.

The Title IX claim currently before the court is brought by the individual transgender Plaintiffs on their own behalf; the current complaint asserts no claim for class relief or any Title IX claim by ACLU-NC on behalf of its members. (Doc. 9 ¶¶ 235-243.)<sup>39</sup> Consequently, the relief granted now is as to the individual transgender Plaintiffs.

The individual transgender Plaintiffs have not sought an order guaranteeing them access to any specific facility. The court's order will return the parties to the status quo ante existing immediately before the passage of Part I of HB2, wherein public agencies accommodated the individual transgender Plaintiffs on a case-by-case basis, rather than applying a blanket rule to all people in all facilities under all circumstances. Plaintiffs have no complaint with UNC's pre-HB2 policy; Defendants, in turn, do not contend that it caused any significant privacy or safety concerns. Such an order is also consistent with the DOE opinion letter, which states that schools "generally" must treat students consistent with their gender identity. (Doc. 23-29 at 3.) As a

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<sup>39</sup> Although Plaintiffs moved to amend their complaint after the hearing on the present motion (Doc. 116), the motion to amend has not been resolved.

result, the court does not decide how Defendants should apply DOE's guidance in all situations and circumstances. Suffice it to say that for the time being, UNC is not constrained from accommodating the individual transgender Plaintiffs through appropriate means that accord with DOE guidance and recognize the unique circumstances of each case, just as it apparently did for several years prior to HB2. In doing so, UNC should be mindful of North Carolina's trespass, peeping, and indecent exposure laws, which protect the privacy and safety of all citizens, regardless of gender identity. In short, UNC may not apply HB2's one-size-fits-all approach to what must be a case-by-case inquiry.<sup>40</sup>

IT IS THEREFORE ORDERED that Plaintiffs' motion for preliminary injunction (Doc. 21) is GRANTED IN PART and DENIED IN PART, as follows:

- (1) The individual transgender Plaintiffs' motion for preliminary injunction on their Title IX claim is GRANTED. The University of North Carolina, its officers, agents, servants, employees, and attorneys, and all other persons acting in concert or participation with them are hereby ENJOINED from enforcing Part I of

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<sup>40</sup> To the extent the individual transgender Plaintiffs assert an unqualified right to use all multiple occupancy bathrooms, showers, and changing rooms under all circumstances (see Doc. 9 at 56), that issue is not currently before the court. Whether it will be at a later stage in this case, or as part of the United States' motion for preliminary injunction in the 425 case, remains for later determination.

HB2 against the individual transgender Plaintiffs until further order of the court.

- (2) Plaintiffs' motion for preliminary injunction on their Equal Protection claim is DENIED without prejudice to a final determination on the merits.
- (3) The court reserves ruling on Plaintiffs' motion for preliminary injunction on their Due Process claims. If Plaintiffs wish to submit additional briefing on these claims, they must do so no later than September 9, 2016. Any response briefs must be filed no later than September 23, 2016, and any reply briefs must be filed no later than October 7, 2016. Although the parties may address any matter relevant to the Due Process claims in their briefs, the court is particularly interested in the following questions: (1) whether the sex on an individual's birth certificate is freely available in public records in North Carolina and other States and, if so, whether individuals have a Due Process privacy interest in such information; and (2) the degree to which a law in general, and Part I in particular, must burden a fundamental right in order to warrant strict scrutiny. Plaintiffs' initial brief and any response briefs may not exceed twenty pages per side, and Plaintiffs' reply may not exceed ten pages. If the parties desire

additional oral argument regarding Plaintiffs' Due Process claims, any hearing will be combined with the consolidated preliminary injunction hearing and trial on the merits in the 425 case.

/s/ Thomas D. Schroeder  
United States District Judge

August 26, 2016

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

JOAQUÍN CARCAÑO; PAYTON GREY  
MCGARRY; H.S., by her next friend and mother,  
KATHRYN SCHAFER; ANGELA GILMORE;  
KELLY TRENT; BEVERLY NEWELL; and  
AMERICAN CIVIL LIBERTIES UNION OF  
NORTH CAROLINA,

*Plaintiffs,*

v.

No. 1:16-cv-00236-TDS-JEP

PATRICK McCRORY, in his official capacity as  
Governor of North Carolina; UNIVERSITY OF  
NORTH CAROLINA; BOARD OF GOVERNORS  
OF THE UNIVERSITY OF NORTH CAROLINA;  
and W. LOUIS BISSETTE, JR., in his official  
capacity as Chairman of the Board of Governors of  
the University of North Carolina,

*Defendants,*

and

PHIL BERGER, in his official capacity as President  
*pro tempore* of the North Carolina Senate; and TIM  
MOORE, in his official capacity as Speaker of the  
North Carolina House of Representatives,

*Intevernor-Defendants.*

**NOTICE OF APPEAL**

Notice is hereby given that Plaintiffs Joaquín Carcaño; Payton Grey McGarry;  
H.S., by her next friend and mother, Kathryn Schafer; and American Civil Liberties  
Union of North Carolina hereby appeal to the United States Court of Appeals for the

**JA994**

Fourth Circuit from an order entered in this action on August 26, 2016 (ECF No. 127), denying in part Plaintiffs' motion for preliminary injunction.

Dated: August 29, 2016

Respectfully submitted,

/s/ Christopher A. Brook

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**CERTIFICATE OF SERVICE**

I, Christopher A. Brook, hereby certify that on August 29, 2016, I caused the foregoing NOTICE OF APPEAL to be electronically filed using the CM/ECF system, and have verified that such filing was sent electronically using the CM/ECF system to all parties who have appeared with an email address of record.

/s/ Christopher A. Brook

Christopher A. Brook

**JA996**

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

JOAQUÍN CARCAÑO; PAYTON GREY  
MCGARRY; H.S., by her next friend and  
mother, KATHRYN SCHAFER, and her next  
friend and father, MACHENRY GEORGE  
SCHAFER II; ANGELA GILMORE; and  
AMERICAN CIVIL LIBERTIES UNION OF  
NORTH CAROLINA,

*Plaintiffs,*

v.

PATRICK MCCRORY, in his official capacity  
as Governor of North Carolina; UNIVERSITY  
OF NORTH CAROLINA; and MARGARET  
SPELLINGS, in her official capacity as  
President of the University of North Carolina,

*Defendants,*

PHIL BERGER, in his official capacity as  
President Pro Tempore of the North Carolina  
Senate; TIM MOORE, in his official capacity  
as Speaker of the North Carolina House of  
Representatives,

*Intervenor-Defendants.*

No. 1:16-cv-00236-TDS-JEP

**SECOND AMENDED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE RELIEF AND NOMINAL DAMAGES**

## INTRODUCTION

1. This lawsuit challenges a sweeping North Carolina law, House Bill 2 (“H.B. 2”), which bans transgender people from accessing restrooms and other facilities consistent with their gender identity and blocks local governments from protecting lesbian, gay, bisexual, and transgender (“LGBT”) people against discrimination in a wide variety of settings. By singling out LGBT people for disfavored treatment and explicitly writing discrimination against transgender people into state law, H.B. 2 violates the most basic guarantees of equal treatment and the U.S. Constitution.

2. In February 2016, the City of Charlotte enacted an ordinance (the “Ordinance”) that extended existing municipal anti-discrimination protections to LGBT people. In light of the pervasive discrimination faced by LGBT people—and particularly transgender people—advocates had long pressed the Charlotte City Council for these protections. Because North Carolina state law does not expressly prohibit discrimination based on sexual orientation or gender identity, many LGBT residents of Charlotte—as well as LGBT residents throughout the state—are exposed to invidious discrimination in their day-to-day lives simply for being themselves. After two hours-long hearings, in which there was extensive public comment on both sides of the issue, the Charlotte City Council voted to adopt the Ordinance.

3. Before the Ordinance could take effect, the North Carolina General Assembly rushed to convene a special session with the express purpose of passing a statewide law that would preempt Charlotte’s “radical” move to protect its residents from

discrimination. In a process rife with procedural irregularities, the legislature introduced and passed H.B. 2 in a matter of hours, and the Governor signed the bill into law that same day. Lawmakers made no attempt to cloak their actions in a veneer of neutrality, instead openly and virulently attacking transgender people, who were falsely portrayed as predatory and dangerous to others. While the discriminatory, stated focus of the legislature in passing H.B. 2—the use of restrooms by transgender people—is on its own illegal and unconstitutional, H.B. 2 in fact wreaks far greater damage by also prohibiting local governments in North Carolina from enacting express anti-discrimination protections based on sexual orientation and gender identity.

4. Plaintiffs are individuals and a nonprofit organization whose members and constituents will be directly impacted by H.B. 2. Like the three transgender plaintiffs in the case, transgender people around the state of North Carolina immediately suffered harm under H.B. 2 in that they are not able to access public restrooms and other single-sex facilities that accord with their gender identity. Additionally, all LGBT people are harmed by H.B. 2 in that it strips them of, or bars them from, anti-discrimination protections under local law. Plaintiffs seek a declaratory judgment that H.B. 2 violates their or their members' constitutional and statutory rights to equal protection, liberty, dignity, autonomy, and privacy, as well as an injunction preliminarily and permanently enjoining enforcement by of H.B. 2 by Defendants, and nominal damages for the three transgender plaintiffs in the case for violation of their federal statutory rights.

## PARTIES

### A. Plaintiffs.

5. Plaintiff Joaquín Carcaño (“Mr. Carcaño”) is a 28-year-old man who resides in Carrboro, North Carolina. Mr. Carcaño is employed by the University of North Carolina, and he works at the University of North Carolina at Chapel Hill (“UNC-Chapel Hill”). He is transgender.

6. Plaintiff Payton Grey McGarry (“Mr. McGarry”) is a 20-year-old man who resides in Greensboro, North Carolina. Mr. McGarry is a full-time student at the University of North Carolina at Greensboro (“UNC-Greensboro”). He is transgender.

7. Plaintiff H.S. is a 17-year-old young woman from Raleigh, North Carolina who attends school and resides in Winston-Salem, North Carolina. Plaintiff H.S. is a student at the University of North Carolina School of the Arts High School (“UNCSA-HS”). She is transgender.

8. Plaintiff Angela Gilmore (“Ms. Gilmore”) is a 52-year-old woman who resides in Durham, North Carolina and is an Associate Dean and Professor at North Carolina Central University School of Law. Ms. Gilmore is a lesbian.

9. Plaintiff American Civil Liberties Union of North Carolina (“ACLU of NC”) is a private, non-profit membership organization with its principal office in Raleigh, North Carolina. It has approximately 8,500 members in the State of North Carolina, including LGBT members. The mission of the ACLU of NC is to defend and advance the individual freedoms embodied in the United States Constitution, including

the rights of LGBT people to be free from invidious discrimination and infringements on their liberty interests. The ACLU of NC sues on behalf of its members, some of whom are transgender individuals who are barred by H.B. 2 from using restrooms and other facilities in accordance with their gender identity in schools (including those subject to N.C. Gen. Stat. § 115C-521.2) and government buildings, and some of whom are lesbian, gay, bisexual, or transgender individuals who have been stripped of or barred from local non-discrimination protections based on their sexual orientation and sex, including gender identity.

**B. Defendants.**

10. Defendant Patrick McCrory (“Defendant McCrory” or “Governor McCrory” or “the Governor”) is sued in his official capacity as the Governor of North Carolina. Pursuant to Article III, Section 1 of the State Constitution, “the executive power of the State” is vested in Defendant McCrory in his capacity as Governor. Article III, Section 5(4) also provides that it is the duty of Defendant McCrory in his capacity as Governor to “take care that the laws be faithfully executed.” Governor McCrory is a person within the meaning of 42 U.S.C. § 1983 and was acting under color of state law at all times relevant to this complaint.

11. Defendant University of North Carolina is an education program or activity receiving federal financial assistance. Defendant University of North Carolina (“UNC”) includes its constituent institutions, including, but not limited to, the University of North

Carolina at Chapel Hill, the University of North Carolina at Greensboro, and the University of North Carolina School of the Arts High School.

12. Defendant Margaret Spellings (“Defendant Spellings”) is sued in her official capacity as the President of the University of North Carolina. In her capacity as UNC President, Defendant Spellings is “the chief administrative officer of the University,” N.C. Gen. Stat. § 116-14. President Spellings is a person within the meaning of 42 U.S.C. § 1983 and was acting under color of state law at all times relevant to this complaint.

13. Defendants, through their respective duties and obligations, are responsible for enforcing H.B. 2. Each Defendant, and those subject to their direction, supervision, or control, has or intentionally will perform, participate in, aide and/or abet in some manner the acts alleged in this complaint, has or will proximately cause the harm alleged herein, and has or will continue to injure Plaintiffs irreparably if not enjoined. Accordingly, the relief requested herein is sought against each Defendant, as well as all persons under their supervision, direction, or control, including, but not limited to, their officers, employees, and agents.

### **JURISDICTION AND VENUE**

14. This action arises under 42 U.S.C. § 1983 to redress the deprivation under color of state law of rights secured by the United States Constitution and under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, *et seq.* (“Title IX”).

15. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1343 because the matters in controversy arise under laws of the United States and the United States Constitution.

16. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1) and (2) because Defendant University of North Carolina resides within the District, and all Defendants reside within the State of North Carolina; and because a substantial part of the events that gave rise to the Plaintiffs' claims took place within the District.

17. This Court has the authority to enter a declaratory judgment and to provide preliminary and permanent injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure, and 28 U.S.C. §§ 2201 and 2202.

18. This Court has personal jurisdiction over Defendants because they are domiciled in North Carolina.

## FACTUAL ALLEGATIONS

### A. Plaintiffs.

19. **Plaintiff Joaquín Carcaño** works for the University of North Carolina at Chapel Hill (“UNC-Chapel Hill”) Institute for Global Health and Infectious Disease as a Project Coordinator. The project that he coordinates provides medical education and services such as HIV testing to the Latino/a population.

20. Mr. Carcaño is a man.

21. Until the passage of H.B. 2, Mr. Carcaño was recognized and treated like all other men at his job at UNC-Chapel Hill.

22. Mr. Carcaño is transgender. What that means is that his sex assigned at birth was female, as his birth certificate reflects, but that designation does not accurately reflect his gender identity, which is male.

23. A person's gender identity refers to the person's internal sense of belonging to a particular gender. There is a medical consensus that gender identity is innate and that efforts to change a person's gender identity are unethical and harmful to a person's health and well-being.

24. The gender marker on a birth certificate is designated at the time of birth generally based upon the appearance of external genitalia. However, determinations of sex can involve multiple factors, such as chromosomes, hormone levels, internal and external reproductive organs, and gender identity.

25. Gender identity is the primary determinant of sex.

26. Mr. Carcaño was diagnosed with gender dysphoria, the medical diagnosis for the clinically significant distress that individuals whose gender identity differs from the sex they were assigned at birth can experience.

27. Gender dysphoria is a serious medical condition that, if left untreated, can lead to clinical distress, debilitating depression, and even suicidal thoughts and acts.

28. Gender dysphoria is a condition recognized in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fifth ed. (2013) (DSM-V), and by the other leading medical and mental health professional groups,

including the American Medical Association and the American Psychological Association.

29. Medical treatment for gender dysphoria must be individualized for the medical needs of each patient.

30. Treatment for gender dysphoria includes living one's life consistent with one's gender identity, including when accessing single-sex spaces such as restrooms and locker rooms.

31. Forcing a transgender person to use single-sex spaces that do not match the person's gender identity is inconsistent with medical protocols and can cause anxiety and distress to the transgender person and result in harassment of and violence against them.

32. Mr. Carcaño was born and raised in South Texas. Since a very young age, around 7 or 8 years old, Mr. Carcaño was aware that he did not feel like a girl, but he did not know how to express how he felt.

33. Mr. Carcaño ultimately acknowledged his male gender identity to himself later in his adult life.

34. Since 2013, Mr. Carcaño has been in the continuous care of a licensed mental health clinician, who diagnosed Mr. Carcaño with gender dysphoria. Mr. Carcaño initially sought treatment for depression, which was caused in part by his gender dysphoria.

35. Mental health and medical professionals worldwide recognize and follow the evidence-based standards of care for the treatment of gender dysphoria developed by

the World Professional Association for Transgender Health (“WPATH”). After diagnosing Mr. Carcaño with gender dysphoria, his therapist developed a course of treatment consistent with those standards. The goal of such treatment is to alleviate distress by helping a person live congruently with the person’s gender identity, the primary determinant of sex. Consistent with that treatment and his identity, in January 2015, Mr. Carcaño explained to his family and friends that he is a man.

36. A critical component of the WPATH Standards of Care is a social transition to living full-time consistently with the individual’s gender identity. For Mr. Carcaño, that includes living in accordance with his gender identity in all respects, including the use of a male name and pronouns and use of the men’s restrooms.

37. For transgender people, it is critical that social transition include transition in the workplace, including with respect to restrooms. Excluding a transgender man from the restroom that corresponds to his gender identity, or forcing him to use a separate facility from other men, communicates to the entire workplace that he should not be recognized as a man and undermines the social transition process.

38. Mr. Carcaño also began using Joaquín as his first name in January 2015. His friends, family, and coworkers now recognize him as a man, and they refer to him using his male name and male pronouns.

39. Also consistent with the WPATH Standards of Care, Mr. Carcaño’s physician recommended and prescribed hormone treatment, which Mr. Carcaño has received since May 2015. For both hormone therapy and surgical treatment, the WPATH

Standards of Care require persistent, well-documented gender dysphoria, which is a criterion that Mr. Carcaño satisfied. Among other therapeutic benefits, the hormone treatment has deepened Mr. Carcaño's voice, increased his growth of facial hair, and given him a more masculine appearance. This treatment helped alleviate the distress Mr. Carcaño experienced due to the discordance between his birth-assigned sex and his identity and helped him to feel more comfortable with who he is.

40. As part of the treatment for his gender dysphoria, Mr. Carcaño also obtained a bilateral mastectomy and nipple reconstruction (also known as "top surgery") in January 2016. Consistent with WPATH Standards of Care, Mr. Carcaño satisfied the requirement of having a referral from a qualified mental health professional in order to obtain the surgical treatment.

41. As part of his social transition, Mr. Carcaño began using the men's restroom at work and elsewhere in late 2015, which occurred without incident for the five months or so before H.B. 2's enactment. Mr. Carcaño's therapist had also specifically recommended that he use only the men's restroom. She was concerned that using the women's restroom could compromise his mental health, well-being, and safety. By late 2015, Mr. Carcaño had facial hair facilitated by hormone treatment, and his therapist indicated that others would recognize Mr. Carcaño as a man based on his physical appearance.

42. Mr. Carcaño is now comfortable with the status of his treatment and, with the exception of the distress now caused by the passage of H.B. 2, his distress has been

managed through the clinically recommended treatment he has received. He plans to continue treatment under the supervision of medical professionals and based on his medical needs.

43. Apart from the building where he works, Mr. Carcaño also used other men's restrooms on the UNC-Chapel Hill campus without incident for approximately five months prior to H.B. 2's passage. In addition, when out in public, such as at restaurants and stores, Mr. Carcaño uses the men's restroom.

44. The only restrooms on the floor where Mr. Carcaño works at UNC-Chapel Hill are designated either for men or for women. H.B. 2 thus excludes him from using the same restrooms that his coworkers typically use. This exclusion is stigmatizing and marks him as different and lesser than other men.

45. Using the women's restroom is not a viable option for Mr. Carcaño, just as it would not be a viable option for non-transgender men to be forced to use the women's restroom. Forcing Mr. Carcaño to use the women's restroom would also cause substantial harm to his mental health and well-being. It would also force him to disclose to others the fact that he is transgender, which itself could lead to violence and harassment.

46. The idea of being forced into the women's restroom causes Mr. Carcaño to experience significant anxiety, as he knows that it would be distressing for him and uncomfortable for others. He fears for his safety because of the passage of H.B. 2.

47. In the initial period after H.B. 2's passage, Mr. Carcaño generally used a single-occupancy restroom not designated either for men or for women in another building on campus, which was approximately a 10-15 minute walk away from his building each way.

48. Mr. Carcaño was subsequently informed by administrative staff in the building where he works that they had learned of a single-occupancy restroom based on building floor plans. It is accessible using a special service elevator, and the restroom is tucked away in a cubby down a hallway in a part of the building used for housekeeping.

49. Mr. Carcaño is not only humiliated by being singled out and forced to use a separate restroom from his colleagues and all other men that he works with, but also burdened by having to use a separate restroom on a different floor, which increases the likelihood that he will delay or avoid going to the restroom.

50. Mr. Carcaño also visits public agencies as defined by N.C. Gen. Stat. § 143-760(4), and intends to and will do so in the future. For example, as part of his job at UNC-Chapel Hill, Mr. Carcaño has had to visit the offices of the North Carolina Department of Health and Human Services many times in the past, and he will continue to need to do so in the future. Prior to the passage of H.B. 2, he used the men's restroom while at their office, but he will be banned from doing so in the future under H.B. 2.

51. Mr. Carcaño has also visited the Division of Motor Vehicles under the North Carolina Department of Transportation on prior occasions (*e.g.*, to obtain a driver's

license) and anticipates doing so again in the future, where he will be banned from using the men's restroom under H.B. 2.

52. Mr. Carcaño also regularly uses the North Carolina Rest Area System, which maintains public restrooms along highways and is operated by the North Carolina Department of Transportation. For example, he uses the restrooms provided by that system when he travels approximately once a month to visit his brother in Atlanta, and when he visits Washington, D.C. periodically. He will need to continue to use those restrooms in the future, but he will be banned from using the men's restroom under H.B. 2.

53. There have been no incidents or, to the best of Mr. Carcaño's knowledge, complaints related to his use of the restrooms designated for men.

54. Mr. Carcaño is currently in the process of pursuing and exhausting administrative remedies before the Equal Employment Opportunity Commission with respect to his rights under Title VII of the Civil Rights Act of 1964.

55. Mr. Carcaño is a member of the ACLU of NC.

56. **Plaintiff Payton Grey McGarry** is a full-time student at the University of North Carolina at Greensboro ("UNC-Greensboro"), where he is double majoring in Business Administration and Accounting. He is also a skilled musician and has played trumpet in many ensembles at UNC-Greensboro. He plays the guitar, baritone, clarinet, and saxophone.

57. Mr. McGarry is close to his family and has a younger brother who is also a member of the LGBT community. Mr. McGarry hopes to use his education to eventually go to law school and work to defend people's civil rights.

58. Mr. McGarry is a man.

59. Mr. McGarry is transgender. As is true for Mr. Carcaño, Mr. McGarry's sex assigned at birth was female, as his birth certificate reflects, but that designation does not conform to his gender identity, which is male.

60. Mr. McGarry was diagnosed with gender dysphoria.

61. Mr. McGarry was born and raised in Wilson, North Carolina. Throughout his childhood, Mr. McGarry felt like a boy and never really thought of himself as a girl. It was not until he started to go through puberty that he began to wrestle with the disconnect between his identity as a boy and his assigned birth sex.

62. Mr. McGarry realized while he was in high school that he is transgender.

63. In October 2013, during his senior year in high school, Mr. McGarry began mental health treatment with a licensed clinical social worker who diagnosed him with gender dysphoria.

64. After diagnosing Mr. McGarry with gender dysphoria, his therapist developed a course of treatment in accordance with medical standards for treating the condition.

65. Consistent with that treatment and his identity, in the fall and winter of 2013, Mr. McGarry explained to his friends and family that he is male and began to use male pronouns.

66. In April 2014, under the care of an endocrinologist, Mr. McGarry began hormone therapy. This treatment helped alleviate the distress that Mr. McGarry experienced due to the discordance between his birth-assigned sex and his identity and helped him to feel more comfortable with who he is.

67. By the time he graduated high school in June 2014, Mr. McGarry used the name Payton and male pronouns in all aspects of his life. He is known as Payton McGarry to his family, friends, and peers, although he has not yet changed his legal first name to Payton.

68. In the fall of 2014, Mr. McGarry enrolled as a freshman at UNC-Greensboro as Payton McGarry and as male.

69. Since arriving at UNC-Greensboro, Mr. McGarry has identified and has been known to others as male for all purposes.

70. Mr. McGarry is a member of Phi Mu Alpha Sinfonia, a music fraternity, and is the Vice President of the Iota Epsilon Chapter of that fraternity. His fraternity brothers are aware that he is transgender and have no concerns with his use of men's restrooms and locker rooms.

71. Though Mr. McGarry currently lives off campus, he is on campus six or seven days per week and always used the restroom designed for men in on-campus

buildings prior to the passage of H.B. 2. He also used the locker room facilities at UNC-Greensboro and always used the facilities designed for men before passage of H.B. 2.

72. For the past year and a half since he enrolled at UNC-Greensboro, Mr. McGarry has used the men's restrooms and locker rooms on-campus without incident. Mr. McGarry is unaware of any instance in which any person has complained about his use of the men's restroom or locker room.

73. Mr. McGarry works part-time as a visual technician for marching bands at different high schools around the state and regularly uses the bathroom for men when working as a visual technician. There have been no incidents or, to the best of Mr. McGarry's knowledge, complaints related to his use of the restrooms designated for men.

74. In addition, when out in public, such as at restaurants and stores, Mr. McGarry always uses the men's restroom.

75. To Mr. McGarry's knowledge, there are very few single-user restrooms on the UNC-Greensboro campus, and there are no single-user bathrooms in many buildings where he has classes.

76. If Mr. McGarry could not use the men's restroom at UNC-Greensboro, he would have to search for single-user restrooms outside of the buildings where his classes are held every time he had to use the restroom. This would disrupt his ability to attend class and would interfere with his educational opportunities. Expelling him from the multiple occupancy restrooms and locker rooms available to all other male students is stigmatizing and marks him as different and lesser than other men.

77. Since he started testosterone two years ago, Mr. McGarry's voice has deepened and his face and body have become more traditionally masculine in appearance.

78. Using the women's restroom is not a viable option for Mr. McGarry, just as it would not be a viable option for non-transgender men to be forced to use the women's restroom. Forcing Mr. McGarry to use the women's restroom would also cause substantial harm to his mental health and well-being. It would also force him to disclose to others the fact that he is transgender, which itself could lead to violence and harassment.

79. The idea of being forced into the women's restroom causes Mr. McGarry to experience significant anxiety, as he knows that it would be distressing for him and uncomfortable for others. He fears for his safety because of the passage of H.B. 2.

80. Since the passage of H.B. 2, Mr. McGarry has been barred from using the men's restrooms on campus. Given that he cannot use the women's restroom and there are only a few available single-user restrooms, he often avoids going to the restroom all day.

81. Mr. McGarry has also visited public agencies as defined by N.C. Gen. Stat. § 143-760(4), and intends to and will do so in the future. For example, Mr. McGarry has visited the Division of Motor Vehicles under the North Carolina Department of Transportation on prior occasions (*e.g.*, to obtain a driver's license) and anticipates doing

so again in the future, where he will be banned from using the men's restroom under H.B. 2.

82. Mr. McGarry also has used and will continue to use the North Carolina Rest Area System, which maintains public restrooms along highways and is operated by the North Carolina Department of Transportation. He will need to continue to use those restrooms in the future, but he will be banned from using the men's restroom under H.B. 2.

83. **Plaintiff H.S.** is a senior at the University of North Carolina School of the Arts High School ("UNCSA-HS"). The oldest of four children, she is close to her family, who love and support her. She is an accomplished artist and studies visual arts at UNCSA-HS.

84. H.S. is a girl.

85. Until the passage of H.B. 2, H.S. was recognized as a girl at school and when out in public.

86. H.S. is transgender. She was assigned the sex of male at birth, as her birth certificate reflects, but that designation does not accurately reflect her gender identity, which is female.

87. H.S. has been diagnosed with gender dysphoria.

88. H.S. was born in New Jersey but moved to North Carolina when she was 11 years old. From as young an age two or three, H.S. gravitated towards clothing and toys

generally associated with girls. Like many other girls, she would always want to wear the pink princess dresses at pre-school and to play with Barbie dolls.

89. After completing pre-school, H.S. did not feel comfortable expressing her identity as a girl and tried to immerse herself in traditionally masculine spaces and activities. She tried to do things that she felt she was supposed to do as a boy. But nothing felt right.

90. Starting in seventh grade, H.S. again began to gravitate toward clothes and activities that were considered more feminine.

91. By eighth grade, H.S. again began to express a more stereotypically feminine gender and at times would wear makeup and high-heel shoes at school.

92. As puberty began to approach in ninth grade, severe gender dysphoria and anxiety began to hit H.S., and she experienced significant distress around her body and identity. She finally went to her parents, who recognized that she was suffering.

93. In ninth grade, H.S. began therapy with an expert on treating transgender young people and was diagnosed with gender dysphoria.

94. In 2013, H.S. started high school at Broughton High School in Raleigh. In the middle of her freshman year, H.S. began hormone blockers to prevent the onset of male puberty and the development of secondary sex characteristics associated with men. This treatment delayed puberty while H.S. continued to understand her female identity. Though H.S. continued to experience some distress and dysphoria, the hormone blockers greatly reduced her suffering.

95. At the end of ninth grade, H.S. felt fully comfortable embracing her identity as a girl at school and had the full support of her parents. On the last day of school her freshman year, H.S. wore a skirt to school that her mother had purchased for her. It was an important and symbolic turning point in her comfort with and embrace of her identity as a girl.

96. By sophomore year, H.S. was perceived as a girl and began to use the girls' bathroom at school and in public. She was also known by female pronouns—such as she, her, and hers—by this time.

97. During her sophomore year, H.S. was elected to the Queen's Court at her school, an honor that had, in the seventy-five years of the tradition, been shared only among non-transgender girls.

98. Under the care of her endocrinologist, during her sophomore year in high school, H.S. continued to assess her medical treatment for gender dysphoria and began to consider hormone replacement therapy. At the end of her sophomore year, in the spring of 2015, H.S. began estrogen therapy to continue her medical transition.

99. An accomplished visual artist, H.S. applied to the UNCSEA-HS for her junior year and was accepted.

100. In the fall of 2015, H.S. moved to Winston-Salem to attend UNCSEA-HS as a boarding student. She studies visual arts and aspires to a career in fashion.

101. H.S. lives in the girls' dormitory at UNCSEA-HS.

102. Until the passage of H.B. 2, H.S. exclusively used the girls' restroom at school and could not imagine ever using a restroom designated for boys. H.S. is unaware of any instance in which any person has complained about her use of the girls' restroom.

103. In addition, when out in public, such as at restaurants and stores, H.S. uses the restrooms designated for women and girls.

104. Outside of H.S.'s dorm room, there were no single-user restrooms available to her at UNCSA-HS in the spring semester of 2016, and it was disruptive to H.S.'s education to have to avoid the use of the restroom or to return to her room or locate a single-user restroom off campus every time she needed to go to the restroom. H.S. is also unaware of single-user restrooms that are readily available to her in all the buildings where she has class in the fall semester of 2016.

105. Forcing H.S. out of spaces shared with her female peers is stigmatizing and marks her as different and lesser than other girls at school.

106. Particularly because she never went through puberty as a boy and began estrogen treatment earlier this year, H.S. has a traditionally feminine appearance. She is recognized as female in all aspects of her life.

107. Using the boys' or men's restroom is not a viable option for H.S., just as it would not be a viable option for non-transgender women and girls to be forced to use the restrooms designated for men and boys. Forcing H.S. to use the restroom designated for men and boys would also cause substantial harm to her mental health and well-being and would put her in danger of harassment and violence. It would also force her to disclose

to others the fact that she is transgender, which itself could lead to violence and harassment.

108. The idea of being forced into the restroom designated for boys and men at school and in public causes H.S. to experience significant anxiety and brings up painful memories and anxiety from her earlier childhood. She fears for her safety because of the passage of H.B. 2.

109. Since the passage of H.B. 2, H.S. has limited or delayed use of the bathroom because of fear of reprisals if she uses the restroom designated for women and girls and because she fears for her safety if she uses the restroom designated for men and boys, as the law requires.

110. H.S. has also visited public agencies as defined by N.C. Gen. Stat. § 143-760(4), and intends to and will do so in the future. For example, H.S. has visited the Division of Motor Vehicles under the North Carolina Department of Transportation on prior occasions (*e.g.*, to obtain a driver's license) and anticipates doing so again in the future, where she will be banned from using the women's restroom under H.B. 2.

111. H.S. has used and will continue to use the North Carolina Rest Area System, which maintains public restrooms along highways and is operated by the North Carolina Department of Transportation. She will need to continue to use those restrooms in the future, but she will be banned from using the women's restroom under H.B. 2.

112. **Plaintiff Angela Gilmore** is a resident of Durham, North Carolina. Ms. Gilmore has lived in North Carolina since 2011, when she moved from Florida to

take a job at North Carolina Central University. She is currently the Associate Dean for Academic Affairs and Professor of Law at North Carolina Central University.

113. Ms. Gilmore is a lesbian, and has been in a relationship with her wife, Angela Wallace, for almost twenty years. Ms. Gilmore and Ms. Wallace were married in Washington, D.C. in 2014.

114. Ms. Gilmore looked for and accepted a job in North Carolina, after she and her wife fell in love with the state during a visiting teaching job Ms. Gilmore had at Elon University School of Law in Greensboro, North Carolina, in 2010.

115. Both Ms. Gilmore and her wife, African American lesbians, felt that North Carolina, and Durham in particular, was a place where they could be fully themselves, comfortable in terms of both their race and sexual orientation.

116. Ms. Gilmore and her wife love living in Durham—they feel very much part of the community—and prior to the passage of H.B. 2, they had been looking at small towns in North Carolina where they might want to retire.

117. Since moving to North Carolina, Ms. Gilmore has worked towards increasing non-discrimination protections for LGBT people. Ms. Gilmore is a member of the ACLU of NC, and she was on the ACLU of NC board between 2014 and 2015. During that time, the ACLU of NC actively worked to defeat anti-LGBT bills proposed in the state legislature and to pass local ordinances, like the Ordinance, and to protect LGBT people from discrimination at the local level. Ms. Gilmore also has spoken on

panels at her law school and other law schools regarding non-discrimination protections for LGBT people.

118. The passage of H.B. 2 has caused Ms. Gilmore and her wife distress, in that it has significantly undone their sense of belonging and value in the state, which is why they moved to North Carolina. Ms. Gilmore and her wife experience H.B. 2 as sending a clear message to them as lesbians that they are not welcome in North Carolina.

119. Ms. Gilmore and her wife have visited the City of Charlotte and they plan to do so in the future. As two women traveling together with the same first name, they are often asked about the nature of their relationship, and they therefore regularly reveal themselves to be a lesbian couple. Under the Ordinance, Ms. Gilmore and her wife would have been protected from sexual orientation discrimination in public accommodations in the City of Charlotte. With the passage of H.B. 2, Ms. Gilmore worries that she and her wife will now be exposed to discrimination based on their sexual orientation.

120. With the passage of H.B. 2, Ms. Gilmore also is limited in her ability to increase and benefit from non-discrimination protections for LGBT people in North Carolina. Were she able to, Ms. Gilmore would continue to advocate for local ordinances that prohibit discrimination based on sexual orientation and gender identity.

121. As a non-transgender woman who always uses the facilities designated for women in both public and private spaces, Ms. Gilmore does not feel safer in these facilities because of the passage of H.B. 2.

**B. The City of Charlotte's Enactment of a Non-Discrimination Ordinance.**

122. Advocates have long worked for the passage of an ordinance that would ensure that LGBT people were expressly protected from discrimination within the City of Charlotte. Prior to the vote on the Ordinance, there had been an earlier round of intensive public engagement in late 2014 to early 2015, when the Charlotte City Council previously considered expanding non-discrimination protections to include sexual orientation and gender identity and expression.

123. There was again extensive discussion and deliberation leading up to the February 2016 vote on the Ordinance. The Charlotte City Council heard hours of robust public comment in a forum that included hundreds of people—both those who were in support of the Ordinance and those who were in opposition to the Ordinance. The Charlotte City Council also received significant legal analysis from the Office of the City Attorney regarding its authority to enact the Ordinance and the effect of the Ordinance.

124. The impetus for the Ordinance is the reality that LGBT people often face pervasive discrimination. Although same-sex couples may now marry throughout the United States as a result of the U.S. Supreme Court's 2015 ruling in *Obergefell*, lesbian, gay, and bisexual people remain vulnerable to discrimination in states like North Carolina where there is no express protection for sexual orientation in state law, making local anti-discrimination protections even more vital. Discrimination is especially pervasive for transgender people, as evidenced by a 2011 national study of transgender Americans,

*Injustice at Every Turn*, which documented the high levels of harassment, discrimination, and violence that transgender people have faced and continue to face.

125. In the 2011 national report cited above, 90% of respondents reported being harassed at work or taking actions to avoid harassment, while 26% reported being fired because they are transgender. Forty-seven percent reported some form of employment discrimination because they are transgender, including not being hired, not being promoted, or being fired. Fifty-three percent reported being verbally harassed or disrespected in a place of public accommodation, and 22% reported being denied equal treatment by a government agency or official because they are transgender.

126. In 2013, it was estimated that there were more than 250,000 LGBT adults in North Carolina, out of an adult population of approximately eight million people. Among this population of North Carolinians, there are an estimated 37,800 transgender people (of any age), including 15,600 individuals who are 13 to 19 years old. While transgender individuals only make up a small minority of the population, they are disproportionately targeted for hate crimes in the United States.

127. On Monday, February 22, 2016, by a 7-to-4 vote, the Charlotte City Council approved the Ordinance, which, *inter alia*, amended its existing public accommodations protections by barring discrimination in public accommodations based on “gender identity, gender expression” and “sexual orientation.”

128. The City Council’s vote was met with a firestorm of opposition from vocal opponents of the part of the Ordinance that would have required certain public

accommodations to allow transgender people to use single-sex facilities, such as restrooms and locker rooms, in accordance with their gender identity.

129. Opponents of the Ordinance distorted the truth of what the Ordinance's non-discrimination requirement would accomplish and formed a vocal campaign decrying a purported attempt to permit "men in women's restrooms."

**C. The Events Leading to H.B. 2, Contemporary Statements by Decisionmakers, and Departures From the Normal Legislative Process Revealed a Series of Official Actions Taken for Invidious Purposes.**

130. The State of North Carolina has rarely, if ever, exercised authority to preempt local ordinances providing broader protections than under state law. For example, in 1968 Charlotte adopted an ordinance prohibiting discrimination in public accommodations on the basis of race, color, religion, and national origin. In 1972, the Council amended the ordinance to prohibit discrimination based on sex, which the Council further modified in 1985.

131. Even though all of these protections extended beyond the reach of the State's public accommodations law, which until H.B. 2 prohibited only public accommodations discrimination based on disability, the State allowed Charlotte's ordinance to stand undisturbed for decades. It was only after Charlotte took steps to protect LGBT people that the State rushed to preempt the ordinance.

132. Even before the Charlotte City Council had cast its vote on the Ordinance, Governor McCrory informed Charlotte City Council members that the State would likely take immediate action to put a halt to the Ordinance—even as Governor McCrory

conceded that was an exceedingly unusual step. In an email to Charlotte City Council members, Governor McCrory noted that he “made a point as the former 14 year Mayor and current Governor to stay out of specific issues being voted on by the Charlotte City Council.” Governor McCrory nonetheless characterized the Ordinance’s non-discrimination protections for LGBT people as “changing basic long-established values and norms” surrounding “public restrooms,” and he ominously warned of “possible danger from deviant actions by individuals taking improper advantage of a bad policy.” Governor McCrory said that the Ordinance would “most likely cause immediate State legislative intervention which I would support as governor.”

133. On Tuesday, February 23, 2016, the Speaker of the North Carolina House of Representatives, Tim Moore (“Speaker Moore”), issued a press release announcing that he would work with fellow Republicans to explore a “legislative intervention to correct [Charlotte’s] radical course.”

134. In North Carolina, it is the state’s Governor who typically calls a special session, but in this case, Governor McCrory refused to call a special session because he was concerned that the legislature would go beyond addressing the Charlotte Ordinance.

135. As a result of the Governor’s refusal to call a special session, legislative leaders opted for a rarely used law that allows special sessions when three-fifths of legislators in both chambers support the call. That provision in the state constitution had not been used since 1981, according to Lt. Governor Dan Forest’s chief of staff, Hal Weatherman. The special session cost approximately \$42,000 to convene.

136. The text of H.B. 2, which was named the “Public Facilities Privacy and Security Act,” was not shared with most legislators until they arrived to debate the bill.

137. North Carolina House of Representatives Minority Leader Larry Hall (“Minority Leader Hall”) stated “We don’t know what we’re discussing here, we don’t know what we’re voting on. *What we’re doing is a perversion of the process.*”

138. Minority Leader Hall said that Democrats were initially told that the special session would take place on Thursday, March 24, 2016, when instead the special session was held on March 23, 2016. Minority Leader Hall stated that, as a result, a number of legislators were “caught off guard” and were “scrambling to try to come back” for the session.

139. The special session, which lasted a single day, was substantially shorter than previous special sessions. Before H.B. 2 had been filed, Speaker Moore announced that the committee hearing for the bill would begin five minutes after introduction of the bill and adjournment of the morning session. Shortly thereafter, approximately twelve minutes after the House came to order, H.B. 2 was filed—the first time it was officially made available to the public or the legislators.

140. Approximately three minutes after H.B. 2 was filed, the chairman of the House Judiciary IV Committee—the committee to which H.B. 2 was assigned—stated, in response to a fellow member’s question, that it was his “intention” to permit time for public comment on the bill during the committee hearing. Upon information and belief, no prior public notice of the time and place for public comment on H.B. 2 was provided.

141. Only forty-five minutes were allotted for public comment, which was insufficient to permit those who had signed up to speak on H.B. 2 to be heard.

142. In response to complaints during the committee hearing that members had not been given an opportunity to read the text of H.B. 2, the chairman permitted a five-minute break to allow members to read the bill.

143. After a favorable referral from the House Judiciary IV Committee, H.B. 2 received only three hours of debate in the House, after which it was passed and referred to the Senate.

144. The roll call for H.B. 2 in the Senate was called after all Democratic members of the Senate walked out of the chambers in protest, with North Carolina State Senate Democratic Leader Dan Blue calling the special session an “affront to democracy” and stating that the Democratic caucus in the Senate “choose[s] not to participate in this farce.” With every Democratic member absent, the Senate passed H.B. 2 unanimously.

145. Comments made by lawmakers both during the debate, in the press, and through their social media used vitriolic language to make clear their aim at undoing Charlotte’s protections for LGBT people:

a. North Carolina State Senate President Pro Tempore Phil Berger’s descriptions of the legislature’s work included:

i. “Senate unanimously votes to stop radical ordinance allowing men into public bathrooms with women and young girls.”

ii. “Lawmakers were forced to come back to session to address the serious safety concerns created by the dangerous ordinance—which violated existing state criminal trespass law, indecent exposure law and building codes and created a loophole that any man with nefarious motives could use to prey on women and young children . . .”

iii. “How many fathers are now going to be forced to go to the ladies’ room to make sure their little girls aren’t molested?”

b. North Carolina State Senator Buck Newton said, “The Charlotte City Council should have never passed this unlawful and reckless bathroom and locker room ordinance. Politics have reached a new extreme when a municipality’s top priority is allowing men into women’s bathrooms and locker rooms. But tens of thousands of our constituents from across the state have called on us to stand up to the political correctness mob, fight for common sense and put a stop to this nonsense once and for all.”

c. North Carolina State Senator David Curtis (“Senator Curtis”) said, “This liberal group is trying to redefine everything about our society. Gender and marriage — just the whole liberal agenda.” Senator Curtis added that while, “We generally don’t get involved in local politics. We need to do what’s right.” Senator Curtis said that H.B. 2 was necessary because, “The gays would go into a business, make some outrageous demand that they know the owner cannot comply with and file a lawsuit against that business owner and put him out of business.” Senator Curtis suggested that H.B. 2 was broadly drafted specifically for the purpose of defending the bathroom

provision it in court: “[w]e feel like we can successfully defend the law and the fact that we made the law much broader,” explaining that “[i]n addition to the bathroom issue we restricted the rights of cities and towns to impose a higher minimum wage. The bill has to do with restricting rights of cities and counties. I suspect we will defend it based on that.”

d. North Carolina State Senator Andrew Brock said, “You know, \$42,000 is not going to cover the medical expenses when a pervert walks into a bathroom and my little girls are in there.”

e. Speaker Moore said “They want to protect adults who feel compelled to dress up like the opposite sex. I, on the other hand, oppose the ordinance to protect children, who from the time they’ve been potty trained, know to go into the bathroom of their god given appropriate gender. Honestly, it’s ridiculous we are even having this discussion. I look forward to invalidating this ordinance as soon as possible.”

f. North Carolina State Representative Mark Brody said Charlotte’s ordinance “violates my Christian values and it violates decency values,” adding that he “had to stop it.” Representative Brody further stated that “[t]he homosexual community has just stepped too far and that had to stop and that’s my basic opinion,” noting that “[t]his is driven by the homosexual community and they’re emboldened by their victory in the courts on homosexual marriage.” Brody elaborated further that H.B. 2 “sends a message to these municipalities who have been taken over by the liberal, homosexual,

prohomosexual ideology that we are going to stick up for traditional values and we'll stick up for them constantly if that's what we have to do.”

g. North Carolina State Representative John Blust opined that he “think[s] it's ridiculous that your anatomy isn't what governs what restroom you use,” adding that he does not “understand why they have to make way for this .0001 percent of the population.”

146. Debate in both chambers of the North Carolina General Assembly focused specifically on reversing the Charlotte Ordinance, with lawmakers in both chambers condemning the anti-discrimination protections for LGBT people, including transgender individuals' right to use facilities in accordance with their gender identity.

147. Fewer than 10 hours after it was introduced, the bill passed both houses. Governor McCrory signed the bill that same night, issuing a signing statement making clear once again the targets of H.B. 2. His signing statement said, “This radical breach of trust and security under the false argument of equal access not only impacts the citizens of Charlotte but people who come to Charlotte to work, visit or play. This new government regulation defies common sense and basic community norms by allowing, for example, a man to use a woman's bathroom, shower or locker room.” H.B. 2 took effect immediately.

**D. H.B. 2 Harms Transgender People.**

148. H.B. 2 amended North Carolina's General Statutes to mandate that school boards *require* students to use restrooms and other single-sex facilities in accordance with

their “biological sex” providing that,

Local boards of education shall require every multiple occupancy bathroom or changing facility that is designated for student use to be designated for and used only by students based on their biological sex.

149. H.B. 2 also imposes the same mandate on all executive branch agencies (which are expressly defined to include Defendant University of North Carolina), and all public agencies, providing that they

shall require every multiple occupancy bathroom or changing facility to be designated for and only used by persons based on their biological sex.

150. Each of those provisions defines “biological sex” as follows,

Biological sex. – The physical condition of being male or female, which is stated on a person’s birth certificate.

151. Changing the gender marker on one’s birth certificate is not a viable option for many transgender people, as every jurisdiction has a different set of often onerous and unnecessary requirements for updating the gender listed on a birth certificate.

152. For instance, a person born in North Carolina can only update the gender marker listed on a North Carolina-issued birth certificate with proof of certain surgeries that may not be medically necessary, advisable, or affordable for any given person. Meanwhile, a person born in neighboring Tennessee can never change the gender listed on a Tennessee-issued birth certificate.

153. Medical treatment such as the surgery required to update a person’s North Carolina birth certificate does not alter a person’s gender (or what H.B. 2 calls “biological sex”), but rather merely brings a person’s body into alignment with the

gender they have always been. Gender identity is instead the chief determinant of a person's gender.

154. H.B. 2's provisions requiring use of single-sex facilities in accordance with the sex stated on their birth certificate not only disproportionately burdens transgender people, but intentionally targets them for differential treatment. Lawmakers made clear that H.B. 2 was specifically aimed at transgender people. For example, an FAQ released by Governor McCrory after H.B. 2's enactment states, "Why did North Carolina pass this law in the first place? Answer: The bill was passed after the Charlotte City Council voted to impose a regulation requiring businesses to allow a man into a women's restroom, shower, or locker room if they choose," even though it does not do that, but only allows a transgender woman to use a women's restroom or other multiple user facility for women and a transgender man to use a men's restroom or other multiple user facility for men.

155. Prior to the passage of H.B. 2, it was already illegal for a person to enter a restroom or locker room to assault or injure another. Moreover, protecting transgender people from discrimination in public accommodations, as has been done in numerous states and hundreds of localities, has resulted in no increase in public safety incidents in any jurisdiction anywhere in the United States, and including transgender people in public life in no way impacts the safety or well-being of non-transgender people.

156. The painful message of stigma sent by H.B. 2 echoes the dehumanizing rhetoric employed by a number of lawmakers, suggesting that transgender people are

somehow predatory or dangerous to others. In fact, it is H.B. 2 that exposes transgender people to harassment and potential violence. Transgender people are already disproportionately targeted for physical violence and harassment in North Carolina and across the country. When a transgender person is forced to disclose their transgender status to strangers, such disclosure puts them at a high risk for violence. H.B. 2's requirement that transgender people be shunted into single-sex spaces that do not match their gender identity invades their privacy and exposes this vulnerable population to harassment and potential violence by others.

157. Upon information and belief, after the enactment of H.B. 2, some school officials that had been respecting their students' gender identity without any problem called parents to say that their children would be forced out of the single-sex facilities that match their gender identity.

158. H.B. 2's broad sweep means that the same result applies to executive and public agencies, including routine places such as libraries, public health centers, airports, and the Division of Motor Vehicles, as well as places where people may turn in times of crisis, such as state hospitals, police departments, and courthouses. Transgender individuals working in such agencies may not be able to safely use any bathroom any longer, threatening their ability to keep their job.

159. Following the enactment of H.B. 2, the City Attorney of the City of Charlotte issued a memorandum dated April 1, 2016 to the Mayor and City Council of the City of Charlotte, regarding the effect of H.B. 2 on the Ordinance and other city laws

or policies. The memorandum noted that H.B. 2 “invalidates . . . the February 22 amendments to the public accommodations ordinance,” and concluded that “[d]ue to the preemption described above, the Community Relations Committee can no longer receive, investigate, and conciliate complaints for violations of the public accommodations ordinance.” The memorandum also expressed uncertainty regarding whether H.B. 2 preempted the city’s non-discrimination protections for city employees.

160. Following the enactment of H.B. 2, Defendant Spellings issued a memorandum dated April 5, 2016 to chancellors of constituent UNC schools, including UNC-Chapel Hill, UNC-Greensboro, and UNCSA-HS. The memorandum specifically states that “University institutions must require every multiple-occupancy bathroom and changing facility to be designated for and used only by persons based on their biological sex.” The memorandum included a copy of H.B. 2, which includes its definition of “biological sex.” The same memo directed constituent schools to “fully meet their obligations under the Act.” The following week, Defendant Spellings issued public comments providing unequivocal guidance that “the University is bound to comply with HB2.” On May 9, 2016, on the University of North Carolina’s behalf, Defendant Spellings further stated to representatives of the United States Department of Justice that “[H.B. 2] remains the law of the State . . . and the University has no independent power to change that legal reality.”

161. Following the enactment of H.B. 2, Governor McCrory issued Executive Order No. 93, dated April 12, 2016. The order affirmed that “[u]nder current law, every

multiple occupancy restroom, locker room, or shower facility located in a cabinet agency must be designated for and only used by persons based on their biological sex,” and that “restrooms, locker rooms, and shower facilities in public buildings, including our schools” would be maintained by the State “on the basis of biological sex.” In a press release and video statement accompanying Executive Order No. 93, the governor stated that the Executive Order “[m]aintains . . . gender-specific restroom and locker room facilities in government buildings and schools.”

162. Executive Order No. 93 required that N.C. Gen. Stat. § 143-760 (H.B. 2, Section 1.3) be interpreted consistent with the following guidance: “[w]hen a private entity leases State real property and the property in the lessee’s exclusive possession includes multiple occupancy restrooms, locker rooms or other like facilities, the private entity will control the signage and use of these facilities.”

163. Executive Order No. 93 also sought to clarify the ambiguity regarding the scope of preemption provision noted by the City Attorney of the City of Charlotte, stating that “N.C. Gen. Stat. § 143-422.2(c) permits local governments or other political subdivisions of the State to set their own employment policies applicable to their own personnel,” and affirming that “local governments may establish their own non-discrimination employment practices.”

164. H.B. 2’s restroom ban also deters transgender people from participating in the state and local democratic process. It bans them from using the restroom consistent with their gender identity when visiting the North Carolina General Assembly,

petitioning their legislator, or entering any building operated by the legislative branch. It also bans them from using the restroom consistent with their gender identity at a city council meeting or at a mayor's office.

165. H.B. 2's harms extend even farther, creating conflicts between state law and various federal laws. The conflict with Title IX, for example, puts at risk the more than \$4.5 billion in federal education funding that North Carolina is expected to receive in 2016. H.B. 2 also could lead to financial penalties under Executive Order 11246, which prohibits federal contractors (such as the University of North Carolina) from barring transgender employees from the restrooms consistent with their gender identity. In addition, public employers subject to Title VII will violate the U.S. Equal Employment Opportunity Commission's decree that discriminating against transgender people with respect to restroom use is impermissible sex discrimination. Public hospitals that receive federal funding also will violate Section 1557 of the Affordable Care Act if they comply with H.B. 2.

166. The enactment of H.B. 2 follows a history of discrimination by decision-makers against transgender people, including, for example, Governor McCrory's participation in a Fourth Circuit *amicus curiae* brief arguing that a transgender student's request to access restrooms in accordance with his gender identity is "radical."

**E. H.B. 2 Harms Lesbian, Gay, and Bisexual Individuals, as well as Transgender Individuals.**

167. H.B. 2 also disproportionately burdens lesbian, gay, and bisexual individuals, as well as transgender individuals, by stripping them of or barring them from

anti-discrimination protections under local law. H.B. 2 took aim at the Charlotte ordinance in a section providing,

The General Assembly declares that the regulation of discriminatory practices in employment is properly an issue of general, statewide concern, such that this Article and other applicable provisions of the General Statutes supersede and preempt any ordinance, regulation, resolution, or policy adopted or imposed by a unit of local government or other political subdivision of the State that regulates or imposes any requirement upon an employer pertaining to the regulation of discriminatory practices in employment, except such regulations applicable to personnel employed by that body that are not otherwise in conflict with State law.

168. H.B. 2 stripped lesbian, gay, and bisexual individuals of anti-discrimination protections in Charlotte, because no such sexual orientation anti-discrimination protections exist in state law. The preemptive effect of this section did not fall equally on all North Carolinians, however.

169. Recognizing that North Carolina law had no statewide public accommodations protection of any kind except for people with disabilities, H.B. 2 actually enacted a new public accommodations statute—so that the other groups whose protections also would have been preempted under the Charlotte Ordinance were spared that result. The new public accommodations statute prohibits discrimination based on “race, religion, color, national origin, or biological sex”—omitting the sexual orientation protections that had been included in the Charlotte Ordinance.

170. The North Carolina legislature has a history of targeted discrimination toward lesbian, gay, and bisexual people. For example, the legislature approved and referred to voters a constitutional amendment barring access to marriage for same-sex couples. Legislative leaders also intervened in litigation challenging the constitutionality

of the exclusion of same-sex couples from marriage pursuant to a statute authorizing them to act on behalf of the General Assembly. In 2015, the legislature also passed a bill that allows county magistrates to recuse themselves from performing civil marriages.

171. The preemptive effect of H.B. 2 also harmed transgender people. While the Charlotte Ordinance had prohibited discrimination based on sex, gender identity, and gender expression, the new public accommodations statute restricted its protections solely to “biological sex,” which is defined in an effort to deliberately exclude transgender people from protection.

## **CLAIMS FOR RELIEF**

### **COUNT I**

#### **Deprivation of Equal Protection**

#### **U.S. Const. Amend. XIV**

172. Plaintiffs incorporate paragraphs 1 through 171 as though fully set forth herein.

173. Plaintiffs state this cause of action against Defendants in their official capacities for purposes of seeking declaratory and injunctive relief, and challenge H.B. 2 both facially and as applied to them.

174. The Fourteenth Amendment to the United States Constitution, enforceable pursuant to 42 U.S.C. § 1983, provides that no state shall “deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1.

**A. Discrimination Based on Sex and Transgender Status in Single-Sex Restrooms and Facilities (H.B. 2, Part I)**

175. Section A of Count I is asserted by Plaintiffs Carcaño, McGarry, H.S., and ACLU of NC against Defendants Governor McCrory and Spellings.

176. Under the Equal Protection Clause of the Fourteenth Amendment, discrimination based on sex is presumptively unconstitutional and subject to heightened scrutiny.

177. H.B. 2 discriminates against transgender people on the basis of sex.

178. Discrimination based on sex includes, but is not limited to, discrimination based on gender nonconformity, gender identity, transgender status, and gender transition.

179. H.B. 2 facially classifies people based on sex, gender identity, and transgender status.

180. Under the Equal Protection Clause of the Fourteenth Amendment, discrimination based on transgender status is presumptively unconstitutional and subject to heightened scrutiny.

181. H.B. 2 treats transgender people differently than non-transgender people who are similarly situated.

182. Under H.B. 2, non-transgender people are able to access restrooms and other single-sex facilities consistent with their gender identity, but transgender people are banned from restrooms and other single-sex facilities consistent with their gender identity.

183. H.B. 2 discriminates against transgender people based on gender nonconformity. For example, although Mr. Carcaño and Mr. McGarry are men, are perceived as men in public, and have had medical treatment to bring their body into alignment with their male gender identity, they have birth certificates with female gender markers that do not conform to H.B. 2's expectations for men. Furthermore, if transgender men such as Mr. Carcaño and Mr. McGarry had been assigned male at birth, they would not be banned by H.B. 2 from the restrooms and other single-sex facilities consistent with their gender identity. The same is true for H.S., who is a young woman, is perceived as a woman in public, and has had medical treatment to bring her body into alignment with her gender but has a birth certificate that classifies her as male and therefore does not conform to H.B. 2's expectations for women. Had H.S. been assigned female at birth, she would not be banned by H.B. 2 from restrooms and other single-sex facilities designated for women and girls.

184. No person has any control over the sex that person is assigned at birth. In fact, when a person is born with characteristics associated with both male and female infants, the appropriate course is to assign sex based on likely gender identity and to later re-assign sex based on gender identity once it is known if it conflicts with the original sex assignment.

185. H.B. 2's discrimination against transgender people based on sex or transgender status is not substantially related to any important government interest. Indeed, it is not even rationally related to any legitimate government interest.

186. H.B. 2 endangers the safety, privacy, security, and well-being of transgender individuals. For example, if a transgender young woman, like H.S., were to use the restroom designated for men and boys, she likely would be harassed and might be assaulted by men or boys who believed that she should not be in that restroom. Similarly, if a transgender man were to use the women's restroom, he likely would be harassed and might be assaulted by women who believe he should not be in the women's restroom.

187. H.B. 2 does not promote the safety, privacy, security, or well-being of non-transgender people.

188. H.B. 2 deprives transgender people of their right to equal dignity, liberty, and autonomy by branding them as second-class citizens.

189. H.B. 2's discrimination against transgender people based on sex denies them the equal protection of the laws, in violation of the Equal Protection Clause of the Fourteenth Amendment.

**B. Discrimination Based on Sex, Transgender Status, and Sexual Orientation in Preemption of Local Non-Discrimination Protections (H.B. 2, Part II, Sections 2.2 & 2.3; H.B. 2, Part III)**

190. Section B of Count I is asserted by Plaintiffs Carcaño, McGarry, H.S., Gilmore, and ACLU of NC against Defendant Governor McCrory.

191. Under the Equal Protection Clause of the Fourteenth Amendment, discrimination based on sex, discrimination based on sexual orientation, and discrimination based on transgender status are presumptively unconstitutional and subject to heightened scrutiny.

192. H.B. 2 deprives LGBT people of protections against discrimination based on sexual orientation, gender identity, and gender expression.

193. H.B. 2 was motivated by an intent to treat LGBT people differently, and worse, than other people, including by stripping them of the protections afforded by the City of Charlotte's Ordinance and precluding any local government from taking action to protect LGBT people against discrimination.

194. H.B. 2 was enacted for the purpose of disadvantaging LGBT people and is based on animus against LGBT people. H.B. 2 was also enacted because of, and not in spite of, its adverse effects on LGBT people.

195. The justifications cited in H.B. 2 for its enactment, including a purported governmental interest in consistent statewide obligations, are pretext for discrimination and did not reflect the actual motivations for the bill. For example, proposals to add sexual orientation and gender identity and expression protections to the statewide public accommodations law were rejected.

196. By blocking anti-discrimination protections for LGBT people at the local level, H.B. 2 imposes a different and more burdensome political process on LGBT people than on non-LGBT people who have state protection against identity-based discrimination. H.B. 2 accordingly places a special burden on LGBT people within the governmental process with an intent to injure that minority group.

197. H.B. 2 deprives LGBT people of their right to equal dignity, liberty, and autonomy by branding them as second-class citizens.

198. H.B. 2's discrimination against LGBT people based on sex and sexual orientation denies them the equal protection of the laws, in violation of the Equal Protection Clause of the Fourteenth Amendment.

**C. Discrimination Based on Transgender Status Warrants Heightened Scrutiny.**

199. Transgender people have suffered a long history of extreme discrimination in North Carolina and across the country, and continue to suffer such discrimination to this day.

200. Transgender people are a discrete and insular group and lack the political power to protect their rights through the legislative process. Transgender people have largely been unable to secure explicit local, state, and federal protections to protect them against discrimination.

201. A person's gender identity or transgender status bears no relation to a person's ability to contribute to society.

202. Gender identity is a core, defining trait and is so fundamental to one's identity and conscience that a person cannot be required to abandon it as a condition of equal treatment.

203. Gender identity generally is fixed at an early age and highly resistant to change through intervention.

**D. Discrimination Based on Sexual Orientation Warrants Heightened Scrutiny.**

204. Lesbian, gay, and bisexual people have suffered a long history of extreme

discrimination in North Carolina and across the country, and continue to suffer such discrimination to this day.

205. Lesbian, gay, and bisexual people are a discrete and insular group and lack the political power to protect their rights through the legislative process. Lesbian, gay, and bisexual people have largely been unable to secure explicit local, state, and federal protections to protect them against discrimination.

206. A person's sexual orientation bears no relation to a person's ability to contribute to society.

207. Sexual orientation is a core, defining trait and is so fundamental to one's identity and conscience that a person cannot be required to abandon it as a condition of equal treatment.

208. Sexual orientation generally is fixed at an early age and highly resistant to change through intervention.

## **COUNT II**

### **Violation of Right to Privacy**

#### **U.S. Const. Amend. XIV**

#### **Plaintiffs Carcaño, McGarry, H.S., and ACLU of NC against Defendants Governor McCrory and Spellings**

209. Plaintiffs incorporate paragraphs 1 through 208 as though fully set forth herein.

210. The Due Process Clause of the Fourteenth Amendment places limitations on state action that deprives individuals of life, liberty, or property.

211. Substantive protections of the Due Process Clause include the right to avoid disclosure of sensitive, personal information.

212. There is a fundamental right of privacy in preventing the release of, and in deciding in what circumstances to release: (1) personal information of which the release could subject them to bodily harm; and (2) information of a highly personal and intimate nature.

213. H.B. 2 requires the disclosure of highly personal information regarding transgender people to each person who sees them using a restroom or other facility inconsistent with their gender identity or gender expression. This disclosure places them at risk of bodily harm.

214. There is no compelling state interest that is furthered by H.B. 2, nor is H.B. 2 narrowly tailored or the least restrictive alternative for promoting a state interest. H.B. 2 is not even rationally related to a legitimate state interest.

215. In addition, the privacy interests of transgender people that are invaded outweigh any purported interest the government could assert.

\* \* \*

**COUNT III****Violation of Liberty and Autonomy in the  
Right to Refuse Unwanted Medical Treatment****U.S. Const. Amend. XIV****Plaintiffs Carcaño, McGarry, H.S., and ACLU of NC  
against Defendants Governor McCrory and Spellings**

216. Plaintiffs incorporate paragraphs 1 through 215 as though fully set forth herein.

217. The Fourteenth Amendment's Due Process Clause protects individuals' substantive rights to be free to make certain private decisions without unjustified governmental intrusion.

218. The right to make certain private decisions without unjustified governmental intrusion includes the right to refuse unwanted medical treatment.

219. H.B. 2 forces transgender people to undergo medical procedures that may not be medically appropriate or available in order to access facilities consistent with their gender identity.

220. Not all transgender individuals undergo gender confirmation surgery. For some, the surgery is not medically necessary, while for others it is medically dangerous or impossible. For example, because medical treatment for gender dysphoria is individualized, hormone treatment may be sufficient to manage the distress associated with gender dysphoria for some individuals. Surgery may be medically necessary for

others who do not have health insurance coverage for it and cannot afford to pay for the surgery out-of-pocket.

221. Some states require proof of surgery before they will allow the gender marker on a birth certificate to be changed. For those born in North Carolina, state law requires proof of “sex reassignment surgery.” N.C. Gen. Stat. § 130A-11B.

222. For example, H.S. has not been able to amend her New Jersey birth certificate to accurately reflect her gender because surgery is not medically necessary for her and is generally not available to individuals under 18. Accordingly, H.B. 2 bans her from accessing restrooms and other facilities consistent with her gender identity.

223. There is no compelling state interest that is furthered by H.B. 2, nor is H.B. 2 narrowly tailored or the least restrictive alternative for promoting a state interest. H.B. 2 is not even rationally related to a legitimate state interest.

#### **COUNT IV**

##### **Violation of Title IX**

**20 U.S.C. § 1681, *et seq.***

**Plaintiffs Carcaño, McGarry, H.S., and ACLU of NC  
against Defendant University of North Carolina**

224. Plaintiffs incorporate paragraphs 1 through 223 as though fully set forth herein.

225. Title IX provides that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to

discrimination under any education program or activity receiving Federal financial assistance.” 20 U.S.C. § 1681(a).

226. Under Title IX, discrimination “on the basis of sex” includes discrimination on the basis of gender nonconformity, gender identity, transgender status, and gender transition.

227. Defendant University of North Carolina is an education program receiving federal financial assistance.

228. Defendant University of North Carolina is an executive branch agency as defined by H.B. 2.

229. Pursuant to H.B. 2, Defendant University of North Carolina “shall require every multiple occupancy bathroom or changing facility to be designated for and only used by persons based on their biological sex.” As set forth in Defendant Spellings’ memorandum dated April 5, 2016, Defendant University of North Carolina has implemented H.B. 2 by issuing guidance that “[u]niversity institutions must require every multiple-occupancy bathroom and changing facility to be designated for and used only by persons based on their biological sex.”

230. By requiring Mr. Carcaño—a transgender man—to use restrooms and changing facilities that are inconsistent with his gender identity, Defendant University of North Carolina excludes Mr. Carcaño from participation in, denies him the benefits of, and subjects him to discrimination in educational programs and activities at Defendant’s constituent campus, UNC-Chapel Hill, “on the basis of sex,” which violates Mr.

Carcaño’s rights under Title IX of the Education Amendments of 1972, 20 U.S.C.

§ 1681, *et seq.*

231. By requiring Mr. McGarry—a transgender man—to use restrooms and changing facilities that are inconsistent with his gender identity, Defendant University of North Carolina excludes Mr. McGarry from participation in, denies him the benefits of, and subjects him to discrimination in educational programs and activities at Defendant’s constituent campus, UNC-Greensboro, “on the basis of sex,” which violates Mr.

McGarry’s rights under Title IX of the Education Amendments of 1972, 20 U.S.C.

§ 1681, *et seq.*

232. By requiring H.S.—a transgender young woman—to use restrooms and changing facilities that are inconsistent with her gender identity, Defendant University of North Carolina excludes H.S. from participation in, denies her the benefits of, and subjects her to discrimination in educational programs and activities at Defendant’s constituent campus, UNCSA-HS, “on the basis of sex,” which violates H.S.’s rights under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, *et seq.*

233. By requiring transgender members of the ACLU of NC, who attend school or work at constituent campuses of Defendant University of North Carolina, to use restrooms and changing facilities inconsistent with their gender identity, Defendant University of North Carolina excludes transgender members of the ACLU of NC from participation in, denies them the benefits of, and subjects them to discrimination in educational programs and activities “on the basis of sex,” which violates ACLU of NC

members' rights under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, *et seq.*

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment:

A. Declaring that the unlawful provisions of H.B. 2 discussed above and their enforcement by Defendants violate Plaintiffs' rights under the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution;

B. Declaring that the unlawful provisions of H.B. 2 discussed above and their enforcement by Defendants violate Plaintiffs' rights under Title IX;

C. Preliminarily and permanently enjoining enforcement by Defendants of the unlawful provisions of H.B. 2 discussed above;

D. Requiring Defendants in their official capacities to allow individuals, including transgender people, to use single-sex facilities in accordance with their gender identity in all public schools and universities, executive branch agencies, and public agencies; and requiring Defendants in their official capacities to allow local governments to enact and to continue to enforce anti-discrimination protections for LGBT people;

E. Awarding Plaintiffs Carcaño, McGarry, and H.S. nominal damages in the amount of \$1.00 for violation of their rights under Title IX;

F. Awarding Plaintiffs their costs, expenses, and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 and other applicable laws; and

G. Granting such other and further relief as the Court deems just and proper.

H. The declaratory and injunctive relief requested in this action is sought against each Defendant; against each Defendant's officers, employees, and agents; and against all persons acting in active concert or participation with any Defendant, or under any Defendant's supervision, direction, or control.

Dated: August 15, 2016

Respectfully submitted,

/s/ Christopher A. Brook  
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\* Appearing by special appearance pursuant to L.R. 83.1(d).

**CERTIFICATE OF SERVICE**

I hereby certify that on October 18, 2016, the foregoing document was served on all parties or their counsel of record through the CM/ECF system.

/s/ Jon W. Davidson  
Jon W. Davidson