

Follow-Up From February 8, 2016 Dinner Briefing Presentation on the Non-Discrimination Ordinance

This provides the Mayor and Council with additional information as requested regarding the proposed non-discrimination ordinance, which Council will consider on February 22, 2016.

1. What would the ordinance cover?

The proposal before the Council would prohibit discrimination based on “marital status, familial status, sexual orientation, and gender identity and expression” in three areas (Attachment 1):

- a. Public Accommodations include businesses that provide goods and services to the general public, most commonly, restaurants, hotels, retail stores (florists, bakery, clothing shop, jeweler, hair dresser, auto repair, etc.),
- b. Passenger Vehicles for Hire, which are taxis and black car services, and
- c. City contractors in their selection of vendors, suppliers, subcontractors, or commercial customers.

2. Against whom is discrimination currently prohibited?

In each of the three areas outlined above, the City currently prohibits discrimination based on race, color, religion, sex/gender, and national origin. The commercial non-discrimination ordinance also prohibits discriminations based on age and disability.

3. Why do people think that the non-discrimination ordinance is needed?

In spring and summer of 2015, the Charlotte Non-Discrimination Ordinance Coalition conducted a survey about lesbian, gay, bisexual, and transgender (LGBT) discrimination in Charlotte (Attachment 2). From 146 responses, 104 people indicated that they had “been denied service, received poor service, experienced disparaging comments or had been verbally harassed in a place that serves the public.”

There is limited additional documentation from other Charlotte sources as there are no legal protections and no recourse for people facing discrimination based on marital status, familial status, sexual orientation, and gender identity and expression in public accommodations. There is no one with whom to file complaints and, thus, there are no records available.

Because the City explicitly by ordinances forbids discrimination on the basis of race, color, religion, national origin, and sex, the absence of protections based on “marital

status, familial status, sexual orientation, and gender identity or expression” implies that discrimination is in fact permitted.

4. As non-discrimination protections have been adopted, has there been a decrease in hate crimes based on sexual orientation, gender identify, and gender expression?

Staff has not found a study that correlates hate crimes with adoption of non-discrimination ordinances. The FBI database did not provide hate crime information based on sexual identity until 2013. In 2013, 33 offenses were reported nationally based on sexual identity; in 2014, 109 incidents were reported. Hate crimes based on sexual orientation have declined from 1,528 offenses nationally in 2010 to 1,248 offenses in 2014. The only year that did not see a decline from the previous year was 2013.

5. Why do some people oppose the non-discrimination ordinance?

A number of ministers and business people expressed opposition to the ordinance explicitly on the premise that businesses should have the right to deny services based on marital status, familial status, sexual orientation, and gender identity or gender expression. In a letter and other material to the City Council in February 2015, an argument was made that it is the right of businesses to deny services to people whose “sexual behavior” is contrary to a business’s “religious and conscience beliefs” (Attachment 3):

Business people that serve the public will be placed in the untenable position of having to choose between following the dictates of their consciences or following the City’s new non-discrimination law. Taking the freedom of choice to follow their conscience away from business owners in the City of Charlotte creates undue regulatory burdens, which in turn discourage businesses from locating or expanding in the City of Charlotte. It also exposes these businesses to lawsuits by persons included in the new specially protected categories created by the City.

The national organization Focus on Family opposes adding LGBT protections to state and local non-discrimination laws. They cite the following examples of businesses being challenged based on non-discrimination laws in the respective communities (Attachment 4):

- A t-shirt maker in Lexington-Fayette, KY who declined to print apparel for a gay pride parade;
- A photographer in Albuquerque, NM who refused to photograph a same-sex commitment ceremony;
- A florist in Richland, WA who would not provide flowers to a same-sex wedding;
- A bed and breakfast in Matton, IL that denied space for a civil union ceremony and reception; and

- An inn in Lyndonville, VT that turned away patrons based on sexual orientation.

Focus on Family argues that discrimination based on religious beliefs should have been allowed in the above public accommodations.

6. If businesses should have the freedom to choose who they serve, wouldn't this logically extend to people already protected based on "race, color, religion, national origin, and sex?"

No one has made the argument that the current non-discrimination protections should be repealed; however, the freedom of choice argument would be the same. Evidence shows that discrimination still occurs against people already protected. Over the past three years, the Community Relations Committee has received an average of five complaints a year alleging public accommodations violations. The complaints are usually against a store or establishment and are usually resolved through conciliation (Attachment 5).

7. Is it a violation of the constitutional rights of a business owner to prohibit discrimination?

No. Please see the City Attorney's legal opinion (Attachment 6, beginning on page 5). The City Attorney concludes based on his legal research that "there is no constitutional right to avoid compliance with a neutral law of general applicability prohibiting conduct that is within the government's right to regulate."

8. Is there consensus in the religious community that the LGBT community should not be afforded the same protections against discrimination as others?

No. A number of Charlotte clergy members wrote the Mayor and Council, urging the adoption of non-discrimination protections in February 2015 (Attachment 7):

We are troubled that equal protections are not afforded the Lesbian, Gay, Bisexual, and Transgender members of our faith communities. Furthermore, we believe it is imperative for the soul of our Queen City that the Charlotte-Mecklenburg Community Relations Committee be able to track and resolve discrimination complaints based on sexual orientation gender identity, familial status, marital status, and gender expression.

Research conducted by the Pew Center about churches and religious groups' formal positions on transgender individuals found a range of levels of inclusion (Attachment 8).

Religious institutions are starting to formally address the participation of transgender people in their congregations. The Union for Reform Judaism approved a resolution on the rights of transgender and gender nonconforming people, affirming its 'commitment to

the full equality, inclusion and acceptance of people of all gender identities and gender expressions.’ The United Church of Christ, Unitarian Universalist and Episcopal churches each have issued specific statements of inclusion..

According to Pew, other religious groups have adopted stances that do not support inclusion, such as Assemblies of God, Church of Jesus Christ of Latter-day Saints, Lutheran Church – Missouri Synod, and the Southern Baptist Convention (Attachment 8).

9. Is there consensus in the business community that the LGBT community should not be afforded the same protections against discrimination as others?

No. Charlotte’s largest employers, like the City of Charlotte, have adopted non-discrimination employment policies. Of Charlotte’s top 10 non-government employers, all 10 have policies prohibiting discrimination based on sexual orientation and gender identity (Attachment 9, Table 1).

Additionally, many prominent Charlotte businesses are sponsors of the Charlotte Pride Parade (Attachment 10).

The Human Rights Campaign, which advocates for non-discrimination expansion, surveys businesses on their workplace policies. A staff review of the HRC research (Attachment 11) shows that 93% of Fortune 500 companies prohibit discrimination on the basis of sexual orientation and 75% prohibit discrimination on the basis of gender identity.

Four Charlotte-based businesses were identified in the HRC survey, three of which provide non-discrimination protection for employees based on sexual orientation and gender identity: Bank of America, Duke Energy, and Moore & Van Allen. Compass Group USA, which received a partial score for non-discrimination based on sexual orientation, does not provide protections based on gender identity (Attachment 9, Table 2). Staff conducted supplementary interviews of Charlotte businesses policies on non-discrimination, and the information from those responding businesses is provided as an attachment (Attachment 12).

The proposed non-discrimination ordinance would prohibit discrimination in the larger community for those who choose to work in and visit Charlotte’s LGBT inclusive employers

Additionally, under the proposed amendment to the City’s Commercial Non-Discrimination Ordinance, businesses that support non-discrimination could not themselves be subjected to discrimination based on such policies as it relates to their doing business with the City of Charlotte.

10. If the proposed non-discrimination provisions were adopted, how would charges of discrimination be handled?

It is expected that the adoption of the protections would result in voluntary compliance as is largely done for current protections. Allegations of discrimination in public accommodations would be handled by the Community Relations Committee (CRC) in the same manner as currently done. The CRC works with the parties to mediate the concerns and has been consistently successful in this approach. Beyond that, the City could enforce the ordinance as a criminal misdemeanor (up to \$500 fine and up to 30 days in jail after three prior convictions) and by seeking injunctive relief (e.g. a court order requiring compliance punishable through contempt proceedings). No charges have been filed in court under the current protections. Finally, the ordinance would not authorize an individual who believes they have been discriminated against to file a civil lawsuit.

Allegations under the Vehicles for Hire ordinance would be handled by the Passenger Vehicle for Hire Board, which has the power to issue civil penalties and revoke operating certificates and permits. Allegations under the Commercial Non-Discrimination Ordinance would be handled by the City's Charlotte Business INclusion Office, which could pursue contract suspension or termination, and contractor debarment.

11. Would the expansion of non-discrimination put children and women in danger in restrooms?

Under the revisions, people would be able to use the restroom of the gender with which they identify. As outlined by the City Attorney in his presentation to the City Council on February 8, 2016 (Attachment 13, page 10), all people would remain subject to indecent exposure and trespass laws.

Two concerns have dominated the restroom discussion: a. men who are sexual predators identifying as women for the purpose of gaining access to restrooms to sexually assault women (Attachment 3) and b. women who have transgendered from men making women or children uncomfortable.

With regard to sexual predators, such behavior as described is of a criminal nature today and would continue to be so. Research finds no documentation that such behavior has increased in cities with non-discrimination ordinances. Indecent exposure is prohibited today and would continue to be prohibited if the ordinance changes are adopted. Staff has found no documentation indicating that incidents of indecent exposure have increased in cities with non-discrimination ordinances.

One case widely cited is out of Olympia, WA. Ministers and business owners opposing non-discrimination (Attachment 3) identified a case where a transgender woman was using a sauna in a locker room. Two teens complained that they saw the transgender women's genitals. The case has received widespread attention. Attachment 14 contains

the text from the Fox Radio news report about this incident (and extensive comments about the report) and Attachment 15 is a rebuttal from a transgender advocacy group. There is no confirmed evidence that this person was exposing herself and no allegation of sexual assault.

12. Would the expansion of the non-discrimination ordinance cause a sense of discomfort for some people with regard to public restrooms in Charlotte?

Yes. The City's research found a number of instances, particularly in the workplace, where individuals expressed discomfort in sharing a restroom with a transgender person. There are also many cases where transgender people have expressed discomfort at having to use the restroom of the gender different from how they present themselves.

As noted above, outreach by staff to Charlotte employers (Attachment 12) who have non-discrimination hiring policies and to other jurisdictions (Attachment 16) found no evidence of any danger related to restroom issues; however, examples were found related to someone expressing feelings of discomfort sharing a restroom with a transgender person.

For example, one local health care organization relayed that while one employee was transitioning, some of their teammates were uncomfortable. Another issue in Kansas City, MO included a complaint by a woman who sought to prevent a transgender person from using a restroom and blocked access to the door with a trashcan because of her discomfort with using the same restroom.

Focus on the Family, an advocacy group opposing non-discrimination expansion, notes the following cases (Attachment 4):

- An employee dismissed from a Macy's store in San Antonio, TX for denying use of a dressing room to a transgender woman.
- A Denny's restaurant in Auburn, ME being required to let a regular customer use the restroom consistent with her gender identity.
- A fifth-grader in Orono, ME being assigned a separate restroom based on gender identity.
- A biological female student using the men's locker room based on gender identity in Pittsburg, PA.

13. What are the existing policies or practices with regard to public restrooms in Charlotte?

In Charlotte, people are already able to use the restroom of the gender with which they identify in City facilities and those managed by the CRVA (Attachment 17). We have no record of ongoing issues arising from these practices.

14. Are there any other governmental guidelines on restrooms?

Yes. In April 2015, the U.S. Equal Employment Opportunity Commission (EEOC) ruled that a transgender employee cannot be denied access to the common restrooms used by other employees of the same gender identity and that such a denial constituted direct evidence of sex discrimination under Title VII (Attachment 18).

In June 2015, the U.S. Occupational Safety and Health Administration (OSHA) issued a guide to employers on restroom access for transgender workers (Attachment 19).

“The core principle is that all employees, including transgender employees, should have access to restrooms that correspond to their gender identity,” said Assistant Secretary of Labor for Occupational Safety and Health Dr. Michael Davis. “Our goal is to assure that employers provide a safe and healthful working environment for all employees.”

Under OSHA’s model practices, “the employee should determine the most appropriate and safest [restroom] option for him- or herself.” Among the options OSHA identifies, but does not require are (a) single-occupancy gender-neutral (unisex) facilities and (b) multiple-occupant, gender neutral restroom facilities with lockable single occupant stalls.

15. What are the experiences in other cities with regard to restrooms?

Staff contacted 17 cities that have non-discrimination ordinances covering public accommodations and received information from 10 (Attachment 16). Of the 10, four report complaints from members of the transgender community regarding discrimination against them. Another jurisdiction referenced unreported incidents against transgender people. Five jurisdictions report no issues. No jurisdictions reported attacks by members of the transgender community on other people, or of predators using the non-discrimination ordinance to harm others.

Media Matters for America is a self-described “progressive research and information center dedicated to comprehensively monitoring, analyzing, and correcting conservative misinformation in the U.S. media.” Documentation compiled by Media Matters indicates no restroom issues in 12 states that they surveyed (Attachment 20). They also reported that the following Texas cities with non-discrimination protections have not had restroom issues: Austin, Dallas, and El Paso (Attachment 21).

16. Is the federal government involving itself in the public restroom / locker room issue as reflected by a case in Illinois?

There are indications that the federal government is beginning to consider discrimination on the basis of sexual orientation and gender identity as being prohibited under existing protections with regard to “sex.” The U.S. Department of Education (U.S. DOE) issued guidance under Title IX that protects students in covered institutions from sex discrimination including “straight, gay, lesbian, bisexual, and transgender students.”

The Palatine, IL case involved a transgender student seeking access to the female locker rooms. The school district settled the case with the Department of Education, permitting the student to use the locker rooms and installing curtains in dressing areas to protect the privacy of all students (Attachment 22).

17. Are there other areas related to LGBT non-discrimination where the federal government is involved?

Staff has not conducted a complete review of federal policy in the area, but does find two areas that are noteworthy in addition to the OSHA and USDOE restroom cases previously referenced.

a. The U.S. Equal Employment Opportunity Commission considers employment discrimination on the basis of sexual orientation or gender identity to be a violation of Title VII of the 1964 Civil Rights Act:

Employers and employees often have questions about whether discrimination related to LGBT status is prohibited under the laws the EEOC enforces. While Title VII of the Civil Rights Act of 1964 does not explicitly include sexual orientation or gender identity in its list of protected bases, the Commission, consistent with case law from the Supreme Court and other courts, interprets the statute's sex discrimination provision as prohibiting discrimination against employees on the basis of sexual orientation and gender identity.

The Commission's Strategic Enforcement Plan (SEP), adopted by a bipartisan vote in December of 2012, lists "coverage of lesbian, gay, bisexual and transgender individuals under Title VII's sex discrimination provisions, as they may apply" as an enforcement priority for FY2013-2016. This enforcement priority is consistent with positions the Commission has taken in recent years regarding the intersection of LGBT-related discrimination and Title VII's prohibition on sex discrimination.

b. The U.S. Department of Housing and Urban Development (HUD) implemented a “policy to ensure that its core programs are open to all eligible individuals and families regardless of sexual orientation, gender identity, or marital status” in 2012, based on “evidence suggesting that lesbian, gay, bisexual, and transgender (LGBT) individuals and families are being arbitrarily excluded from housing opportunities in the private

sector.” (Attachment 23), and the DHUD web page for LGBT resources: http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_e_qual_opp/LGBT_Housing_Discrimination

18. What cities comparable to Charlotte do not prohibit discrimination on the basis of marital status, familial status, sexual orientation, and gender expression?

Eight of the top 30 cities in the U.S. lack full protections for LGBT populations, according to a Washington Post article on November 4, 2015 (Attachment 24). The eight cities, in order of population are...

- Houston, TX
- San Antonio, TX (Includes non-discrimination in public accommodations, but not housing and employment)
- Jacksonville, FL
- **Charlotte, NC**
- El Paso, TX (Includes non-discrimination in public accommodations, but not housing and employment)
- Memphis, TN
- Nashville, TN
- Oklahoma City, OK

As noted, San Antonio and El Paso do outlaw discrimination in public accommodations, but lack protections in housing and employment. Oklahoma City on January 5, 2016 adopted a non-discrimination ordinance related to housing (Attachment 25), but still lacks protections in employment and public accommodations.

Note: The proposed Charlotte ordinance also does not address housing or private sector employment. According to the City Attorney, Charlotte does not have authorizing legislation to affect these areas. Similarly, Tennessee law prohibits Memphis and Nashville from having non-discrimination laws for other than city employees, according to the Washington Post article.

19. Why have non-discrimination laws not passed in other cities?

The most recent cities, in addition to Charlotte in 2015, where proposed non-discrimination ordinances failed are Houston, TX and Jacksonville, FL.

The previously referenced Washington Post article (Attachment 24) reported the following:

In Houston, opponents of Houston’s anti-discrimination law called it the “bathroom bill” and printed banners that said “NO Men in Women’s Bathrooms.” The law, of course, did much more than address the right of transgender people to use gender-appropriate facilities — this ordinance protected people in Houston from getting fired

or evicted or turned away from stores on account of their sexual orientation or gender identity. But focusing on the trans-bathroom issue was wildly successful: In the end, voters rejected the anti-discrimination law 61 percent to 39 percent.

The most current local effort similar to Charlotte is in Jacksonville, FL. Jacksonville has had extended discussion about protections for the LGBT community, but recently decided to defer action. On February 13, 2016, the sponsor of the Jacksonville ordinance withdrew the proposal. The Florida Times-Union reported the following of Jacksonville.com (Attachment 26):

"After numerous meetings with colleagues and public forums it's now clear "the City Council and many citizens of Jacksonville still have sincere questions and are not ready to move forward on this issue," [City Councilman Tommy] Hazouri said in a written statement. As a result, he plans to ask the council to withdraw his legislation that would expand the city's anti-discrimination law — called the human-rights ordinance — to include lesbian, gay, bisexual and transgender people. "Be assured, this bill and this issue is coming back," he said.

Opposition to the Jacksonville ordinance is similar to that expressed in Charlotte and Houston. The Jacksonville ordinance was also referred to as the "bathroom bill" (Attachment 27) and was challenged on freedom of religion grounds (Attachment 28):

"No council member has the right to make law-abiding citizens and religious institutions vulnerable to the depth of religious persecution that is established by this law," said Mat Staver, Founder and Chairman of Liberty Counsel. "Nationwide, cake bakers, photographers, and florists have already lost their religious freedoms, and some were forced to close their businesses at the behest of the LGBT lobby. Jacksonville does not need to welcome this radical social experiment onto the shoulders of local business owners and taxpayers."

A prominent minister in Jacksonville, Mac Brunson of the First Baptist Church, also put forth the argument that protections are not needed, according to the Christian Examiner (Attachment 29):

Brunson, who has encouraged church members to be informed, told Christian Examiner in an exclusive interview, "the HRO [Human Rights Ordiancne] is totally and completely unnecessary." The pastor said despite a campaign apparently designed to promote the idea that those in the LGBT community are being discriminated against, no one has produced any. "It is simply a way for those in that community to have a rallying point and a cause," Brunson said. The charges of discrimination, he said, are meant to "incite" the LGBT community to action.

Nonetheless, Brunson said there are those in Jacksonville who act in ways that are not reflective of the community at large. "I realize that there are individuals here or there who are unchristian and unkind to them because of their lifestyle choice," Brunson

said, but denied it is a situation which requires more specific action. "There are enough civil laws on the books to take care of any and every legitimate issue," Brunson said. Calling the Human Rights Ordinance (HRO) a "Special Privilege Ordinance (SPO)," Brunson said it opens the door for individuals to want to obtain "special privileges" a number of "fill in the blank" situations.

A much smaller community, Martinsburg, WV passed non-discrimination protections on February 11, 2016, covering employment, public accommodations, and housing. Lewisburg, WV also recently passed similar legislation. (Attachment 30)

20. Does Charlotte have the legal authority to adopt the proposed ordinances?

Yes. The City Attorney has provided a detailed written opinion and presented his legal assessment at multiple meetings (Attachment 6). North Carolina Representative Dan Bishop disagrees with this position. His letter is included as a handout to the City Attorney's response.

21. What forms of discrimination are not covered by the proposals?

The proposals do not cover private employment or housing. It is the City Attorney's opinion that the City does not have the authority to adopt an ordinance prohibiting discrimination based on the proposed characteristics in these areas. However, as noted previously, the federal government is active in expanding non-discrimination in these areas through the EEOC, OSHA, and HUD.

Attachment 1

ORDINANCE NUMBER: _____

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.”~~

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

Attachment 2

Charlotte LGBT Discrimination Survey

After the 2015 non-discrimination ordinance vote, members of the Charlotte Non-Discrimination Ordinance Coalition developed and released a survey to the LGBTQ community in Charlotte as a means of collecting data and real examples of discrimination in the city as experienced by LGBTQ people.

While not a scientific study, the results below are a summary of what we found.

- 146 # of survey responses received
- 104 # of respondents who indicated that they had been denied service, received poor service, experienced disparaging comments or had been verbally harassed in a place that serves the public (hotel, restaurant, retail establishment, etc.) at least once based on their gender identity, gender expression or sexual orientation
- 17 # of respondents who indicated that they had been physically attacked in public based on their gender identity, gender expression or sexual orientation
- 15 # of respondents who indicated that they had been harassed, assaulted or experienced discrimination when attempting to use a restroom that aligned with their gender identity

DISCRIMINATION EXAMPLES

When asked to provide specific examples of discrimination, respondents provided the following answers. (NOTE: All examples copied verbatim, no edits were made to grammar, etc)

Several instances of verbal slurs or derogatory comments issued by strangers in passing. Most recent occurred summer of 2014 on Davidson St in NoDa; two younger white males in a truck yelled "faggot" as they drove past. Other instances are similar in nature. (White, cisgender man, gay 25-34)

My work place forced me to use the mens restroom when women complained about me going into their restroom. But then Men complained about the way I looked in the mens restroom. I was asked to use the restroom on the other side of the building (which was a six minute walk one way) but not to take more than three minutes personal time during the day outside of scheduled breaks and lunches. Eventually someone complained about me using those restrooms too and I gave up... I started holding my bladder until I could get home. After only a few weeks I quit the position because I couldn't work somewhere I wasn't welcomed. The managers at the same job would put out religious information and discussed my personal information with other employees as well as gossiping about me. I was miserable from the day I started until the day I left that company. I have had similar experiences with multiple companies I have worked for. As well as having a boss refer to another trans woman as a tranny. (White transgender woman, age 19-24)

When walking the streets of downtown Charlotte I have been called faggot for holding my lawfully wedded husband's hand. Many times. (White, cisgender man, gay, 25-34)

Service at a restaurant was very poor because I was there on a same sex date. **(White, cisgender man, gay, 25-34)**

Charlotte City Council Chambers. Direct verbal abuse from attendees, People behind me (opposition to my position) hit me multiple times with their cardboard sign, saying "Oops, sorry sir" when I am obviously dress feminine. Did not attempt to use restrooms there due to the harassment, even though I needed to go. I do not normally go places that I consider unsafe. I thought City Council Chambers would be safe, I was wrong. **(White, transgender woman, 55+)**

As a gender androgynous white male, I have experienced assumptions of depravity primarily from female parents. The remarks and reactions are mitigated when my spouse is with me, indicating it is the lone, non-conformist white male that they are reacting to. **(White, Gender non-specific, Bisexual, 35-44)**

Most of these incidents can be related back to being sexually harassed by a coworker in the tax assessor's office. She felt it necessary to make unnecessary remarks about my appearance, and would follow me into the men's restrooms. She inappropriately groped me to try to see if I was "a complete man." Rather than discipline her, my boss had me relocated to another office, until the other employee's contract ended six months later. Even then, she would go out of her way to make unwelcome comments about my genitals where everyone could hear her. Her excuse that allowed her to get away with it: it was her religious right to speak her mind against me.

At a previous job in retail, I was forced to use the women's room, despite appearing as male since I had been on Hormone Replacement Therapy for over a year. This resulted in me being physically attacked by a customer, which then led to me being fired for causing a disruption. I'm banned from that store. **(White, transgender man, 25-34)**

I went with my friends to a local eatery earlier last year, all but a few of us were trans, service took too long, people laughed at us and tried to take photos, they whispered racial & gendered slurs etc. Walking into a restaurant last October, a couple of men followed me and called me sexist slurs (slut/fag etc) I went to my school's restroom in the past week, a young woman mistook me for a man and insulted me etc etc etc **(Multi racial, genderqueer, 19-24)**

Early into my transition (2014), 'passing' as the female I am was more difficult. I've run into situations back then where I would be misgendered, even after correcting the person. I have fortunately, had the means to afford me surgeries that removed the male traits I once had, so this is no longer an issue for me. Other transgender folks, sadly are not as fortunate. **(White, transgender woman, 35-44)**

Employees whispering, cutting their eyes or referring to me in the wrong pronouns on purpose. **(White, transgender woman, 25-34)**

I moved my life and business from NYC to NC and I had not experienced Homophobia since I was 14 YO. However when I arrived in NC the landlords I have had in the past here have used poor language and have acted out on me as though I was the lowest form of being on Earth. I brought my job my business and my life to NC and pay taxes. The Homophobia I experienced where from people who have committed fraud, have filled for disability who use the system to their benefit and continue to commit criminal activity, whilst I pay tax and work hard. So in the end the public can be involved in criminal activity and displace on my homosexuality to the the focus off Bigotry hate and having no integrity. **(White, cisgender man, gay, 35-44)**

It has never been physical but I have been asked if I am in the correct bathroom on several occasions or have been told I was in the incorrect bathroom. Most of my experiences have been simple in that they ask but a few places have outright told me to get out or followed me to make sure I went in the "correct" bathroom. As a cashier for a grocery chain a few years ago, I had customers refuse to go through my line, talk to me, outright tell me I'm wrong, or loudly verbalize their opinions on what was in my pants. On several occasions I was asked to get a fellow clerk to assist them as they felt uncomfortable being helped by someone like me. I was verbally harassed for doing my job and being friendly to the customers. I was denied usage of the bathroom based on my identity, which was uncomfortable for everyone involved (customers and fellow employees). Most days I avoid bathrooms because I fear the potential verbal harassment. It makes me feel like a second class citizen here in Charlotte **(White, Transgender woman, 25-34)**

I hold hands with my partner and faggot or queer can be heard multiple times. It's just part of the uptown experience. **(White, cisgender man, gay, 35-44)**

I was denied a taxi ride to the airport because the taxi driver saw that I was wearing an HRC t-shirt. Countless times I've experienced black teenaged kids making gay slurs and yelling "Faggot!" and "You gay!", I have been in restaurants and had both waitstaff as well as other customers make comments about me being gay. I was physically attacked outside of a popular restaurant in East Charlotte by 2 white thugs who used slurs and violence in attempts to intimidate me. **(White, cisgender man, gay, 25-34)**

I have been criticized for not being masculine enough after a job interview. Yes, this happened at one of our large corporations based in Charlotte. I have been called a faggot while walking down the street on several occasions over the years. Just a few months ago, my date and I were walking after dinner and were yelled at by a cyclist for being gay. We were walking down the sidewalk. There was no reason for any conversation at all, yet the biker yelled a slur as he rode by. **(White, cisgender man, gay, 35-44)**

Fired from my job after negative performance reviews and having clients transferred to other engineers. Yelled at a couple of times on the street by passers by. Sexually assaulted by a taxi driver. **(White, transgender woman, 25-34)**

2004 lost a job when a girl I was dating sent flowers to my workplace and signed the card. **(Multi-racial, cisgender woman, lesbian, 45-54)**

I have been denied medical treatment. I have been given poor service because myself or those i am with are perceived as queer. There are some venues which I just will not visit because I don't feel safe/respected. **(White, transgender man, 35-44)**

Within last six months I have been told in public place that I am going to hell. Several times in the last 10 years I have lived in Charlotte I have been called names (I.e. Dyke, faggot) While walking down the street Holding my wife's hand I have had the cross waved in my face. **(White, cisgender woman, lesbian, 35-44)**

While I have never been denied service anywhere for any reason, as a bi woman my orientation is not obvious nor does it get called into question. However, I have been harrassed on the street multiple times when showing mild physical affection such as hand holding or walking arm in arm with another woman. **(White, cisgender woman, bisexual, 45-54)**

I am an androgynous identifying male bodied person. I am frequently sneered at and verbally assaulted in public bathrooms and have frequently been harassed by individuals based on my gender ambivalent appearance. **(White, genderqueer, gay, 25-34)**

Many instances of under-breath comments such as "faggots" or "fairies" in movie lines, walking down a sidewalk (alone or with a casual friend w/ no PDA) Extremely slow and poor service in restaurants & stores. Threatening glances/comments from fellow patrons in restaurants/bars. Feeling under a microscope at work w/ some supervisors. I knew that I had to be deeply closeted; only 4 or 5

supervisors gave the rigorous letter-of-the-law evals; many colleagues, once suspected as gay were subjected to repeated nit-picking - daily checks while most employees received twice-yearly checks. One friend was a CMS teacher. When he complained to an AP about anti-gay slurs from students (some in his classes, some in the hallway), he was told to "suck it up" - it was just fun and to learn to have fun with them. This AP was rigid about any kind of insinuation to teachers or students about race, obesity or other kinds of verbal harassment, but anti-gay harassment was just fun **(White, cisgender man, gay, 55+)**

At the pride parade last year, a street preacher screamed at me and my girlfriend that we were "on the bus to hell" while we rode on the B of A double decker bus. During the non-discrimination ordinance vote, I was told I was a deviant and that I was "sick". **(White, cisgender woman, lesbian, 35-44)**

I've experienced verbal street harassment on numerous occasions consisting of anti gay slurs and sexual innuendos. **(White, cisgender woman, bisexual, 45-54)**

Most of these incidents have occurred at Charlotte Pride, in which protestors gathered outside the boundaries and protested with hateful speech and posters. Also, I have experienced discrimination by protestors at the Democratic National Convention in 2012. Once, I kissed my boyfriend outside a Charlotte restaurant and the manager came outside and asked us to leave. **(White, cisgender man, gay, 19-24)**

When shopping at Macy's I used the women's changing room, which is the one I identify with, yet when walking out a clerk questioned why I was using it when I was clearly shopping for my prom dress. Although their tone was not malicious and they did say I could have used the men's changing room on the second floor, it just wasn't the one I was comfortable using. **(Asian, transgender woman, 19-24)**

Taxi 3 times, Government Center once, Restaurant once, Lesbian,Gay insults , misgendering, multiple times in and out of public **(White, transgender woman, 55+)**

Slow service a few times at restaurants. Been told I was in the wrong bathroom. **(White, genderqueer, lesbian, 35-44)**

I am a physician who treats transgender patients. I once had a cisgender patient state that she would never come back and see me because I allowed people like that in my medical practice. She said it was wrong and she was planning to tell everyone she knew how terrible it was. I asked her to explain why

she felt it was wrong, and she could not. I explained to her the reason I provide hormone therapy for transgender patients, which is because of my personal religious beliefs as I explained the biblical basis for transgender as well as medical basis. She remained shocked and angry, disbelieving. **(Multiracial, cisgender man, bisexual, 35-44)**

At Carolina's Medical Center (Main hospital), a man outside the ER yelled out at me after I kissed my partner goodbye (on her cheek)...He yelled "Hey, was that really necessary!?" **(White, cisgender woman, lesbian, 45-54)**

My girlfriend and I were denied a hotel room when we first moved to Charlotte the night before we could move into our first apartment. We finally got a hotel in Gastonia after being denied at 3 hotels in south Charlotte. I've been called a "dyke" multiple times while walking down the street holding my girlfriend's hand. **(White, cisgender woman, lesbian, 25-34)**

Staff member in a learning member institution took away my project's equipment because I am gay **(Black, cisgender man, gay, 25-34)**

I was denied access into Crystals by the bouncer because he assumed I was gay. He told me it was a sin and to go across the street to Chasers **(Black, cisgender man, gay, 25-34)**

At local restaurants in Charlotte while out with my partner who dresses non-conforming to female we have received delayed and un-professional service. **(Black, cisgender woman, lesbian, 45-54)**

When my wife & I went to the courts to get our marriage license the clerks besides being very rude scowled at us & others did not want to help then our scheduled day to exchange vows was on Veterans Day so we asked if they were sure they would be open, "yes" asked 4 times by my wife every week before wedding confirming they would be open. Yes, yes, yes then day of wedding "Oh no we're closed" Like really. **(Black, cisgender woman, lesbian, 35-44)**

Most of the incidents have been while in mixed company out at bars or clubs. All events happened while i was working as a server and it was generally my tables that would make comments while i was walking away from them. **(White, cisgender man, gay, 25-34)**

The only time I can remember is when I went to pride festival and outside were protesters with bibles and signs and some were screaming inappropriate statements to my partner and I and all of the other visitors. Those who were in that area looked with hurt feelings but decided to proceed because Pride is for us. Councilwoman please continue the fight for Mecklenburg County to respect ALL residents if Mecklenburg County and not just some. And please don't allow churches and corporation to deter you from what is right and humane with all humans. Thank you **(Black, cisgender woman, lesbian, 25-34)**

SURVEY DEMOGRAPHICS

	Race/Ethnicity
115	White (including Hispanic)
20	Black/African American
3	Asian
1	Native American/Pacific Islander
7	Multiracial

	Age
1	<18
26	19-24
43	25-34
38	35-44
27	45-54
11	55+

	Gender Identity
70	Cisgender man
44	Cisgender woman
6	Transgender man
13	Transgender woman
13	Gender fluid, non-binary, gender queer

	Sexual Orientation
68	Gay
33	Lesbian
19	Bi sexual
26	Asexual, Pan Sexual, Queer

SURVEY PROCESS

The survey was conducted between 03/30/2015 – 04/08/2015, 05/11/15 – 05/22/15 and 06/08/15 – 06/10/15.

The following questions were asked:

- Have you ever been denied service in a Mecklenburg County restaurant, hotel, taxi, or other public business based on your gender expression, gender identity, or sexual orientation? (28/146)
- Have you received poor service in Mecklenburg County based on your gender expression, gender identity, or sexual orientation? (57/146)
- Has an employee of a Mecklenburg County restaurant, hotel, taxi company or other public business ever made a disparaging comment or used a slur against you based on your gender identity, gender expression, or sexual orientation? (57/146)
- Have you ever been verbally harassed in public, in Mecklenburg County, based on your gender identity, gender expression, or sexual orientation? (91/146)
- In general, have you ever been physically attacked in public, in Mecklenburg County, based on your gender identity, gender expression, or sexual orientation? (17/146)
- If you are transgender or otherwise gender non-conforming, have you ever been harassed, assaulted, or discriminated against when attempting to use a public restroom in Mecklenburg County? (17/32)
- Have you ever been discriminated against in any public setting as a result of your gender identity, gender expression, or sexual orientation? (85/146)

Attachment 3

February 27, 2015

Members of the City Council,
City of Charlotte
600 E. 4th Street
Charlotte, North Carolina 28269

Honorable Members of the City Council of Charlotte:

We are leaders in the City of Charlotte, pastors, business leaders, and leaders of state-wide organizations. We are writing to you to ask you to vote "NO" on the proposed City ordinance that would create non-discrimination laws on the basis of "marital status, familial status, sexual orientation, gender identity, and gender expression."

The ordinance is addressing a problem that doesn't exist. Charlotte is already a tolerant city where people of different beliefs, religions and sexual preferences work peacefully with one another. But this ordinance will create unnecessary tensions, lawsuits and violate the Constitutional protections of all Charlotteans, including heterosexuals, homosexuals and transgendered.

This dangerous ordinance will impact the City of Charlotte and its citizens negatively in four ways:

- I. **The ordinance is unconstitutional. It creates undue regulatory burdens on private businesses and unnecessarily exposes them to lawsuits and liability by requiring them to give up their First Amendment rights of Freedom of Speech, Religion and Association.**

Should a gay T-shirt maker be forced to create anti-gay marriage T-shirts? Should a Muslim T-shirt maker be forced to create pro-gay marriage T-shirts? That's exactly what this ordinance will do if passed. By adding "marital status, familial status, sexual orientation, gender identity, and gender expression," to the public accommodations laws, the City will require many businesses to provide their "goods, services, facilities, privileges, advantages, and accommodations" to promote messages or ideas (speech) that are contrary to their religious and conscience beliefs about human sexual behavior.

Business people that serve the public will be placed in the untenable position of having to choose between following the dictates of their consciences or following the City's new non-discrimination law. Taking the freedom of choice to follow their conscience away from business owners in the City of Charlotte creates undue regulatory burdens, which in turn discourage businesses from locating or expanding in the City of Charlotte. It also exposes these businesses to lawsuits by persons included in the new specially protected categories created by the City.

Attached is a short brief of examples of the lawsuits and discrimination that have resulted from similar ordinances and laws in other parts of the country.

The ordinance will allow discrimination complaints to be filed against business owners who are simply trying to operate their businesses like they do their private lives—in accordance with their religious beliefs or dictates of their consciences. The ordinance is, therefore, a threat to the most basic freedom of all Americans—the right to freely exercise their religious beliefs and not be forced to promote speech or associations with which they disagree. Again, this ordinance would diminish the rights of *homosexuals* because it could also be used to force businesses owned by *homosexuals* to promote messages with which they disagree (such as anti gay marriage T-shirts, cakes or other products and services that are contrary to their beliefs). U.S. Const. amend. 1; N.C. Const. art. 1, § 13.

II. The ordinance puts children and women in danger and violates their sense of privacy and security.

The proposed non-discrimination ordinance will put children and women at risk of sexual assault and will violate the Constitutional right of privacy by forcing citizens to share restrooms, locker rooms, and showers with members of the opposite biological sex.

Three Circuit Courts of Appeals have held that there is a constitutional right to privacy that is violated when a government policy or action allows a member of the opposite sex to view a person while engaging in activities such as undressing, using restrooms, or showering. However, the proposed ordinance will allow males to use female restrooms, showers, and locker rooms (and visa versa) based on what gender they “identify” with. This will affect businesses, non-profits, and private clubs. It may even affect churches.

In Olympia, Washington, where the town has a similar non-discrimination law as the one you are considering, a man who identifies as a woman frequently uses the women’s showers and locker room at a local state college that shares its facilities with a children’s swim club. **Despite frequent complaints about indecent exposure in front of girls as young as 6 years old, the nondiscrimination law prevents the college from banning this man from the women’s locker rooms.**

In other states where laws have been passed prohibiting discrimination on the basis of gender identity, sexual predators have claimed to identify as women for the sole purpose of gaining access to bathrooms and women’s shelters so they can abuse and sexually assault women.

It would be irresponsible of the Charlotte City Council to pass a city ordinance that would violate the constitutional right to privacy of its citizens when engaging in personal activities like showering, dressing, and using restrooms. It would be dangerous for the

City Council to pass an ordinance that puts children and women at risk of indecent exposure and sexual assault.

Even more, passing an ordinance of this type puts businesses and organizations in an untenable position of having to choose between obeying the law or protecting the safety and privacy of their patrons. They will not be able to legally stop a male from entering a women's bathroom, locker room, or shower.

III. The ordinance requires the City of Charlotte to engage in impermissible discrimination on the basis of religion and association when it chooses businesses with which to contract and do business.

The proposed ordinance requires the City of Charlotte "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 "sexual orientation, gender identity, or gender expression." The addition of these new terms to the City's non-discrimination law *will cause the City to discriminate* against companies that, because of their religious beliefs or associations, choose not to employ persons whose sexual behavior violates their religious beliefs or consciences. The ordinance creates an advantaged class based on sexual behavior and a disadvantaged class based on religious belief. *Current City law prohibits discrimination on the basis of religion, but this ordinance would compel it.*

Many businesses who currently have contracts with the City of Charlotte will be negatively impacted by this proposed non-discrimination ordinance. These businesses, including water and sewer contractors, vendors in athletic stadiums for food and beverages and athletic apparel, and any number of services, will be put in the dilemma of having to give up doing business with the City or violate their religious beliefs. This is unreasonable and discriminatory.

The government should not be forcing citizens to hire or fire people based on what they think about controversial cultural issues such as sexual behavior. The private sector ensures fairness quite nicely without such unconstitutional government interference. Homosexual household income is significantly higher than that of heterosexuals. So this ordinance is attempting to fix "discrimination" that doesn't exist.

IV. The ordinance violates Article II, Section 24 (j) of the Constitution of the State of North Carolina, by creating a local non-discrimination ordinance regulating labor and trade.

In order to solve a problem created by the North Carolina Constitution as originally adopted in 1776, the voters of the State amended the Constitution in 1916 to prohibit the

General Assembly from enacting “local, special, and private” legislation pertaining to certain subjects, including “labor and trade.” This new provision resolved the incongruity created by the General Assembly passing bills that resulted in the law being one thing in one locality and quite a different thing in another locality. Article II, Section 24 of the Constitution was intended to bring uniformity to the laws of the State and predictability to commerce and business.

In 2003, the North Carolina Supreme Court relied on Article II, Section 24 to strike down a non-discrimination ordinance passed by Orange County that added the terms “familial status” and “veteran status” to the categories of individuals protected by the County’s civil rights ordinance. The Court also struck down the enabling legislation that was passed by the General Assembly to allow Orange County’s actions. “The enabling legislation and the Ordinance generate different law in one locality from that applicable to other localities within the State,” said the Court. The Court concluded that there were no special circumstances that warranted granting Orange County the power to create and enforce additional employment rights beyond those accorded any other county in the State. “We are unable to conclude that conditions in Orange County alone are suspect to such an extent that the legislature legally could create a separate classification to address employment discrimination in that county only.” *Williams v. Blue Cross Blue Shield of North Carolina*, 357 N.C. 170 (2003).

The proposed ordinance before this City Council is unconstitutional, because it creates a “local, private, or special” ordinance regulating labor or trade in violation of Article II, Section 24. Adding “marital status, familial status (the specific term struck down in the *Williams* case), sexual orientation, gender identity, and gender expression” to the City’s non-discrimination laws pertaining to employment for its contractors and vendors, public accommodations, and vehicles for hire expands the categories protected by the non-discrimination ordinances of the City of Charlotte beyond those of any other county or city in North Carolina. This leads to balkanization of the State’s employment non-discrimination laws.

We caution the City Council that not only is this proposed ordinance unconstitutional, but it is not authorized by any enacting legislation of the General Assembly. As such, it is subject to a facial legal challenge.

Moreover, modifying this ordinance to exempt religious organizations (such as churches, synagogues and mosques) will not fix its problems. Such a modification would not protect religious individuals in business, nor would it protect everyone else (heterosexuals, homosexuals and transgendered) who also have First Amendment rights.

As members of the City Council, it is your responsibility to enact laws and policies that are constitutional, that foster and advance the safety of the citizens of Charlotte, and that

Charlotte City Council
February 27, 2015
Page Five

encourage the growth and development of businesses in the City so that the City can thrive and prosper. This proposed ordinance does not accomplish those goals. If you choose to nevertheless pass this proposed ordinance, you will not only violate the rights of all Charlotteans, but also initiate a concerted effort to remove you from the City Council at the next election. We do not need City leaders who put social engineering at the behest of a small minority group above good governance for the whole of the City.

We have attached to this letter a 7-page memo from attorneys with the Alliance Defending Freedom outlining the legal problems with this proposed ordinance. We urge members of the Council to read this memo and to vote against this unconstitutional expansion of non-discrimination laws in the City of Charlotte. Thank you for your service to our great city.

Sincerely,

1 Mark Harris, Senior Pastor
First Baptist Church Charlotte

2 David Benham
Benham Real Estate

3 Jason Benham
Benham Real Estate

4 Dr. Michael L. Brown
Host of the nationally syndicated talk radio show "The Line of Fire"
President, FIRE School of Ministry
Director, Coalition of Conscience

5 Dr. Frank Turek
Author, *Correct, Not Politically Correct*

6 Matthew P Harrison, MD
Director Hospitalist Program, Novanthealth Rowan Regional Medical Center
Medical Director, Belmont Abbey College Student Health Center
Medical Advisor, Priests for Life

7 Pat Baldrige
CEO, Charlotte Christian Chamber

Charlotte City Council

February 27, 2015

Page Six

8 Greg Provenzano
Co-founder and President ACN

Mel Graham
9 CEO, Graham Enterprises
Board Member, Billy Graham Evangelistic Association
Board Member, Samaritans Purse

10 Dr. Richard Land
President, Southern Evangelical Seminary

11 Jim Riggins
President, Technocom

12 Marty Karriker
President & CEO, Charlotte Insurance

13 Sean Hertel
Vice President & Co-Founder, Charlotte Insurance

14 Mark Whittaker
President, Strike Light

15 Brett Portaro
Chairman/CEO, Charter Oak Development Companies

16 Haines Maxwell
Vice President of Sales, Data Imaging

17 James B Noble
Owner, Nobles Restaurants
Pastor, Restoring Place Church

18 Lloyd Bustard
Pastor, World Worship Church

19 Rocky Norkum
Director of Ministries, World Worship Center

20 Keith Collins, Lead Pastor
FIRE Church, Concord, NC

Charlotte City Council
February 27, 2015
Page Seven

21 Donald Glen Raiger
President & CEO, Sovren Group, Inc.
COO, Rhino Assembly

22 Michele Fisher

23 Robert Dunn
CEO and Founder, Dunn Growth Advisors, LLC

24 Mark Gibson
President, Magnum distributors

25 Doug Stephan
Principal, Vision Ventures

26 Kristin Billy
Vice President, Arbonne International

27 William White
President WGW IV Investments LLC

28 Kelvin Torve
Dir. of Development, Covenant Classical School

29 Joe and Mary Beth Bryson

30 Sheri Provenzano

31 Clint Boland
CEO Microhound Media

32 Robert Sanders
District Manager/NC

33 Michael Druzbeck, D.C.
Druzbeck Family Chiro Inc.

34 Mark Tally
Vice President Shrub Doctor Inc.

35 Jamin Buchanan
Student CVCC

Charlotte City Council
February 27, 2015
Page Eight

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Medical Professional

Mark Bouchez
I.T. Dir. Am Dox Inc.

Matthew Baddley
Opp. Manager, SAGE Publications

David Greehan
Capt., US Airways/American

Gary Pearson
Capt., US Airways/American

Jon Mollendick
President, RISE Eco-Technologies

Ronald Williams
NC Real Estate Broker

Nathan Dowdy
Owner, Nathan Dowdy Media

Gil Gatch
Administrative Director, Cross Examined.Org

Jeff Strotim
COO, Apex Marketing

Manny Provenzano
Regional Director, ACN

C. Pat Whisenant
The Cannon School

Jonathan Billy
Independent Business Owner, ACN

Ross Linfoot
Technical Analyst

Charlotte City Council
February 27, 2015
Page Nine

Danny Arsov
Product Analyst, ACN

Jay Johnson

Gerry Mankos
Marketing Manager, Industrial Equipment

David Koenders
Independent Sales Agent, Wholesale Gift Industry

Brian Blaney
Speedy Delivery Carolinas Expeditor

Brad St. Clair

David Woodie
Engineer, BMP Solutions

Tom Palombo
President, The Instore Group

Joseph Acovski
Owner/Operator, Joeys Food-Spirits in Denver North Carolina

John Sears
President, Realty Point

Josh Collins
President, PresPro.com

Adrian Ordoqui
Director of Renovations, PresPro.com

Jeff Royal
Real Estate Valuations, Benham REO

Amick Cutler
CEO, Moose Mojo Branding

Chris Evans
CEO, Online Profit Strategies

Charlotte City Council
February 27, 2015
Page Ten

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MD, Rowan Regional Medical Center

Jason Oesterreich
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Tom Barry
President, Partition Designer, LLC

Bill Coleman
Together for Israel

Dean Volk
Volk Physical Therapy

Suzi Coleman
Adore Realty, LLC

Scott Volk
Together for Israel

Casey Crawford
Movement Mortgage

Reggie and Jessica Mullen

Robbie Wilson
Wilson Technology Group

Glenn Chambers
US Global Ventures, Inc.

Rebecca Chambers
Simply Styled, LLC

Mark Metzger
Voya Financial Advisors

Jason Dellinger
Dellinger Insurance

Charlotte City Council
February 27, 2015
Page Eleven

Jon Devine
Excelon Group

Saji Fazal
G Cubed Marketing

Dr. Leon Threatt, Pastor
Christian Faith Assembly

Farrell Lemings
Pastor, Grace Covenant in Cornelius

Ted W. Hill III, CCIM
Vice President, Vision Ventures

Jeffrey Watson
Owner, Cornerstone Sales and Marketing

Julie Watson
Owner, Cornerstone Sales and Marketing

Justin Reeder
President, Superior Wash Carolina

Bob Reeder
Vice President, Superior Wash Carolinas

Mike and Kelly Pascarella

McLean Faw
Pastor, Joy Christian Fellowship

Dr. Gabriel Rogers
Pastor, Kingdom Christian Church

Warren Smith
Journalist, World Magazine

Rev. L. Todd Marlow
HOPE Community Church of Metrolina

Charlotte City Council
February 27, 2015
Page Twelve

Tami Fitzgerald
Executive Director, NC Values Coalition

Dr. Mark Creech
Executive Director
Christian Action League of North Carolina, Inc.

Attachment 4

Social Issues

The Impact of Adding LGBT to Nondiscrimination Laws

By Jeff Johnston

Freedoms Threatened and Innocence Lost:

The Impact of Adding Sexual Orientation, Gender Identity and Gender Expression to Statutes and Policies

Hundreds of states, municipalities and schools have added “sexual orientation,” “gender identity” and “gender expression” to non-discrimination and public accommodations laws, ordinances and policies. Sexual orientation is a broad term that includes sexual and romantic attractions and behavior. And while our language used to refer to a person’s sex—male or female, “gender identity and/or expression” are terms created to refer to how people feel, identify and express themselves. In this “transgender” ideology and language, gender is fluid and changeable and there is a legion of “genders” for people to identify as and express.

When these newly created rights come into conflict with religious liberties, religious freedom often loses. In addition, such non-discrimination laws also threaten the privacy and safety of individuals. Listed here are just some examples of this loss of freedom, privacy and safety across our country.

Kentucky T-Shirt And Promotional Goods Company Accused Of Violating Local “Fairness Ordinance”

Lexington-Fayette KY

The owner of a Kentucky T-shirt printing company (<http://www.alliancedefendingfreedom.org/News/Detail?ContentID=80948>) was found guilty of discriminating against the Gay and Lesbian Services Organization after he declined to print apparel for a gay pride event. Although the Christian owner disagreed with the group’s message, he found another company to print the shirts at same price. A complaint against him was filed anyway, and the Lexington-Fayette Urban County Human Rights Commission (<http://www.kentucky.com/2012/11/26/2421990/city-rules-hands-on-originals.html>) has sided with the homosexual group and ordered the employees to attend diversity training (<http://www.theblaze.com/stories/2014/10/13/christian-owned-t-shirt-company-likely-to-be-forced-to-attend-diversity-training-after-refusing-to-print-gay-pride-shirts-but-is-the-battle>

[really-over/](#)). The company will likely appeal.

High School Girls' Swim Team Exposed To Naked Man In Women's Sauna

Olympia, WA

The girls' swim team (<http://radio.foxnews.com/toddstarnes/top-stories/college-allows-transgender-man-to-expose-himself-to-young-girls.html>) from Olympia High School was using the pool and other facilities at nearby Evergreen State College. The mother of one girl complained after her daughter walked into a naked man in a sauna. Girls as young as six-years old, from a local swim club, also share the facilities. The female swim coach asked the man to leave, but later apologized after discovering he was “transgendered.” The college says their non-discrimination policy (<http://www.focusonthefamily.com/socialissues/religious-freedom/houstons-religious-freedom-problem/houstons-religious-freedom-problem>)* prevents them from stopping the “transgender” man from using the women’s facilities. “Colleen Francis” is 45 years old, married three times, and the father of five children. According to one report, he is retired from the US Army, wears a low-dose estrogen patch, takes a mixture of psychiatric medicine, and has no intention of having so-called “sexual reassignment surgery.”

Teacher Announces “Sex Change” To 8-Year Old Students—Without Parents’ Knowledge

Vacaville, CA

A female music teacher at Foxboro Elementary School (<http://abcnews.go.com/US/story?id=6050076&page=1#.T57HNVG8GSo>), Abbey Clark, came to school and announced to her students that she was no longer Abbey Clark, but was “James Clark” and instructed the students that they must refer to her as “Mr. Clark.” The parents of the school children were not informed or consulted about the situation in advance—they learned about it when their children came home from school. About two-dozen children were removed from “Mr.” Clark’s classes by concerned parents.

New Mexico Civil Rights Commission Fines Christian Photographer

Albuquerque, NM

Elaine and Jonathan Huguenin, (<http://www.focusonthefamily.com/socialissues/citizen-magazine/religious-freedom/paying-the-price-nov-2013>) Christian owners of Elane Photography, were fined almost \$7,000 for refusing to photograph the same-sex commitment ceremony of two lesbian-identified women. Celebrating the event would have violated their religious beliefs and freedom of expression. The U.S. Supreme Court declined to hear the case.

<http://www.adfmedia.org/News/PRDetail/5537> (EditorPage.aspx?da=core&id=%7BDFE9A9E0-0634-48A0-BFBE-37C9F275675E%7D&ed=FIELD75868601&vs&la=en&fld=%7BB340ABFF-6A62-471C-B401-835EDE715AB6%7D&so&di=0&hdl=H75868628&us=sitecore%5Csnowco&mo&pe=0#_edn4)

Employee Fired For Telling Cross-Dressing Male Not To Use Women's Dressing Room

San Antonio, TX

Natalie Johnson was a store clerk at a Macy's department store in San Antonio. She noticed a young man wearing make-up and women's clothing emerging from the women's dressing room. Ms. Johnson talked to the man, telling him he was not allowed to use the women's dressing room. The cross-dressing man complained to the store's management. The management's response? They fired Ms. Johnson for violating Macy's anti-discrimination policy (http://www.mysanantonio.com/news/local_news/article/Firing-of-Macy-s-worker-pits-freedom-of-religion-2377472.php), which allows self-described "transgender" people to use whichever changing room they want. (EditorPage.aspx?da=core&id=%7BDFE9A9E0-0634-48A0-BFBE-37C9F275675E%7D&ed=FIELD75868601&vs&la=en&fld=%7BB340ABFF-6A62-471C-B401-835EDE715AB6%7D&so&di=0&hdl=H75868628&us=sitecore%5Csnowco&mo&pe=0#_edn5)

Washington State Attorney General Sues Florist For Holding To Her Faith

Richland, WA

Baronelle Stutzman, the owner of Arlene's Flowers (<http://articles.latimes.com/2013/apr/10/nation/la-na-nn-washington-gay-wedding-florist-arlene-20130410>), said she could not provide flowers for a same-sex wedding, due to her Christian faith. As a result, she was sued (http://abcnews.go.com/Business/washington-florist-sued-refusing-provide-flowers-sexwedding/story?id=18922065#.Ua_F2EBOTTo) by both the state of Washington and the same-sex couple; she has counter-sued (<http://www.adfmedia.org/News/PRDetail/8608>) the state for violating her freedom. (EditorPage.aspx?da=core&id=%7BDFE9A9E0-0634-48A0-BFBE-37C9F275675E%7D&ed=FIELD75868601&vs&la=en&fld=%7BB340ABFF-6A62-471C-B401-835EDE715AB6%7D&so&di=0&hdl=H75868628&us=sitecore%5Csnowco&mo&pe=0#_edn6)

Catholic Hospital Sued After Refusing Breast Augmentation Surgery To Man

Daly City, CA

A man who claimed to be a woman, “Charlene” Hastings, filed a lawsuit against Seton Medical Center after the hospital refused Hastings’ request for “breast augmentation surgery.” The hospital explained that, as a Catholic institution, it does not allow transgender surgery as it conflicts with church teaching (<http://www.foxnews.com/story/0,2933,323791,00.html>). The lawsuit claimed that the hospital’s denial of breast enlargement for Hastings caused “shock, embarrassment, intimidation, physical distress and injury, humiliation, fear, stress, and other damages.” Seton Medical Center eventually settled the lawsuit, paying Hastings \$200,000. Discrimination against anyone who claims to be “transgendered” is illegal under California law. ([EditorPage.aspx?da=core&id=%7BDFE9A9E0-0634-48A0-BFBE-37C9F275675E%7D&ed=FIELD75868601&vs&la=en&fld=%7BB340ABFF-6A62-471C-B401-835EDE715AB6%7D&so&di=0&hdl=H75868628&us=sitecore%5Csnowco&mo&pe=0#_edn7](http://www.foxnews.com/story/0,2933,323791,00.html))

Church Loses Tax-Exempt Status On Retreat Property

Ocean Grove, NJ

A United Methodist church retreat property (<http://www.nytimes.com/2007/09/18/nyregion/18grove.html>) no longer qualifies for a tax-exemption after administrators declined to allow a same-sex civil union ceremony to be conducted at its seaside pavilion. Same-sex civil unions are contrary to church beliefs. A New Jersey judge ruled that the Constitution allows “some intrusion into religious freedom to balance other important societal goals.” ([EditorPage.aspx?da=core&id=%7BDFE9A9E0-0634-48A0-BFBE-37C9F275675E%7D&ed=FIELD75868601&vs&la=en&fld=%7BB340ABFF-6A62-471C-B401-835EDE715AB6%7D&so&di=0&hdl=H75868628&us=sitecore%5Csnowco&mo&pe=0#_edn8](http://www.foxnews.com/story/0,2933,323791,00.html))

A Biological Male, With Breast Implants, Demands To Use Women’s Locker Rooms At Athletic Club

Worcester, MA

A man who claimed to be a woman demanded to use the women’s locker room at the Bally Total Fitness Club, but was denied by the club’s management. The individual, “Natasha Lee West,” had breast implant surgery but retained other male anatomy. The case was reported in the homosexual newspaper “*Bay Windows*” under the headline: “Health club harasses transwoman (<http://baywindows.com/health-club-harasses-transwoman-67999>).” ([EditorPage.aspx?da=core&id=%7BDFE9A9E0-0634-48A0-BFBE-37C9F275675E%7D&ed=FIELD75868601&vs&la=en&fld=%7BB340ABFF-6A62-471C-B401-835EDE715AB6%7D&so&di=0&hdl=H75868628&us=sitecore%5Csnowco&mo&pe=0#_edn9](http://www.foxnews.com/story/0,2933,323791,00.html))

Denny's Forced To Accommodate Men Dressed As Women In Women's Bathrooms

Auburn, ME

Bruce Freeman, a regular Denny's restaurant customer, changed his name to "Brianna" Freeman; began wearing women's clothing, makeup, and jewelry; and also started using the women's restroom at Denny's. A female patron complained to the restaurant management about Freeman's presence in the women's bathroom, and a manager told Freeman that he would have to use the men's room. Freeman filed a complaint, and the Maine Human Rights Commission ruled in 2009 that Denny's was indeed guilty of discrimination. In 2011, Denny's reached a settlement agreement with Freeman, and now allows any person who claims to be "transgendered" to use whatever restroom is consistent with their personal "gender identity." The new policy applies at all Denny's restaurants in the state of Maine.

Transgender-Identified Student, Biological Female, Files Complaint Over Dorm Position

Oxford, OH

A transgender student filed a complaint against Miami University of Ohio (<http://cleveland.cbslocal.com/2012/03/21/transgender-student-files-complaint-after-being-banned-from-all-male-dorm/>) because the student was refused a campus housing position as a resident advisor in a male dormitory. The student, born female, identifies as male. Both the university and the town of Oxford, Ohio, have policies protecting "gender identity" and "sexual orientation" in housing, employment, and public accommodations.

Human Rights Commission Orders School To Allow "Transgender" Boy In Girls' Restroom

Orono, ME

A fifth-grade boy (<http://bangordailynews.com/2009/06/30/politics/state-rules-in-favor-of-young-transgender/>) at Asa Adams Elementary School claimed that he was, in reality, a female and therefore entitled to use the girls' restroom. The school would not allow the boy to use the girls' restroom and assigned him a separate restroom. The parents of the boy accused the school of "implicitly isolating" their child by not allowing him to use the girls' restroom. The Maine Human Rights Commission (<http://www.glad.org/uploads/docs/cases/doe-v-clenchy/2012-01-30-doe-v-clenchy-motion-for-summary-judgment.pdf>) ruled against the school, saying that it had practiced unlawful discrimination by not allowing the boy to use the restroom of his choice.

Student Group Files Complaint Over Bathrooms And Locker Rooms

Pittsburgh, PA

The Rainbow Alliance (http://www.pittnews.com/news/article_ee960707-6cc9-5350-a6f7-af534edb63d2.html), a student group at the University of Pittsburgh, filed a complaint (<http://triblive.com/home/1159524-74/university-transgender-complaint-johnston-commission-discrimination-human-lives-locker-pitt>) with the city's Commission on Human Relations for violating the rights of "transgender" students in accommodations. A female student, who lives as a man, was expelled for using the men's locker room, after told not to do so. The city code (http://www.pittnews.com/news/article_b43517bc-7c2b-5eba-8c7b-12c5b10a1ed4.html) identifies sex as "the gender of a person, as perceived, presumed or assumed by others, including those who are changing or have changed their gender identification." Students at the school want to use the locker rooms and restrooms of their choice, regardless of birth sex.

Gay-Identified Couple Files Complaint Against Two Bed And Breakfasts

Mattoon, IL

The two men filed complaints (<http://www.suntimes.com/news/metro/3958932-418/story.html>) with the Illinois Attorney General's office and the Dept. of Human Rights against two separate bed and breakfast establishments for refusing to rent them space for a civil union ceremony and reception. The owners refused based on their religious beliefs.

Innkeepers Sued For Not Providing Accommodations For Lesbian

Lyndonville, VT

A lesbian-identified couple filed suit in Vermont Superior Court, accusing the Wildflower Inn (http://www.nytimes.com/2011/07/20/us/2overmont.html?_r=1) of violating Vermont's Fair Housing and Public Accommodations Act, which prohibits turning away patrons based on sexual orientation. The Catholic owners paid \$30,000 in fines (http://townhall.com/news/religion/2012/08/24/vt_bb_settles_lawsuit_with_gay_couple), despite their religious belief that marriage is the union of one man and one woman.

* Warning: Adult/graphic content

([EditorPage.aspx?da=core&id=%7BDFE9A9E0-0634-48A0-BFBE-37C9F275675E%7D&ed=FIELD75868601&vs&la=en&fld=%7BB340ABFF-6A62-471C-B401-835EDE715AB6%7D&so&di=0&hdl=H75868628&us=sitecore%5Csnowco&mo&pe=0#_ednref3](http://www.focusonthefamily.com/socialissues/religious-freedom/houstons-religious-freedom-problem/the-impact-of-adding-lgbt-to-nondiscrimination-laws))

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Attachment 5

MEMO

DATE: February 12, 2016

TO: Ron Carlee, City Manager,
City of Charlotte

FROM: Willie Ratchford, Director,
Community Relations Committee

SUBJECT: *Fair Housing and Public Accommodations*

Ron, the Community Relations Committee (CRC) is responsible for administering Article III (Public Accommodations) and Article V (Fair Housing) of Chapter 12 of the Code of the City of Charlotte (Human Relations). We have addressed public accommodations complaints since 1968 and fair housing complaints since 1880.

Article III – Public Accommodations prohibits discrimination based on race, color, religion or national origin. Article V – Fair Housing prohibits discrimination based on race, sex, religion, national origin, color, familial status or disability.

Over the past 3 years we have received an average of five complaints a year alleging a public accommodations violation. These complaints are usually against a retail store or establishment and have been resolved through conciliation. For instance, we have received multiple complaints against the Epicenter on East Trade. The complaints have been due to the Epicenter’s dress code policies which prohibit entrance to patrons who wear boot-like shoes (Timberlines) which are popular with young African-American males. Complainants have been concerned that the dress code targets young black men and that the policy while neutral on its face, has an adverse impact on African-Americans; and that this is intentional.

To my knowledge, we have not had any public accommodations complaints where an LGBT person has alleged that they were denied access due to their sexual orientation. However, we do get approximately 15 calls a year where an LGBT person alleges that they have been denied housing due to their sexual orientation. We have not been able to accept any complaints on this basis because sexual orientation is not a protected class under the Charlotte Fair Housing Ordinance.

During the past 3-4 years we have investigated two fair housing complaints by LGBT persons based on sex; and based on guidance from HUD. According to HUD, jurisdictions that don't include sexual orientation or gender identity as a protected class might still be able to take complaints from transgender people on the basis of sex. According to guidance from HUD: "The federal Fair Housing Act prohibits housing discrimination based on race, color, national origin, religion, sex, disability, and familial status (i.e., presence of children in the household). The Fair Housing Act does not specifically include sexual orientation and gender identity as prohibited bases. However, a lesbian, gay, bisexual, or transgender (LGBT) person's experience with sexual orientation or gender identity housing discrimination may still be covered by the Fair Housing Act [as an act of sex discrimination]. In addition, housing providers that receive HUD funding, have loans insured by the Federal Housing Administration (FHA), as well as lenders insured by FHA, may be subject to HUD program regulations intended to ensure equal access of LGBT persons."

Let me know if you have any questions.

Attachment 6

**CITY OF CHARLOTTE
OFFICE OF THE CITY ATTORNEY
Memorandum**

TO: Mayor and City Council

FROM: Robert E. Hagemann, City Attorney *REH*
Jason Kay, Senior Assistant City Attorney *JK*

DATE: February 5, 2016

RE: Legal Considerations Regarding the Proposed Non-Discrimination Ordinance

In a February 1, 2016 letter (attached), Rep. Dan Bishop asserts that the City lacks authority to adopt a non-discrimination ordinance. The purpose of this memo is to respond to Rep. Bishop's contentions and to address other legal issues that have been raised regarding this subject. Please note that this is a legal opinion. We are in no way advocating any particular policy outcome.

1. The City has sufficient authority to protect citizens from discrimination.

Cities are instrumentalities of the State created by the legislature. They do not have inherent power. Rather, cities have those powers that have been granted to them by the General Assembly.

The primary and broad grant of power to regulate is provided in N.C. Gen. Stat. § 160A-174, which authorizes cities to "define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the city, and may define and abate nuisances." This is known as the "police power." This grant is strengthened by the General Assembly's express directive that all ambiguity about the reach of a city's power be resolved in favor of finding that the power reasonably exists.

It is the policy of the General Assembly that the cities of this State should have adequate authority to execute the powers, duties, privileges, and immunities conferred upon them by law. To this end, the provisions of this Chapter and of city charters shall be broadly construed and grants of power shall be construed to include any additional and supplementary powers that are reasonably necessary or expedient to carry them into execution and effect

N.C. Gen. Stat. § 160A-4.

The General Assembly has also granted to cities broad power to regulate businesses within their jurisdiction: "[a] city may, by ordinance, subject to the general law of the State, regulate and license occupations, businesses, trades, professions, and forms of amusement or entertainment and prohibit those that may be inimical to the public health, welfare, safety, or convenience." N.C. Gen. Stat. § 160A-194. This power to regulate businesses is additional to the general grant

of power in section 160A-174. See N.C. Gen. Stat. § 160A-177 (enumeration of specific powers is not exclusive or limiting of the broad grant of power). Like the general police power, a city may exercise its business regulation power to protect the health, safety, and welfare of the city's citizens.

While these powers are robust, they are not unlimited. For example, a city may not contradict higher laws: “[s]ection 160A-174 is limited by individual rights and by the laws and constitution of the state and federal governments.” King v. Town of Chapel Hill, 367 N.C. 400, 407 (2014). Also, a city may not enact laws when the state or federal government has clearly evidenced an intent to occupy the particular field at issue with its own laws. See N.C. Gen. Stat. § 160A-174(b). However, and as further discussed below, neither of these limitations applies here because there is no higher law that contradicts the proposed non-discrimination ordinance or set of laws that preempts the City from regulating in this area.

Therefore, the issue is whether the City's broad police power and authority to regulate businesses is sufficient to enable it to protect its citizens from the invidious effects of discrimination.

The North Carolina Supreme Court “has long recognized that the police power of the State may be exercised to enact laws, within constitutional limits, ‘to protect or promote the health, morals, order, safety, and general welfare of society.’” Standley v. Town of Woodfin, 362 N.C. 328, 333 (2008) (internal citations omitted). “To be sustained as a legitimate exercise of the police power, an ordinance that regulates trades or business ‘must be rationally related to a substantial government purpose.’” King, 367 NC at 407. When the City undertakes to regulate a business, courts must “assume that it acted within its powers until the contrary clearly appears.” Cheek v. City of Charlotte, 273 N.C. 293 (1968). Thus, the General Assembly and the North Carolina Supreme court require not only that grants of power to cities be broadly construed, but also that reviewing courts must assume that a city has acted within its powers unless it is clear that the city has not.

Protecting citizens from discrimination falls within both the broad police power and the business regulation power granted to North Carolina cities. While no North Carolina court has ruled on the issue of whether a non-discrimination ordinance falls within the police power or the business regulation power of a city, federal courts and other state courts have, for over 50 years, routinely found that non-discrimination ordinances applicable to businesses providing public accommodations are permissible under the police power of a city.

With respect to the authority of a municipality to enact anti-discrimination laws, the United States Supreme Court and the courts of other States have held that the municipality's power to regulate a particular business includes the power to prohibit discrimination in that business on the basis of color, race, or religion.

Chicago Real Estate Bd. v. City of Chicago, 36 Ill.2d 530 (1967). See also District of Columbia v. John R. Thompson Co., 346 U.S. 100, 109 (1953) (“And certainly so far as the Federal Constitution is concerned there is no doubt that legislation which prohibits discrimination on the basis of race in the use of facilities serving a public function is within the police power of the states.”); Hutchinson Human Rel. Comm'n v. Midland Mgmt. Inc., 213 Kan 308, 312 (1973)

(“the enactment of a civil rights ordinance is a proper exercise of a municipality’s police power as tending to promote the health, safety, convenience and general welfare of its citizens.”); Marshall v. Kansas City, 355 S.W.2d 877, 883 (Mo. 1962) (“We are constrained to hold that this municipal ordinance, designed to prevent discrimination by reason of race or color in restaurants, bears a substantial and reasonable relation to the specific grant of power to regulate restaurants and to the health, comfort, safety, convenience and welfare of the inhabitants of the city and is fairly referable to the police power of the municipal corporation.”); Hartman v. City of Allentown, 880 A.2d 737, 743 (2005) (“a municipality’s authority to enact anti-discrimination laws is derived from its police powers”); and Bolden v. Grand Rapids Oper. Corp., 239 Mich 318, 321 (1927)(“[The non-discrimination law] clearly provides against discrimination on the part of those conducting theaters by withholding from or denying to colored people the accommodations, advantages, facilities, or privileges accorded to others. The power of the Legislature to so provide rests upon its so-called police power. The existence of this power and the enactment of laws pursuant to it are necessary to the well-being of the people of all civilized communities.”).

Despite the clear weight of legal precedent, Rep. Bishop cites two North Carolina Supreme Court cases that he submits support his contention that GS 160A-174 and -194 are insufficient to authorize the contemplated ordinance.

In Williams v. Blue Cross and Blue Shield of North Carolina, the Court first concluded that legislation that specifically authorized Orange County to enact a civil rights ordinance was an unconstitutional local act in violation of Article II, Sec. 24(1)(j) of the North Carolina Constitution which prohibits local acts “[r]egulating labor, trade, mining, or manufacturing.” 357 N.C. 170 (2003). (The local act issue is further addressed below).

As an alternative source of authority for the ordinance, Orange County pointed to N.C. Gen. Stat. § 153A-121, the county counterpart to N.C. Gen. Stat. § 160A-174. In rejecting Orange County’s argument and holding that the ordinance exceeded the statutory grant of authority, it did so solely on the fact that the ordinance gave citizens subpoena power and the right to sue.¹

By creating a civil relationship and concomitant private cause of action by one citizen against another, the Ordinance goes far beyond merely “requiring a higher standard of conduct or condition.” Such a new and independent framework for litigation substantially exceeds the leeway permitted to individual counties by these statutes.

Id. at 193. Significantly, the Court was silent on the substantive civil rights provisions of the ordinance.

¹ When the Council considered proposed amendments to the Citizens Review Board ordinance in 2013, this office advised that the City does not have the authority to grant the Board subpoena power. And in 2015 when the Council was considering a proposed Civil Rights ordinance, we advised that the City does not have the authority to create a private cause of action. That advice was consistent with the holding in Williams.

Unlike the Orange County ordinance, the City is not considering the grant of subpoena power or giving citizens the right to sue. For that reason, Williams has no bearing on the City's authority to adopt a non-discrimination ordinance.

The second case, King v. Town of Chapel Hill, 367 N.C. 400 (2014), is also not determinative. King involved, among other things, a Chapel Hill ordinance regulating nonconsensual towing off of private property. The ordinance established requirements for notice and signage, and established a maximum fee schedule for certain services. Considering whether N.C. Gen. Stat. § 160A-174 provided sufficient authority for the ordinance, the Court upheld the notice and signage requirements:

Given the tension between vehicle owners' personal property rights and the right to remove vehicles illegally parked on private property, these provisions appear to be a rational attempt at addressing some of the inherent issues affecting citizen health, safety, or welfare that arise when one's car is involuntarily towed. Construing N.C.G.S. § 160A-174 broadly, we agree that the Town's authority to regulate towing is expansive enough to sustain the notice and signage requirements.

The Court did, however, find that the fee schedule exceeded the Town's statutory authority.

Unlike the signage and notice provisions, there is no rational relationship between regulating fees and protecting health, safety, or welfare. Further, the fee schedule provision implicates the fundamental right to "earn a livelihood."

... This Court's duty to protect fundamental rights includes preventing arbitrary government actions that interfere with the right to the fruits of one's own labor. ...

Despite our expansive reading of N.C.G.S. Sec. 160A-174, we do not believe that statute permits a city or town to create the fee schedule at issue here. The prices that citizens pay for towing are wholly unrelated to the protection of citizen health or safety, leaving only the question of whether the fee schedule provision falls under the protection of citizen welfare. Allowing Chapel Hill to engage in price setting under the general and undefined rubric of "welfare" could subject other enterprises not only to price setting but also to officious and inappropriate regulation of other aspects of their businesses. Where any relationship between "welfare" and the specific activity sought to be regulated is as attenuated as here, we believe that the more prudent course is for the General Assembly to grant such authority expressly, as it has done in regard to rates that may be charged in other contexts such as, for instance, taxi cabs. N.C.G.S. Sec. 160A-304 (2013).

Id. at 408-409.

Unlike the Chapel Hill ordinance addressed in King, the proposed non-discrimination ordinance does not regulate what a business is permitted to charge its customers. Instead it is a rational attempt at addressing citizens' right to be free from discrimination. This concern is, as demonstrated above, well within the purpose of the police power – *i.e.*, the protection of the health, safety, or welfare of Charlotte's citizens and the peace and dignity of the city.

One final point. We agree with Rep. Bishop that if the City lacks the authority to prohibit discrimination based on sexual orientation, gender identity, and gender expression, it also lacked the authority in 1968 to prohibit discrimination based on race, color, religion, and national origin and in 1972 to prohibit discrimination based on sex.

2. There is no constitutional right to avoid compliance with neutral laws of general applicability based on one's religious beliefs.

It has been suggested that the proposed non-discrimination ordinance conflicts with the First Amendment because there is a supposed right to not comply with a law that conflict with one's sincerely held religious beliefs. This is clearly not the case. Perhaps the best statement on this question is from Justice Scalia in Employment Division, Department of Human Resources of Oregon v. Smith, 494 U.S. 872 (1990), a case involving individuals who were fired for their sacramental use of peyote, a controlled substance, at a ceremony of a Native American Church.

We have never held that an individual's religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate. On the contrary, the record of more than a century of our free exercise jurisprudence contradicts that proposition. ... "Conscientious scruples have not, in the course of the long struggle for religious toleration, relieved the individual from obedience to a general law not aimed at the promotion or restriction of religious beliefs. The mere possession of religious convictions which contradict the relevant concerns of a political society does not relieve the citizen from the discharge of political responsibilities" ... "Laws," we said, "are made for the government of actions, and while they cannot interfere with the mere religious belief and opinions, they may with practices.... Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself."

Id. at 878-79 (citations omitted). From this and numerous other cases that reach a similar conclusion, it is clear that there is no constitutional right to not comply with a non-discrimination law based on one's religious beliefs.

That said, Congress and the General Assembly can afford protections or exceptions to compliance with laws for religious reasons in certain circumstances. For example, in Burwell v. Hobby Lobby Stores, Inc., 573 U.S. ___, 134 S.Ct. 2751 (2014), the United States Supreme Court considered whether the Federal Religious Freedom Restoration Act (RFRA), 42 U.S.C. Sec. 2000bb, *et seq.*, allows the federal government to require a closely held corporation to

provide health insurance coverage for forms of contraception that violate the sincerely held religious beliefs of the companies' owners. In part, the RFRA provides:

(a) IN GENERAL

Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b) of this section.

(b) EXCEPTION

Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person—

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

42 U.S.C. Sec. 2000bb-1.

After determining that a closely held corporation is entitled to the protections of the RFRA, the Burwell Court concluded that the contraception insurance mandate could not be imposed on Hobby Lobby as a matter of federal statute. It should be noted, however, that the RFRA is a limitation only on the federal government.

Several states have also enacted similar forms of religious freedom legislation. A bill to create a RFRA-like state law in North Carolina was introduced last year (*i.e.*, H348 and S550) but did not pass. North Carolina does not currently have such a law in place.

To summarize, there is no constitutional right to avoid compliance with a neutral law of general applicability prohibiting conduct that is within the government's right to regulate. And there currently is no applicable statute in North Carolina.

3. A non-discrimination ordinance is not a local act prohibited by the North Carolina Constitution.

Some have questioned whether the City's proposed non-discrimination ordinance runs afoul of the North Carolina Constitution's prohibition on certain "local acts." To understand these questions, it is first necessary to understand the nature of state legislative machinations.

North Carolina state laws may be general or local. General laws apply to the entire state and are subject to veto by the Governor. Local laws apply to a partial, local area of the state, typically a city or county or small group of cities or counties. Local acts do not require gubernatorial approval. The North Carolina Constitution prohibits laws on certain subjects from being enacted via a local act, among them, laws pertaining to labor and trade.

The local act objections appear to assert that the City's proposed non-discrimination ordinance pertains to labor or trade and, since it only applies within the City, it is therefore a forbidden local act. These assertions misapprehend the meaning and purpose of the local act provision of the North Carolina Constitution.

The local act provision is found in section 24 of Article II of the North Carolina Constitution. This article is entitled “Legislative,” and governs the operations and powers of the General Assembly. The constitutional text specifically indicates that it operates as a limitation on the state legislative branch, not on cities. “The General Assembly shall not enact any local, private, or special act or resolution: . . . regulating labor, trade, mining, or manufacturing . . .” N.C. Const., Art II, sec 24. This provision neither mentions nor applies to a city ordinance, which may only be local by its very nature.

There are cases that have struck local ordinances under the local act provision of the state constitution, but such ordinances are struck because they depend on a forbidden local act for their enabling authority. The reasoning behind striking the local ordinance is obvious: without a valid state law to enable it, the local regulation necessarily fails. An example of this occurred in Williams (discussed above in this memo). See Williams, 357 N.C. 170. There, a local act of the General Assembly (which applied only to Orange County) was invalidated under the local act provision of the constitution. Accordingly, the county ordinance enacted under that offending state law was invalidated as well. Here, however, the proposed city ordinance is founded on at least two express grants of power that are general laws enacted by the General Assembly and applicable state-wide to all cities, N.C. Gen. Stat. § 160A-174 and -194. The proposed ordinance does not depend (or purport to depend) on a local act for its enabling authority. Thus, the local act objections do not apply to the City’s proposed ordinance.

4. The building code is designed to ensure buildings are constructed in a prescribed manner, not for policing the conduct of occupants of a building.

Another important limitation on a city’s broad grant of power to exercise the police power provides that a city may not enact an ordinance that “purports to regulate a field for which a State or federal statute clearly shows a legislative intent to provide a complete and integrated regulatory scheme to the exclusion of local regulation.” N.C. Gen. Stat. § 160A-174(b)(3). There is presently no state or federal statute that provides “a complete and integrated scheme” to preempt a city from prohibiting public accommodation businesses from discriminating against individuals based on their sexual orientation, gender identity, or gender expression.

Rep. Bishop indicated in his letter that the state’s building code provides such a scheme to prevent the city from protecting its citizens against discrimination based on sexual orientation or gender identity. His analysis invokes a stretched reading of the building code.

In Green v. City of Winston-Salem, our Supreme Court held that a city’s building code requirement for high-rise buildings to install a sprinkler system was preempted by the state building code, which then had no such requirement. 287 N.C. 66 (1975). While we agree that a city building requirement may, in some instances, be preempted by the state building code, the preemption argument is inapplicable in this situation.

The state building code – which provides the standards for (among others) safe electrical, plumbing, HVAC, structural, and restroom facilities – governs the construction of buildings. The state building code does not clearly evidence an intent by the state to provide “a complete and integrated regulatory scheme” sufficient to preempt a city from enacting an ordinance to

protect citizens from discrimination based on sexual orientation and gender identity. The state building code does not address, nor was it intended to address, discrimination.

Rep. Bishop asserts that the building code governs the “use and occupancy” of building facilities, including restrooms. That assertion, however, depends on partial statement in the building code that is clarified by its enabling statute. The statute makes clear that the building code “may include reasonable and suitable classifications of buildings and structures, both as to use and occupancy . . .” N.C. Gen. Stat. § 143-138(b). The statute authorizes the code to make classifications of buildings based on use and occupancy. For example, the code provides different structural requirements for a farm building than for a residence. Such distinctions are classifications based on use and occupancy. But contrary to Rep. Bishop’s contention, the code does not create an integrated scheme to prescribe how people are to use the restroom facilities. Again, the building code is as it appears to be: a code for buildings. Its manifest intent is to produce safe building structures, not to structure an integrated regulatory scheme prohibiting, permitting, or regulating discrimination.

The state building code requires separate restrooms for men and women. The city’s proposed ordinance does not disturb that requirement. Nothing in the city’s proposed ordinance addresses whether separate restroom facilities are (or are not) to be constructed or how they are to be constructed. It merely prohibits a business providing public accommodations from compelling a person to use a particular restroom facility based on gender expression or identity.

Conclusion

Based on the forgoing, it is our opinion that the City’s existing non-discrimination ordinances, and the contemplated amendments, are, and would be, sufficiently authorized, constitutional, and otherwise lawful. In summary, we hold this legal opinion on the basis that the proposed non-discrimination ordinance:

- (1) is authorized under the broad powers granted to cities by the General Assembly in N.C. Gen. Stat. § 160A-174, -194, and other related laws;
- (2) will not infringe on a constitutionally protected liberty because there is no recognized constitutional right to avoid compliance with a neutral law of general applicability based on one’s religious beliefs;
- (3) does not implicate the “local act” provisions of the North Carolina Constitution because those provisions govern laws passed by the General Assembly, not cities; and
- (4) will not regulate activity that is preempted from regulation because the state has not indicated a clear intent “to provide a complete and integrated scheme” of regulation for discrimination based on sexual orientation, gender identity, or gender expression, whether by the state building code or other applicable law.

Again, this legal opinion is not intended to express any view regarding the policy decision that will rightfully be made by the Council.



North Carolina General Assembly
House of Representatives

PHONE: (704) 619-7680
EMAIL: DAN.BISHOP@NCLEG.NET
WEB: WWW.NCGA.STATE.NC.US

REPRESENTATIVE DAN BISHOP
104TH DISTRICT

February 1, 2016

VIA HAND DELIVERY

Honorable Mayor Jennifer Roberts
Honorable Members of the Charlotte City Council
600 E. 4th St., 15th Floor
Charlotte, NC 28202

Re: Public accommodations ordinance expansion

Dear Mayor Roberts and Members of Council:

According to the media reports, you will again take up the expansion of the City's public accommodations ordinance that failed last March, beginning at your dinner meeting on February 8. Although I disagree with the proposal on policy grounds, I write now to explain why you lack legal authority for this action.

I also will explain a danger you may not have considered — that the collateral result of exceeding your authority here may be to invalidate the existing public accommodations ordinance, which has for almost 50 years expressed the community's consensus against discrimination on grounds of race, color, religion, national origin and, except for in "[r]estrooms, shower rooms, bathhouses and similar facilities which are in their nature distinctly private," sex. Charlotte, N.C., Code § 12-59 (Municode Corp. 2004 & Supp. 33 Jul. 27, 2015). It would be tragic for an overreach to destroy that legacy of a more moderate and consensus-oriented time.

The place to begin is with the basic structure of local government in North Carolina. As most of you know, there is no "home rule" provision for municipalities in our state constitution. The general principle is that cities can exercise only those powers granted by the General Assembly in express terms and those necessarily or fairly implied in or incident to express powers. This is sometimes referred to, loosely, as Dillon's Rule. *See Lanvale Props., LLC v. County of Cabarrus*, 366 N.C. 142, 153, 731 S.E.2d 800, 809 (2012).

The City Attorney can confirm for you that the General Assembly has never delegated to cities generally, or Charlotte specifically, express authority to adopt a public accommodations nondiscrimination ordinance. By contrast, Charlotte's charter, including in the version most recently enacted by the General Assembly, does contain such express authority in one area alone, housing: "The Council may adopt ordinances prohibiting discrimination on the basis of race, color, sex, religion, handicap, familial status, or national origin in real estate transactions."



N.C. Sess. Laws 2000-26 § 6.151(a) (emphasis added).¹ Indeed, because this express authority exists,² the City Attorney concluded last year that Council could not modify the classifications (by adding sexual orientation, gender identity, gender expression, etc.) to Charlotte's housing nondiscrimination ordinance. He believed, correctly, that this express charter authority limits you to the categories expressly stated. It should strike you as counterintuitive that the absence of any express authority to legislate nondiscrimination for public accommodations affords you broader power than you have in the area of housing. That flies in the face not only of Dillon's Rule, but also common sense.

The only other statute granting cities authority touching on nondiscrimination policy authorizes establishment of "human relations, community action and manpower development programs." N.C. Gen. Stat. § 160A-492. This means a program to "study [] problems in the area of human relations, [] promot[e] [] equality of opportunity for all citizens," and encourag[e] the employment of qualified people without regard to race." *Id.* This statute does not grant you substantive power to regulate discrimination.

The absence of any expressly delegated authority begs the question what authority supported the existing public accommodations ordinance. In fact, there may not have been sufficient authority. To address that glaring issue, the existing ordinance begins with a declaration that it is based on the City's "licensing and police powers." Charlotte, N.C., Code § 12-56. It is a dubious claim.

Cities reaching beyond their authority have often sought to rely on these general powers, which are now found in General Statutes Sections 160A-174 and -194.³ The League of Municipalities has argued to our appellate courts at least twice that these powers make cities mini-legislatures, exercising the full police power of the State. And that argument has been rejected twice by the North Carolina Supreme Court.

In *Williams v. Blue Cross and Blue Shield of North Carolina*, 357 N.C. 170, 581 S.E.2d 415 (2003), a local government claimed authority under its police and licensing powers for a comprehensive employment nondiscrimination ordinance. The argument failed, and the ordinance was struck down.

¹ See also N.C. Gen. Stat. § 160A-499.2, which superficially appears to be a general law extending this express housing nondiscrimination regulatory authority to all municipalities, except that the concluding subsection makes it applicable only "to municipalities that have permanent population of 90,000 or more according to the most recent decennial census and that are the location of a recurring special accommodation event requiring temporary accommodations for at least 50,000 people." This appears to describe only High Point and the annual furniture show there.

² This charter authority may itself be defective on grounds that it violates limitations on "local acts" in N.C. Const. Art. II, § 24(1)(j).

³ The reference to Section 6.41 of the Charter is obsolete. It refers to a provision of the 1965 charter, N.C. Sess. Laws 1965-713 p. 21, which is absent from the 2000 reenactment.

Mayor Jennifer Roberts
Members of Council
February 1, 2016
Page 3

Just two years ago, our Supreme Court invalidated parts of another ordinance claimed to rest on these general powers. *King v. Town of Chapel Hill*, 367 N.C. 400, 758 S.E.2d 364 (2014). The court explained that the General Assembly only delegated “a portion” of its police power in Section 160A-174, which is best suited to the enactment of health and safety regulations. *Id.* at 406, 758 S.E.2d at 370. The court also noted a risk of “officious and inappropriate” regulation of business by cities under the police power and expressed preference for explicit grants of subject-matter authority by the General Assembly. *Id.* at 409, 758 S.E.2d at 371.

None of this furnishes any comfort about the authority underlying the existing public accommodations ordinance. It is at risk of invalidation if it has to be litigated. What might be said in defense of the existing ordinance, however, is that it did not significantly break new legal ground. It echoed Title II of the federal Civil Rights Act of 1964, which already had outlawed race, color, religion, and national origin discrimination in public accommodations. Our ordinance defined a wider array of “public accommodations” covered, but applied the same nondiscrimination principle as federal law. Perhaps the general municipal police and licensing powers were sufficient for this modest undertaking.

The expanded ordinance you contemplate is an entirely different matter. The classifications are novel, going beyond either federal or North Carolina state law. In so doing, they purport to displace, without action by the General Assembly or Congress, an established general legal principle of the State that businesses, just like their customers, are free to choose with whom to do business. *State v. Cobb*, 262 N.C. 262, 136 S.E.2d 674 (1964). The new classifications have no foundation in the history or traditions of the State. And because the expanded ordinance tacitly requires embracing these unconventional classifications as a condition doing business, the expanded ordinance may impermissibly intrude upon the fundamental state constitutional right to “earn a livelihood” free of arbitrary governmental interference. *See King*, 367 N.C. at 408-09, 758 S.E.2d at 371 (explaining right established by N.C. Const. Art. I, § 1 “fruits of their labor” clause).

All of these circumstances make it likely that the police and licensing powers will fail to sustain your expanded ordinance. But there is another factor that makes your lack of authority exceedingly clear. Your insistence on imposing a radical change in bathroom management and use policy leads the ordinance into a square conflict with positive state law in two respects.

One conflict is with 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 the “facilities” that your ordinance would regulate as “public accommodations.” 2012 N.C. Bldg. Code § 101.2 (Int’l Code Council, Inc. 3d prtng. 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

Mayor Jennifer Roberts
Members of Council
February 1, 2016
Page 4

(emphasis added). It also specifically requires signage for each facility “designating the sex.” *Id.* § 2902.4.

However much it may seem to epitomize modern progressive government, 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 segregate bathrooms by sex, on the other hand. The revised ordinance — by consolidating sex with the other prohibited characteristics, eliminating the existing exemptions for bathroom and shower facilities, and adding gender identity and gender expression — creates exactly this conflict.

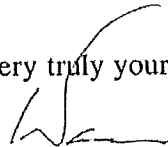
In addition, by forbidding facility operators from segregating gang showers by sex, the expanded ordinance also would conflict with the state’s criminal indecent exposure statute, which expressly forbids facility operators from permitting cross-sex exposure of people’s “private parts.” N.C. Gen. Stat. § 14-190.9.

Whenever a local exercise of police power conflicts with state law, the local action is invalid. *Greene v. City of Winston-Salem*, 287 N.C. 66, 73, 213 S.E.2d 231, 236 (1975). Indeed, our Supreme Court has held specifically that this rule applies when a local ordinance conflicts with — or addresses the same subject matter as — the Building Code. *Id.* at 75-76, 213 S.E.2d at 237.

It is, therefore, clear that the expanded ordinance will be invalid. Furthermore, if it must be invalidated through litigation, because you will have “acted outside the scope of [your] legal authority,” “the court may award reasonable attorneys’ fees” to the party challenging the ordinance. N.C. Gen. Stat. § 6-21.7. This could easily be hundreds of thousands of dollars. And if the court finds that you abused your discretion — for example, by ignoring the warning in this letter — an award of fees to the challenger will be mandatory. *Id.*

I hope that this information will be beneficial in helping you to avoid a costly legal error for the City.

Very truly yours,



Rep. Dan Bishop

cc: Robert Hagemann, City Attorney
Email list
Media

Attachment 7

February 27th, 2015

Charlotte City Council
600 East 4th Street
Charlotte, North Carolina 28202

Dear Mayor Clodfelter and Charlotte City Council Members,

We are proud to be religious leaders in a city seeking to protect its citizens by removing discriminatory policies and practices from public places. We are proud and grateful for your support, Mayor Clodfelter, for the Non-Discrimination Ordinances. We understand there is similar support among your colleagues within the Charlotte City Council. We extend our gratitude and pride for your sense of history, integrity, and ethics. We further encourage all Council Members to support these important measures.

We are troubled that equal protections are not afforded to the Lesbian, Gay, Bisexual and Transgender members of our faith communities. Furthermore, we believe it is imperative for the soul of our Queen City that the Charlotte-Mecklenburg Community Relations Committee will be able to track and resolve discrimination complaints based on sexual orientation, gender identity, familial status, marital status and gender expression.

We are disheartened to hear the tones of fear and misinformation from a few religious leaders in our community who are speaking against the ordinances. We believe in civil discourse and community dialogue that is grounded in a spirit of mutual regard and love for neighbor. We truly hope the community speakers on March 2nd will reflect these values as the City Council considers these ordinances.

We write to you as clergy in the Charlotte community who voice our unequivocal support of the Non-Discrimination Ordinances. We also write to you as parents, grandparents, elders, neighbors and community members who know that these ordinances will strengthen our community's values, safety and wellbeing.

Thank you for your service and commitment to the city of Charlotte.

We, the clergy of our beloved city,

with faith in our shared future and eyes set on the arc bending toward justice,

Rev. Loris N. Adams

Rev. Joe Aldrich, Myers Park Baptist Church

Rev. Dr. Chris Ayers, Pastor, Wedgewood Church

Rev. Michael Baldonado, Campus Minister, Cooperative Ministry Central
Piedmont Community College

Rev. Amantha L. Barbee, Pastor, Statesville Avenue Presbyterian Church (USA)

Rev. Amy Brooks, Minister, Unitarian Universalist Fellowship of Lake Norman

Rev. Dr. Peter Brown, Sr. Pastor, St. Mark's Lutheran Church

Steven Burleson, Youth Minister, Holy Covenant United Church of Christ

Rev. John Cleghorn, Pastor, Caldwell Presbyterian Church

Rev. Robin P. Coira, Executive Minister, Myers Park Baptist Church

Rev. Mary Frances Comer, Affiliated Community Minister, Piedmont Unitarian
Universalist Church

Rev. Martha Dixon Kears

Rev. Dr. Nancy Ellett Allison, Pastor, Holy Covenant United Church of Christ

Dennis W. Foust, PhD, Senior Minister, St. John's Baptist Church

Rabbi Jonathan Freirich, Associate Rabbi, Temple Beth El, Charlotte, NC

Rev. Dr. Susan A. Heafner-Heun, Pastor, Inclusion Community UMC

Rev. Debra J. Hopkins, Associate Minister of Sacred Souls Community Church

Rev. Catherine Houchins, Pastor Metropolitan Community Church of Charlotte

Rev. Chris Hughes, Minister of Youth, Myers Park Baptist Church

Russ and Amy Jacks Dean, Park Road Baptist Church

Rev. Dr. Nancy Kraft, pastor of Holy Trinity Lutheran Church, Charlotte

Rev. James C. (Jay) Leach, Senior Minister, Unitarian Universalist Church of Charlotte

Reverend Sonja Lee, Pastor, Unity Fellowship Church Charlotte

Reverend Renee' Leboa, Senior Pastor, Spiritual Living Center of Charlotte

The Rev. Dr. Richard Little, Lutheran pastor, Retired

Rev. Justin Martin, Minister of Education and Care, Piedmont Unitarian Universalist Church

Rev. LeDayne McLeese Polaski, Executive Director, Baptist Peace Fellowship of North America

Rev. Barry Metzger, Church Administrator, Myers Park Baptist Church

Reverend Melissa Mummert, Affiliated Community Minister, Unitarian Universalist Church of Charlotte

Rev. Joslyn Ogden Schaefer, Associate Rector, St. Peter's Episcopal Church

Bishop Tonya M. Rawls, Pastor, Sacred Souls Community Church

Reverend Glencie Rhedrick, Advocate for Justice

The Rev. Dr. Rodney S. Sadler, Jr., Associate Professor of Bible, Union Presbyterian Seminary; Executive Committee Member, NC NAACP

Rabbi Judith Schindler

Reverend Christy Snow, Pastor Emeritus, Spiritual Living Center of Charlotte

Rev. Robin Tanner, Lead Minister, Piedmont Unitarian Universalist Church

Rabbi Dr. Barbara Thiede, Temple Or Olam

Rev. Jolin Wilks McElroy, Pastor of First Christian Church

Rev. Deborah C. Warren, President and CEO, Regional AIDS Interfaith Network

Rev. Jason Williams, MeckMin

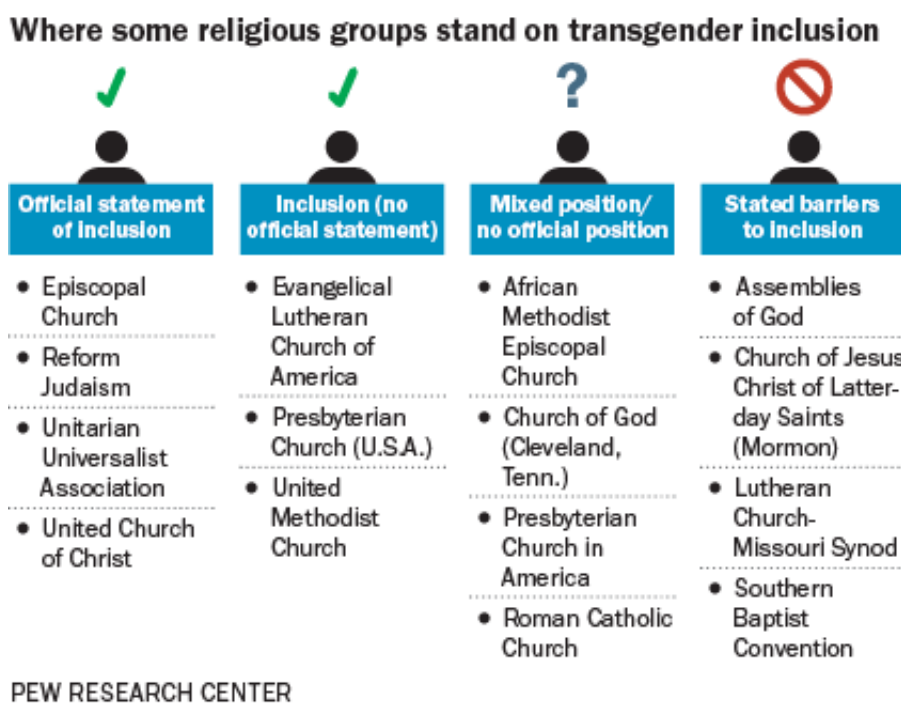
Attachment 8

PewResearchCenter

DECEMBER 2, 2015

Religious groups' policies on transgender members vary widely

BY ALEKSANDRA SANDSTROM ([HTTP://WWW.PEWRESEARCH.ORG/AUTHOR/ASANDSTROM/](http://www.pewresearch.org/author/asandstrom/))



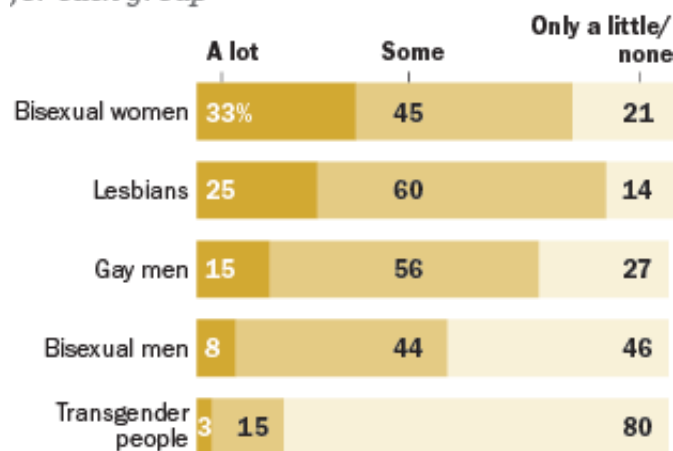
(http://www.pewresearch.org/?attachment_id=275542) Religious institutions are starting to formally address the participation of transgender people in their congregations, much as they have with the issue of accepting homosexuals.

Just recently, the Union for Reform Judaism approved a far-reaching resolution (<http://www.urj.org/what-we-believe/resolutions/resolution-rights-transgender-and-gender-non-conforming-people>) on the rights of transgender and gender nonconforming people, affirming its “commitment to the full equality, inclusion and acceptance of people of all gender identities and gender expressions.”

In addition to Reform Judaism, the United Church of Christ (<http://uccfiles.com/pdf/2003-AFFIRMING-THE-PARTICIPATION-AND-MINISTRY-OF-TRANSGENDER-PEOPLE-WITHIN-THE-UNITED-CHURCH-OF-CHRIST-AND-SUPPORTING-THEIR-CIVIL-AND-HUMAN-RIGHTS.pdf>), Unitarian Universalist (<http://www.uua.org/lgbtq/identity/transgender>) and Episcopal (<http://www.episcopalchurch.org/page/lgbt-church>) churches each have issued specific statements saying that transgender people should be fully included in the life of the church and that they can be ordained as ministers.

LGBT Americans say society accepts some of them more than others

% of all LGBT saying there is ... social acceptance for each group



Note: Based on all LGBT (N=1,197). Those who didn't answer not shown. Source: Survey conducted April 11-29, 2013.

PEW RESEARCH CENTER

(<http://www.pewsocialtrends.org/2013/06/13/chapter-2-social-acceptance/>) Lesbian, gay, bisexual and transgender (LGBT) people generally see less social acceptance of transgender Americans than for lesbians, gay men and bisexuals in the country, according to a Pew Research Center survey (<http://www.pewsocialtrends.org/2013/06/13/chapter-2-social-acceptance/#social-acceptance>) conducted in 2013. Among all LGBT respondents, eight-in-ten say there is only a little (59%) or no (21%) social acceptance for transgender people in society, while far fewer say there is little to no acceptance for gay men (27%), lesbians (14%) or bisexual women (21%) or men (46%).

The 2013 Pew Research Center survey also found that LGBT adults are less religious than the general public (<http://www.pewsocialtrends.org/2013/06/13/chapter-6-religion/>) in the U.S. And large majorities of LGBT Americans say that certain religious institutions – particularly Islam (84%), the Mormon church (83%), the Catholic Church (79%) and evangelical churches (73%) – are unfriendly toward people like them. LGBT adults

have more mixed views of the Jewish religion and mainline Protestant churches, with 47% and 44% of LGBT adults, respectively, describing those religions as unfriendly, one-in-ten describing each of them as friendly and the rest saying they are neutral.

When it comes to acceptance, our research about churches and religious groups' formal positions on transgender individuals found a range of levels of inclusion.

In 2008, the United Methodist Church voted down a motion

(<http://abcnews.go.com/Health/MindMoodNews/congregation-embraces-transgender-minister-larger-church-rift/story?id=8706416>) that would have excluded transgender people from joining the clergy, thus allowing transgender ministers to keep their ordination. But the church has continued to struggle with LGBT issues. In February of this year, the body tasked with articulating a vision for the future of the church proposed a “third way” on inclusion of LGBT people, which would remove punishments for ministers supportive of gay rights but stop short of full inclusion for LGBT people. The governing body of the United Methodist Church will vote on the proposal in 2016. Although the more recent debate has largely centered around same-sex marriage, the current proposal also would apply to transgender people.

The Presbyterian Church (U.S.A.) has no specific statement of inclusion, but in 2010 the church did remove (<http://oga.pcusa.org/section/ga/ga221/message-stated-clerk-grady-parsons-marriage/>) specific barriers to transgender people being ordained. And the Evangelical Lutheran Church in America has no specific policy on the ordination of transgender people, although a transgender minister (<http://www.glaad.org/blog/transgender-man-asher-ocallaghan-ordained-evangelical-lutheran-church-america>) was ordained by the organization in July.

On the other side of the spectrum, some evangelical churches do not accept those who change their gender but instead look to provide special pastoral care for transgender people. The Lutheran Church-Missouri Synod (<https://blogs.lcms.org/2014/ctcr-releases-paper-on-gender-identity-disorder/>), for instance, gives advice to ministers on how to counsel transgender people and encourage them to seek treatment for dysphoria. The Pentecostal denomination Assemblies of God (http://ag.org/top/beliefs/position_papers/pp_downloads/pp_4181_homosexuality.pdf) “supports the dignity of individual persons affirming their biological sex and discouraging any and all attempts to physically change, alter, or disagree with their predominant biological sex.” And the Southern Baptist Convention (<http://www.sbc.net/resolutions/2250/on-transgender-identity>) approved a resolution in 2014 stating that transgender people can only become members if they repent.

The Church of Jesus Christ of Latter-day Saints (also known as the Mormon church), in its handbook for stake presidents and bishops (<https://s3-us-west-2.amazonaws.com/churchhandbookleak/PDF+Files/General+Handbook+of+Instruction+No+27+-+Book+1A+-+2010.pdf>), says that those who are considering “elective transsexual operations” may not be baptized or confirmed. (“Stakes” are similar to Catholic dioceses.) Those who have already undergone such an operation may be baptized and confirmed with approval from the church’s governing body. However, the handbook specifically states that those who have undergone surgery cannot be priesthood holders, a designation given to most Mormon boys at age 12.

The Roman Catholic Church does not recognize gender changes (<http://ncronline.org/news/vatican-says-sex-change-operation-does-not-change-persons-gender>) and says that in the eyes of the church, gender is determined permanently at birth. The church says that people who have had procedures to change their gender are not allowed to marry in the church, although also says such procedures could be morally acceptable in “extreme cases.” Pope Francis has given somewhat mixed messages (<http://ncronline.org/blogs/francis-chronicles/pope-francis-gender-theory-problem-not-solution>) on the issue. He was quoted in a book (<http://www.nytimes.com/2015/07/29/us/gay-and-transgender-catholics-urge-pope-francis-to-take-a-stand.html>) saying that gender theory, like nuclear weapons, is a danger to humanity. (Gender theory holds that gender identity is a malleable social construct.) Yet Francis also has met (<http://ncronline.org/blogs/ncr-today/report-pope-francis-meets-hugs-transgender-man>) with a transgender man.

Many other churches, including the Presbyterian Church in America (<http://pcahistory.org/pca/3-025.html>), the Church of God (Cleveland, Tenn.) (<http://www.churchofgod.org/resolutions/sanctity-of-marriage-between-man-and-woman-1996>) and the African Methodist Episcopal Church (<http://www.christianpost.com/news/african-methodist-episcopal-church-rejects-gay-147-marriage-148-blessing-rights-2783/>), do not have statements that explicitly address the status of transgender people, although many of these groups condemn homosexuality.

Correction: The paragraph dealing with the United Methodist Church has been corrected since publication.

Aleksandra Sandstrom (<http://www.pewresearch.org/author/asandstrom/>)

is a copy editor focusing on religion at Pew Research Center.

[POSTS](#) | [EMAIL](#)

15 Comments



Tomas Breitenstein Nowack • 1 month ago (#comment-664203)

Some gods are good at sending mixed messages...

[Reply](#)

Attachment 9

MEMORANDUM

Date: 2.12.16

Subject: **Charlotte Specific Results Non-Discrimination by Employers**

Charlotte Non-Government Employers and Non-Discrimination Policy Status

Principle Employers in Charlotte with Highest # of Employees	Sexual Orientation Included in Non-Discrimination Policy	Gender Identity Included in Non-Discrimination Policy
*Carolina's HealthCare System	Y	Y
<i>Wells Fargo</i>	Y	Y
<i>Walmart and Sam's Club</i>	Y	Y
<i>Bank of America</i>	Y	Y
*Novant Health	Y	Y
<i>American Airlines</i>	Y	Y
<i>Delhaize America Inc.</i>	Y	Y
*Harris Teeter Supermarkets	Y	Y
<i>Lowe's</i>	Y	Y
<i>US Airways (now American Airlines)</i>	Y	Y

Top 10 number of non-government employees provided by Chamber of Commerce, as listed in FY15 City of Charlotte CAFR. *Italicized companies* were scored by HRC employer database: <http://asp.hrc.org/issues/workplace/list.asp>

* Not available in HRC's database. Response based on direct contact by Charlotte staff with the organization.

Charlotte-Based Businesses that Responded to HRC's Corporate Equality Index Overall Rank & Status of Non-Discrimination Policies for all U.S. and Global Operations

CEI Respondents	CEI Rank	Sexual Orientation Included in Non-Discrimination Policy	Gender Identity Included in Non-Discrimination Policy
Bank of America	100%	Y	Y
Compass Group USA	64%	Received partial score	N
Duke Energy	90%	Y	Y
Moore & Van Allen	75%	Y	Y

Full CEI Index and components of rating system available: <http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/CEI-2016-FullReport.pdf>

Attachment 10



Enriching, empowering, strengthening & making visible LGBTQ people in Charlotte & the Carolinas

CHARLOTTE PRIDE

Charlotte Pride Sponsors and Partners

Join Charlotte Pride as a sponsor or partner in 2016

Charlotte Pride is now seeking sponsorships and partnerships for our 2016 Charlotte Pride Festival & Parade, slated for Aug. 20-21, 2016. Each year's Charlotte Pride Festival and Parade acts as a primary fundraiser for our efforts, including collaborative projects like the GayCharlotte Film Festival, Trans* Pride, and Latin@ Pride, among others.

[Click here to view the sponsorship brochure and learn more about opportunities for you to sponsor or partner with Charlotte Pride \(PDF\)](#)

Learn more about sponsoring or partnering with Charlotte Pride:

[2015 Sponsor Recap](#)

[2015 Economic Impact Report](#)

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For questions or to discuss a potential sponsorship contact: sponsors@charlottepride.org



PRESENTING SPONSORS

Bank of America — Presenting Sponsor: Parade

bankofamerica.com/diversity&inclusion

Our people make us better. At Bank of America, our goal is to be a great place to work and create an environment where our employees can achieve their goals. Central to that is our commitment to diversity and inclusion and being a place where anyone can bring their whole self to work. For the past nine years, Bank of America has scored 100% in the Human Rights Campaign's Corporate Equality Index. From offering same-sex domestic partner benefits and incorporating sexual orientation and gender identity into our nondiscrimination policies to tax equalization of domestic partner benefits, our aim is to provide support where and when it's needed. We celebrate our diversity by setting the standard for supporting LGBT people both inside and outside the company and we stand proudly with Charlotte Pride and their efforts to champion equality and inclusiveness for everyone.



PNC Bank — Presenting Sponsor: Festival Zone

PNC.com/lgbt

At PNC, we're committed to diversity and inclusion. You'll see it in our hiring practices, our employee programs, the communities and sponsorships we invest in and the suppliers we do business with. We've developed a keen appreciation for our collective strengths. By working together and fostering inclusion, we can better meet the needs of our customers, communities and shareholders in our increasingly diverse marketplace. It's why we're committed to our Lesbian, Gay, Bisexual and Transgender (LGBT) employees, communities and customers in the markets we serve



Named a "Best Place to Work for LGBT Equality" by the Human Rights Campaign (2015), we are committed to building and maintaining an inclusive workplace that supports LGBT employees across our organization. Through the deployment of multiple LGBT-focused programs and best practices that seek to support, educate and develop all employees, we have created a culture that strives to maximize and celebrate the achievements and contributions of our LGBT employees

We are committed to understanding the unique needs of our LGBT customers and providing solutions that help them achieve great things. PNC is a member of the National Gay and Lesbian Chamber of Commerce (NGLCC), and PNC Wealth Management® has a national practice group to focus on wealth planning for same-sex couples.

Through ongoing initiatives and sponsorships, we are helping our LGBT communities achieve great things.

Learn more at PNC.com/lgbt

PNC Wealth Management is a registered trademark of The PNC Financial Services Group, Inc.

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Time Warner Cable — Presenting Sponsor: VIP Experience

www.timewarnercable.com

www.twcbc.com

www.twcmedia.com

Time Warner Cable is the second-largest cable operator in the U.S., with well-clustered systems located mainly in five geographic areas — the Carolinas, New York State (including New York City), Ohio, southern California (including Los Angeles) and Texas.

Time Warner Cable serves more than 14 million customers who subscribe to one or more of its video, high-speed data and voice services. Time Warner Cable Business Class offers a suite of phone, Internet, Ethernet and cable television services to businesses of all sizes.

Time Warner Cable Media, the advertising arm of Time Warner Cable, offers national, regional and local companies innovative advertising solutions that are targeted and affordable. More information about the services of Time Warner Cable is available at www.timewarnercable.com, www.twcbc.com and www.twcmedia.com.



Wells Fargo — Presenting Sponsor: Stage

wellsfargo.com

Wells Fargo & Company is a nationwide, diversified, community-based financial services company with \$1.7 trillion in assets.

Founded in 1852 and headquartered in San Francisco, Wells Fargo provides banking, insurance, investments, mortgage, and consumer and commercial finance through more than 8,700 locations, 12,000 ATMs, and the internet (wellsfargo.com) and mobile banking, and has offices in more than 36 countries to support customers who conduct business in the global economy. With more than 266,000 team members, Wells Fargo serves one in three households in the United States. Wells Fargo & Company was ranked No. 30 on Fortune's 2015 rankings of America's largest corporations. Wells Fargo's vision is to satisfy our customers' financial needs and help them succeed financially.

Diversity is a core value at Wells Fargo. We value, and learn from, the diversity of team members, customers and communities. It offers us a competitive advantage and is part of what makes our company special. We can't be one of the world's great companies unless we become more diverse and inclusive.

Let us know when you are ready to move forward. Together, we'll go far.





LEADERSHIP SPONSORS

Charlotte's Got A Lot

charlottesgotalot.com

The Charlotte Regional Visitors Authority (CRVA) works to deliver experiences that uniquely enrich the lives of our visitors and residents. Through leadership in destination development, marketing and venue management expertise, the CRVA leads efforts to maximize the region's economic potential through visitor spending, creating jobs and opportunities for the community. The CRVA is a proud supporter of Charlotte Pride, one of the many remarkable annual events that embody the 'a lot' the community has to offer via the city's destination brand, 'Charlotte's got a lot' and contribute to making the Queen City an attractive place to live, work, play and visit.



The Scorpio — Presenting Featured Entertainers

2301 Freedom Dr., Charlotte, NC 28208. thescorpio.com

The Scorpio is Charlotte's longest running nightclub complex (46 years) catering to the gay/lesbian/bisexual/transgender community. The doors are open to all. The Scorpio is home of the legendary Miss Gay NC America Pageant, one of the most prestigious state preliminaries of the Miss Gay America pageant system. The club is rich in history and has been supporting many local LGBT organizations through it's long-standing, proud existence. The Scorpio immensely proud of it's many awards and commendations throughout the years, which can be seen on display in the fabulous, shining, lobby trophy case.

The Scorpio, established in 1968, continues to offer a great high energy dance experience as well as the best shows for the gay community around. You can see the best in national titleholders and reality TV show entertainers as well as the best in local female impersonation. The club features four bars and two dance floors with the best up-to-date light system on the main dance floor in the Southeast!

It is with this success and high standards that the Scorpio is proud to present two female impersonators from RuPaul's Drag Race, which airs on the Logo Channel, as part of this year's Charlotte Pride entertainment line-up.





VISIBILITY SPONSORS

Bud Light

www.budlight.com/whateverusa.html

Bud Light's crisp, clean refreshing taste and superior drinkability make it popular everywhere from backyard BBQs to black-tie soirees. Its light-bodied brew comes with a fresh and subtle hop aroma, delicate malt sweetness and crisp finish for the ultimate refreshment.

The same brew since 1982: Superior drinkability comes from superior brewing. It starts with a blend of premium hop varieties, both American-grown and imported, and a combination of barley malts and rice. Bud Light's crisp, clean, refreshing taste and award winning advertising has made it the most popular beer brand in the US.



Charlotte Lesbian & Gay Fund

www.fftc.org



The vision of the Charlotte Lesbian and Gay Fund vision is to cultivate one community with the belief that all people should be treated with equal respect and dignity.

The Charlotte Lesbian Gay Fund's mission is to fund organizations that support the LGBTQ community through the pooled financial resources of individuals, corporations and foundations.

The Charlotte Lesbian and Gay Fund was created to positively impact the underfunding of nonprofit organizations serving the LGBTQ community. The Fund has awarded more than \$800,000 to Charlotte area nonprofits..

Join us each May at the Happening, the most fun lunch of the year. All of the funds donated to the Charlotte Lesbian and Gay Fund support grant making for local organizations you know and love: Charlotte Pride, One Voice Chorus, Campus Pride, Gay Men's Chorus of Charlotte, PFLAG Charlotte, Charlotte Royals Rugby Club, Time Out Youth and many more.

UTC Aerospace Systems

www.utcaerospacesystems.com

We are a world leader in aerospace technology. Our 42,000 employees design, manufacture and service high-tech systems that make aircraft safer, lighter and more efficient. Our products flew with Lindberg and Earhart, helped usher in the jet age, and allowed man to travel to the moon. Today, our mission is to be the best aerospace systems company for the world. Every second a plane takes off with our systems on board, and we are committed to ensuring they perform flawlessly so every takeoff, flight and landing is safe. Looking to the future, we are building an inclusive environment where diverse ideas, perspectives and people come together to solve the most complex challenges in the aerospace industry, create customer value and offer rewarding opportunities for employees.



West Elm

www.westelm.com

west elm

Ten things to know about West Elm: 1. We Think Great Design Should Be Affordable. 2. We Believe In Big Ideas For Small Spaces (And Big Spaces Too). 3. We Collaborate Whenever We Can. It Makes Us Better At What We Do. 4. We Strive To Get A Little Greener Everyday. 5. We Have A Soft Spot For Natural Materials And Clean Modern Lines. 6. We Love Multi-Functional Things That Fold, Stack, Wheel + Nest. 7. We Want Comfortable Kick-Up-Your-Feet-Style To Look Good Too. 8. We Search For Inspiration In Far-Flung Places. (It's More Fun That Way). 9. We Work With Artisans And Nonprofit Workshops Around The World. 10. We Rearrange The Furniture Just For Fun. How About You?

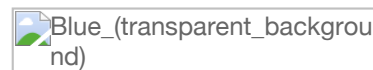


EQUALITY SPONSORS

Aetna

www.aetnalgbt.com

When it comes to health insurance coverage, maybe you want access to more than just the basics. Like a way to find LGBT and LGBT-friendly doctors and care you're comfortable with. Wellness coaching that inspires you to work out, eat healthier or manage stress. Coverage with features that fit you, your partner and your family. We're here, with health plans and programs to help you—and those you love—be healthy and well. At Aetna, we have a proud history of supporting the lesbian, gay, bisexual and transgender (LGBT) community. To learn more, simply visit www.AetnaLGBT.com. Be proud. Be well.



AXAwww.axa.com

AXA, one of the largest life insurance and retirement savings companies in the United States, has been providing peace of mind to our clients since 1859, and now has nearly 2.45 million customers nationwide. More than 4,800 AXA



Advisors financial professionals create strategies to help individuals, families, and business owners move forward on the road to financial security. AXA U.S. is part of the global AXA Group, a worldwide leader in financial protection strategies and wealth management, with 103 million clients in 59 countries. Visit www.axa.com for more information.

Barefoot Wine & Bubbly

www.barefootwine.com

Out and Proud. We've been sipping with the LGBTQ community for more than 25 years. Everyone has the right to get Barefoot and have a great time. And we believe in doing that with whomever you want. In 1988, the first donation was made celebrating diversity to San Francisco's Golden Gate Business Association. And the party just won't stop!

In 2009, we partnered with over 100 different LGBTQ local non-profits as well as national charities like GLAAD, CenterLink, InterPRIDE and GALA Chorus. We've toasted to same-sex marriage on top of a giant wedding cake. We've walked PRIDE festivals around the globe and danced with every kind of Foot Fan out there.

Diversity is a passion close to our heart and sole (ever noticed the rainbow of colours on our labels?). We're always looking for more Foot Fans to celebrate with.



Blue Cross Blue Shield of North Carolina

www.bcbsnc.com

For generations, Blue Cross and Blue Shield of North Carolina (BCBSNC) has offered its customers high quality health insurance at a competitive price and has led the charge toward better health and health care in our state. We are committed to making the health care system in North Carolina better – but we know we can't do it alone. That's why we have worked with doctors, hospitals and others to bring our customers innovative solutions that simplify the health care system, improve efficiency and outcomes, and help rein in costs.

Our commitment to North Carolina extends beyond service to our 3.9 million members and into communities across the state, where we promote improved health and well-being through our employee volunteer programs, financial support and community-focused partnerships and initiatives. Since 1997, BCBSNC employees have logged more than 387,000 volunteer hours. In addition, 86 percent of our corporate officers participate in volunteerism and community outreach programs.

We are also proud to support our independent charitable affiliate, the BCBSNC Foundation which, since 2000, has invested more than \$88 million into North Carolina communities through more than 750 grants and special initiatives.

For more information about BCBSNC, including employment opportunities, visit us at www.bcbsnc.com.

Carolina Volkswagen

www.carolinavw.com



Carolina Volkswagen, Charlotte's Original Volkswagen Dealer, is the premier retailer of new and pre-owned Volkswagen automobiles in Charlotte, NC. We pride ourselves on our award-winning Sales & Service Staff as well as our outstanding Customer Service & Reputation. Carolina Volkswagen is proud to be a local family-owned and operated dealership.

Carolina Volkswagen is located at 7800 Independence Blvd. in Charlotte. You can contact us at 704-537-2335 or on the web at www.carolinavw.com.

Fluent Language Solutions

www.fluentls.com

Since 1989, **Fluent Language Solutions, a LanguageLine Solutions Company**, has helped tens of thousands of clients across the country overcome language barriers with the highest quality interpreting and translating services available in over 200 languages.

At Fluent, we are experts in the field of interpreting and translating; it is our only business. With the broadest array of services available and the most stringent quality control processes employed in our industry, our integrated approach to service delivery ensures you will receive the highest quality service in the most cost effective manner possible.



To get Fluent today, please call us toll free at 888.225.6056.

Human Rights Campaign

www.hrc.org

As the largest civil rights organization working to achieve equality for lesbian, gay, bisexual and transgender Americans, the Human Rights Campaign represents a force of more than 1.5 million members and supporters nationwide.

Founded in 1980, HRC advocates on behalf of LGBT Americans, mobilizes grassroots actions in diverse communities, invests strategically to elect fair-minded individuals to office and educates the public about LGBT issues. For more information about HRC, visit www.hrc.org.



The 21st Annual HRC North Carolina Gala will be held in Charlotte on Saturday, February 20, 2016 at the Charlotte Convention Center. For more information about the Gala, visit www.hrccarolina.org.



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Adams Beverage, Artisian Tropic Chops, Bojangles, Brixx Pizza, Brood Soda, Brothers Vilgalys Spirits, Caldwell Memorial Presbyterian Church, Charlotte Film Society, Cottage Lane Kitchen, Teresa Davis, Dee Dee's Gourmet, EagleSpeak Coffee, Frito Lay, Hissho Sushi, Holy Trinity Lutheran Church, Humane Society of Charlotte, Kerr Lake Candles, Jim Kimbler, Just Fresh, Krispy Kreme, Mother's Little Helper, Scott Leonard – Beautiful You face/body cream, littleSpoon Restaurant, Old Town Soap Co., Petco, Petra's, Pinnacle Vodka, Playgirl, Pride Socks, Red Bull, Rex Goliath, SILVERFLY, Sir Speedy, Theatre Charlotte, Triple C Brewing Company, Wet, Where The Bears Are, White Rabbit

Last updated: Feb. 4, 2016



WHAT'S NEW?

VOLUNTEER WITH PRIDE!

Join us at one of two all-call volunteer meetings. [Click here for info on our Jan. 28 interest meeting](#) and [click here for info on our Jan. 31 interest meeting](#).

GAYCHARLOTTE FILM FESTIVAL:

Mark your calendars for this year's GayCharlotte Film Festival, slated for April 21-24, 2016 [Learn more...](#)





Charlotte Pride

16,150 likes

FOR MORE INFORMATION VISIT:

Like Page

Share



Charlotte Pride

Yesterday at 8:57am

Charlotte Pride's Media & Marketing Team will meet for an initial interest and involvement meeting this Sunday, Feb. 21, 2 p.m., at the Charlotte Pride office, 1900 The Plaza, Charlotte, NC 28205. Join us to learn more about the media/marketing team and how you can get involved! There's a few more details below. Feel free to email media@charlottepride.org with any other questions or to let us know you'll be there!

About the meeting: The media/marketing team is primarily respo... [See More](#)

1 Comment 1

Tweets

Follow



Charlotte Pride

@cltpride

29 Jan

Charlotte Pride writes to [@observer](#) in support of proposed [#LGBTQ](#) non-discrimination ordinances - charlotteobserver.com/opinion/op-ed/... [#clt](#) [#cltcc](#)

Show Summary



Charlotte Pride

@cltpride

23 Jan

On a snowy Saturday in [#clt](#), see our latest updates incl 2016 [#cltpride](#) parade and vendor registration: us6.campaign-archive2.com/?u=4a43e843240... [#lgbtq](#)

Tweet to @cltpride

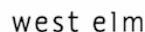
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About Charlotte Pride

Charlotte Pride is the leader in LGBTQ visibility in Charlotte and the Carolinas. We present and collaborate on programs, projects, and activities, including the annual Charlotte Pride Festival and Parade, Trans* Pride, Latin@ Pride, and the GayCharlotte Film Festival, among others. Since its founding in 2000, Charlotte Pride has expanded its year-round programming and partnerships to better connect community members with its mission, vision, and values. It is now the third-largest LGBTQ Pride organization in the American Southeast.

[Learn more about our work...](#)



Charlotte Pride is a proud member of [InterPride](#)

PO Box 32362, Charlotte, NC
28232
General:
info@charlottepride.org
Media:
media@charlottepride.org
Entertainment:
entertainment@charlottepride.org
[Frequently Asked Questions](#)

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Recent Announcements

Charlotte Pride focus groups
lend new ideas, suggestions
for outreach January 18, 2016
GayCharlotte Film Festival
slated for April 21-24, 2016
January 16, 2016
Charlotte Pride Festival &
Parade to be held Aug. 20-21,
2016 January 13, 2016
Charlotte Pride seeks
executive director, new board
members January 4, 2016
Charlotte Pride adopts new
mission, future growth strategy
as planning for 2016 activities
gets underway November 17,
2015

A SiteOrigin Theme

☺

Attachment 11

MEMORANDUM

Date: 2.12.16

Subject: Corporate Equality Index Summary and Related Charlotte Findings

Background. The Human Rights Campaign (HRC) produces a Corporate Equality Index that rates workplaces on lesbian, gay, bisexual, and transgender equality. A total number of 1,938 businesses received invitations to take part in the HRC survey, 679 submitted surveys, and 851 were officially rated. To achieve a 100 percent rating, businesses must: have sexual orientation and gender identity nondiscrimination protections explicitly included in all of its operations, both within the U.S. and global operations, require U.S. contractors to abide by companies' existing inclusive nondiscrimination policy, and implement internal requirements prohibiting U.S. company/ law firm philanthropic giving to nonreligious organizations that have a written policy of discrimination on the basis of sexual orientation and gender identity. They must implement comprehensive transgender inclusion initiatives, and have a corporate commitment to LGBT workers.

Snapshot of Results. In the 14th edition of the index, released in 2016, 407 businesses achieved a top rating of 100 percent. It is the highest number of 100 percent-rated businesses to date. Other findings from the report include:

- Three-fourths of the Fortune 500 and 93% of the entire CEI universe of businesses offer explicit gender identity non-discrimination protections in the US
- 89% of employers provide employment protections on the basis of sexual orientation in the U.S. and globally
- 87% of CEI rated employers provide employment protections on the basis of gender identity in the U.S. and globally
- Two-fifths of the Fortune 500 and 60 percent of the CEI universe of businesses offer transgender-inclusive health care coverage, up from 0 in 2002 and nearly six times as many businesses as five years ago
- More than eight in ten of CEI-rated businesses offer education and training programs that specifically include definitions and/ or scenarios on gender identity in the workplace
- Over three hundred major businesses have adopted gender transition guidelines for employees and their teams to establish best practices in transgender inclusion

Equality at the Fortune-Ranked Companies

	All Fortune 500	Fortune 500 Participants	Fortune 500 Non-Responders
Businesses' Commitment to LGBT Employees			
Sexual Orientation in U.S. Non-Discrimination Policy	93%	99%	81%
Gender Identity in U.S. Non-Discrimination Policy	75%	94%	40%
Domestic Partner Benefits	64%	98%	16%
Transgender-Inclusive Benefits	40%	63%	0%
Organizational LGBT Competency	51%	79%	0%
Public Commitment to the LGBT Community	56%	87%	0%
Average Score	61	88	13

11 of the Top 20 Fortune-Ranked Companies Received 100% Ratings		
	Fortune1000	2016 CEI Score
Wal-Mart Stores Inc.	1	90
Exxon Mobil Corp.	2	40
Chevron Corp.	3	100
Berkshire Hathaway Inc.	4	0
Apple Inc.	5	100
Phillips 66	6	20
General Motors Co.	7	100
Ford Motor Co.	8	100
General Electric Co.	9	100
Valero Energy Corp.	10	10
AT&T Inc.	11	100
CVS Health Corp.	12	100
Federal National Mortgage Association (Fannie Mae)	13	100
UnitedHealth Group Inc.	14	95
McKesson Corp.	15	100
Verizon Communications Inc.	16	85
Hewlett-Packard Co.	17	100
JPMorgan Chase & Co.	18	100
Costco Wholesale Corp.	19	80
Express Scripts Inc.	20	90

Full CEI Available: <http://hrc-assets.s3-website-us-east-1.amazonaws.com//files/assets/resources/CEI-2016-FullReport.pdf>

Attachment 12

Non-Discrimination Research – Non-Government Sector

Interview Notes

Compiled by City of Charlotte Human Resources staff

Employer	Question	Response
Bank of America	Do you have a non-discrimination policy that addresses employment?	Bank of America and its affiliates consider for employment and hire qualified candidates without regard to race, religion, color, sex, sexual orientation, gender, gender identity, age, national origin, ancestry, citizenship, protected veteran or disability status or any factor prohibited by law, and as such affirms in policy and practice to support and promote the concept of equal employment opportunity and affirmative action, in accordance with all applicable federal, state, provincial and municipal laws. The company also prohibits discrimination on other bases such as medical condition, marital status or any other factor that is irrelevant to the performance of our teammates.
	Do you have a non-discrimination policy that addresses treatment of customers?	Our success as a company is driven by the people supporting our customers and clients each day. Bank of America is committed to treating every employee with respect and dignity and protecting their human rights. We offer equal employment opportunity to all, do not tolerate discrimination or harassment, and are proud to be a leader in supporting diversity and inclusion. We abide by labor laws and regulations in the regions where we conduct business including those that address child labor, forced labor, equal pay and nondiscrimination in our workforce. We strive to provide a safe and healthy work environment for all employees. We also acknowledge and support the rights of each employee and value an open dialogue with our employees so we may continue to improve their work environment as well as the service we provide customers and clients around the world. At Bank of America, we encourage Supplier Diversity through the use of diverse businesses, based on the categories of goods and services we purchase in the communities we serve. The Supplier Diversity and Development program managers collaborate internally to ensure that we include diverse suppliers across the bank. Some examples of diverse suppliers include: individuals who are minorities, veterans, women, lesbian, gay, bi-sexual or transgender, and individuals with disabilities.
	Do you have a non-discrimination policy that addresses transgender use of restrooms?	Corporate buildings uptown still have traditional Male/Female restrooms
	If so, what is your stance on the use of restrooms by transgendered individuals?	Unknown
	Have you had any issues with use of opposite sex restrooms by transgendered individuals?	Unknown
Carolina Health System (CHS)	Do you have a non-discrimination policy that addresses employment?	Yes. Carolinas HealthCare System treats all team members and persons seeking employment equally. This means that team members and those seeking employment can be secure that treatment will be without regard to any of the following: Race, Color, Age, Religion, Gender, Sexual Orientation, Gender Identity, National Origin, Vietnam-era, Special Disabled Veteran, Other Covered Veteran, Disability, Genetic Information. Carolinas HealthCare System follows all federal, state, and

Carolina Health System (CHS)		<p>local laws relating to equal employment opportunities.</p> <p>Carolinas HealthCare System is committed to providing a culture of diversity and inclusion. Carolinas HealthCare System is committed to treating all team members with dignity and respect. It is important to Carolinas HealthCare System that team members, patients, and visitors have an environment that is free from discrimination, harassment, and retaliation. Any action that is demeaning to another person undermines the integrity of the employment relationship. This is clearly not allowed. Carolinas HealthCare System provides team member education surrounding these activities and how to identify them in the workplace. It is not only encouraged, but expected, that all team members report such behaviors. It is the goal of Carolinas HealthCare System that these incidents will be dealt with in a fair manner.</p> <p>All Carolinas HealthCare System team members, volunteers, students, patients, visitors, visiting physicians, patients, and contract workers.</p>
	Do you have a non-discrimination policy that addresses treatment of customers?	Yes. Patient Experience related policies.
	Do you have a non-discrimination policy that addresses transgender use of restrooms?	Many of the newer buildings have included unisex bathrooms, but also still have male/female within the same building. They have not completed retrofitting older facilities.
	If so, what is your stance on the use of restrooms by transgendered individuals?	Allowed to use restroom of choice
	Have you had any issues with use of opposite sex restrooms by transgendered individuals?	Yes. Had an employee transitioning and some teammates were uncomfortable. Manager's job was to explain to other teammates that this is uncomfortable to you, but it's the right thing to do. Told may not be in agreement, but here at work must be in alignment. Also careful to avoid EEOC and/or FMLA.
Duke	Do you have a non-discrimination policy that addresses employment?	Yes. Duke Energy is an equal opportunity employer and does not discriminate against any employee or applicant for employment because of race, color, sex, pregnancy, religion, national origin, ethnicity, citizenship, sexual orientation, gender identity, age, marital status, physical or mental disability, genetic information, military status, or protected veteran status. Duke Energy complies with all applicable state, federal and local laws, regulations and ordinances prohibiting discrimination in places where Duke Energy operates. Duke has Employee Resource groups and one of them is an LGBT employee group.
	Do you have a non-discrimination policy that addresses treatment of customers?	They do not have a specific policy regarding customers.
	Do you have a non-discrimination policy that addresses transgender use of restrooms?	Nothing different than above non-discrimination statement.
	If so, what is your stance on the use of restrooms by transgendered individuals?	Allowed to use restroom of choice, but prefer they use a gender neutral restroom, if available.

	Have you had any issues with use of opposite sex restrooms by transgendered individuals?	Employee related items are addressed on a case by case basis. Specifically during gender transition, single use restroom is a best practice they attempt to deploy. Have single use restrooms in some facilities. The employee is NOT required to use it. The employee may use the restroom based on his/her gender identity.
Novant	Do you have a non-discrimination policy that addresses employment?	Novant Health does not exclude, deny benefits to , or otherwise discriminate against any person on the basis of race; color; religion; national origin; culture; language; physical or mental disability; genetic information; age; sex, including pregnancy, childbirth or related medical conditions; marital status; sexual orientation; gender identity or expression; socioeconomic status; or source of payment in admission to, participation in, or receipt of the services and benefits of any of its programs and activities, whether carried out by Novant Health directly or through a contractor or other entity with whom Novant Health arranges to carry out its programs and activities. Free foreign language interpreters are available for individuals who are limited English proficient.
	Do you have a non-discrimination policy that addresses treatment of customers?	<p>“At Novant Health, there is a strong focus on health equity and ensuring that patients, families, communities, employees and stakeholders are respected and heard. “Diversity is owned from the executive team through each employee to ensure that our patients’ healthcare experience is remarkable.”</p> <p>The seven business resource groups, each comprised of employees and an executive sponsor, are African American, Hispanic, Women, Lesbian/Gay/Bisexual/Transgender, Asian, Generational and Veterans and Individuals with Disabilities. Each group focuses on addressing the unique needs of their population segment in regard to patient care, attracting and retaining employees from that segment, community health and outreach, identification and use of businesses from that segment, and creating a welcoming environment that supports diversity and inclusion of people from various backgrounds.</p>
	Do you have a non-discrimination policy that addresses transgender use of restrooms?	No. Still use Male, Female, Family restrooms
	If so, what is your stance on the use of restrooms by transgendered individuals?	Unknown
	Have you had any issues with use of opposite sex restrooms by transgendered individuals?	Unknown
PNC Bank	Do you have a non-discrimination policy that addresses employment?	Employee Business Resource Groups (EBRGs) are inclusive groups that support employees with a shared heritage, gender, sexual orientation or background. These groups provide a forum for discussion and professional development and offer employees an opportunity to contribute to PNC’s business success. PNC’s 10 EBRGs have 10,500 members across 51 chapters and represent the following groups: African American; Asian American; Disability Awareness; Emerging Professionals; Intergenerational; Latino; Lesbian, Gay, Bisexual and Transgender and Allies (LGBTQA); Multicultural; Veterans/Military; and Women.
	Do you have a non-discrimination policy that	Planning for Same-Sex Couples National Practice Group PNC Wealth Management has a Planning for

	addresses treatment of customers?	Same-Sex Couples National Practice Group that advises Lesbian, Gay, Bisexual and Transgender (LGBT) couples on numerous topics, including financial planning, estate planning, taxes, retirement and benefits. This group also educates community partners and PNC employees on best practices for working with LGBT customers.
	Do you have a non-discrimination policy that addresses transgender use of restrooms?	Unknown
	If so, what is your stance on the use of restrooms by transgendered individuals?	Unknown
	Have you had any issues with use of opposite sex restrooms by transgendered individuals?	Unknown
Piedmont Natural Gas	Do you have a non-discrimination policy that addresses employment?	Yes. Piedmont Natural Gas is firmly committed to Equal Employment Opportunity and the compliance with all Federal, State and local laws that prohibit employment discrimination on the basis of age, race, color, gender, national origin, religion, disability, protected veteran status, other protected classifications and in accordance with Piedmont HR Policy #2001, sexual orientation, genetic information, marital status and citizenship status. This policy applies to all employment decisions including, but limited to recruiting, hiring, training, promotions, pay practices, benefits, disciplinary actions and terminations.
	Do you have a non-discrimination policy that addresses treatment of customers?	Unknown
	Do you have a non-discrimination policy that addresses transgender use of restrooms?	Unknown
	If so, what is your stance on the use of restrooms by transgendered individuals?	Unknown
	Have you had any issues with use of opposite sex restrooms by transgendered individuals?	Unknown
Time-Warner Cable	Do you have a non-discrimination policy that addresses employment?	Diversity and Inclusion: Three Key Areas of Focus: Workplace, Marketplace, and Workforce. Time Warner Cable provides equal opportunities for employment and advancement to qualified employees and applicants. Individuals will be considered for positions for which they meet the minimum qualifications and are able to perform without regard to race, color, gender, age, religion, disability, national origin, veteran status, sexual orientation, gender identity, current unemployment status, or any other basis protected by federal, state or local laws. Time Warner Cable offers 11 different types of Employee Networks, dispersed in nearly 25 chapters across the country. They are formed around a common dimension of diversity, interests, and/or experiences.
	Do you have a non-discrimination policy that	Diversity and inclusion is central to Time Warner Cable's culture and success. We ensure our

	addresses treatment of customers?	<p>continued relevance to our customers by fostering and supporting the broadest possible range of people, perspectives and experiences in our workforce, suppliers and communities.</p> <p>TWC sees the importance of working with diverse vendors and considers using Minority and Women Business Enterprises (MWBE) whenever possible. The company's MWBE spend is measured and communicated regularly to company leaders. MWBE suppliers can register with TWC at www.twcablesupplierdiversity.com. This same website can be used to obtain a list of local MWBE suppliers</p>
	<p>Do you have a non-discrimination policy that addresses transgender use of restrooms?</p> <p>If so, what is your stance on the use of restrooms by transgendered individuals?</p>	<p>Have a transgender policy that speaks to utilization of bathroom. If large enough facility, have unisex bathrooms and also have the option to use restroom that corresponds with identity. Not to be made to go to another floor.</p> <p>Restroom of choice</p>
	Have you had any issues with use of opposite sex restrooms by transgendered individuals?	Yes, but no real concerns. Transitioning employees have had formal, open discussions as well as quieter, informal discussions with leaders. Communicated to co-workers if requested.
Wells Fargo	Do you have a non-discrimination policy that addresses employment?	<p>Wells Fargo believes in and is committed to diversity. We recruit, hire, and promote team members based on their individual ability and experience and in accordance with Equal Employment Opportunity and Affirmative Action laws and regulations. Our policy is that we do not discriminate on the basis of race, color, gender, national origin, religion, age, sexual orientation, gender identity, genetic information, physical or mental disability, pregnancy, marital status, status as a protected veteran, or any other status protected by federal, state, or local law. We also strive to go beyond these basic guidelines to recruit and retain a high-caliber, inclusive workforce that reflects the growing diversity of our marketplace.</p>
	Do you have a non-discrimination policy that addresses treatment of customers?	<p>At Wells Fargo, our vision is to satisfy all of our customers' financial needs and help them succeed financially. We also are committed to conducting our business ethically and with integrity.</p> <p>Consistent with our <u>Vision and Values</u>, Wells Fargo recognizes that governments have the duty to protect human rights, and our company has a responsibility to respect human rights. To that end, we strive to respect human rights throughout our operations and our products and services, including consistent treatment among people, employee well-being and security, economic and social freedom, and environmental stewardship.</p> <p>We seek tangible ways to apply these principles through our actions and relationships with our team members, customers, suppliers and communities in which we do business.</p> <p>Wells Fargo's ongoing respect for human rights reflects our vision and values. We recognize that respecting human rights is a continuing effort, and we must regularly assess our practices and approaches in light of changing global policies and business practices. This effort is done with the understanding that in some circumstances we may go above and beyond what the law and industry standards require. We are dedicated to corporate social responsibility and strive to uphold human rights in all our business activities.</p>

		<p>We value what is right for our customers in everything we do. We are committed to building relationships with customers and work hard to provide them with meaningful products, advice, and guidance to ensure they are able to make informed financial choices.</p> <p>At the core of this commitment, we expect our team members to adhere to our Code of Ethics and Business Conduct (PDF), and believe that honesty, trust, and integrity should guide our business activities. We regularly monitor and refine our business practices to help ensure all team members are performing ethically and with integrity.</p> <p>Wells Fargo is dedicated to living by fair and responsible lending and servicing principles to foster best practices and ensure consumers are treated with respect. We consistently follow business practices we believe serve the interests of our customers for the long term. We do not tolerate abusive, misleading, or fraudulent lending.</p> <p>Wells Fargo strives to engage with business customers that respect human rights. We recognize the critical economic importance of various industry sectors, including some that may have significant impacts on the environment and local communities. We believe organizations in such industries should operate in a responsible manner, complying with applicable legal requirements and with respect for human rights, local communities, and the environment. We conduct enhanced due diligence for corporate customers in identified sensitive industries, as set out in our Environmental and Social Risk Management Statement (PDF).</p>
	Do you have a non-discrimination policy that addresses transgender use of restrooms?	Corporate buildings uptown still have traditional Male/Female restrooms
	If so, what is your stance on the use of restrooms by transgendered individuals?	Unknown
	Have you had any issues with use of opposite sex restrooms by transgendered individuals?	Unknown
Compass Group Charlotte	Do you have a non-discrimination policy that addresses employment?	Very general statement: "Compass Group is committed to creating a workplace where all associates feel respected, can contribute their best work and can reach their full potential"
	Do you have a non-discrimination policy that addresses treatment of customers?	No
	Do you have a non-discrimination policy that addresses transgender use of restrooms?	No – the focus of their business is to have their employees in others' facilities
	If so, what is your stance on the use of restrooms by transgendered individuals?	No

	Have you had any issues with use of opposite sex restrooms by transgendered individuals?	No
Microsoft	Do you have a non-discrimination policy that addresses employment?	<p>Microsoft promotes a cooperative and productive work environment by supporting the cultural and ethnic diversity of its workforce. Our collective challenge is to enhance the company's performance through valuing and understanding differences.</p> <p>Microsoft is committed to a policy of providing equal employment opportunity to all qualified employees and applicants. This commitment is reflected in all aspects of our daily operations. We do not discriminate on the basis of race, color, sex, sexual orientation, gender identity or expression, religion, national origin, marital status, age, disability, veteran status, or genetic information in any personnel practice, including recruitment, hiring, training, compensation, promotion, and discipline. We do not discriminate based on any other characteristic protected by applicable state or local law where a particular employee works.</p> <p>It is the policy of Microsoft to provide reasonable accommodation to qualified employees and applicants who have protected disabilities, including pregnancy-related disability, to the extent required by federal law and any state or local law where a particular employee works.</p>
	Do you have a non-discrimination policy that addresses treatment of customers?	<p>Yes, for example for non-profit groups:</p> <div data-bbox="1104 808 2306 1084" style="border: 1px solid #ccc; padding: 10px;"> <p>3. Nondiscrimination Policy -</p> <p>Organizations that engage in discrimination in hiring, compensation, access to training or services, promotion, termination, and/or retirement based on race, color, sex, national origin, religion, age, disability, gender identity or expression, marital status, pregnancy, sexual orientation, political affiliation, union membership, or veteran status other than as allowed by law, are not eligible to participate in this program.</p> </div>
	Do you have a non-discrimination policy that addresses transgender use of restrooms?	No
	If so, what is your stance on the use of restrooms by transgendered individuals?	Have gender neutral restrooms
	Have you had any issues with use of opposite sex	Unknown

Attachment 13



CHARLOTTE.

Non-Discrimination Ordinance

2/8/16



Outline of Presentation

- History – current ordinances
- Proposed amendments
- Enabling authority
- First Amendment – religious beliefs
- NC Constitution local act limitations
- State building code
- Current criminal laws



History

- Civil Rights Act of 1964
 - Title II (public accommodations) – race, color, religion, national origin (age, disability)
- Sexual orientation, gender identity, gender expression



City - Public Accommodations

- 1968 ordinance - race, color, religion, and national origin
- Unlawful to deny any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations because of...



City – Public Accommodations

- 1972 amendment added sex
- 1985 recodification – carve out of “sex”
- 1992 – proposed addition of sexual orientation failed
- Enforcement – misdemeanor/injunction



City – Community Relations Committee

- Established in 1968
- Duties – make recommendations regarding the elimination/reduction of discrimination
- Approve plans to eliminate/reduce discrimination



City – Passenger Vehicle for Hire

- Prohibits companies and drivers from discriminating
- Enforcement – civil penalties and revocation of operating certificates and permits



City – Commercial non-discrimination

- City contractors may not discriminate against vendors, suppliers, subcontractors or commercial customers
- Enforcement – suspension or termination of contract; debarment for up to two years



Proposed Ordinance

- Add marital status, familial status, sexual orientation, gender identity, and gender expression to passenger vehicles for hire and commercial non-discrimination ordinances
- Add new characteristics and sex to public accommodations ordinance and delete separate section dealing with sex



Enabling Authority

- G.S. 160A-174 – General ordinance-making power (*i.e.*, the “police power”)
- “A city may by ordinance ... regulate ... acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the city...”



Enabling Authority

- G.S. 160A-194 – Regulating and licensing businesses, trades, etc.
- “A city may by ordinance, subject to the general law of the State, regulate and license occupations, businesses, trades, professions, and forms of amusement or entertainment...”



Enabling Authority

- “the United States Supreme Court and the courts of other States have held that the municipality’s power to regulate a particular business includes the power to prohibit discrimination in that business on the basis of color, race, or religion.”
Chicago Real Estate Bd. v. City of Chicago, 36 Ill.2d 530 (1967).



Cases

- *Williams v. Blue Cross and Blue Shield of North Carolina*, 357 N.C. 170 (2003) – granted citizens subpoena power and the right to sue
- *King v. Town of Chapel Hill*, 367 N.C. 400 (2014) – established a fee schedule for nonconsensual towing



Enabling Authority

- If Charlotte lacks authority to prohibit discrimination based on the contemplated characteristics, it did not have the authority to prohibit discrimination based on race, color, religion, and national origin in 1968, and sex in 1972



Religious Freedom

"We have never held that an individual's religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate. ... 'Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself.'"

Employment Division, Department of Human Resources of Oregon v. Smith, 494 U.S. 872, 878-879 (1990).



Religious Freedom Restoration Acts

- "Government shall not substantially burden...[unless] in furtherance of a compelling governmental interest [and it] it is the least restrictive means..." 42 U.S.C. Sec. 2000bb-1.
- *Burwell v. Hobby Lobby Stores, Inc.*, 134 S.Ct. 2761 (2014)
- H348 and S550



Unconstitutional Local Act

- Sec. 24. Limitations on local, private, and special legislation.
 - (1) Prohibited subjects. **The General Assembly shall not** enact any local, private, or special act or resolution:
 - ...
 - (j) Regulating labor, trade, mining, or manufacturing



Building Code

- "separate facilities shall be provided for each sex"
- Signage "designating the sex"
- Building code does not "occupy the field" of discrimination laws
- Building code "may include reasonable and suitable classifications of buildings and structures, both as to use and occupancy..." GS 143-138(b)



G.S. 14-190.9 - Indecent exposure

“any person who shall willfully expose the private parts of his or her person in any public place and in the presence of any other person or persons, except for those places designated for a public purpose where the same sex exposure is incidental to a permitted activity...shall be guilty of a Class 2 misdemeanor.”



G.S. 14-159.13 – Second degree trespass

(a)Offense. - A person commits the offense of second degree trespass if, without authorization, he enters or remains on premises of another:

(1) After he has been notified not to enter or remain there by the owner, by a person in charge of the premises, by a lawful occupant, or by another authorized person; or

(2) That are posted, in a manner reasonably likely to come to the attention of intruders, with notice not to enter the premises.



Conclusion

A policy question for the Council

Questions?

Attachment 14

College Allows Transgender Man to Expose Himself to Young Girls

Top Stories (<http://radio.foxnews.com/toddstarnes/category/top-stories>)



(<http://radio.foxnews.com/toddstarnes/wp-content/uploads/2011/09/american-flag-2a2.jpg>)

By **Todd Starnes** (<http://twitter.com/toddstarnes>)



A Washington college said their non-discrimination policy prevents them from stopping a transgender man from exposing himself to young girls inside a women's locker room, according to a group of concerned parents.

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(<https://www.facebook.com/pages/Todd-Starnes/128334087241432>)

"Little girls should not be exposed to naked men, period," said David Hacker, senior legal counsel with the Alliance Defending Freedom. A group of concerned parents contacted the legal firm for help.

Hacker said a 45-year-old male student, who dresses as a woman and goes by the name Colleen Francis, undressed and exposed his genitals on several occasions inside the woman's locker room at **Evergreen State College**.

(<http://www.evergreen.edu/>)

Students from nearby Olympia High School as well as children at a local swimming club share locker rooms with the college.

According to a police report, the mother of a 17-year-old girl complained after her daughter saw the transgender individual walking naked in the locker room. A female swim coach confronted the man sprawled out in a sauna exposing himself. She ordered him to leave and called police.

The coach later apologized when she discovered the man was transgendered but explained there were girls using the facility as young as six years old who weren't used to seeing male genitals.

"They're uncomfortable with him being in there, her, being in there and are shocked by it," parent Kristi Holterman told KIRO-TV.

According to the police report, the local district attorney probably will not pursue charges because he said the "criminal law is very vague in this area."

Francis told KIRO-TV that he was born a man but chose to live as a woman in 2009. Francis said he felt discriminated against after he was told to leave.

“This is not 1959 Alabama,” Francis told the television station. “We don’t call police for drinking from the wrong water fountain.”

Hacker and local parents are outraged over the college’s response to the incident.

“The idea that the college and the local district attorney will not act to protect young girls is appalling,” he said. “What Americans are seeing here is the poisoned fruit of so-called ‘non-discrimination’ laws and policies.”

Placing this man’s proclivities ahead of protecting little girls is beyond unacceptable, Hacker said.

A spokesman for the college did not return calls seeking comment.

Hacker said the college could be held liable for damages if any of the young girls is harmed by the transgendered individual.

“Clearly, allowing a person who is biologically a man to undress and expose himself to young girls places those girls at risk for emotional distress and harm,” he wrote in a letter to the college. “Any reasonable person would view this as dangerous to the young girls involved. The fact that this individual was sitting in plain view of young girls changing into their swimsuits puts you and Evergreen on notice of possible future harm.”

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Robert Wade



Even though I m a Conservative, I fully support the LGBTQ community; but this is just plain wrong, and it is nothing but Political Correctness run amok!

Like · Reply ·  116 · Nov 1, 2012 3:22pm



David Lampo · Director of Publications at Cato Institute

I'm also pro-gay rights, but this is ridiculous. This person is clearly on an ego egrip trying to force everyone to indulge him, or her.

Like · Reply ·  117 · Nov 1, 2012 4:05pm



Dennis Black

Very Very Wrong!

Like · Reply ·  43 · Nov 1, 2012 4:11pm



Joshua Rouw · Austin, Texas

"He started wearing a low-dose estrogen patch two years ago and has written that he has no intention of ever getting "sex reassignment" surgery, stating ... I saw LONG ago, in childhood that those were what I was given, and being the very, very sexual creature that I was/am, I used them. Enthusiastically. I decided not to be robbed of the blessing of sexuality simply because I came wrapped in the wrong package."

<http://gendertrender.wordpress.com/.../evergreen-state.../>

Like · Reply ·  10 · Nov 1, 2012 5:27pm

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April Waters

This is just sick!!!

Like · Reply ·  10 · Nov 1, 2012 3:23pm



Tim Flipse · Works at FTD Flowers

cut his nuts off if that's what he/she wants then.

Like · Reply ·  65 · Nov 1, 2012 3:29pm



Beverly Owens

And anything else dangling down there.

Like · Reply ·  41 · Nov 1, 2012 5:00pm



Joel Rivera · Brentwood, California

Tim

Whether he has his balls or not, he doesnt belong in a locker room full of women and young girls. This is complete insanity.

Like · Reply ·  132 · Nov 1, 2012 5:00pm



Brandon Gunnells · ITT Technical Institute Arlington, Texas

so so true

Like · Reply ·  23 · Nov 1, 2012 5:06pm

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Julia Gordon · Illinois State University

unbelievable....lounging in the sauna.. does he get some sort of sick thrill...

Like · Reply · 44 · Nov 1, 2012 3:30pm



Mark Currier

Yes, he does, that's why he's doing it. Other sicko's are letting him.

Like · Reply · 63 · Nov 1, 2012 4:56pm



Joel Rivera · Brentwood, California

Julia

Just the fact that he's doing all this is sick enough. He's not right in the head.

Like · Reply · 46 · Nov 1, 2012 4:59pm



William Cade Marion Mandile · Bartlett Jr/Sr High School

She clearly isn't right in the head. If she refuses to conform to the standard everyone in society follows so well, she must be mentally ill.

Like · Reply · 11 · Nov 1, 2012 6:49pm

[Show 10 more replies in this thread](#)



Kinman Cheng

"This is not 1959 Alabama," Francis told the television station. "We don't call police for drinking from the wrong water fountain."

comparing this to the 60's, are you serious? I mean really, are you serious?

Like · Reply · 162 · Nov 1, 2012 3:38pm



Mark Eric LaRoche · University of Phoenix

Actually 1959 would be the 50's and yes I am serious!

Like · Reply · 6 · Nov 1, 2012 4:39pm



Eric Campbell · The University of Texas at Austin

Maybe you could introduce him to your sister. But only if she is in High School.

Like · Reply · 36 · Nov 1, 2012 4:45pm



Rob Wrobel · Senior Trader at Chicago Board of Trade

Or even his grade school aged daughter.

Like · Reply · 36 · Nov 1, 2012 4:55pm

[Show 10 more replies in this thread](#)



Terre Taylor Gildon · Greenville High School, Greenville, MS

IMHO if this person wants to go into the ladie's locker room. they need to have the sex change surgerv before they are allowed in. ALSO. we women are not like

sex change surgery, before they are allowed in AIDS, no women are not into men.....we don't walk around naked in front of other women. It's just common decency!

Like · Reply ·  174 · Nov 1, 2012 3:46pm



Stephanie Edd

That's your standard of common decency, not the whole world's. Also, that's within the context of the gender binary, which is an arbitrary social construction. Plenty of women "walk around naked in front of other women." Locker rooms, saunas, hot springs, etc. In terms of environments where everyone has agreed that nudity is acceptable, nudity will logically occur. This situation is only "news" because people are transphobic and cannot separate gender from genitals. If you think nudity isn't decent, then simply avoid places where nudity is acceptable. It's a really simple solution.

Making arbitrary rules enforcing the gender binary just represses people. It's unnecessary.

Like · Reply ·  51 · Nov 1, 2012 7:16pm



Kristan Sabella · Mother/Wife at Headmaster at H.O.M.E (Liv & Nina)

Ranger Bagel, I respect your opinion, but I think that we are very messed up as a society. Simple because a man feels like a woman and vice versa doesn't mean they ought to be handed a new identity. If my three year old decided they were a dinosaur, it wouldn't make me treat them as anything different. I fear for the human race when there are no absolute morals in place. This poor person obviously grew up in an environment where there was probably no positive male or female role models. I believe that men are men and women are women. Just because a man likes to wear dresses and lipstick doesn't mean anything. He should be sent to a shrink, period. It's very sad really. I think that people have been drinking the radical secular kool-aid for too long and this is where we are. These rules aren't arbitrary.

Like · Reply ·  144 · Nov 1, 2012 7:29pm



Stephanie Edd

It's not about being "handed" a new identity. And also, that comparison to a dinosaur is called a "straw man" and it is a logical fallacy. It's not corollary. If you do some research into this you will see that gender and sex are not binary. They simply are not. People subscribe to lots of different ways of performing gender -- and that's what it is. We are all performing our own particular identities.

Dresses and makeup do not make up gender. Neither do genitals. The rules absolutely are arbitrary. There is overwhelming scientific and archaeological evidence showing that gender is a social c... [See More](#)

Like · Reply ·  40 · Nov 1, 2012 7:41pm

[Show 10 more replies in this thread](#)



Sheila Firmin



I am about to bang my head against the desk WTF is wrong with society....this guy is a pervet...gets his kicks exposing himself....should be in jail....when will the insanity stop.

Like · Reply · 406 · Nov 1, 2012 3:54pm



Mark Currier

When we outlaw liberals. It is a disease.

Like · Reply · 302 · Nov 1, 2012 4:55pm



Paul Nelms · School of Hard Knocks

I do hope the ADF will bring about some type of litigation that will correct this insane policy of this school. that seems to be more concerned about political correctness for perverts than for the public safety of these minor children.

Like · Reply · 123 · Nov 1, 2012 7:59pm



Robertson Emmie

Paul Nelms it is this way all over the Seattle area. DON'T move to Seattle if you want your children to be safe. I moved away from there for just that reason. They all drink the koolaid there!

Like · Reply · 70 · Nov 1, 2012 9:21pm

[Show 10 more replies in this thread](#)



Eduardo Uchoa · Universidade Federal da Paraíba (UFPB)

Suppose a law saying that any transexual can use the girl's bathroom. What's to prevent a man from dressing as a woman just so he can go inside of their bathroom, locker rooms, etc. just to peek or harass?

Like · Reply · 173 · Nov 1, 2012 4:01pm



Mark Currier

Or, what is to prevent them from saying on Tuesday they are a 'woman', on Wednesday they are a 'man', and just keeps changing it at their whim. They are trying to make fools of us all.

Like · Reply · 112 · Nov 1, 2012 4:57pm



Veronica Zapata · Cal Poly Pomona

You are absolutely correct. You should check out Colorado bathroom laws.

Like · Reply · 24 · Nov 1, 2012 4:59pm



Stephanie Edd

So because something *might* happen, we should legislate gender standards and restrain peoples rights? Thought crime much?

Like · Reply · 11 · Nov 1, 2012 6:38pm

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Chris Winter



The behaviour "HE" exhibited the laying around and deliberately exposing "HIMSELF" is sexual in nature and a perversion, this "GUY" is no more transgendered than any other pervert and should be prosecuted to the full extent of the law.

Like · Reply ·  436 · Nov 1, 2012 4:03pm



Paige Morrison


Ranger Bagel Don't be such an ignoramous. He is not a She or HE would have it CUT OFF> and then no one would care if he was in the ladies room. But he should not be parading around 6 year olds no matter what Political Correctness BS is spouted off. HE is an exhibitionist and a pervert. REAL transgenders, are not exposing themselves to little kids or other people because they WANT to be accepted as female. Get some knowledge and maybe a few REAL transgender friends.

Like · Reply ·  526 · Nov 1, 2012 7:21pm



Ken Hodges · Seeking Truth, Justice, and the American Way at Superman

Ranger Bagel It isnt a "SHE: if it has a PENIS!

Like · Reply ·  339 · Nov 1, 2012 7:21pm



Claudia Hirschochs · U.S - ARMY

Ranger Bagel, here on planet earth in the Milky Way Galaxy YES if you are born with a penis and testicles you are biologically MALE. No ifs and or buts changes that basic fact. As far as all of your emotive empathetic feelings for this person trapped in the wrong body we here on Earth have such things called Psychiatrists if one desires help with that confusion or they may very well live their lives however they wish but MALE IS STILL MALE.

Like · Reply ·  34 · Nov 1, 2012 7:25pm

[Show 10 more replies in this thread](#)



Frank Lile · Lake in the Hills, Illinois

If you have a dick you're a guy! What you feel like inside doesn't matter, it's simple anatomy.

Like · Reply ·  157 · Nov 1, 2012 4:07pm



Patti Bostick

And, btw, nobody wants to see your junk.

Like · Reply ·  135 · Nov 1, 2012 4:22pm



Daniel Beck

He is having his "rights" imposed on society. He obviously is an exhibitionist and he is doing what comes naturally to him. Those damned mothers just don't understand how they have crushed this shemales baby feelings. He should be glad my daughter wasn't one of the children he exposed himherself to, or heshe would be reassigned by an outraged father.

Like · Reply ·  113 · Nov 1, 2012 6:13pm



Billy Massey

Therein lies the issue. Do we assign your sex by your own gender identity or your anatomical one? That's why this article is so polarizing. Sexuality and gender are not black and white issues. Saying "you have a dick so you're a man" is a very shallow and ignorant comment.

Like · Reply ·  11 · Nov 1, 2012 7:06pm

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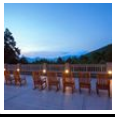


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2 hrs

It turns out Apple refused to help law enforcement trying to gain access into a phone belonging to the San Bernardino Muslim terrorists.

Today – a federal judge ordered Apple to assist the feds.

14 people were killed on Dec. 2 and

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(<http://radio.foxnews.com/toddstarnes/top-stories/university-president-trump-wont-be-speaking-at-oklahoma-wesleyan.html>)

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Attachment 15

Colleen Francis and the infamous Evergreen State College incident

TA www.transadvocate.com/colleen-francis-and-the-infamous-evergreen-state-college-incident_n_10765.htm

by Cristan Williams

The mere mention of the incident *should* send shivers down your spine. Trans people who support protections based on gender identity *should* feel nervous when Colleen's name is mentioned. If you're trans, you *should* hope that this incident fades into the distance and is never brought up in polite conversations.

For the uninitiated, here's a recap from [Fox News](#):

A Washington college said their non-discrimination policy prevents them from stopping a transgender man from exposing himself to young girls inside a women's locker room, according to a group of concerned parents.

"Little girls should not be exposed to naked men, period," said David Hacker, senior legal counsel with the Alliance Defending Freedom. A group of concerned parents contacted the legal firm for help.

Hacker said a 45-year-old male student, who dresses as a woman and goes by the name Colleen Francis, undressed and exposed his genitals on several occasions inside the woman's locker room at Evergreen State College.

Students from nearby Olympia High School as well as children at a local swimming club share locker rooms with the college.

According to a police report, the mother of a 17-year-old girl complained after her daughter saw the transgender individual walking naked in the locker room. A female swim coach confronted the man sprawled out in a sauna exposing himself. She ordered him to leave and called police.

The coach later apologized when she discovered the man was transgendered but explained there were girls using the facility as young as six years old who weren't used to seeing male genitals. "They're uncomfortable with him being in there, her, being in there and are shocked by it," parent Kristi Holterman told KIRO-TV.

According to the police report, the local district attorney probably will not pursue charges because he said the "criminal law is very vague in this area."

Francis told KIRO-TV that he was born a man but chose to live as a woman in 2009. Francis said he felt discriminated against after he was told to leave.

Hacker and local parents are outraged over the college's response to the incident.

"The idea that the college and the local district attorney will not act to protect young girls is appalling," he said. "What Americans are seeing here is the poisoned fruit of so-called 'non-discrimination' laws and policies."

Placing this man's proclivities ahead of protecting little girls is beyond unacceptable, Hacker said. A spokesman for the college did not return calls seeking comment.

Hacker said the college could be held liable for damages if any of the young girls is harmed by the

transgendered individual.

“Clearly, allowing a person who is biologically a man to undress and expose himself to young girls places those girls at risk for emotional distress and harm,” he wrote in a letter to the college. “Any reasonable person would view this as dangerous to the young girls involved. The fact that this individual was sitting in plain view of young girls changing into their swimsuits puts you and Evergreen on notice of possible future harm.”

There was a strongly worded [letter](#) from a legal group who took up the cause to keep Francis from walking around nude in front of 6 year olds. Then there was the [police report](#) with statements from a parents who were reporting what they say their daughter reported to them.

Here are the facts. On several occasions recently, these children saw a naked man in the women’s locker room sauna who was displaying his genitalia... There has been a problem for many years now of men using the women’s locker room, especially the sauna. The ongoing problem, including the situation with Francis, regardless of his personal beliefs, endangers the young girls who use Evergreen’s locker room and pool. – Alliance Defending Freedom for Faith and Justice, November 1, 2012

The police report explained that on Wednesday, September 26th at 5:12 PM Tiffany Write, who is a swim coach for Evergreen Swim Club (no affiliation with the Evergreen College) had Officers Brewster and Koppenhaver respond to the Campus Recreation Center (CRC) on a report of a man in the women’s locker room.

There you have it. This is *the* case that proves all those who stand against trans equality laws right. There’s a letter from a group who wants to defend freedom and faith, there’s the early report from Fox News *AND* a police report. The evidence is incontrovertible. Case closed. *Right?*

RIGHT?!?

So, I was listening to a podcast of people talking about this situation as a cautionary tale. This case, they agreed, proved that trans-equality laws can, and sometimes do, go too far. In fact, when I debated Arizona State Representative John Kavanagh about his efforts to criminalize the use of restrooms by trans people, he pointed to this case as being his evidence for the need to ban trans people from using hygiene facilities which correspond to their gender identity. This case has become the rhetorical linchpin for practically all narratives arguing against trans equality policies.

Under the guise of “prohibiting discrimination” against people on the basis of sexual orientation, gender identity, and gender expression, The Phoenix City Council is considering an ordinance riddled with devastating legal and ethical consequences...

Look no further than Olympia, Washington to discover the consequences of laws like the Bathroom Bill. Late last year, when one Washington family complained that a 45-year-old male college student was permitted to enter a girls’ locker room and expose himself in front of their 17-year-old daughter, authorities informed them the man was allowed to be there because he claimed to be transgender. – [The Center for Arizona Policy](#)

What if I were to tell you that the reports are, on the whole, false?

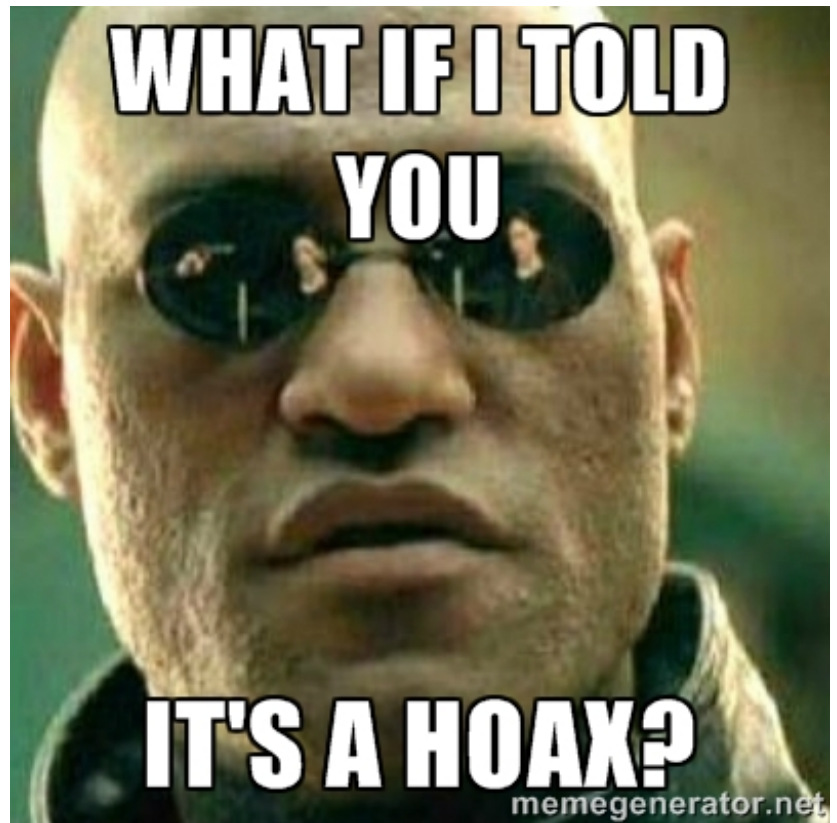
What if I were to tell you that, unlike the mountains of reports citing Fox News, the ex-gay advocacy group (oh, did I fail to mention – just like the news reports did – that the Alliance Defending Freedom for Faith and Justice is an ex-gay group?), and the police report, I called the college, got the facts and learned that the facts don’t exactly

match up with the myth of the now infamous Evergreen State College incident?

Here's the nugget of truth to the story: two teens did claim to see Colleen Francis nude while in the Evergreen College sauna.

Here's what you may not have heard:

- The sauna area was off limits to the two teens.
- Unless one specifically tries to see inside the sauna, you can't view the people inside the sauna.
- Colleen Francis AND her cisgender female friend were using the sauna together. They were sitting there talking.
- At no point did Francis act to expose herself to children.
- At no point was Francis walking around nude in the area where children were.



So, the actual story is that two 17 year olds went into an area they weren't allowed, attempted to view the people in the sauna and saw Francis. The rest of what you've probably heard about this incident is, at this point, an urban myth.

My conversation with Todd Sprague, the Executive Director of College Relations was preceded by an email exchange which immediately brought into question everything I thought I know about this incident. Sprague wrote, "Unfortunately many news reports and online commentaries have chosen to take a sensational, and often inaccurate, path in characterizing what has and has not happened at Evergreen." He went on to clarify, "On the occasion that sparked the media coverage, the individual in question was using the sauna, an area generally off limits to swim team members." Sprague also made it clear that this was "one incident that occurred in September 2012, not multiple incidents" and that Francis was "covered up with a towel on the way to the sauna and when leaving it."

I had more questions, so I called Sprague and recorded the call:

Do you notice anything familiar about the trajectory of this story?

1. Something is said to have happened
2. Anti-gay group gets involved.
3. Anti-gay group issues a strongly worded letter to the school *and* to the media.
4. Far right-wing media picks it up and only quotes the ex-gay group.
5. A mainstream media outlet runs the story citing the right-wing media outlet.
6. The story explodes and becomes a talking point to be used by anti-LGBT political activists.

Where have I seen this exact strategy deployed before?

What about that story in LA where it was claimed that a trans kid was [scurrying up the walls of restroom stalls](#) to peek at the cis girls?

1. Something is said to have happened? ✓
2. Anti-gay group gets involved? ✓
3. Anti-gay group issues a strongly worded letter to the school *and* to the media? ✓
4. Far right-wing media picks it up and only quotes the ex-gay group? ✓
5. A mainstream media outlet runs the story citing the right-wing media outlet? ✓
6. The story explodes and becomes a talking point to be used by anti-LGBT political activists ✓

How about the story in Colorado where [it was claimed](#) that a trans kid was sexually harassing cis girls in the restroom?

1. Something is said to have happened? ✓
2. Anti-gay group gets involved? ✓
3. Anti-gay group issues a strongly worded letter to the school *and* to the media? ✓
4. Far right-wing media picks it up and only quotes the ex-gay group? ✓
5. A mainstream media outlet runs the story citing the right-wing media outlet? ✓
6. The story explodes and becomes a talking point to be used by anti-LGBT political activists ✓

Let's see what happens when any one of these steps is interrupted.

Do you remember when an Oakland, California school employee said that kids were being raped and molested because of protections for trans children? No? That's because this is what happened:


1. Something is said to have happened? ✓
2. The TransAdvocate contacts the school to [fact check](#) the assertion and it turns out that the claim was substantively false.

Here are the facts associated with that claim: the person did work for the Oakland school district and in the history of the school district's existence, both rape and murder had occurred in the district and did involve school students, but it had nothing to do with trans kids (unless you count Oakland [cis kids setting non-cis kids on fire](#)).

Even when reports like this are posted on satire sites, the report is lined up to engage this process for manufacturing anti-trans talking points. It was reported that school children were being forced crossdress in order gain appreciation for LGBTQ people. Here's where the process of manufacturing anti-trans talking points fell apart:

1. Something is said to have happened? ✓
2. Anti-gay group gets involved? ✓
3. TransAdvocate [fact checks](#), finds the story to be a hoax and then mocks the anti-gay group:

What would have been the headlines for the Evergreen College incident had the process of manufacturing talking points been interrupted? Would anyone have ever heard of Evergreen College or Colleen Frances?

 **PFOX.org** @PFOX4U 9 Nov
Maryland School Requires Children To Cross Dress For "LGBTQ Appreciation Day" | Jane M. Agni | National Report nationalreport.net/maryland-middl...
Expand ← Reply ↻ Retweet ★ Favorite

 **transadvocate** @transadvocate 9 Nov
[@PFOX4U](#) Bawhahahahahaha!!!!
Hide conversation ← Reply 🗑 Delete ★ Favorite

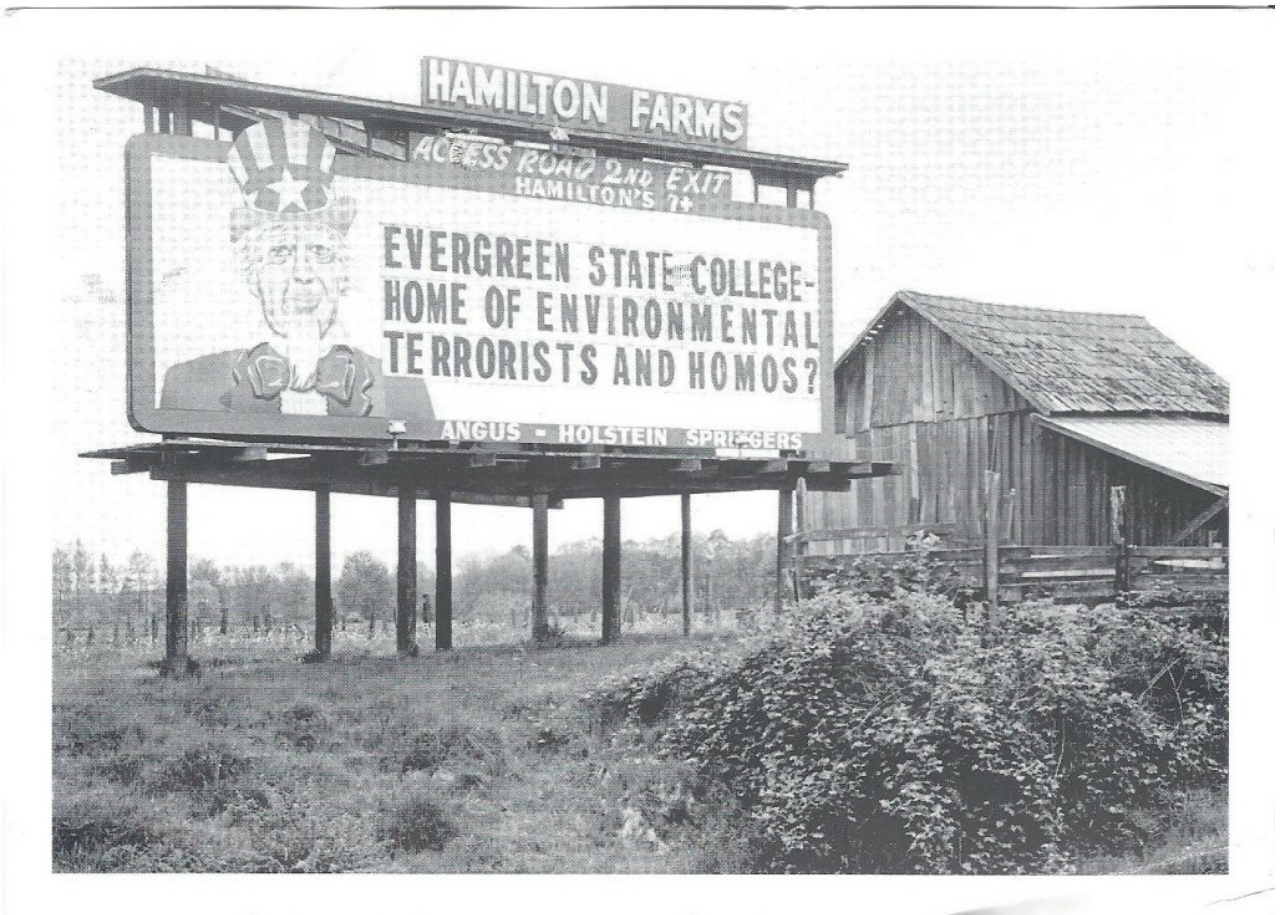
3:00 PM - 9 Nov 13 · Details

As I said at the beginning of this article, the mere mention of the incident *should* send shivers down your spine... Because the story was manufactured to specifically elicit that response. This story has served those who stand against trans equality measures well. It's been used as a talking point for TERFs, radical right pundits and elected lawmakers alike and it's time to call BS, not only on this talking point, but on the process that manufactures them.

Right-wing signage targeting Evergreen College

[hr] [column size="one-half"]

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[/column] [column size="one-half" last="true"]

Select Tip ▾



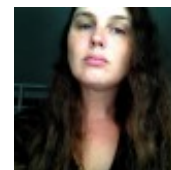
[/column]

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Cristan Williams

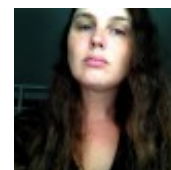
Editor-in-Chief at [TransAdvocate](#)

Cristan Williams is a trans historical researcher and pioneer in addressing the practical needs of the transgender community. She started the first trans homeless shelter and co-founded the first federally funded trans-only homeless program, pioneered affordable health care for trans people in the Houston area, won the right for trans people to change their gender on Texas ID prior to surgery, started numerous trans social service programs and founded the Transgender Center as well as the Transgender Archives. Cristan is the editor at the social justice sites [TransAdvocate.com](#) and [TheTERFs.com](#), chairs the City of Houston HIV Prevention Planning Group, is the jurisdictional representative to the Urban Coalition for HIV/AIDS Prevention Services (UCHAPS), serves on the national steering body for UCHAPS and is the Executive Director of the Transgender Foundation of America.



Latest posts by Cristan Williams ([see all](#))

- [\(Re\)Introducing inclusive Radical Feminism](#) - January 2, 2016
- [Fact check: study shows transition makes trans people suicidal](#) - November 2, 2015
- [Study: Trans kid's gender implicit; govt report condemns conversion therapy](#) - October 17, 2015



Thanks for rating this! Now tell the world how you feel through social media. [Share this on Twitter and on Facebook.](#) (Nah, it's cool; just take me back.)

How do you feel about this article?

- Fascinated
- Amused
- Excited
- Sad
- Angry

Attachment 16

Jurisdictions with Updated Non-Discrimination Ordinances Incidents Regarding Public Accommodations

City staff reached out to 17 jurisdictions to date and received information from 10. Staff inquired whether the jurisdictions had experienced reports of incidents specific to the public accommodations provisions of the updated ordinance, including bathrooms. The table below summarizes the feedback from the jurisdictions.

Compiled by City Manager's Office

City	Year of Update	Responding Department	Reports
Atlanta, GA	2013	Mayor's Office	No formal reports, but several unofficial incidents of discrimination against the transgender community have been relayed to the Mayor's Office.
Kansas City, MO	2008	Human Relations	There was one complaint by a person who sought to prevent a transgender person from using a restroom and blocked access to the bathroom with a trashcan. The transgender person pushed through a trashcan that was propped up in front of the door to keep her out. The woman who had prevented the transgender person from entering was upset. The Human Relations Commission maintained the transgender woman had the right to use the bathroom.
Orlando, FL	2014	Community Affairs	None
San Antonio, TX	2013	Diversity and Inclusion Office	None
Pittsburgh, PA	2014	Community Affairs and Commission on Human Relations	There was one complaint filed by a transgender person who was harassed by a client of an establishment in a place of public accommodation. Steps were not taken to remedy the situation, and instead the transgender person was asked to leave the establishment. The complaint is currently under investigation.
Columbus, OH	2008	Community Relations	They have only received reports of discrimination against members of the transgender community. For example, one local business asked a transgender person not to visit his business because some women were uncomfortable using the bathroom when she was in the establishment.
St. Louis, MO	2012 County Ordinance	Civil Rights Enforcement Agency	None
Dallas, TX	2015	City Manager's Office	None
Louisville, KY	2004	Police Department	None
Denver, CO	2001	Human Rights and Community Partnerships	Resolved several complaints early on. The issues were of transgender people who were discriminated against in public accommodations and in employment because employees or owners of establishments had discomfort around transgender people using bathrooms. Complaints were resolved through conversations, training, and learning best practices.

Attachment 17

Hagemann, Robert

From: Hagemann, Robert
Sent: Thursday, February 11, 2016 12:04 PM
To: Rep. Dan Bishop (Dan.Bishop@ncleg.net)
Subject: FW: Your email to City Council

From: Carlee, Ron
Sent: Thursday, April 09, 2015 7:58 AM
To: Janice Covington
Subject: RE: Your email to City Council

Janice,

This is in response to your recent communication to the Charlotte City Council regarding use of public restrooms in the Government Center.

There are no written policies regarding the use of public restrooms at the Government Center. The practice has been and will continue to be that persons may use the restroom of the gender with which they identify. If there are concerns or complaints, they will be dealt with on an individual basis.

On the night in question, the current practice was intended to be followed and the officer referenced has affirmed that she did not intend to convey anything to the contrary to you. It was an emotionally filled night, however, and I can understand how you may have felt otherwise.

Please know that you and other members of the public are free to use restrooms in the Government Center and other City facilities based on your gender identity.

It is an underlying value of the City's administration that all people be treated in a non-discriminatory manner and with respect and dignity. If you ever find behavior by a City employee to the contrary, please let me know. -Ron

Ron Carlee, City Manager
City of Charlotte, NC
600 East Fourth Street
Charlotte, NC 28202
704 336 2241 (office)
704 301 4376 (mobile)
Twitter @roncarlee
rcarlee@charlottenc.gov

Hagemann, Robert

From: Hagemann, Robert
Sent: Thursday, February 11, 2016 12:06 PM
To: Rep. Dan Bishop (Dan.Bishop@ncleg.net)
Subject: FW: Just making sure what's being confirmed

From: Carlee, Ron
Sent: Thursday, April 30, 2015 2:29 PM
To: Price, Mark
Cc: D'Elosua, Sandy; 'Tom Murray'; mike.crum@crva.com; Cagle, Brent; Kimble, Ron
Subject: RE: Just making sure what's being confirmed

Mark,
Sorry for any confusion. The airport is a City facility and follows the same practices as other City facilities.

The City does not manage Bojangles, Ovens, Time Warner Cable Arena, or the Convention Center. They are overseen by CRVA. Below is the response we received from CRVA. Clarification about Time Warner Cable Arena should come CRVA and/or the Hornets.

Ron Carlee, City Manager
City of Charlotte, NC

From: Mike Crum [<mailto:mike.crum@crva.com>]
Sent: Thursday, April 30, 2015 8:26 AM
To: Kimble, Ron
Subject: Restroom Access Statement

Ron, here's the statement CRVA has developed concerning restroom access for transgender patrons:

"The CRVA does not have a policy concerning restroom access for transgender patrons. Patrons are free to choose restrooms in CRVA venues based on their gender identity."

Let me know if you have any questions.

Mike

Michael E. Crum
VP, Business Development and Chief Financial Officer
Charlotte Regional Visitors Authority (CRVA)
500 S. College Street
Charlotte, NC 28202
704-414-4154
crva.com

Attachment 18

[Portal](#) [Labor and Employment Law](#) [Labor and Employment Law Blog](#) [EEOC on Transgender Harassment, Discrimination, and Restrooms](#)

04-10-2015 | 10:51 AM | Author: [Philip Miles](#)

EEOC on Transgender Harassment, Discrimination, and Restrooms



The EEOC issued an important new decision regarding transgender discrimination in [Lusardi v. Dept. of Army](#). The employee transitioned from a man to a woman and explained the transitioning process to (now-) her employer.

Rather than allow the employee to use the common women's restroom, the employer required her to use a single-use restroom (the employer claims the employee collaborated on this plan). The EEOC held that denying the employee use of the common women's restroom was disparate treatment on the basis of sex in violation of Title VII. To get there, the EEOC had to hold that the bathroom denial rose to the level of "adverse employment action" - a call that could easily go either way.

Also, the employee's team leader continued to occasionally refer to her by her male name, using male pronouns, and often calling her "sir." The EEOC concluded that this was sex-based harassment. Whether these incidents constituted "severe or pervasive" harassment (a requirement for harassment claims) was another close call.

Clearly, the EEOC has gone all-in on utilizing Title VII to protect transgender employees from workplace discrimination. Whether courts will address these issues in the same manner remains an open question.



[Read additional employment law articles](#) on Philip Miles' blog, [Lawffice Space](#) .

For more information about LexisNexis products and solutions, please connect with us through our [corporate site](#).

Tags: [employment discrimination](#) [transgender discrimination](#) [transgender harassment](#)

Attachment 19

OSHA Trade News Release

U.S. Department of Labor
OSHA, Office of Communications

June 1, 2015

Contact: Office of Communications

Phone: 202-693-1999

OSHA publishes guide to restroom access for transgender workers

WASHINGTON – The Occupational Safety and Health Administration today published a Guide to Restroom Access for Transgender Workers*. The publication provides guidance to employers on best practices regarding restroom access for transgender workers. The guide was developed at the request of the National Center for Transgender Equality, an OSHA Alliance partner that works collaboratively with the agency to develop products and materials to protect the safety and health of transgender workers.

OSHA's Sanitation standard requires that all employers under its jurisdiction provide employees with sanitary and available toilet facilities, so that employees will not suffer the adverse health effects that can result if toilets are not available when employees need them.

"The core principle is that all employees, including transgender employees, should have access to restrooms that correspond to their gender identity," said Assistant Secretary of Labor for Occupational Safety and Health Dr. David Michaels. "OSHA's goal is to assure that employers provide a safe and healthful working environment for all employees."

Many companies have implemented written policies to ensure that all employees—including transgender employees—have prompt access to appropriate sanitary facilities. The core belief underlying these policies is that all employees should be permitted to use the facilities that correspond with their gender identify. For example, a person who identifies as a man should be permitted to use men's restrooms, and a person who identifies as a woman should be permitted to use women's restrooms.

The publication includes a description of best practices and also makes employers aware of federal, state and local laws that reaffirm the core principle of providing employees with access to restroom facilities based on gender identification.

Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA's role is to ensure these conditions for America's working men and women by setting and enforcing standards, and providing training, education and assistance. For more information, visit www.osha.gov.

###

U.S. Department of Labor news materials are accessible at <http://www.dol.gov>. The department's Reasonable Accommodation Resource Center converts departmental information and documents into alternative formats, which include Braille and large print. For alternative format requests, please contact the department at (202) 693-7828 (voice) or (800) 877-8339 (federal relay).

* **Accessibility Assistance** Contact OSHA's Office of Communications at 202-693-1999 for assistance accessing PDF materials.



Best Practices

A Guide to Restroom Access for Transgender Workers

Core principle: All employees, including transgender employees, should have access to restrooms that correspond to their gender identity.

Introduction

The Department of Labor's (DOL) Occupational Safety and Health Administration (OSHA) requires that all employers under its jurisdiction provide employees with sanitary and available toilet facilities, so that employees will not suffer the adverse health effects that can result if toilets are not available when employees need them. This publication provides guidance to employers on best practices regarding restroom access for transgender workers. OSHA's goal is to assure that employers provide a safe and healthy working environment for *all* employees.

Understanding Gender Identity

In many workplaces, separate restroom and other facilities are provided for men and women. In some cases, questions can arise in the workplace about which facilities certain employees should use. According to the Williams Institute at the University of California-Los Angeles, an estimated 700,000 adults in the United States are *transgender*—meaning their internal *gender identity* is different from the sex they were assigned at birth (e.g., the sex listed on their birth certificate). For example, a *transgender man* may have been assigned female at birth and raised as a girl, but identify as a man. Many transgender people *transition* to live their everyday life as the gender they identify with. Thus, a transgender man may transition from living as a woman to living as a man. Similarly, a *transgender woman* may be assigned male at birth, but transition to living as a woman consistent with her gender identity. Transitioning is a different process for

everyone—it may involve social changes (such as going by a new first name), medical steps, and changing identification documents.

Why Restroom Access Is a Health and Safety Matter

Gender identity is an intrinsic part of each person's identity and everyday life. Accordingly, authorities on gender issues counsel that it is essential for employees to be able to work in a manner consistent with how they live the rest of their daily lives, based on their gender identity. Restricting employees to using only restrooms that are not consistent with their gender identity, or segregating them from other workers by requiring them to use gender-neutral or other specific restrooms, singles those employees out and may make them fear for their physical safety. Bathroom restrictions can result in employees avoiding using restrooms entirely while at work, which can lead to potentially serious physical injury or illness.

OSHA's Sanitation Standard

Under OSHA's Sanitation standard (1910.141), employers are required to provide their employees with toilet facilities. This standard is intended to protect employees from the health effects created when toilets are not available. Such adverse effects include urinary tract infections and bowel and bladder problems. OSHA has consistently interpreted this standard to require employers to allow employees prompt access to sanitary facilities. Further, employers may not impose unreasonable restrictions on employee use of toilet facilities.

Model Practices for Restroom Access for Transgender Employees

Many companies have implemented written policies to ensure that *all* employees—including transgender employees—have prompt access to appropriate sanitary facilities. The core belief underlying these policies is that all employees should be permitted to use the facilities that correspond with their gender identity. For example, a person who identifies as a man should be permitted to use men’s restrooms, and a person who identifies as a woman should be permitted to use women’s restrooms. The employee should determine the most appropriate and safest option for him- or herself.

The best policies also provide additional options, which employees may choose, but are not required, to use. These include:

- Single-occupancy gender-neutral (unisex) facilities; and
- Use of multiple-occupant, gender-neutral restroom facilities with lockable single occupant stalls.

Regardless of the physical layout of a worksite, all employers need to find solutions that are safe and convenient and respect transgender employees.

Under these best practices, employees are not asked to provide any medical or legal documentation of their gender identity in order to have access to gender-appropriate facilities. In addition, no employee should be required to use a segregated facility apart from other employees because of their gender identity or transgender status. Under OSHA standards, employees generally may not be limited to using facilities that are an unreasonable distance or travel time from the employee’s worksite.

Other Federal, State and Local Laws

Employers should be aware of specific laws, rules, or regulations regarding restroom access in their states and/or municipalities, as well as the potential application of federal anti-discrimination laws.

The Equal Employment Opportunity Commission (EEOC), the Department of Justice (DOJ), DOL, and several other federal agencies, following

several court rulings, have interpreted prohibitions on sex discrimination, including those contained in Title VII of the *Civil Rights Act of 1964*, to prohibit employment discrimination based on gender identity or transgender status. In April 2015, the DOL’s Office of Federal Contract Compliance Programs (OFCCP) announced it would require federal contractors subject to Executive Order 11246, as amended, which prohibits discrimination based on both sex and gender identity, to allow transgender employees to use the restrooms and other facilities consistent with their gender identity. Also in April 2015, the EEOC ruled that a transgender employee cannot be denied access to the common restrooms used by other employees of the same gender identity, regardless of whether that employee has had any medical procedure or whether other employees’ may have negative reactions to allowing the employee to do so. The EEOC held that such a denial of access constituted direct evidence of sex discrimination under Title VII.

The following is a sample of state and local legal provisions, all reaffirming the core principle that employees should be allowed to use the restrooms that correspond to their gender identity.

Colorado: Rule 81.9 of the Colorado regulations requires that employers permit their employees to use restrooms appropriate to their gender identity rather than their assigned gender at birth without being harassed or questioned. 3 CCR 708-1-81.9 (revised December 15, 2014), available at <http://cdn.colorado.gov/cs/Satellite/DORA-DCR/CBON/DORA/1251629367483>.

For more information refer to: “Sexual Orientation & Transgender Status Discrimination—Employment, Housing & Public Accommodations,” Colorado Civil Rights Division, available at: <http://cdn.colorado.gov/cs/Satellite/DORA-DCR/CBON/DORA/1251631542607>.

Delaware: Guidance from the Delaware Department of Human Resource Management provides Delaware state employees with access to restrooms that correspond to their gender identity. The guidance was issued pursuant to the state’s gender identity nondiscrimination law.

Delaware’s policy also suggests: Whenever practical, a single stall or gender-neutral restroom may be provided, which all employees may utilize.

However, a transgender employee will not be compelled to use only a specific restroom unless all other co-workers of the same gender identity are compelled to use only that same restroom.

For more information refer to: State of Delaware Guidelines on Equal Employment Opportunity and Affirmative Action Gender Identity, available at: <http://www.delawarepersonnel.com/policies/documents/sod-eeoc-guide.pdf>.

District of Columbia: Rule 4-802 of the D.C. Municipal Regulations prohibits discriminatory practices in regard to restroom access. Individuals have the right to use facilities consistent with their gender identity. In addition, single-stall restrooms must have gender-neutral signage. D.C. Municipal Regulations 4-802, "Restrooms and Other Gender Specific Facilities," available at: <http://www.dcregs.dc.gov/Gateway/RuleHome.aspx?RuleNumber=4-802>.

Iowa: The Iowa Civil Rights Commission requires that employers allow employees access to restrooms in accordance with their gender identity, rather than their assigned sex at birth.

For more information refer to: "Sexual Orientation & Gender Identity – An Employer's Guide to Iowa Law Compliance," Iowa Civil Rights Commission, available at: https://icrc.iowa.gov/sites/files/civil_rights/publications/2012/SOGIEmpl.pdf.

Vermont: The Vermont Human Rights Commission requires that employers permit employees to access bathrooms in accordance with their gender identity.

For more information refer to: "Sex, Sexual Orientation, and Gender Identity: A Guide to Vermont's Anti-Discrimination Law for Employers and Employees," Vermont Human Rights Commission, available at: <http://hrc.vermont.gov/sites/hrc/files/pdfs/other%20reports/trans%20employment%20brochure%207-13-12.pdf>.

Washington: The Washington State Human Rights Commission requires employers that maintain gender-specific restrooms to permit transgender employees to use the restroom that

is consistent with their gender identity. Where single occupancy restrooms are available, the Commission recommends that they be designated as "gender neutral."

For more information refer to: "Guide to Sexual Orientation and Gender Identity and the Washington State Law Against Discrimination," available at: <http://www.hum.wa.gov/Documents/Guidance/GuideSO20140703.pdf>.

Additional Information

- American Psychological Association. Answers to your questions about transgender people, gender identity and gender expression, 2011: <http://www.apa.org/topics/lgbt/transgender.aspx>.
- Transgender Law Center's model employer policy, with an extensive section on restrooms, can be found at: <http://transgenderlawcenter.org/wp-content/uploads/2013/12/model-workplace-employment-policy-Updated.pdf>.
- "Restroom Access for Transgender Employees" on Human Rights Campaign website: <http://www.hrc.org/resources/entry/restroom-access-for-transgender-employees>.
- National Gay and Lesbian Task Force and the National Center for Transgender Equality. National Transgender Discrimination Survey, 2011: <http://endtransdiscrimination.org/report.html>.

How OSHA Can Help

OSHA has a great deal of information to assist employers in complying with their responsibilities under the law. Information on OSHA requirements and additional health and safety information, including information on OSHA's Sanitation standard, is available on the agency's website (www.osha.gov).

Workers have a right to a safe workplace (www.osha.gov/workers.html#2). The law requires employers to provide their employees with working conditions that are free of known dangers. An employer's duty to provide a safe workplace includes the duty to provide employees with toilet facilities that are sanitary and available, so that employees can use them when they need to do so. Employers also have a duty to protect all

their employees, regardless of whether they are transgender, from any act or threat of physical violence, harassment, intimidation, or other threatening disruptive behavior that occurs at the work site. For more information on workplace violence, please see OSHA's website at: www.osha.gov/SLTC/workplaceviolence.

Workers who believe that they have been exposed to a hazard or who just have a question should contact OSHA. For example, workers may file a complaint to have OSHA inspect their workplace if they believe that their workplace is unsafe or that their employer is not following OSHA standards. Just contact OSHA at: 1-800-321-OSHA (6742), or visit www.osha.gov. Complaints that are signed by an employee are more likely to result in an on-site inspection. It's confidential. We can help.

The *Occupational Safety and Health Act* (OSH Act) prohibits employers from retaliating against their employees for exercising their rights under the OSH Act. These rights include raising a workplace health and safety concern with the employer, reporting an injury or illness, filing an OSHA complaint, and participating in an inspection or talking to an inspector. If workers have been retaliated against for exercising their rights, they must file a complaint with OSHA within 30 days of the alleged adverse action. For more information, please visit www.whistleblowers.gov.

OSHA can also help answer questions or concerns from employers. To reach your closest OSHA regional or area office, go to OSHA's Regional and Area Offices webpage (www.osha.gov/html/RAmap.html) or call 1-800-321-OSHA (6742). OSHA also provides free, confidential on-site assistance and advice to small and medium-sized employers in all states across

the country, with priority given to high-hazard worksites. On-site Consultation services are separate from enforcement activities and do not result in penalties or citations. To contact OSHA's free consultation program, or for additional compliance assistance, call OSHA at 1-800-321-OSHA (6742).

References:

Department of Labor, Office of Federal Contract Compliance Programs, 2015. "Frequently Asked Questions EO 13672 Final Rule", available at: http://www.dol.gov/ofccp/lgbt/lgbt_faqs.html#Q35.

National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011 at 56 (noting that only 22% of transgender people have been denied access to gender-appropriate restrooms), available at: <http://endtransdiscrimination.org/report.html>.

Gates, Gary J., How many people are lesbian, gay, bisexual, and transgender? Williams Institute, UCLA School of Law, 2011. Retrieved 5/18/2015 from: <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-How-Many-People-LGBT-Apr-2011.pdf>.

Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling. Injustice at Every Turn: A Report of the National Transgender Discrimination Survey. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011 at 56 (noting that only 22% of transgender people have been denied access to gender-appropriate restrooms), available at: <http://endtransdiscrimination.org/report.html>.

Lusardi v. McHugh, EEOC Appeal No. 0120133395 (Apr. 1, 2015), available at: <http://transgenderlawcenter.org/wp-content/uploads/2015/04/EEOC-Lusardi-Decision.pdf>.

Macy v. Holder, EEOC Appeal No. 0120120821 (2012); Attorney General Memorandum, Treatment of Transgender Employment Discrimination Claims (Dec. 15, 2015). Retrieved 5/18/2015 from: http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/12/18/title_vii_memo.pdf.

Memorandum to Regional Administrators and State Designees of the Occupational Safety and Health Administration on the Interpretation of 29 CFR 1910.141(c)(1)(i): Toilet Facilities (Apr. 6, 1998), available at: www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=22932.

Disclaimer: This document is not a standard or regulation, and it creates no new legal obligations. It contains recommendations as well as descriptions of mandatory safety and health standards. The recommendations are advisory in nature, informational in content, and are intended to assist employers in providing a safe and healthful workplace. The *Occupational Safety and Health Act* requires employers to comply with safety and health standards and regulations promulgated by OSHA or by a state with an OSHA-approved state plan. In addition, the Act's General Duty Clause, Section 5(a)(1), requires employers to provide their employees with a workplace free from recognized hazards likely to cause death or serious physical harm.



U.S. Department of Labor



Occupational Safety
and Health Administration

Attachment 20

15 Experts Debunk Right-Wing Transgender Bathroom Myth

[Research](#) March 20, 2014 10:01 AM EDT >>> LUKE BRINKER & CARLOS MAZA

Experts in 12 states -- including law enforcement officials, government employees, and advocates for victims of sexual assault -- have debunked the right-wing myth that sexual predators will exploit transgender non-discrimination laws to sneak into women's restrooms, calling the myth baseless and "beyond specious."



Media Outlets Have Promoted Myths About Sexual Assault To Attack Transgender Non-Discrimination Laws

Media Outlets Have Promoted "Urban Myth" About Restroom Sexual Assault In Trans-Inclusive Jurisdictions. According to Gay Star News' Jane Fae, transphobic bathroom myths have been promoted by news outlets that fail to fact-check unsubstantiated stories about alleged sexual assaults:

Have you heard the one about the trans woman who went into a female changing room and exposed herself to all and sundry?

No: that's not joke, so much as persistent urban myth. However, thanks to an unhappy combination of reactionary and transphobic groups in the United States, and newspapers with a less than whole-hearted commitment

to fact-checking, this is one trope that looks set to run and run.

[...]

Early opposition, primarily from religious groups in bizarre alliance with some radical feminists, led to the circulation of scary video clips: one depicted the supposed nightmare scenario of a young girl entering a toilet, to be followed moments later by a mustachioed man in a dress. Since, however, this was mostly preaching to the converted, the campaign appears to have gone mainstream, with an increasingly regular drip-feed of stories of the kind highlighted above.

The transphobic tendency is often aided and abetted by journalists who don't check the stories. [Gay Star News, [1/9/14](#)]

DC Trans Coalition: Conservatives Use "Bathroom Panic" To Defeat Transgender Non-Discrimination Laws. According to the DC Trans Coalition:

All over the world, anti-trans bigots try to convince the public that trans people are somehow a "threat" in public bathrooms. We've seen it in New Hampshire, in Gainesville, Fl and close to home in Montgomery County, Md: Our opponents stereotype trans people as sexual predators and try to use "bathroom panic" to defeat legislation that would protect our ability to gain employment and live safe lives. [DC Trans Coalition, accessed [3/18/14](#)]

Fox News Has Promoted Harassment Fears About Transgender Access To Restrooms. Fox News has repeatedly invoked fears of sexual assault and misbehavior in restrooms to attack equal access to public accommodations for transgender people, including a fake story about a transgender student harassing females in her school's restroom. [*Equality Matters*, [6/5/13](#), [2/27/13](#), [8/14/13](#), [10/15/13](#)]

Conservative Media Outlets Have Promoted Bogus Bathroom Stories. Numerous conservative media outlets, including The Daily Caller, WND, and the Media Research Center, have similarly promoted the myth that sexual predators will exploit trans-inclusive restrooms to prey upon women. [*Equality Matters*, [8/19/13](#), [8/22/13](#), [2/3/14](#)]

Experts From 12 States Debunk, Condemn Transgender Bathroom Myths

Colorado

State Law Has Prohibited Discrimination In Public Accommodations Since 2008. In 2008, Colorado expanded its Anti-Discrimination Act, which prohibits discrimination in public accommodations, to include sexual orientation and gender identity as a protected class. [*The Denver Post*, [5/29/08](#)]

Coalition Against Sexual Assault: Opponents Of Protections Are Creating "Unsubstantiated Fear." Alexa M. Priddy, director of training and communications at

the Colorado Coalition Against Sexual Assault, reported no problems as a result of her state's non-discrimination law. In an email to *Media Matters*, she wrote:

Denying equal rights is yet another form of discrimination against transgender individuals, which is pervasive within our society and institutions. Such criticisms of this law and ads [that] invoke what we see as "trans panic," an attempt to create fear of transgender people and a false label of trans individuals as sexual predators.

CCASA would love to see the real focus be on the realities that transgender people are far too often targeted for sexual violence, and if they seek support through victim services or the criminal justice system in the aftermath, they often face continued discrimination from the very people who are there to help. Sexual assault is already an under-reported crime, and we see this increase with marginalized communities. We want to focus on creating safety for transgender survivors and not on creating unsubstantiated fear. [Email exchange, 3/8/14]

Connecticut

State Law Has Prohibited Discrimination In Public Accommodations Since 2011. In 2011, Connecticut Gov. Dannel Malloy signed into law legislation prohibiting discrimination in public accommodations based on gender identity or expression. [*Bay Windows*, [7/6/11](#)]

State Commission On Human Rights: "Unaware Of Any Sexual Assault." In an email to *Media Matters*, Jim O'Neill, legislative liaison and spokesman for the Connecticut Commission on Human Rights in Opportunities, reported no problems as a result of the state's non-discrimination law:

I am unaware of any sexual assault as the result of the CT gender identity or expression law. I'm pretty sure it would have come to our attention. [Email exchange, 3/6/14]

Hawaii

State Law Has Prohibited Discrimination In Public Accommodations Since 2006. In 2006, Hawaii expanded its non-discrimination laws to prohibit discrimination in public accommodations on the basis of sexual orientation and gender identity. [Hawaii Civil Rights Commission, accessed [3/12/14](#)]

State Civil Rights Commission: Non-Discrimination Law "Has Not Resulted In Increase[d] Sexual Assault Or Rape." William Hoshijo, executive director of the Hawaii Civil Rights Commission, told *Media Matters* in an email:

In Hawai'i, the protection against discrimination in public accommodations on the basis of sex, including gender identity or expression, has not resulted in increase sexual assault or rape in women's restrooms. The HCRC is not aware of any incidents of sexual assault or rape causally

related or attributed to the prohibition against discrimination on the basis of gender identity or expression. (In contrast to anecdotal reports of transgender students being harassed and bullied in school restrooms when forced to use an assigned restroom inconsistent with their gender identity.) [Email exchange, 3/6/14]

Iowa

State Law Has Prohibited Discrimination In Public Accommodations Since 2007. In 2007, the Iowa Civil Rights Act was expanded to prohibit discrimination on the basis of sexual orientation and gender identity in public accommodations. [Iowa Civil Rights Commission, accessed [3/14/14](#)]

Des Moines Police Department: "We Have Not Seen That." In an interview with *Media Matters*, Des Moines Police Department spokesman Jason Halifax stated that he hadn't seen cases of sexual assault related to the state's non-discrimination ordinance:

We have not seen that. I doubt that's gonna encourage the behavior. If the behavior's there, [sexual predators are] gonna behave as they're gonna behave no matter what the laws are. [Phone interview, 3/13/14]

Maine

State Law Has Prohibited Discrimination In Public Accommodations Since 2005. In 2005, Maine adopted legislation prohibiting discrimination in public accommodations on the basis of gender identity and sexual orientation. [GLAD, [2/25/14](#)]

State Human Rights Commission: "No Factual Basis" For Sexual Assault Fears. In an email to *Media Matters*, Executive Director Amy Sneirson of the Maine Human Rights Commission said that the state's non-discrimination law hadn't led to increased sexual assault or rape:

I know that this concern persists but I personally have not seen any factual basis for it.

I am not aware of any increased sexual assault or rape in women's restrooms as a result of Maine's 2005 adoption of protections in the Maine Human Rights Act for sexual orientation (which, in Maine, includes "a person's actual or perceived heterosexuality, bisexuality, homosexuality or gender identity or expression"). [Email exchange, 3/7/14]

Massachusetts

Cambridge Has Prohibited Discrimination In Public Accommodations Since 1997. In 1997, the city of Cambridge expanded its non-discrimination ordinance to prohibit discrimination against transgender people in public accommodations. [National

Gay and Lesbian Task Force, [July 2008](#)]

Cambridge Police Superintendent: "No Incidents" Of Transgender Protections Being Abused. Police Superintendent Christopher Burke told *Media Matters* in an email:

Back in 1984 Cambridge enacted an ordinance that established the Human Rights Commission. The purpose of the ordinance was to protect the human rights of all citizens of the City. In 1997 this ordinance was amended to specifically include gender identity and expression. Much like the Transgender Equal Rights Bill proposal, the City of Cambridge sought to offer protection to transgender individuals from being harassed, fired from a job, denied access to a public place, or denied or evicted from housing. Since this 1997 amendment there have been no incidents or issues regarding persons abusing this ordinance or using them as a defense to commit crimes. **Specifically, as was raised as a concern if the bill were to be passed, there have been no incidents of men dressing up as women to commit crimes in female bathrooms and using the city ordinance as a defense.** [Email exchange, 3/7/14, emphasis added]

State Victims' Advocacy Group: Fears About Transgender Protections Are "Beyond Specious." Toni Troop, spokeswoman for the statewide sexual assault victims organization Jane Doe Inc., told *Media Matters* in an email:

The argument that providing transgender rights will result in an increase of sexual violence against women or men in public bathrooms is beyond specious. The only people at risk are the transgender men and women whose rights to self-determination, dignity and freedom of violence are too often denied. We have not heard of any problems since the passage of the law in Massachusetts in 2011, nor do we expect this to be a problem. While cases of stranger rape and sexual violence occur, sexual violence is most often perpetrated by someone known to the victim and not a stranger in the bush or the bathroom. [Email exchange, 3/7/14, emphasis added]

Minnesota

State Law Has Prohibited Discrimination In Public Accommodations Since 1993. In 1993, Minnesota amended its Human Rights Act to prohibit discrimination against transgender people in public accommodations. [OutFront Minnesota, accessed [3/13/14](#)]

Minneapolis Police Department: Fears About Sexual Assault "Not Even Remotely" A Problem. Minneapolis police spokesman John Elder told *Media Matters* in an interview that sexual assaults stemming from Minnesota's 1993 transgender non-discrimination law have been "not even remotely" a problem. Based on his experience, the notion of men posing as transgender women to enter women's restrooms to commit sex crimes "sounds a little silly," Elder said. According to Elder, a police department inquiry found "nothing" in the way of such crimes in the city. [Phone

interview, 3/11/14]

Nevada

State Law Has Prohibited Discrimination In Public Accommodations Since 2011. In 2011, Nevada enacted three transgender non-discrimination laws, including a law explicitly prohibiting discrimination in public accommodations. [National Gay and Lesbian Task Force, [6/2/11](#)]

Las Vegas Police Department: No Problems Since Passage Of Non-Discrimination Law. Asked whether Nevada's 2011 gender identity law had fueled a rise in sex crimes, Las Vegas Police Department spokesman Jesse Roybal told *Media Matters*, "the answer would be no." After the department's lieutenant for sexual assault ran a check of crimes since 2011, Roybal told *Media Matters* that the department had not "had any incidents involving transgender suspects." [Phone interview, 3/6/14, 3/11/14]

New Mexico

State Law Has Prohibited Discrimination In Public Accommodations Since 2003. In 2003, New Mexico amended its Human Rights Act to prohibit discrimination on the basis of sexual orientation and gender identity in public accommodations. [The Williams Institute, [September 2009](#)]

Albuquerque Police Department: "Unaware Of Any Cases Of Assault" Due To Non-Discrimination Law. Officer Tasia Martinez, Public Information Officer for the Albuquerque Police Department, told *Media Matters* in an email:

We are unaware of any cases of assault in our city as a result of transgendered [sic] accommodations. [Email exchange, 3/13/14]

Oregon

State Law Has Prohibited Discrimination In Public Accommodations Since 2007. In 2007, Oregon enacted the Oregon Equality Act, which prohibits discrimination in public accommodations on the basis of sexual orientation and gender identity. [Lambda Legal, accessed [3/13/14](#)]

Bureau of Labor And Industries: "Zero Allegations" Of Assault Due To 2007 Law. Oregon Bureau of Labor and Industries spokesman Charlie Burr told *Media Matters* in an email:

The Oregon Equality Act protects the rights of LGBT Oregonians in employment, housing and public places and has done so without any incidents of LGBT assaults on women in public restrooms that we're aware of. Our agency has encountered zero allegations of LGBT assault related to this public accommodation protection. [Email exchange, 3/7/14]

Portland Police Department: "I Have Never Heard Of Any Issues Like

This." Portland Police Department spokesman Peter Simpson wrote in an email to *Media Matters*:

I have never heard of any issues like this in Portland. We have a very low rate of sexual assault/rape crimes here overall. [Email exchange, 3/7/14]

Rhode Island

State Law Has Prohibited Discrimination In Public Accommodations Since 2001. In 2001, Rhode Island explicitly prohibited discrimination on the basis of gender identity or expression in public accommodations. [GLAD, [2/25/14](#)]

State Commission for Human Rights: No Increase In Sex Crimes Due To Non-Discrimination Law. Rhode Island Commission for Human Rights Executive Director Michael D. Evora told *Media Matters* in an email:

The Commission for Human Rights has not taken in any cases alleging gender identity discrimination in respect to bathroom usage in public facilities since the law was amended to prohibit such discrimination. In addition, we are not aware of any affect the passage of the law has had on incidents of assault in public restrooms. [Email exchange, 3/7/14]

Vermont

State Law Has Prohibited Discrimination In Public Accommodations Since 2007. In 2007, Vermont explicitly prohibited discrimination on the basis of gender identity in public accommodations. [GLAD, [3/4/14](#)]

State Human Rights Commission: "We Are Not Aware" Of Any Problems From Non-Discrimination Law. In an email to *Media Matters*, the Vermont Human Rights Commission's Karen Richards said:

I have only been here a short time so was checking with my staff to find out if they were aware of any issues. ... We are not aware of any other issues or problems similar to this caused by prohibiting discrimination against those who are transgendered. [Email exchange, 3/7/14]

Montpelier Police Department: No Complaints. Montpelier Police Chief Tony Facos responded to an email inquiry about whether the state's non-discrimination law had led to incidents of rape or sexual assault in women's restrooms, stating, "We do not have any complaints related to this issue." [Email exchange, 3/10/14]

Attachment 21

Texas Experts Debunk The Transgender "Bathroom Predator" Myth Ahead Of HERO Referendum

[Research](#) October 15, 2015 10:30 AM EDT >>> CARLOS MAZA & RACHEL PERCELAY

Opponents of Houston's LGBT-inclusive Equal Rights Ordinance warn that non-discrimination protections threaten women's safety in public restrooms. But experts -- including law enforcement officials, government employees, and advocates for sexual assault victims -- from three Texas cities with similar non-discrimination ordinances debunk the "bathroom predator" myth, citing empirical evidence and experience working with sexual assault victims.



Houston Voters Will Decide Next Month Whether To Retain Or Repeal City's Non-Discrimination Ordinance

Houston's Equal Rights Ordinance Will Be On The Ballot In November. On November 3, Houstonians will vote on whether to repeal the city's Equal Rights Ordinance (HERO), which was enacted in May 2014. [*International Business Times*, [8/5/15](#)]

HERO Prohibits Discrimination On The Basis Of Fifteen Characteristics,

Including Sexual Orientation And Gender Identity. HERO prohibits discrimination in areas like employment, housing, and public accommodations on the basis of 15 characteristics including race, sex, religion, disability, veteran status, sexual orientation, and gender identity. [Houston Equal Rights Ordinance, [5/14/14](#)]

Opponents Falsely Claim That HERO Allows Sexual Predators To Sneak Into Public Restrooms. HERO's opponents have claimed HERO would allow male sexual predators to sneak into women's restrooms by dressing up as women and pretending to be transgender. [*Equality Matters*, [5/13/14](#); *Equality Matters*, [5/30/14](#)]

Houston Media Have Uncritically Parroted The "Bathroom Predator" Myth. Television news stations in Houston have uncritically parroted opponents' "bathroom" talking point without giving viewers empirical evidence about the impact of similar non-discrimination laws in other states and cities. [*Media Matters*, [8/13/15](#)]

Texas Cities With Similar Non-Discrimination Laws Disprove The Bathroom Predator" Myth

Media Matters Contacted Officials In Three Texas Cities With Similar Non-Discrimination Laws. *Media Matters* contacted city officials, law enforcement officials, and advocates for sexual assault victims in Texas cities with similar non-discrimination laws in place, and asked:

Have gender identity/transgender public accommodations protections resulted in increased sexual assault or rape in women's restrooms? Has [CITY] encountered any other problems as a result of such protections?

Austin

Austin Has Prohibited Discrimination On The Basis Of Gender Identity Since 2004. In 2004, Austin's city council voted to add "gender identity" to the list of characteristics protected from discrimination in housing, public accommodations, and employment. [City of Austin, [6/10/04](#); Austin Equal Employment and Fair Housing Office, accessed [10/6/15](#)]

SAFE Alliance: "Cannot Recall A Single Incident" Of Sexual Assault In Public Restrooms. Emily LeBlanc, director of community advocacy at Austin's SAFE Alliance -- a group that works with survivors of sexual assault and exploitation, domestic violence, and child abuse and neglect -- told *Media Matters*:

I checked in with the manager who oversees all of our advocates--she reads reports on every forensic medical accompaniment we provide and has for about 5 years. She cannot recall a single incident in a women's restroom in that time. So while I can't tell you for sure that it never happens I can tell you that it has not been an issue we've seen for the survivors who've reached out for our services. [Email to *Media Matters*, 10/2/15]

City Council Mayor Pro Tem: "Have Not Heard Of Such Incidents" As A Result Of Non-Discrimination Ordinance. Kathie Tovo, mayor pro tem of the Austin City Council, told *Media Matters*:

Austin incorporated gender identity into our non-discrimination ordinance in 2004; the only notable change is that those who are transgender have a legal remedy should they be denied a public accommodation. While the data would be difficult to track, I can say that I have not heard of such incidents in my years of service on the Austin City Council. [Email to *Media Matters*, 10/10/15]

Austin Police Department: "Never Heard Of Any Cases" Of Suspect Entering A Public Restroom While Claiming To Be Transgender. Austin Police Department Detective Mike Crumrine told *Media Matters*:

I have never heard of any cases in which a suspect entered a public restroom while being dressed as a woman, (or claiming to be transgender), and sexually assaulted a female victim, nor have I heard of a male and assaulting another male victim in this manner. I checked with detective Rae Egan who just transferred from Sex Crimes to homicide, she too has never heard of APD working a case like that. Sergeant Benningfield was a detective in Sex Crimes before me and is currently the sergeant of the unit. She may have heard of such a case but, to my knowledge, in the six plus years from when she left as a detective to when she came back as the sergeant there has not been a case. [Email to *Media Matters*, 10/13/15]

Sergeant Sandra Benningfield also told *Media Matters*:

We have checked and we have nothing that matches transgender going into bathrooms to commit sexual assaults. [Email to *Media Matters*, 10/13/15]

Dallas

Dallas Has Prohibited Discrimination On The Basis Of Sexual Orientation And Gender Identity Since 2002. For over a decade, Dallas has prohibited discrimination based on sexual orientation and gender identity in housing, employment, and public accommodations. [City of Dallas, accessed [10/5/15](#)]

Dallas Fair Housing Office "Not Aware" Of Increase In Sexual Assault In Women's Restrooms. In response to *Media Matters'* inquiry, Fair Housing Office Assistant Director Beverly Davis stated that her office was unaware of any increase in sexual assault attributed to the city's non-discrimination ordinance:

In response to your inquiry, we are not aware of any increase in sexual assaults or rapes in women's restrooms here in the City of Dallas that can be attributed to our LGBT non-discrimination ordinance.

[...]

The city's leadership has made a concerted effort to promote diversity and respect for all citizens and visitors to the City of Dallas. [Email to *Media Matters*, 9/16/15]

Dallas Rape Crisis Center: Bathroom Predator Myth Comes From "Ignorance." April A. Mitchell, chief executive officer at the Dallas Area Rape Crisis Center (DARCC), told *Media Matters*:

These protections are passed with the intention to protect those that are vulnerable to harm in their communities. In our experience, sexual predators will perpetrate under ANY circumstance that presents itself. These types of ordinances or laws do not increase the sexual assaults or rapes for the community. Further, for communities to refuse these basic protections for all citizens will give power to those that would harm others. Last, those that cite this proposition as an "opportunity" to victimize someone are simply doing so in ignorance; not understanding the mentality of perpetrators.

To our knowledge there have not been any problems related to sexual assault and these mandated ordinances by any gender identified or trans gendered persons. [Email to *Media Matters*, 10/12/15]

El Paso

El Paso Has Prohibited LGBT Discrimination Since 2003. In 2003, El Paso amended its municipal code to prohibit discrimination based on sexual orientation or gender identity in places of public accommodation. [City of El Paso, accessed [10/5/15](#)]

El Paso Human Resources Director: "No Evidence" Of Negative Outcomes From Non-Discrimination Ordinance. In response to *Media Matters'* inquiry, Linda Thomas, City of El Paso Human Resources Director, said that there was "no evidence" of sexual assault related to the city's LGBT non-discrimination ordinance, adding "HR has not received complaints of that nature, nor are they in Police statistics." [Email to *Media Matters*, 9/18/15]

El Paso Police Department: "We Haven't Seen These Types Of Incidents Here." Sergeant Enrique Carrillo from the El Paso Police Department told *Media Matters* in a statement:

We haven't seen these types of incidents here. Not an issue. [Email to *Media Matters*, 10/14/15]

Center Against Sexual And Family Violence: LGBT Non-Discrimination Laws "Do Not Put Women At Risk." Stephanie Karr, executive director of El Paso's Center Against Sexual and Family Violence, told *Media Matters*:

El Paso approved an LGBT-inclusive non-discrimination law in April of 2003. In our experience 80% of all our clients who were sexually assaulted knew their perpetrator, which is on par with statistics nationwide. Sexual assault is a crime of opportunity facilitated by knowing the victim. Of all the

transgender persons we have worked with, every one of them, has been the victim of a sexual assault. LGBT-inclusive non-discrimination laws do not put women at risk of being sexually assaulted. These laws help foster a culture that validates and protects LGBT individuals from discrimination and violence. [Email to *Media Matters*, 10/7/15]

Experts In 15 Other States Have Previously Debunked The Transgender Bathroom Myth. Law enforcement officials, victims' rights advocates, and human rights commission officials in states and localities with transgender non-discrimination protections have debunked the claim that sexual predators will exploit non-discrimination laws, calling it "beyond specious." [*Media Matters*, [3/20/14](#)]

Attachment 22

CITY OF CHARLOTTE
OFFICE OF THE CITY ATTORNEY
Memorandum

TO: Mayor and Council

FROM: Robert E. Hagemann, City Attorney *REH*
Jason Kay, Senior Assistant City Attorney

DATE: May 20, 2015

RE: Illinois School Transgender Situation

Council Member Smith requested more details about a situation in Illinois, in which a transgender student had sought to use restroom facilities consistent with their gender identity.

The United States Department of Education (DOE) enforces claims of sexual discrimination under Title IX of the Education Amendments of 1972 ("Title IX"). Title IX is existing federal law that prohibits discrimination on the basis of sex in federally funded education programs and activities. All public and private elementary and secondary schools, as well as colleges and universities that receive federal funding are covered by this federal law.

In April of 2014, the DOE Office for Civil Rights issued clarifying guidance on the meaning of "sex" discrimination under Title IX. That guidance clarified that transgender students were included within the sex non-discrimination protections that are applied to all students under Title IX. "Title IX protects all students at recipient institutions from sex discrimination . . . [including] straight, gay, lesbian, bisexual and transgender students . . ." Accordingly, the Office of Civil Rights has brought actions on behalf of transgender students in a variety of school districts.

Recently, Township High School District 211 in Palatine, Illinois was investigated by DOE in connection with allegations raised by a transgender female (biological male) student who had sought access to the girls' locker room facilities. The school had refused her request, instead offering separate facilities for the student to change clothes.

The school district ultimately entered into a settlement agreement to avoid further litigation. Specifically, the settlement agreement required the district to provide the student "access to locker room facilities designated for female students at school . . ." Additionally, the district agreed to install privacy curtains within the girls' locker rooms for the benefit of the transgender student and "any students who wished to be assured of privacy while changing." Settlement agreements involving schools in other states have included similar requirements to provide transgender students access to restroom or locker room facilities of the student's choice.

Inquiry was also made regarding the interaction of transgender non-discrimination protections for students and the public indecent exposure laws applicable in Illinois. The public exposure law in Illinois has a component of the offense that specifically requires sexual intent: the offense is not mere exposure in public; the offense is exposure with the intent to arouse or satisfy a sexual desire. The public exposure law also applies only to persons age 17 and over.¹ The laws in other states appear to vary on this issue, some including a sexual intent component (like Illinois) and some without that component (like North Carolina).

¹ In Illinois, persons age 16 and younger are sometimes charged with disorderly conduct in relation to actions that would otherwise constitute public exposure if committed by an older person.

Attachment 23

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

**24 CFR Parts 5, 200, 203, 236, 400, 570,
574, 882, 891, and 982**

[Docket No. FR 5359–F–02]

RIN 2501–AD49

**Equal Access to Housing in HUD
Programs Regardless of Sexual
Orientation or Gender Identity**

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: Through this final rule, HUD implements policy to ensure that its core programs are open to all eligible individuals and families regardless of sexual orientation, gender identity, or marital status. This rule follows a January 24, 2011, proposed rule, which noted evidence suggesting that lesbian, gay, bisexual, and transgender (LGBT) individuals and families are being arbitrarily excluded from housing opportunities in the private sector. Such information was of special concern to HUD, which, as the Nation's housing agency, has the unique charge to promote the federal goal of providing decent housing and a suitable living environment for all. It is important not only that HUD ensure that its own programs do not involve discrimination against any individual or family otherwise eligible for HUD-assisted or -insured housing, but that its policies and programs serve as models for equal housing opportunity.

DATES: *Effective Date:* March 5, 2012.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

**I. Background—the January 24, 2011,
Proposed Rule**

HUD published a proposed rule on January 24, 2011 (76 FR 4194), which advised of evidence suggesting that LGBT individuals and families do not have equal access to housing. Such information concerned HUD because HUD is charged with promoting the federal goal of providing decent housing and a suitable living environment for

all.¹ In the January 24, 2011, proposed rule, HUD noted that many state and local governments share the concern over equal housing opportunity for LGBT individuals and families. Twenty states, the District of Columbia, and over 200 localities have enacted laws prohibiting discrimination in housing on the basis of sexual orientation or gender identity.²

As the Nation's housing agency, it is important not only that HUD ensure that its own programs do not involve arbitrary discrimination against any individual or family otherwise eligible for HUD-assisted or -insured housing, but that its policies and programs serve as models for equal housing opportunity. In July 2010, HUD issued guidance to assist LGBT individuals and families facing housing discrimination. (See http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/LGBT_Housing_Discrimination.) In addition to the guidance, HUD initiated this rulemaking in January 2011 in an effort to ensure that HUD's rental housing and homeownership programs remain open to all eligible persons regardless of sexual orientation, gender identity, or marital status.

HUD's January 24, 2011, rule proposed to amend 24 CFR 5.100 to include definitions of "sexual orientation" and "gender identity" among the definitions generally applicable to HUD programs. Under the proposed rule, 24 CFR 5.100 would define "sexual orientation" as "homosexuality, heterosexuality, or bisexuality," a definition that the Office of Personnel Management (OPM) uses in the context of the federal workforce in its publication "Addressing Sexual Orientation in Federal Civilian Employment: A Guide to Employee Rights." (See www.opm.gov/er/address.pdf at page 4.) The January 24, 2011, rule proposed to define "gender identity" as "actual or perceived gender-related characteristics," consistent with the definition of "gender identity" in the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, Public Law 111–84, Division E, Section 4707(c)(4) (18 U.S.C. 249(c)(4)).

To promote equal access to HUD's housing programs without regard to

sexual orientation or gender identity, in the January 2011 rule, HUD proposed to prohibit inquiries regarding sexual orientation or gender identity. As proposed, the prohibition precludes owners and operators of HUD-assisted housing or housing whose financing is insured by HUD from inquiring about the sexual orientation or gender identity of an applicant for, or occupant of, the dwelling, whether renter- or owner-occupied. In the January 2011 rule, HUD proposed to institute this policy in its rental assistance and homeownership programs, which include HUD's Federal Housing Administration (FHA) mortgage insurance programs, community development programs, and public and assisted housing programs.³ While the January 2011 rule proposed to prohibit inquiries regarding sexual orientation or gender identity, nothing in the rule proposed to prohibit any individual from voluntarily self-identifying his or her own sexual orientation or gender identity. Additionally, the January 2011 rule did not propose to prohibit otherwise lawful inquiries of an applicant or occupant's sex where the housing involves the sharing of sleeping areas or bathrooms. This prohibition of inquiries regarding sexual orientation or gender identity was proposed to be provided in a new paragraph (a)(2) to 24 CFR 5.105.

Additionally, the January 24, 2011, proposed rule clarified in the regulations governing HUD's housing programs that all otherwise eligible families, regardless of sexual orientation, gender identity, or marital status have the opportunity to participate in HUD programs. As noted in the January 2011 proposed rule, the majority of HUD's rental housing and homeownership programs already interpret the term "family" broadly. The proposed rule clarified that families, who are otherwise eligible for HUD programs, may not be excluded because one or more members of the family may be LGBT or perceived to be LGBT.

Finally, the rule proposed to revise 24 CFR 203.33(b), by adding sexual orientation and gender identity to the characteristics that an FHA lender may not take into consideration in determining the adequacy of a mortgagor's income. Marital status is already a prohibited consideration under the current version of 24 CFR 203.33(b).

³ Institution of this policy in HUD's Native American programs will be undertaken by separate rulemaking.

¹ This goal is rooted in section 2 of the Housing Act of 1949, 42 U.S.C. 1441.

² See, e.g., *Laws Prohibiting Discrimination Based on Sexual Orientation and Gender Identity*, Institute of Real Estate Management (IREM) Legislative Staff, July 2007, which is available at www.irem.org/pdfs/publicpolicy/Anti-discrimination.pdf; see also http://www.hrc.org/files/assets/resources/Housing_Laws_and_Policies.pdf.

II. Changes Made at the Final Rule Stage

In response to public comment and upon further consideration by HUD of the issues presented in this rulemaking, HUD makes the following changes at this final rule stage:

- New § 5.105(a)(2) is revised to make explicit that eligibility determinations for HUD-assisted or -insured housing must be made without regard to actual or perceived sexual orientation, gender identity, or marital status. Also, new § 5.105(a)(2) is revised by dividing this paragraph into two sections. Section 5.105(a)(2)(i) will affirmatively state that housing assisted or insured by HUD must be made available without regard to actual or perceived sexual orientation, gender identity, or marital status. New § 5.105(a)(2)(ii) includes the prohibition of inquiries regarding sexual orientation or gender identity for the purpose of determining eligibility or otherwise making housing available and further allows inquiries related to an applicant or occupant's sex for the limited purpose of determining placement in temporary, emergency shelters with shared bedrooms or bathrooms, or for determining the number of bedrooms to which a household may be entitled.

- The term "family" in § 5.403 is slightly reorganized in the opening clause to read as follows: "Family includes but is not limited to the following, regardless of actual or perceived sexual orientation, gender identity, or marital status * * *." This reorganization makes explicit that perceived, as well as actual, sexual orientation, gender identity, and marital status cannot be factors for determining eligibility for HUD-assisted housing or FHA-insured housing.

- The term "family" in 24 CFR 574.3 of the program regulations for the Housing Opportunities for Persons With AIDS (HOPWA) program is slightly revised to reinsert a clause in the definition of "family" in the codified HOPWA regulations that was inadvertently omitted at the proposed rule stage. As stated below in the discussion of public comments, the insertion of this clause serves to combine the original meaning of "family" as provided in the HOPWA regulations with the meaning given the term "family" in 24 CFR 5.403, as revised by this rule.

- The regulations for HUD's Section 202 Supportive Housing for the Elderly and Section 811 Supportive Housing for Persons with Disabilities programs are revised to provide a cross-reference to

"family" in 24 CFR 5.403, as revised by this rule.

There is one issue of significant comment for which HUD is not making a change at the final rule stage. This pertains to development and implementation of a national system that reports the sexual orientation and gender identity of beneficiaries of HUD housing programs, to allow HUD to better understand the extent to which HUD programs are serving LGBT persons. HUD is not making the requested change to the rule because HUD needs more time to consider the feasibility of such a system and the issues it raises; foremost among them being maintaining the privacy rights of the individual who would be the subject of such reporting. However, in response to comments highlighting the beneficial uses of data on LGBT individuals seeking assistance under HUD programs, and in deference to other government agencies that do collect such data, HUD is clarifying that the prohibition on inquiries is not intended to prohibit mechanisms that allow for voluntary and anonymous reporting of sexual orientation or gender identity solely for compliance with data collection requirements of state or local governments or other federal assistance programs.

With respect to permissible inquiries as to sex where the accommodations provided to an individual involve shared sleeping or bathing areas, HUD clarifies that the lawful inquiries as to sex would be permitted primarily for emergency shelters and like facilities. This temporary housing, unlike other HUD subsidized housing and unlike housing insured by the FHA, involves no application process to obtain housing, but rather involves immediate provision of temporary, short-term shelter for homeless individuals.

III. Public Comments Submitted on Proposed Rule and HUD's Responses

A. Overview of Public Comments

The public comment period for the proposed rule closed on March 25, 2011. At the close of the public comment period, approximately 376 public comments were received from a variety of commenters, including individuals, advocacy groups, legal aid offices, tenant and fair housing organizations, realtors and their representatives, law school clinics, public housing authorities, local government officials, and members of Congress. The overwhelming majority of comments were supportive of the rule. Some commenters, while supporting the rule, suggested modifications, and a

minority of the commenters opposed the rule.

Commenters supporting the rule stated that it was long overdue and noted that HUD, as the Nation's housing agency, should lead the efforts to prevent discrimination against LGBT persons in housing. The commenters supportive of the rule all pointed to the importance of equal housing opportunity for LGBT persons.

Commenters opposing the rule stated that of the many important topics that should be addressed in the housing area, this is not one of them. One commenter viewed the rule as excessive government regulation. Other commenters opined that the rule will cause owners of multifamily housing to decline to participate in the Housing Choice Voucher program. A minority of commenters opposing the rule expressed concern that HUD's proposal will create an unsuitable housing environment.

In proceeding with this final rule, HUD expresses its disagreement with the commenters opposing the rule. HUD believes that the concerns they have voiced will not be realized in practice.

B. Significant Public Comments and HUD's Responses

This section presents significant issues raised by commenters and HUD's responses to these comments.

Terminology Changes

Several commenters recommended some changes to the terms proposed to be included in 24 CFR part 5, including for "family," "gender identity," and "sexual orientation." Commenters also proposed adding definitions of "child," "marital status," and "sex."

Family. For the convenience of the reader and the discussion to follow, the term "family" proposed to be included in 24 CFR 5.403 is restated below:

Family includes, but is not limited to, regardless of marital status, actual or perceived sexual orientation, or gender identity, the following:

- (1) A single person, who may be an elderly person, displaced person, disabled person, near-elderly person, or any other single person; or
- (2) A group of persons residing together, and such group includes, but is not limited to:

- (a) A family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family);

- (b) An elderly family;
- (c) A near-elderly family;
- (d) A disabled family;
- (e) A displaced family; and

(f) The remaining member of a tenant family.

Comment: One commenter proposed expanding the definition of “family” to include any person or persons, regardless of their sex or relationship to one another, with the only restriction being to allow at least one, but no more than two, persons per bedroom.

Response: HUD believes the term “family,” as presented in 24 CFR 5.403, addresses the concern of the commenter. With respect to bedroom size, the existing occupancy requirements of HUD’s public and assisted housing programs already address the number of persons who may occupy one bedroom.

Comment: Other commenters suggested that it is important that the term “family” in HUD’s rule prevent from exclusion family members who may identify as LGBT individuals or who have LGBT relationships, or who may be perceived as such.

Response: HUD submits that the term “family,” as provided in 24 CFR 5.403, and as proposed to be slightly revised by this final rule, prevents such arbitrary exclusion.

Comment: Commenters suggested that the rule include in 24 CFR 982.201(c), a Public and Indian Housing program regulation permitting public housing agencies (PHAs) to determine who qualifies as a family, an explicit statement that PHAs do not have discretion to define family groupings in a way that excludes LGBT persons, and that a PHA’s discretion cannot conflict with 24 CFR 5.403. To accomplish this, a commenter recommended adding to 24 CFR 982.201(c) the phrase “regardless of marital status, sexual orientation, or gender identity.”

Response: HUD maintains that amendment of 24 CFR 982.201(c) is not required. The rule already proposes an amendment to 24 CFR 982.4 requiring that PHA determinations regarding family be consistent with 24 CFR 5.403. PHAs submit administrative plans to HUD. These administrative plans must include family definitions that are at least as inclusive as HUD’s definition. This requirement has generally proven an effective means of ensuring compliance with HUD eligibility requirements for beneficiaries of its public housing programs. If this approach is not effective following implementation of this rule, HUD will revisit the issue.

Comment: A commenter requested that HUD ensure that the term “family” as presented in 24 CFR 5.403 not have an adverse impact on Housing Opportunities for Persons With AIDS (HOPWA) recipients. The commenter

stated that HOPWA regulations are intended to ensure that AIDS patients can structure their living situations broadly, according to their health needs.

Response: At this final rule stage, HUD makes a slight change to the definition of the term “family” in 24 CFR 574.3, the definition section of the HOPWA program regulations, to reinsert in the definition of “family” the clause “who are determined to be important to their care or well-being.” This clause was inadvertently omitted in the proposed rule. Through insertion of this clause, the final rule combines the definition of family in the proposed 24 CFR 5.403 with the other elements of the original term “family” in 24 CFR 574.3.

Comment: Commenters stated that the definition for disabled households may be read to exclude same-sex couples. They suggested that HUD amend the definition of disabled households to add an additional cross-reference to the term “family” in 24 CFR 5.403 to capture “regardless of marital status, sexual orientation, or gender identity.”

Response: HUD’s regulations for the Section 202 Supportive Housing for the Elderly and Section 811 Supportive Housing for Persons with Disabilities programs, codified in 24 CFR part 891, include broad definitions of “elderly family” and “disabled household.” Nevertheless, similar to the approach that HUD took with the HOPWA definition of the term “family,” HUD is adding to the regulations in 24 CFR part 891 a cross-reference to the term “family” in 24 CFR 5.403. The cross-reference to “family” in 24 CFR 5.403 will supplement the meanings already provided to “family” in 24 CFR part 891.

Comment: Commenters suggested that the term “family” could be made more inclusive by moving the phrase “actual or perceived” to explicitly include marital status, and clarifying who qualifies as a “child,” as many LGBT parents lack the ability to create legal relationships with their children.

Response: In response to the commenters’ concern and as noted in Section II of this preamble, the final rule restates the term “family” to provide in relevant part, as follows: “Family includes but is not limited to the following, regardless of actual or perceived sexual orientation, gender identity, or marital status * * *.” However, with respect to the second request, who qualifies as a child has not arisen as an issue in determining eligibility for housing. Accordingly, HUD will not add a definition of “child” to the final rule.

Comment: A commenter asked whether a family can be one individual.

Response: Yes, in accordance with section 3(b)(3)(A) of the U.S. Housing Act of 1937, HUD’s longstanding definition of “family” has always included a single person.

Comment: A commenter stated that the term “family” as provided in 24 CFR 5.403 of the proposed rule fails to give a “definite meaning to family” and leaves the door open for program abuse by allowing any group that wants to live together to call itself a family. Another commenter stated that the proposed regulation, with its expansion of the term “family,” could potentially allow any combination of persons to qualify as a family without the requirement of a legally recognized relationship. Another commenter stated that the term “family” as proposed in the January 2011 rule will make it impossible for the PHA to determine the family composition, the family income, or who is on the lease, as families could change on a weekly basis. The commenter submitted that the proposed change will take away the security and stability of the family, as well as the PHA’s power to determine if a tenant is suitable or whether the tenant’s behavior would have an adverse effect on other residents.

Response: As discussed in this rulemaking, in both the proposed and final rules, “family” in HUD programs had broad meaning long before these regulatory amendments. By way of this rule, HUD is merely affirming that an eligible family may not be excluded because of actual or perceived sexual orientation, gender identity, or marital status. This rule’s clarification of the term “family” has no impact on other program eligibility requirements, such as income qualification, annual certification, or the requirement that all family members are named on the household lease. The rule in no way precludes a PHA from consistently applying its otherwise lawful policies to a family consisting of LGBT members, just as it would a family with no LGBT members.

Gender Identity. For the convenience of the reader and the discussion to follow, the term “gender identity” in proposed 24 CFR 5.403 is restated below:

Gender identity means actual or perceived gender-related characteristics.

Comment: One commenter stated that the term “gender-related characteristics” is ambiguous and that this ambiguity could result in discriminatory application of the rule. The commenter called for a more precise definition for “gender identity,” but did not offer suggested language.

Another commenter was concerned that it would be very difficult to predict how the term “gender identity,” as defined in the statute, would actually be applied. Another commenter expressed similar concern that the rule does not address how “actual or perceived gender-related characteristics” would be interpreted in a given case, and recommended incorporation of an express reasonableness standard. The commenter stated that a reasonableness standard “will require claimants to meet a strenuous standard for relief, without placing them in the dubious position of having to produce proof that is most readily available to potential defendants.”

A commenter suggested replacing the term “gender identity” with the more comprehensive “gender identity or expression.” Another commenter also stated that the definition of “gender identity” should include gender-related expression, to better protect transgender individuals from discrimination.

Another commenter stated that “without more, ‘actual or perceived gender-related characteristics’ could be interpreted to be limited to those characteristics traditionally associated with the individual’s sex at birth.” The commenter further stated, “To pre-empt any suggestion that HUD condones this view,” HUD should amend the language to read: “Gender identity means actual or perceived gender related characteristics, whether or not those characteristics are stereotypically associated with the person’s designated sex at birth.” This commenter stated that the definition mirrors language currently adopted by a number of states and municipalities. Another commenter endorsed the definition suggested by the preceding commenter.

Response: HUD appreciates the suggested revisions to the definition of “gender identity” offered by the commenters, and will consider these suggested revisions further. However, HUD declines to make changes to this term at this final rule stage. The number of suggested revisions to the definition highlights the differing views among the commenters regarding the meaning of this term. Given this, HUD believes that any changes to the definition should be the subject of further public comment before HUD submits the term as the established definition under which HUD programs will operate. The definition of “gender identity” that is being established by this rule is based on the definition of “gender identity” in the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, 18 U.S.C. 249(c)(4). This federal statute was enacted in 2009 to protect LGBT

individuals from targeted violence. Passage of the law resulted from the ongoing efforts of individuals personally impacted by hate crime violence, together with nearly 300 civil rights and religious organizations, education groups, and civic associations committed to gaining legal protections for members of the LGBT community. In addition, the bill received support from many major law enforcement organizations, including the International Association of Chiefs of Police, the National District Attorneys Association, the National Sheriffs Association, the Police Executive Research Forum, and 31 state Attorneys General. Congress considered the issue over multiple sessions through public hearings, reports, and floor debates. The purpose of HUD’s rule, as with the Hate Crimes Prevention Act, is to provide greater protection for LGBT persons. Accordingly, HUD believes it appropriate to use the same definition of “gender identity” as applies in the Hate Crimes Prevention Act. HUD seeks to experience how this term works in its programs before determining what, if any, changes are needed for its effective application in the housing context. Commenters should note, however, that since the definition is intended to cover actual or perceived gender-related characteristics of all persons, including transgender persons, HUD will interpret it to include those gender-related characteristics not stereotypically associated with a person’s designated sex at birth.

Sexual Orientation. For the convenience of the reader and the discussion to follow, the term “sexual orientation” in proposed 24 CFR 5.403 is restated below:

Sexual orientation means homosexuality, heterosexuality, or bisexuality.

Comment: A commenter claimed that defining sexual orientation as “homosexuality, heterosexuality, or bisexuality” alone excludes many people. Another commenter stated that HUD should “broaden the definition of “sexual orientation” to “homosexuality, heterosexuality, bisexuality, or *sexuality as defined by the individual*” [emphasis added by commenter].

Other commenters stated that HUD could add the word “including” prior to the list in the proposed definition of “sexual orientation” to clarify that the list is not exhaustive. The commenters stated that, as written, the definition “excludes transgender individuals who self-identify as multi-gendered or between genders.” Still other commenters stated that the fluidity of the term sexual orientation must be

considered in light of transgender individuals. One of the commenters stated that the term sexual orientation should specifically include transgender individuals, due to uncertainty about whether general “sexual orientation” language would protect such individuals and in light of the historical treatment of such individuals.

Another commenter stated that the rule should broaden protections for “sexual orientation” to include persons who self-identify as heterosexuals but who have histories of same-sex relationships. Such histories could be an issue in small communities, in particular. The commenter states that protection for persons who identify as bisexuals would not be sufficient to cover this situation.

Response: As with commenters’ suggested revisions to the definition of “gender identity,” HUD appreciates the suggested revisions to the definition of “sexual orientation” offered by commenters, but for the same reasons as provided in the preceding response, HUD declines to make changes at this final rule stage. The definition of “sexual orientation,” which HUD provided in the proposed rule, is based in federal policy—the Office of Personnel Management (OPM) “Addressing Sexual Orientation in Federal Civilian Employment: A Guide to Employee Rights.” (See <http://www.opm.gov/er/address.pdf> at page 4.) The purpose of the OPM publication is to implement the Federal Government’s commitment to equal employment opportunity for LGBT individuals in the federal civil service. The OPM publication serves a goal analogous to the one served by HUD’s proposed rule, and, as with the definition of “gender identity,” HUD seeks to experience how this term will work in practice before making changes to a definition currently established in federal policy.

HUD notes that its rule covers actual or perceived sexual orientation, as well as gender identity. As such, the rule covers most of the situations presented by the commenters, such as identifying as transgender; being perceived as transgender, multi-gendered, or between genders; or having a history of same-sex relationships. No one definition in the rule need cover every situation.

Marital Status.

Comment: One commenter recommended adding a definition of “marital status” that would define this term as “the state of being unmarried, married, or separated, as defined by applicable state law. The term ‘unmarried’ includes persons who are single, divorced, or widowed.”

Response: The term “marital status” is not currently defined in HUD regulations and HUD does not find that the focus of this rule calls for a definition of “marital status.”

Sex.

Comment: One commenter stated that to foreclose the possibility of using the allowed inquiry into sex in 24 CFR 5.105(a)(2) against transgender individuals, the rule should either: (a) Define “sex” broadly as “the state of being or becoming male or female or transsexual;” or (b) substitute the more inclusive term “gender” for “sex,” and define “gender” as “sex, including a person’s gender identity and gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth.”

Response: HUD declines to define “sex” or to substitute “gender identity” for “sex” in HUD programs. HUD recognizes the difficulty that transgender persons have faced in finding adequate emergency shelter. HUD does not, however, believe that it is necessary to define “sex” as the commenter suggests. The rule makes clear that housing must be available without regard to actual or perceived gender identity and prohibits inquiries concerning such. Inquiries as to sex are permitted only when determining eligibility for a temporary, emergency shelter that is limited to one sex because it has shared sleeping areas and/or bathrooms, or to determine the number of bedrooms to which a household may be entitled. Such inquiries are not permitted in any other homeless shelter or housing. In light of the narrow breadth of the exception and the regulation’s overall purpose, HUD anticipates that transgender individuals will have greater access to shelters and other housing and will monitor its programs so as to ascertain whether additional guidance may be necessary.

Rule Should More Directly Prohibit Discrimination

Several commenters requested that HUD more directly prohibit discrimination. One commenter stated that “a different section of the proposed regulation completely prohibits a mortgagee from taking into account the sexual orientation or gender identity of an individual in determining whether to provide a mortgage to that person. Amending the proposed regulation to completely ban housing discrimination towards individuals based on their sexual orientation or gender identity * * * would (1) be more consistent with the complete prohibition on using sexual orientation or gender identity in

determining an individual’s adequacy for a mortgage and would (2) provide greater protection to LGBT individuals from housing discrimination.”

Other commenters agreed, stating that the rule could provide stronger protection by completely prohibiting “discrimination based on sexual orientation or gender identity toward occupants of or applicants for HUD-assisted housing (or housing with financing insured by HUD),” rather than by prohibiting certain inquiries. The commenters stated that there are ways other than direct inquiry that LGBT individuals could be identified or discriminated against.

Still other commenters expressed concern that people who are gender-nonconforming may be perceived as gay or lesbian without any inquiry into their sexual orientation and that most discrimination against LGBT persons occurs not because a person answered an inquiry about sexual orientation or gender identity, but because of assumptions about a person’s gender identity or sexual orientation. Those commenters proposed adding language that clearly prevents discrimination on the basis of real or perceived sexual orientation or gender identity.

One commenter suggested that proposed 24 CFR 5.105(a) be revised to cite 18 U.S.C. 249, the Hate Crimes Prevention Act, “for the inference that Congress intends to discourage animus against others based on their sexual orientation, and therefore HUD will similarly disallow animus against others based on their sexual orientation.” Another commenter also referenced the Hate Crimes Prevention Act, stating that HUD’s rule falls short of the goals of that Act. The commenter stated that a rule prohibiting inquiries will have little effect on those who discriminate based on their unverified perceptions.

Response: HUD believes that the revision made to § 5.105(a)(2), as discussed in Section II of this preamble, addresses the commenters’ concern.

Interpret the Fair Housing Act To Cover Discrimination Based on Sexual Orientation or Gender Identity

One commenter suggested that HUD interpret “discriminatory practice” in the Fair Housing Act to include discrimination against persons on the basis of sexual orientation or gender identity.

Response: In order to ensure equal access for all eligible families to HUD programs, this rule requires that eligibility determinations for HUD-assisted or -insured housing be made without regard to sexual orientation, gender identity, or marital status. These

additional program requirements do not, however, create additional protected classes in existing civil rights laws such as the federal Fair Housing Act. The Fair Housing Act prohibits discrimination based on race, color, national origin, religion, sex, disability, and familial status. Sexual orientation and gender identity are not identified as protected classes in the Fair Housing Act. As discussed in the following section, however, the Fair Housing Act’s prohibition of discrimination on the basis of sex prohibits discrimination against LGBT persons in certain circumstances, such as those involving nonconformity with gender stereotypes.

Interpret Sex Discrimination Under the Fair Housing Act To Reach Discrimination and Harassment of LGBT Persons

A commenter stated that proposed 24 CFR 5.403, prohibiting inquiries of “actual or perceived sexual orientation,” could be revised to prohibit inquiries of “actual or perceived sex.” The commenter stated that sex is already a protected class under the Civil Rights Act of 1964 and could be used to reach discrimination against LGBT persons.

Response: HUD declines to revise the proposed rule to prohibit inquiries of sex, but notes that certain complaints from LGBT persons would be covered by the Fair Housing Act. If an LGBT person experiences any of the forms of discrimination enumerated in the Fair Housing Act, such as race or sex discrimination, that person can invoke the protections of the Fair Housing Act to remedy that discrimination. Discrimination based on sex under the Fair Housing Act includes discrimination because of nonconformity with gender stereotypes. For example, if a PHA denies a voucher to a person because the person does not conform to gender stereotypes, that person may file a Fair Housing Act complaint with HUD alleging sex discrimination.

HUD may also have jurisdiction to process a complaint filed under the Fair Housing Act if an LGBT person obtains housing but then experiences discrimination in the form of sexual harassment. Sexual harassment is illegal under the Fair Housing Act if the conduct is motivated by sex and is either so severe or pervasive that it creates a hostile environment or the provision of housing or its benefits is conditioned on the receipt of sexual favors (for example, as a *quid pro quo*). Harassment may be motivated by sex if, for example, it is due to the landlord’s view that the tenant’s appearance or

mannerisms fail to conform with stereotypical expectations of how a man or woman should look or act. Housing owners or operators may be liable for their own actions or the actions of their employees or other residents.

If HUD determines that it does not have jurisdiction to investigate a complaint from an LGBT person, the person may still be protected under state and local laws that include sexual orientation or gender identity as protected classes.

Expand the Rule's Protection To Cover Discrimination Beyond Refusal To Rent

A commenter recommended expanding the proposed rule to prohibit harassment and disparate treatment on the basis of sexual orientation or gender identity. The commenter explained that in order for the proposed rule to maximize its effectiveness, owners and operators of HUD-assisted housing or housing whose financing is insured by HUD should be precluded from negative decisionmaking based on these protected categories. HUD should be clear about its power to enforce nondiscrimination and the remedies available to individuals who have been discriminated against.

Another commenter suggested that the prohibition on inquiries be strengthened so that no information about a person's sexual orientation or gender identity can be used to deny a tenancy, harass a tenant, evict a tenant, or terminate a voucher.

Yet other commenters recognized the intent behind prohibiting inquiries regarding sexual orientation or gender identity, but submitted that the prohibition will not adequately protect LGBT persons from harassment in housing, as much housing discrimination occurs when a housing provider infers a person's sexual orientation or gender identity based on stereotypes, appearances, mannerisms, or information from a third party. The commenters urged HUD to adopt a final rule that prohibits discrimination based on sexual orientation and gender identity in all HUD-assisted and HUD-insured housing.

Response: HUD believes the revision made to § 5.105(a)(2), as discussed in Section II of this preamble, addresses the commenters' concern. In order to ensure equal access for all eligible families to HUD programs, § 5.105(a)(2) requires that eligibility determinations for HUD-assisted or -insured housing be made without regard to sexual orientation, gender identity, or marital status.

Prohibition on Inquiries

Several commenters suggested changes to the prohibition on inquiries in proposed 24 CFR 5.105(a)(2). The proposed rule provided as follows:

No owner or administrator of HUD-assisted or HUD-insured housing, approved lender in an FHA mortgage insurance program, nor any (or any other) recipient or subrecipient of HUD funds may inquire about the sexual orientation, or gender identity of an applicant for, or occupant of, a HUD-assisted dwelling or a dwelling whose financing is insured by HUD, whether renter- or owner-occupied. This prohibition on inquiries regarding sexual orientation or gender identity does not prohibit any individual from voluntarily self-identifying the individual's sexual orientation or gender identity.

Comment: A commenter stated that the prohibition on inquiries may discourage open dialogue when determining appropriate placement of families applying for HUD programs. Inquiries regarding sexual orientation or gender identity may be appropriate where the safety of the individual or family being placed is of concern. There also may be other nondiscriminatory reasons for a person responsible for program placement to inquire about an individual's sexual orientation or gender identity. This commenter states that "the language [should] be changed to simply include 'actual and perceived sexual orientation and gender identity' in the section for nondiscrimination; or that the prohibition on inquiries [should be] limited to discriminatory purposes."

Response: Revised § 5.105(a)(2) addresses the commenters' nondiscrimination concerns. In addition, the prohibition on inquiries regarding sexual orientation or gender identity does not prevent individuals from volunteering to identify their sexual orientation or gender identity. They may choose to do so to address any safety concerns or for other placement-related issues, for example. Also, the commenter's concern is one that prompted HUD to include in the proposed rule its language on the permissibility of lawful inquiries as to sex, which is discussed below. However, as noted in the discussion of Section II of this preamble, and addressed in revised § 5.105(a)(2), the inquiries permissible in determining program eligibility are contemplated generally only where temporary, emergency shelter is provided to homeless individuals that involves the sharing of sleeping areas or bathrooms, or for a determination of the number of bedrooms to which a household may be entitled.

Lawful Inquiries of Sex

Several commenters requested clarification of the rule's lawful inquiry provision or expressed concern that the provision would allow for discrimination. The lawful inquiry provision provided by the proposed rule stated as follows:

[The] prohibition on inquiries regarding sexual orientation or gender identity does not prohibit lawful inquiries of an applicant or occupant's sex where the housing provided or to be provided to the individual involves the sharing of sleeping areas or bathrooms.

Comment: A commenter stated that the lawful inquiry exception for the sharing of sleeping areas or bathrooms may exacerbate extant stereotypes about gays and lesbians living in close quarters with heterosexuals. The commenter stated that numerous scenarios come to mind where landlords abuse this exception to refuse to rent to homosexuals, purportedly because heterosexuals feel uncomfortable "sharing bathrooms or living space" with homosexuals. The only legitimate purpose of such an exception, the commenter stated, would be in single-sex housing situations. But even there, the commenter stated, the inquiry is "entirely irrelevant and inappropriate" as to transgender status, because the person would have already acquired a new gender.

A commenter stated that the assumption that one person's sexual orientation might disturb the rights of another person in a setting where bathrooms and bedrooms would be shared reinforces stereotypes and biases, rather than countering them. Another commenter made a similar comment, stating that the proposal continues to promote negative stereotypes and violence against LGBT persons. A commenter speculated that while such language was placed in the proposal with the intention of ensuring that other tenants remain comfortable and safe, there are several issues with that goal, the first of which is whether "leaving so much up to the discretion of the landlord will lead to greater potential risk of danger for these tenants."

Another commenter stated that this provision creates numerous problems in application. The commenter states that asking someone who identifies with the so-called "opposite" gender to identify their sex implies that their identification is not "real" or "genuine," and that reinforces the very problems the regulation seeks to resolve. This commenter stated that as with sexual orientation, it is difficult to imagine how one's gender identity, even in a shared situation, would be a problem for

any other person, as few programs require individuals to share bedrooms with strangers.

Another commenter also expressed concern about the practical effect of allowing inquiries into the applicant's or occupant's sexual orientation or gender identity. The commenter stated that it is not clear from the proposed rule whether this language provides an exhaustive or merely illustrative list of scenarios under which it is appropriate to inquire about an individual's gender. The commenter claimed that if the language is merely illustrative, a housing provider will likely be authorized to make broad inquiries into an applicant's gender identity when any shared living space is anticipated. A commenter stated that this "lawful inquiry" into sex could be used to indirectly reach gender identity, for instance in the case of a transgender individual, and this allowed inquiry could be used to accomplish the kind of discrimination the rule is meant to prevent. Another commenter expressed concern about the impact unrestricted inquiries would have on low-income transgender people who cannot afford to access legal gender change petitions.

Response: The allowance of lawful inquiries of sex for housing that provides shared bathrooms or sleeping arrangements is not a license to exclude LGBT persons from HUD-assisted housing. HUD programs must be open and available to persons regardless of sexual orientation or gender identity. The allowance of the limited inquiry of sex provided in the proposed rule is intended to apply primarily in emergency shelters for homeless persons, to ensure privacy if the shelter consists of shared sleeping or bathing areas. HUD addressed the harassment issue earlier in this preamble.

Comment: A commenter noted that HUD had not proposed a definition of what is meant by the term "housing provided * * * to the individual (that) involves the sharing of sleeping areas or bathrooms." The commenter stated that "[t]here was presumably no intention to permit inquiry of any person applying to any development that had bathrooms in common space. Additionally, by not providing that the "sharing" reference applies only to persons who are not part of the same household," it would open the door to inquiries of all applicants for all housing that permits households of more than one individual.

Response: HUD believes that revised § 5.105(a)(2), in this final rule, expressly provides that LGBT status cannot be a basis for denying participation in a program funded or insured by HUD. Moreover, the inquiry permitted by the

rule is not unrestricted. As provided in this final rule, HUD believes it is appropriate to make inquiries as to sex in temporary, emergency shelters that have shared bedrooms or bathrooms. This housing, unlike other HUD subsidized housing and housing insured by FHA, necessitates immediate provision of temporary shelter for homeless individuals.

Comment: Another commenter expressed concern that the proposed prohibition on inquiries concerning gender identity may adversely affect the assignment of households to appropriately sized housing. The commenter explained that many local programs determine housing size in part based on the gender of household members, because household members of different genders other than spouses are not required to share a bedroom. According to the commenter, sponsors may assign households to housing that is too small or too large based on members' genders, consuming unnecessary housing assistance resources. A commenter suggested that HUD clarify the existing exception or add another exception to the blanket prohibition against inquiries to permit the assignment of households to properly sized housing.

Response: With the clarification provided in this final rule that HUD intended to allow lawful inquiries to a limited sector of HUD-assisted programs, HUD does not believe the commenter's concerns will be realized.

Comment: A commenter expressed concern about the lawful inquiries provision in the rule because the commenter believed the provision would allow housing providers to inquire about someone's human immunodeficiency virus/acquired immune deficiency syndrome (HIV/AIDS) status, and explained that gay men are often discriminated against when they are considered to have HIV/AIDS.

Response: Nothing in the lawful inquiries provision of this rule and no provision in HUD's existing regulations for its housing programs allows a housing provider to inquire about someone's HIV status, except where providing HIV/AIDS-related housing assistance and supportive services (e.g. activities under the HOPWA program (24 CFR part 574)), and subject to confidentiality requirements. Moreover, the federal Fair Housing Act, which HUD enforces and administers, prohibits discrimination against someone who has or is regarded as having a disability, including HIV/AIDS. (See 42 U.S.C. 3602(h)(3) and 3604(f)(1).)

Comment: Several commenters expressed concern that inquiries as to a person's "sex" in situations involving shared sleeping areas and bathrooms is not sufficiently clear to guard against discrimination based on gender identity and asked HUD to provide further guidance. One commenter stated that this exception for lawful inquiries "leaves landlords with significant discretion to deny housing on illegitimate grounds." This same commenter stated that HUD "should add language to more clearly confine this exception to its legitimate ends." Another commenter requested that HUD clarify what type of inquiries are acceptable and in what specific circumstances, so as not to allow this exception to become a pretext for discrimination based on gender identity.

Several commenters stated that the allowed inquiry into sex provided could be used to identify and target transgender individuals, in particular, because the term "sex" used in the rule is vague and because the "lawful inquiries" exception is too broadly defined, leaving landlords "significant discretion to deny housing on illegitimate grounds." Some of these commenters thought the exception should be more narrowly defined.

One commenter stated that the proposed rule does not provide sufficient guidance to clarify for housing providers the limits of permissible inquiry into the applicant's sex, thus placing housing administrators in the position of arbiter of the transgender individual's sex for the purpose of their housing applications, and exposing transgender persons to harm and discrimination because of varying interpretations. Another commenter similarly stated that "the exception for inquiries about sex for determining eligibility for single sex-dormitories or housing with single-sex shared-bathrooms might create opportunities for discrimination against transgender persons." The commenter asked HUD "to establish strict limitations on when these questions are appropriate."

A commenter stated that opponents of the rule will likely focus on the "niche issue of the placement of transgender individuals (or those that are pretending to be transgender) in single sex facilities." The commenter stated that HUD, in the interest of addressing these critics and for clarity overall, "should fully analyze this question instead of merely stating that the rule is 'not intended to prohibit otherwise lawful inquiries'" of sex, which is vague. The commenter asked, as an example, "[c]an a battered women's shelter still receive funding from HUD if it denies shelter to

a man, who perceives himself to be a woman? What would be the adjudicatory process in such an event? Is this event a realistic scenario? HUD should further analyze issues such as these both to undercut critics' arguments that the proposed rule would be unworkable and to better guide its local program coordinators in proper practices. The overarching goal of this proposed rule change is too important for it to be scrapped because of this rare and currently murky legal scenario."

Another commenter stated that a transgender person's actual sex may be at odds with his or her appearance, and questioned the meaning of this provision for such a person. A commenter asked if transgender persons may be excluded from shared housing or gay men excluded from sharing housing with other men. If so, would other accommodations be made for excluded groups? Other commenters urged HUD to clarify the rule to state that a housing provider may only inquire about individuals' gender identity for the purpose of placing them in gender-specific accommodations, but cannot inquire about a person's birth sex, anatomy, or medical history.

Response: In Section II of this preamble, HUD has already addressed several of the concerns raised by the commenters. HUD is committed to further review of this issue and, as necessary, will issue guidance that, through examples, elaborates on how the prohibition of inquiries on sexual orientation and gender identity, and the allowance for lawful inquiries as to sex, will work in practice.

Comment: Several commenters suggested that HUD-funded programs should accept an individual's gender identity, as opposed to "sex" in determining housing placement in sex-segregated housing programs. One commenter stated that lawful inquiries of a consumer's "sex" where housing involves the sharing of sleeping areas and bathrooms leave transgender individuals, who may need the most protection, particularly vulnerable to discrimination. Another commenter stated that even inquiries of individuals who have obtained legal gender change documents would lead to harassment and discrimination. For this reason, the commenter suggested that inquiries about sex for sex-specific housing should be made in reference to an individual's gender identity.

Another commenter stated that if applicants are not allowed to report their gender identity rather than their sex as legally defined by their state government, the considerable differences among states as to how

persons may change their sex would lead to a considerable lack of uniformity across HUD programs. The commenter further stated that transgender persons may be arbitrarily excluded from HUD programs if they are forced to report their sex as defined by their state government, instead of being permitted to report a gender identity that more accurately describes them. Several commenters expressing similar concerns recommended that the rule be revised so that a person is required only to disclose the gender they identify as regardless of sex assigned at birth and not be asked to provide proof of that identity.

Other commenters stated that the rule should allow for voluntary self-reporting where sex designations are required. In such cases, the commenter stated that "HUD could allow applicants to list the sex designation they would like to have rather than their biological or as yet medically un-reassigned sex." The commenter stated that this would help to avoid the problem of using allowed inquiries regarding sex to get to issues of gender identity. Another commenter stated that it is important to ensure that persons are able to self-select their sex in order to protect the access of transgender persons to housing facilities. Another commenter, after querying how the "lawful inquiries" regarding sex will apply to transgender individuals, stated that "in these instances, self-identification is probably the best way to go; however, this may be an area best left with some discretion."

Response: HUD recognizes the serious problem of housing instability among transgender persons. The housing discrimination, harassment, and homelessness that transgender persons face are part of what precipitated HUD's rulemaking in this area. These issues also contributed to HUD's recent recognition that housing discrimination because of nonconformity with gender stereotypes may constitute sex discrimination under the Fair Housing Act. HUD is aware of the significant challenges that transgender persons face when attempting to access shelters. By way of this rule, however, HUD is not mandating a national policy related to appropriate placement of transgender persons in shelters limited to one sex. HUD needs additional time to review this issue and determine whether setting national policy is appropriate.

Comment: A commenter expressed concern about being required to identify the sex of tenants on the Form HUD-50059, given that the applicant/tenant is not asked to self-identify sex but rather the information is assigned by a third party based on observation. Form HUD-

50059 is used to determine the number of bedrooms a family may need, based on the age and sex of the children. The commenter submitted that requiring information on sex to be reported on Form 50059 conflicts with the proposed rule prohibiting inquiries about sex, and suggested that individuals should self-identify their gender and sex.

Response: HUD will further examine this form, to determine whether a change is needed. The form is subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), which requires notice and comment when changes are made. Accordingly, any changes made to this form will provide the public the opportunity to comment, and such comment will not only be helpful in addressing the specific issues raised about this form, but may inform HUD on changes that may be needed to other forms.

Collect Data To Protect LGBT Community

Several commenters suggested that HUD establish a confidential data collection system to identify LGBT beneficiaries of HUD housing programs to ensure that their housing needs are met and that they are protected from discrimination.

Comment: Several commenters proposed that HUD provide a mechanism by which applicants and tenants of HUD-assisted housing or HUD-insured housing can voluntarily report their sexual orientation and gender identity. Such data would be collected for informational purposes only, and in a manner to protect the confidentiality of the responder.

Commenters identified varying need for such data. One commenter explained that data on the sexual orientation and gender identity of HUD program participants is crucial to demonstrate the need for affirmative outreach, assess its effect, and attract resources to address problems in this area. Other commenters stated that the data would be of substantial value for the development of appropriate programs and policies. One commenter specified that information on program participants' sexual orientation and gender identity can be useful to determine whether appropriate services are being delivered and to assess whether progress is being made in meeting the housing needs of LGBT youth and adults. Other commenters stated that data should be collected only to assess whether the rule is achieving its goals.

Commenters provided specific suggestions for safeguarding confidentiality. One commenter

proposed that inquiries should not be permitted until after admission decisions have been made, and another stated that only staff involved in the collection and analysis of the data should have access to it. Other commenters urged HUD to continue to work with fair housing organizations and the housing community to collect demographic information on the LGBT community in a way that cannot be used to discriminate, by including appropriate restrictions on the acquisition, retention, and use of the information to protect the privacy of those whose data is being collected. Several commenters discussed the effect of the proposed prohibition on inquiries on data collection. One commenter stated there are a myriad of potential mechanisms for achieving the dual goals of protection against discrimination while gathering sufficient data to monitor LGBT housing discrimination. The commenter proposed a voluntary reporting system that would allow persons who wish to self-identify to bypass housing providers and PHAs and submit demographic information directly to HUD. The commenter suggested that language be added to existing forms that would direct all applicants and occupants of HUD-assisted housing wishing to provide such information to a Web site and mailing address for HUD's Office of Fair Housing and Equal Opportunity. The commenter stated that this could enable the person to submit the information anonymously, while providing HUD with sufficient demographic information to monitor discrimination.

Another commenter also viewed voluntary disclosure as the appropriate balancing of the right to privacy "against the rule's purpose in ensuring equal access to housing." But according to the commenter, "[w]hile the rule proposal notes that the inquiry prohibition does nothing to limit voluntary disclosure, it also does nothing to channel such disclosures in a way that promotes the rule's underlying goal."

One commenter recommended that HUD conform its data collection systems related to the sex of household members to the proposed prohibition of inquiries concerning gender identity. Another commenter stated that the prohibition on inquiries regarding gender identity could result in the inadvertent housing of dangerous individuals because, in the commenter's view, gender identity is an important component of the applicant information collected to gather accurate criminal background information. The commenter supported the establishment

of a database containing gender identity information of applicants.

Response: For the reasons discussed in Section II of the preamble, HUD declines to include in this regulation a national reporting system of sexual orientation and gender identity. HUD understands the concerns of the commenters, but believes that further consideration must be given to this proposal. This final rule is not intended to prohibit mechanisms that allow for voluntary and anonymous reporting of sexual orientation or gender identity for compliance with data collection requirements of state and local governments or other federal assistance programs, but only after determining the individual's or family's eligibility for HUD assistance.

Comment: Commenters urged HUD to look for ways to collect and maintain data to help identify and combat LGBT housing discrimination, while protecting and preserving privacy and safety, and preventing further discrimination or retaliation so that additional policy efforts can be further developed. The commenters stated that because discrimination against LGBT individuals is substantially underreported, the final rule should contain language requiring covered housing providers and grantees to provide accessible information about these protections, as well as necessary information on how people can submit complaints when they believe their rights have been violated.

One commenter urged HUD to work with the LGBT community and fair housing organizations to collect demographic data on sexual orientation and gender identity to better enable the LGBT community to advocate for increased funding for geographic and programmatic areas where LGBT persons remain vulnerable. Another commenter stated that because sexual orientation and gender identity are still not identified in the Fair Housing Act as prohibited bases for discrimination, data must be collected to reflect the number of LGBT individuals and families seeking access to HUD programs and services to help advocate for necessary policy changes and to identify areas where LGBT persons remain particularly vulnerable to discrimination.

Response: HUD appreciates all the proposals submitted by the commenters. As discussed in Section II of the preamble, HUD declines to add a data collection mechanism to the rule. HUD notes, however, that it has existing mechanisms for collecting and reporting on discrimination claims filed with its Office of Fair Housing and Equal

Opportunity. (See http://portal.hud.gov/hudportal/HUD?src=/topics/housing_discrimination.)

Enforcement Procedures

Comment: Several commenters noted that the proposed rule was not explicit as to how HUD plans to enforce the rule. One commenter stated that there must be a mechanism by which claims of discrimination in HUD programs can be voiced by the LGBT community. Another commenter echoed that concern, stating that if sexual orientation or gender identity discrimination does occur, it must be clear to the landlords and future tenants that these matters will be addressed in a fair and timely manner.

A commenter suggested that HUD include in the final rule a clear procedure for submitting complaints, holding hearings, and making determinations of violations of HUD program rules. Another commenter suggested including an appeals process. One commenter suggested that HUD create a centralized complaint system through which persons can submit information about discrimination under the rule. That commenter proposed that HUD establish a telephone number for complaints based on violations of the proposed rule, and that HUD designate a coordinator to direct complaints to the appropriate persons in the program offices. The commenter proposed that HUD create a complaint intake form similar to the existing Form HUD-903 that persons use to file complaints under the Fair Housing Act. The commenter stated that creating a centralized intake system would have the benefit of facilitating the filing of reports of discrimination, as well as providing more information about the occurrence of discrimination in HUD programs. The commenter stated that "[p]ractical mechanisms for enforcement will allow LGBT families and advocates to fully utilize these changes to access housing."

One commenter questioned whether HUD anticipates an expansion of its Investigations Division to support the proposed rule, and if so, what if any training the existing staff would undergo to adequately prepare for this type of investigation. Another commenter simply suggested that HUD consider expanding its investigative units to respond to the likely increase in complaints.

A commenter inquired whether the regulations create a new right for aggrieved parties. The commenter explained that while an aggrieved party can file a complaint alleging discrimination on grounds expressly

forbidden in the Fair Housing Act, the proposed rule does not seem to give victims of discrimination based on sexual orientation or gender identity the same right. The commenter requested clarification regarding what method of enforcement HUD will implement if it does not explicitly extend this right to victims of discrimination based on sexual orientation or gender identity. The commenter concluded that without zealous and informed enforcement, these regulations will provide only lip service to the broader goals of promoting access to HUD programs for all eligible families.

Response: As noted in response to an earlier comment, this rule creates additional program requirements to ensure equal access to HUD programs for all eligible families. Therefore, a violation of the program requirements established by this rule will be handled in the same manner that violations of other program requirements are handled. Each HUD program has in place mechanisms for addressing violations of program requirements. If a participant in HUD-assisted or HUD-insured housing programs believes that the housing provider is not complying with program requirements, the individual may complain to the appropriate HUD office that administers the program (e.g., the Office of Public and Indian Housing, the Office of Community Planning and Development). In addition, as also noted in the earlier response to a comment, certain complaints would be covered by the Fair Housing Act. A claim of discrimination based on nonconformity with gender stereotypes may be investigated and enforced under the Fair Housing Act as sex discrimination. HUD recently published guidance on this. See http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/LGBT_Housing_Discrimination. Such claims would be filed through HUD's Office of Fair Housing and Equal Opportunity at the Web site noted earlier in this preamble: http://portal.hud.gov/hudportal/HUD?src=/topics/housing_discrimination or 1-(800) 669-9777. Many states and localities have laws prohibiting discrimination based on one's LGBT status. HUD's guidance, referenced above, contains a list of such states. As noted below, HUD will develop training materials to educate recipients of HUD funding of their rights and responsibilities under this rule.

Remedies

Other commenters recommended that HUD clearly explain its authority to

provide remedies under the rule, whether it is to sanction, suspend, debar, or seek civil penalties against those individuals or entities who deny individuals and families safe, clean, affordable housing because of their gender identity or sexual orientation. The commenters believe that "setting the rules in stone" would deter housing providers from violating the terms of the rule.

Response: Whenever a participant in a HUD program fails or refuses to comply with regulatory requirements, such failure or refusal shall constitute a violation of the requirements under the program in which the participant is operating and the participant will be subject to all sanctions and penalties for violation of program requirements, as provided for under the applicable program, including the withholding of HUD assistance. In addition, as is discussed in the prior response, HUD may pursue an enforcement action when the Fair Housing Act is implicated. A housing provider who is found to have violated the Fair Housing Act may be liable for actual damages, injunctive and other equitable relief, civil penalties, and attorney's fees.

Education, Outreach, and Guidance

A commenter stated that HUD should add education requirements. The commenter stated that within 9 months after this regulation goes into effect, entities that participate in HUD programs should educate their relevant staff on the rule. An Internet-based training program could be efficiently used. This requirement could be waived in rural areas that currently lack Internet access, or an alternative means of satisfying the requirement could be created, such as participation via telephone. This commenter also stated that within 9 months, HUD should require participating entities to begin providing individuals with updated information regarding their rights to be free from discrimination. This commenter stated that given limited resources, HUD should focus its efforts on areas with large LGBT populations and in jurisdictions that do not currently possess anti-discrimination statutes that cover sexual orientation or gender identity.

Another commenter stated that whether this policy has its desired effect will greatly depend on outside factors. The anti-discrimination policies in place should be brought to the attention of applicants for HUD housing through HUD application forms, interviews, and Web site pages. HUD employees should be instructed as to the reasons for these policies and should be sanctioned for

any behavior or comment that discriminates against individuals covered under HUD's policies. Employees who are sensitive to LGBT issues should be enlisted to provide information to assist LGBT individuals and their families in making decisions as to the most comfortable and safe housing. Another of the commenters stated that in order to ensure compliance with the proposed rule, it will be necessary to educate the affected agencies and programs on the meaning of "actual or perceived gender-related characteristics," a definition cited in the rule and drawn from the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009.

Another commenter recommended that HUD develop comprehensive outreach goals and advertise in the LGBT media. The commenter recommended that forms HUD-935.2(a) or (b) be amended for this purpose to include categories for gender identity and sexual orientation as target groups, and that such forms be available for all HUD-assisted programs. The commenter also suggested that PHAs affirmatively market to underrepresented populations as they are required to affirmatively market housing under the Fair Housing Act. Other commenters recommended that HUD-assisted housing providers be required to affirmatively market to the LGBT population through community centers and other outreach groups. One of these commenters stated that HUD program staff, PHAs, subsidized housing providers, and housing-related service providers will need education on the final rule to ensure that they are in compliance.

A commenter recommended that HUD conduct a public relations campaign that explains the new regulation and welcomes LGBT families. The commenter suggested that owners and operators of HUD-assisted housing and FHA-insured housing be aware of the proposed rule and its impact on their day-to-day dealings with tenants and mortgagors, while also suggesting that HUD create literature, posters, and other materials directed at LGBT families. The commenter stated that these advertisements should advise LGBT families that HUD wants to ensure their equal access to its core rental assistance and homeownership programs, while the media campaign should convey that HUD is committed to taking actions necessary to ensure that LGBT families are not excluded on the basis of their sexual orientation, gender identity, or other criteria irrelevant to the purpose of HUD.

Another commenter stated that if LGBT individuals do not know about

the proposed regulation, it will be much less effective. If enforcement of the proposed regulation largely depends on litigation by those who have been discriminated against, then those individuals must know that the discrimination that they faced was actually illegal. HUD should work with prominent LGBT organizations, as well as with nonprofits that deal with fair housing and with state and local governments to disseminate these proposed rules in a simple and easy-to-understand way.

A commenter specifically inquired about whether HUD's Fair Housing Enforcement Office would provide training on the implementation of the rule. Another commenter states that, in particular, HUD should: (1) Publicize the new regulation, (2) develop know-your-rights materials for LGBT individuals to promote the reporting of violations, and (3) provide mandatory trainings to owners and operators of HUD-assisted housing programs to encourage compliance.

Another commenter recommended that HUD issue clear guidelines that will ensure that LGBT tenants of single-sex housing will not be singled out for harassment or disparate treatment on the basis of their sexual orientation or gender identity. The commenter suggested that HUD owners and operators be given instructions on how to provide reasonable accommodations for LGBT families, including, where possible, mechanisms that provide privacy in public showers. The commenter stated that HUD staff, as well as HUD owners and operators, should be trained on the importance of safe housing for persons who self-identify as transgender.

Response: Without question, HUD plans to engage in education and outreach about this rule, and will consider many of the proposals offered by the commenters on how such education and outreach may be conducted.

Rule Should Wait for Completion of Study

Comment: A commenter expressed concern that HUD's proposed rule was published before HUD completed its study on housing discrimination based on sexual orientation and gender identity. The commenter suggested that HUD complete its study and consider the study's evidence in revising and finalizing the proposed rule rather than developing the regulation and conducting the study simultaneously.

Response: The study to which the commenter refers concerns the private sector and not HUD's programs.

Accordingly, HUD does not find it necessary to wait for the completion of the study. It is HUD's desire to proactively address the possibility of discrimination against LGBT individuals and families in HUD's housing programs.

Rule Did Not Properly Address Federalism Concerns

Comment: A commenter stated that this rule fails to properly address federalism concerns because protecting LGBT persons from discrimination is a matter of state law, and while some states have chosen to enact such protections, other states have declined to do so. Another commenter stated that HUD is overstepping its authority by defining family in the proposed regulation. The commenter thought this could be construed as an infringement on states' rights because the Federal Government has primarily left it to the states to make determinations regarding the definition of family. Another commenter stated that HUD is violating Executive Order 13132 on federalism by regulating marriage and housing. According to the commenter, these are states' rights issues, as regulation of marriage and housing occur at a state level, notwithstanding that the Federal Government provides funding for housing.

Response: HUD's rule is not in violation of the executive order on federalism, Executive Order 13132, nor is it regulating marriage. HUD's rule only pertains to HUD's housing programs. There is no requirement for any multifamily housing owner to participate in HUD's programs or for any lender to become an FHA-approved lender. However, if these individuals or entities choose to participate, then they must abide by the program requirements established by HUD.

Rule Exceeds HUD's Legal Authority

Comment: A few commenters stated that this rule exceeds HUD's legal authority. The commenters stated that making "sexual orientation" and "gender identity" protected classifications for purposes of federal housing programs has no support in any act of Congress, and that forbidding such discrimination undermines the Defense of Marriage Act. The commenters stated that HUD should not create new protected classifications where there is no statutory policy undergirding it.

Response: The rule creates additional program requirements to ensure equal access of all eligible families to HUD programs, which is well within the scope of HUD's authority. HUD's

mission is to create strong, sustainable, inclusive communities and quality affordable homes for all. This includes LGBT persons, who have faced difficulty in seeking housing. Excluding any eligible person from HUD-funded or HUD-insured housing because of that person's sexual orientation or gender identity contravenes HUD's responsibility under the Department of Housing and Urban Development Act to work to address "the needs and interests of the Nation's communities and of the people who live and work in them." (See 42 U.S.C. 3531.) Congress has repeatedly charged the Department with serving the existing housing needs of all Americans, including in section 2 of the Housing Act of 1949, 42 U.S.C. 1441 ("The Congress hereby declares that the general welfare and security of the Nation and the health and living standards of its people require * * * the realization as soon as feasible the goal of a decent home and a suitable living environment for every American family * * *"); section 2 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701t ("The Congress affirms the national goal, as set forth in section 2 of the Housing Act of 1949, of 'a decent home and a suitable living environment for every American family'"); sections 101 and 102 of the Cranston-Gonzalez National Affordable Housing Act, 42 U.S.C. 12701-702 ("The Congress affirms the national goal that every American family be able to afford a decent home in a suitable environment. * * * The objective of national housing policy shall be to reaffirm the long-established national commitment to decent, safe, and sanitary housing for every American by strengthening a nationwide partnership of public and private institutions able * * * to ensure that every resident of the United States has access to decent shelter or assistance in avoiding homelessness * * * [and] to improve housing opportunities for all residents of the United States"); and section 2(b) of the Housing and Community Development Act of 1974, 42 U.S.C. 5301 note ("The purpose of this Act, therefore, is—(1) to reaffirm the principle that decent and affordable shelter is a basic necessity, and the general welfare of the Nation and the health and living standards of its people require the addition of new housing units to remedy a serious shortage of housing for all Americans.")

Congress has given HUD broad authority to fulfill this mission and implement its responsibilities through rulemaking. Section 7(d) of the Department of Housing and Urban Development Act specifically states that

the Secretary “may make such rules and regulations as may be necessary to carry out his functions, powers, and duties.”

HUD does not agree that the Defense of Marriage Act, which relates to the definition of marriage, overrides the Department’s responsibility to ensure that its programs are carried out free from discrimination. This rule does not define or otherwise regulate marriage. Rather, it seeks to make housing available to LGBT persons who might otherwise be denied access to HUD-funded or assisted housing.

Rule Creates Conflict With Religious Freedom

Comment: A commenter stated that the rule may force faith-based and other organizations, as a condition of participating in HUD programs and in contravention of their religious beliefs, to support shared housing arrangements between persons who are not joined in what the commenter referred to as “the legal union of one man and woman.” Another commenter explained that, while not insisting that any person should be denied housing, faith-based and other organizations should retain the freedom to make housing placements in a manner consistent with their religious beliefs. The commenter further stated that the rule, by infringing on religious freedom, may have the ultimate effect of driving away faith-based organizations with a long and successful track record in meeting housing needs. The commenter concluded that given their large role in serving unmet housing needs, it is imperative that such faith-based organizations not be required to compromise or violate their religious beliefs as a condition of participating in HUD-assisted housing programs and receiving government funds to carry out needed services.

Other commenters stated that protecting sexual orientation and gender identity without provisions for protecting rights of conscience and belief results in governmental discrimination favoring one version of morality and belief over another. The commenters stated that there are many individuals and faith-based organizations who have already been penalized for adherence to religious beliefs that will not permit them to support same-sex relationships.

Response: Faith-based organizations have long been involved in HUD programs and provide valuable services to low-income populations served by HUD. It is HUD’s hope that faith-based organizations will continue to actively participate in HUD programs. However, the exclusion of an individual or family

from HUD housing for no reason other than that the individual is LGBT or the family has one or more LGBT members is inconsistent with HUD’s mission to ensure decent housing and a suitable living environment for all. Accordingly, it is incumbent on HUD to ensure that the regulations governing its housing programs make clear that such arbitrary exclusion will not be tolerated.

IV. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. A determination was made that this rule is a “significant regulatory action,” as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at (202) 402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial

number of small entities. This rule does not impose any new costs, or modify existing costs, applicable to HUD grantees. Rather, the purpose of the rule is to ensure open access to HUD’s core programs, regardless of sexual orientation or gender identity. In this rule, HUD affirms the broad meaning of “family” that is already provided for in HUD programs by statute. The only clarification that HUD makes is that a family is a family as currently provided in statute and regulation, regardless of marital status, sexual orientation, or gender identity. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This rule sets forth nondiscrimination standards. Accordingly, under 24 CFR 50.19(c)(3), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either: (i) Imposes substantial direct compliance costs on state and local governments and is not required by statute, or (ii) preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule would not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule would not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development,

Low and moderate income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Lead poisoning, Loan programs—housing and community development, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping.

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 236

Grant programs—housing and community development, Low- and moderate-income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Loan programs—housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Student aid, Virgin Islands.

24 CFR Part 574

Community facilities, Grant programs—health programs, Grant programs—housing and community development, Grant programs—social programs, HIV/AIDS, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 891

Aged, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 982

Grant programs—housing and community development, Grant programs—Indians, Indians, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated above, HUD amends 24 CFR parts 5, 200, 203, 236, 291, 570, 574, and 982, as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

- 1. The authority citation for 24 CFR part 5 continues to read as follows:

Authority: 42 U.S.C. 3535(d), unless otherwise noted.

- 2. The heading of subpart A is revised to read as follows:

Subpart A—Generally Applicable Definitions and Requirements; Waivers

* * * * *

- 3. In § 5.100, definitions for “family,” “gender identity,” and “sexual orientation” are added to read as follows:

§ 5.100 Definitions.

* * * * *

Family has the meaning provided this term in § 5.403, and applies to all HUD programs unless otherwise provided in the regulations for a specific HUD program.

* * * * *

Gender identity means actual or perceived gender-related characteristics.

* * * * *

Sexual orientation means homosexuality, heterosexuality, or bisexuality.

* * * * *

- 4. In § 5.105, revise the introductory text, redesignate paragraph (a) as paragraph (a)(1), and add paragraph (a)(2) to read as follows:

§ 5.105 Other Federal Requirements.

The requirements set forth in this section apply to all HUD programs, except as may be otherwise noted in the respective program regulations in title 24 of the CFR, or unless inconsistent with statutes authorizing certain HUD programs:

(a) * * *

(2) *Equal access to HUD-assisted or insured housing.* (i) *Eligibility for HUD-assisted or insured housing.* A determination of eligibility for housing that is assisted by HUD or subject to a mortgage insured by the Federal Housing Administration shall be made in accordance with the eligibility requirements provided for such program by HUD, and such housing shall be made available without regard to actual or perceived sexual orientation, gender identity, or marital status.

(ii) *Prohibition of inquiries on sexual orientation or gender identity.* No owner or administrator of HUD-assisted or

HUD-insured housing, approved lender in an FHA mortgage insurance program, nor any (or any other) recipient or subrecipient of HUD funds may inquire about the sexual orientation or gender identity of an applicant for, or occupant of, HUD-assisted housing or housing whose financing is insured by HUD, whether renter- or owner-occupied, for the purpose of determining eligibility for the housing or otherwise making such housing available. This prohibition on inquiries regarding sexual orientation or gender identity does not prohibit any individual from voluntarily self-identifying sexual orientation or gender identity. This prohibition on inquiries does not prohibit lawful inquiries of an applicant or occupant’s sex where the housing provided or to be provided to the individual is temporary, emergency shelter that involves the sharing of sleeping areas or bathrooms, or inquiries made for the purpose of determining the number of bedrooms to which a household may be entitled.

* * * * *

Subpart D—Definitions for Section 8 and Public Housing Assistance Under the United States Housing Act of 1937

- 5. In § 5.403, the definitions of “disabled family”, “elderly family”, “family”, and “near elderly family” are revised to read as follows:

§ 5.403 Definitions.

* * * * *

Disabled family means a family whose head (including co-head), spouse, or sole member is a person with a disability. It may include two or more persons with disabilities living together, or one or more persons with disabilities living with one or more live-in aides.

* * * * *

Elderly family means a family whose head (including co-head), spouse, or sole member is a person who is at least 62 years of age. It may include two or more persons who are at least 62 years of age living together, or one or more persons who are at least 62 years of age living with one or more live-in aides.

Family includes, but is not limited to, the following, regardless of actual or perceived sexual orientation, gender identity, or marital status:

(1) A single person, who may be an elderly person, displaced person, disabled person, near-elderly person, or any other single person; or

(2) A group of persons residing together, and such group includes, but is not limited to:

(i) A family with or without children (a child who is temporarily away from the home because of placement in foster

care is considered a member of the family);

- (ii) An elderly family;
- (iii) A near-elderly family;
- (iv) A disabled family;
- (v) A displaced family; and
- (vi) The remaining member of a tenant family.

* * * * *

Near-elderly family means a family whose head (including co-head), spouse, or sole member is a person who is at least 50 years of age but below the age of 62; or two or more persons, who are at least 50 years of age but below the age of 62, living together; or one or more persons who are at least 50 years of age but below the age of 62, living with one or more live-in aides.

* * * * *

PART 200—INTRODUCTION TO FHA PROGRAMS

■ 6. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1702–1715z–21; 42 U.S.C. 3535(d).

■ 7. In § 200.3, paragraph (a) is revised to read as follows:

§ 200.3 Definitions.

(a) The definitions “department”, “elderly person”, “family”, “HUD”, and “Secretary”, as used in this subpart A, shall have the meanings given these terms in 24 CFR part 5.

* * * * *

■ 8. Section 200.300 is revised to read as follows:

§ 200.300 Nondiscrimination and fair housing policy.

Federal Housing Administration programs shall be administered in accordance with:

(a) The nondiscrimination and fair housing requirements set forth in 24 CFR part 5, including the prohibition on inquiries regarding sexual orientation or gender identity set forth in 24 CFR 5.105(a)(2); and

(b) The affirmative fair housing marketing requirements in 24 CFR part 200, subpart M and 24 CFR part 108.

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

■ 9. The authority citation for 24 CFR part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, 1715z–16, and 1715u; 42 U.S.C. 3535(d).

■ 10. In § 203.33, paragraph (b) is revised to read as follows:

§ 203.33 Relationship of income to mortgage payments.

* * * * *

(b) Determinations of adequacy of mortgagor income under this section shall be made in a uniform manner without regard to race, color, religion, sex, national origin, familial status, handicap, marital status, actual or perceived sexual orientation, gender identity, source of income of the mortgagor, or location of the property.

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS

■ 11. The authority citation for 24 CFR part 236 continues to read as follows:

Authority: 12 U.S.C. 1715b and 1715z–1; 42 U.S.C. 3535(d).

■ 12. Section 236.1 is amended by adding a sentence at the end of paragraph (a) to read as follows:

§ 236.1 Applicability, cross-reference, and savings clause.

(a) *Applicability.* * * * The definition of “family” in 24 CFR 200.3(a) applies to any refinancing of a mortgage insured under section 236, or to financing pursuant to section 236(j)(3) of the purchase, by a cooperative or nonprofit corporation or association of a project assisted under section 236.

* * * * *

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

■ 13. The authority citation for 24 CFR part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d), and 5301–5320.

Subpart A—General Provisions

■ 14. In § 570.3, the definitions of “family” and “household” are revised to read as follows:

§ 570.3 Definitions.

* * * * *

Family refers to the definition of “family” in 24 CFR 5.403.

Household means all persons occupying a housing unit. The occupants may be a family, as defined in 24 CFR 5.403; two or more families living together; or any other group of related or unrelated persons who share living arrangements, regardless of actual or perceived, sexual orientation, gender identity, or marital status.

* * * * *

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

■ 15. The authority citation for 24 CFR part 574 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12901–12912.

■ 16. In § 574.3, the definition of “family” is revised to read as follows:

§ 574.3 Definitions.

* * * * *

Family is defined in 24 CFR 5.403 and includes one or more eligible persons living with another person or persons, regardless of actual or perceived sexual orientation, gender identity, or marital status, who are determined to be important to the eligible person or person’s care or well-being, and the surviving member or members of any family described in this definition who were living in a unit assisted under the HOPWA program with the person with AIDS at the time of his or her death.

* * * * *

PART 891—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES

■ 17. The authority citation for part 891 continues to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d), and 8013.

■ 18. In § 891.105, the definition of “family” is added to read as follows:

§ 891.105 Definitions.

* * * * *

Family is defined in 24 CFR 5.403.

* * * * *

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

■ 19. The authority citation for 24 CFR part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

■ 20. In § 982.4, remove the colon at the end of paragraph (a) subject heading and add a period in its place, revise paragraph (a)(1), remove paragraph (a)(2), and redesignate paragraph (a)(3) as paragraph (a)(2); and revise the definition of “family” in paragraph (b) to read as follows:

§ 982.4 Definitions.

(a) *Definitions found elsewhere—(1) General definitions.* The following terms are defined in part 5, subpart A of this title: 1937 Act, covered person, drug, drug-related criminal activity, federally assisted housing, guest, household, HUD, MSA, other person under the tenant’s control, public housing, Section 8, and violent criminal activity.

* * * * *

(b) * * *

Family. A person or group of persons, as determined by the PHA consistent

with 24 CFR 5.403, approved to reside in a unit with assistance under the program. See “family composition” at § 982.201(c).

* * * * *

■ 21. In § 982.201, paragraph (c) is revised to read as follows:

§ 982.201 Eligibility and targeting.

* * * * *

(c) *Family composition.* See definition of “family” in 24 CFR 5.403.

* * * * *

Dated: January 27, 2012.

Shaun Donovan,

Secretary.

[FR Doc. 2012-2343 Filed 2-2-12; 8:45 am]

BILLING CODE 4210-67-P

Attachment 24

Houston isn't alone: These are the largest U.S. cities that still allow LGBT discrimination.

By **Jeff Guo** November 4, 2015

After yesterday's referendum vote, Houston has become the largest city in the United States not to protect LGBT people from discrimination. The Texas city of 2.2 million is the fourth most populous in the nation, after New York, Los Angeles, and Chicago — three cities that all include gay and transgender people in their laws banning discrimination in employment, housing, and public accommodations.

In fact, of the nation's largest 30 cities, only eight — including Houston — currently lack protections in one or more of these areas. Those cities are highlighted in the chart below.

- San Antonio, Texas (pop. 1.4 million) protects gay and transgender residents from discrimination in housing and public accommodations. It also protects city employees and contractors from employment discrimination. But people who don't work for the city can still be fired for being gay or transgender.
- Jacksonville, Florida (pop. 853,000) offers no protections.
- Charlotte, North Carolina (pop. 810,00) only protects LGBT city employees from employment discrimination. It is legal to evict LGBT people or refuse to serve them.
- El Paso, Texas (pop. 680,000) has outlawed discrimination in public accommodations, but not in housing. City workers and contractors are protected from employment discrimination, but not private employees.
- Memphis (pop. 657,000) and Nashville (pop 644,000) protect city employees from employment discrimination, but a state law prohibits them from having any other non-discrimination laws. It is legal anywhere in Tennessee to evict or refuse to serve someone for being gay or transgender, and cities can't do anything about it. Arkansas passed a [copycat law this year](#).
- Oklahoma City (pop. 621,000) protects gay city employees from employment discrimination — but not transgender employees. It has no other LGBT anti-

discrimination provisions.

In 2014, Houston passed a comprehensive city ordinance protecting gay and transgender people in all three of these key categories. Voters repealed that law on Tuesday — partly, it appears, out of fear that it gave men carte blanche to enter women’s bathrooms.

“Anybody with a penis, I don’t want them in the ladies’ restroom,” [one volunteer told](#) the Washington Post’s Sandhya Somashekhar.

For those who oppose protections for LGBT people, making the issue salient has been an ongoing challenge. An October poll from the Public Religion Research Institute [showed](#) that 72 percent of Americans want laws to protect LGBT people from discrimination — including 70 percent of Texans.

But the movement to allow discrimination against LGBT people has found success with two kinds of stories.

First, there was the concern that religious business owners would be forced to do business with gay people if anti-discrimination laws proliferate. Motivated by accounts of [bakers](#) and [wedding photographers](#) in other states getting sued for refusing gay clients, legislators in Indiana and Arkansas passed laws this spring allowing people of faith to abstain from such encounters. (Backlash caused Indiana Governor Mike Pence to amend Indiana’s law soon after he signed it.)

In Houston, opponents of Houston’s anti-discrimination law called it the “bathroom bill” and printed [banners](#) that said “NO Men in Women’s Bathrooms.” The law, of course, did much more than address the right of transgender people to use gender-appropriate facilities — this ordinance protected people in Houston from getting fired or evicted or turned away from stores on account of their sexual orientation or gender identity. But focusing on the trans-bathroom issue was wildly successful: In the end, voters [rejected](#) the anti-discrimination law 61 percent to 39 percent.

Transgender Americans and their rights are a sensitive topic for many in the LGBT rights movement. Even in gay-friendly places like New York and New Hampshire, the statewide laws ban discrimination against gay people, but not transgender people. This [chart](#) from the Movement Advancement Project, an LGBT advocacy group, shows that as recently as 2011, states like Maryland, Massachusetts, and Connecticut did not have statewide protections for transgender people.

[\[What everybody missed during the fight over religious freedom laws this year\]](#)

Disagreement over transgender rights torpedoed an LGBT anti-discrimination initiative earlier this year in Charlotte, N.C, where residents lack LGBT protections in housing, public accommodations, and private employment. The city council was on track to instate such protections — but a last-minute amendment cut out the section of the law that allowed people to use bathrooms and locker rooms according to the gender they identified with.

In protest, two Democrats voted against the ordinance, which failed 6-5. "I will not and I cannot support an amendment that does not protect all of our citizens," [one of them told the Charlotte Observer](#) in March.

Jeff Guo is a reporter covering economics, domestic policy, and everything empirical. He's from Maryland, but outside the Beltway. Follow him on Twitter: [@_jeffguo](#).

Market Watch

DJIA **1.39%**

Attachment 25

Oklahoma City forbids LGBT discrimination in housing

POSTED 11:47 AM, JANUARY 5, 2016, BY LORNE FULTONBERG, *UPDATED AT 05:14PM, JANUARY 5, 2016*



OKLAHOMA CITY - Following a lengthy, and at times heated, public debate, the Oklahoma City Council narrowly passed an ordinance that will forbid discrimination against members of the LGBT community in the housing sector.

By a 5-4 vote, the council included sexual orientation and gender identity to the list of protected classes in the housing market.

"I just feel this incredible relief and happiness and joy that our kids are going to turn on the TV tonight and think: Oklahoma is standing with you," said Cindy Cason, whose son is gay. She lives in Norman but made the trip to Oklahoma City to address the council. "A government organization that's willing to stand up for the rights of all of the children and all of the families in the community is fantastic."

The council otherwise easily and unanimously updated an ordinance that now protects people from discrimination, regardless of age, familial status, disability, race, color, sex, religion, creed, ancestry or national origin. It was last updated in 1980, before familial status and disability were recognized as protected classes.

"I just think discrimination is wrong and to a certain extent this has to do with the image of the city," said Mayor Mick Cornett, who voted in favor of the LGBT amendment. "Are we a city that's accepting, a city that's open-minded? I believe we are."

Cornett joined councilmembers Ed Shadid, Pete White, Meg Salyer and John Pettis in support of the LGBT add on, which passed after nearly an hour of public comment and discussion.

"This just made sense to me," said 4th Ward Councilman Pete White, one of the most outspoken supporters. "I don't know that it will have much of an impact. I think the message will go out that you're not allowed to discriminate in housing and people won't do it."

Councilmembers James Greiner, Larry McAtee, David Greenwell and Mark Stonecipher opposed the amendment.

Stonecipher was among the most vocal in opposition, wondering aloud whether LGBT discrimination actually existed in the housing sector and whether there were already laws on the books to address that discrimination.

"Through HUD and the civil rights division of the attorney general's office, there should be complaints that are being filed and there should be empirical evidence of whether we know the answer to that and I don't think we have that," he said.

Councilman White shot back: "All the money that's been spent over the past six or seven years by this AG fighting social change of every kind and you expect this guy to be your champion if you're being discriminated against. I have a hard, hard time putting my faith in that."

Fifth Ward Councilman David Greenwell said after the vote he would have preferred more time to discuss the amendment. He and Stonecipher noted the measure had been a late add-on to the ordinance.

"I want to make sure that we are putting something on the book that doesn't have constitutional implications that may affect the right to contract, freedom of religion, or may affect freedom of speech," said Stonecipher. "I don't feel like we know enough at this time."

Councilman Larry McAtee voted against the amendment because he believes in traditional marriage, calling the LGBT add-on "a step in the wrong direction."

Meanwhile, LGBT leaders and their allies on the council are already looking ahead at their next steps.

"We have a lot more to do," said Troy Stevenson, the executive director of Freedom Oklahoma. "We need to get employment protections and protections in public spaces. We're proud of the council. We're glad they took this step and it's a great day for Oklahoma City."

Councilmembers Ed Shadid and Pete White have expressed interest in recreating a Human Rights Commission, which the council abolished in January 1996.

Attachment 26



EIGHTH ANNUAL
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HOME/NEWS

City Councilman plans to withdraw bill to include LGBT community in city's anti-discrimination law

By Christopher Hong & Nate Monroe Sat, Feb 13, 2016 @ 3:04 pm | updated Sun, Feb 14, 2016 @ 9:29 am



Bob.Self@jacksonville.com
Councilman Tommy Hazouri addresses the City Council members on Feb. 4, 2016.

Jacksonville City Councilman Tommy Hazouri said Saturday he will suspend his push to adopt local discrimination protections for the LGBT community, injecting new uncertainty into a high-profile debate that has loomed large over city politics for much of the year.

After numerous meetings with colleagues and public forums it's now clear "the City Council and many citizens of Jacksonville still have sincere questions and are not ready to move forward on this issue," Hazouri said in a written statement. As a result, he plans to ask the council to withdraw his legislation that would expand the city's anti-discrimination law — called the human-rights ordinance — to include lesbian, gay, bisexual and transgender people.

"Be assured, this bill and this issue is coming back," he said.

Hazouri's decision means the divisive issue will effectively be tabled, leaving Jacksonville one of the largest major cities that lacks legal discrimination protection for the LGBT community.

"It's pretty shocking, honestly, to see the bill is being withdrawn," said Jimmy Midyette, legislative director for the Jacksonville Coalition for Equality, which supports expanding the law. "The coalition is going to keep working on getting it passed."

There was an assumption the 2015 city elections may have established a political environment and the City Council that would be more receptive to the issue than in 2012, when similar measures narrowly lost council votes. That has not panned out so far.

Mayor Lenny Curry said during his campaign in the spring that he was unconvinced the law needed to be changed, but many activists — including some of his biggest financial

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supporters — had hoped he would change his mind once in office. He did not.

Even strong support from the business community — normally a potent force in Jacksonville — has not appeared to help move the effort significantly forward. Activists have also garnered support from prominent Republicans and the backing of numerous local religious leaders, including the lead pastor at Curry's church, Southside United Methodist.

But Hazouri's bill has nonetheless faced strong opposition from influential local religious groups and traditional segments of Jacksonville's Republican electorate.

Hazouri, who has made the issue a top priority since his 2015 campaign, said he plans to reintroduce the bill at a later date. He said he'll meet with city attorneys over the next several months to discuss the impacts of an expanded anti-discrimination law on small businesses, religious organizations and public accommodations.

"I believe that passing this legislation ... is imperative if we are truly to be One City—One Jacksonville," Hazouri said. "Today, we are stuck in the past, frozen in time, when it comes to human rights."

The council is in the middle of deciding whether to approve Hazouri's bill or competing legislation, introduced by Councilman Bill Gulliford, that would let voters decide whether to expand the city's anti-discrimination law in a referendum. Putting the issue up for voters to decide is a move widely believed to favor the movement against expansion.

Gulliford said Saturday he would withdraw his own bill, saying he's happy to set aside an issue he considers little more than a distraction.

"There are many more important things we need to be engaged in right now," Gulliford said.

The issue — as with the council's narrow rejection of similar legislation in 2012 — has stirred competing public passions and ramped up political pressure from the city's LGBT, business and religious community.

Hazouri's announcement follows a failed attempt to withdraw the legislation at the council's first special meeting on Feb. 4. That effort, proposed by Councilwoman Lori Boyer, was rejected in an 8-11 vote.

While Hazouri's legislation survived the first meeting, the close vote revealed many council members wished to hold off on the issue and that it's still unclear whether either piece of legislation had enough votes to pass.

Hazouri said he plans to make his withdrawal request Thursday, when the council holds its second of three special meetings scheduled to debate the issue.

Council President Greg Anderson said he wanted to hear from Hazouri before weighing in. For now, Anderson said he still plans to hold Thursday's meeting as scheduled.

"For a significant portion of the people of Jacksonville, this HRO issue is one of the big important issues going on," Midyette said.

"It was big enough to be a question at every candidate forum, from every news outlet in 2015 during the municipal elections. People aren't going to turn their attention off of this."

RECOMMENDED FOR YOU



Ron Littlepage: Judge City Council members on HRO by their campaign promises



City Council members Bill Gulliford, Tommy Hazouri plan requests over LGBT referendums



Duval school board acrimony and dissent builds as one member calls for another to resign

RECOMMENDATIONS FOR YOU



Ron Littlepage: Judge City Council members on HRO by their campaign promises



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Amid heated debate over LGBT issue, Mayor Curry says law does not need to



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Tommy Hazouri speaks at University Club on HRO



(http://www.smithbryanandmyers.com/)

PETER SCHORSCH'S LATEST



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Sunburn – The morning read of what's hot in Tallahassee
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TOMMY HAZOURI TO WITHDRAW HRO BILL

February 13, 2016 | By A.G. Gancarski (<http://floridapolitics.com/archives/author/gancarski>)

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A temporary setback for the movement to expand the Human Rights Ordinance in Jacksonville was revealed Saturday, when **Tommy Hazouri** announced his decision to withdraw his bill... for now.

Hazouri confirmed, in a conversation Saturday, that the bill will be back sooner than later.

Hazouri's decision, according to those familiar with his thinking, was driven by a number of factors.

One of which being that Council simply wasn't ready to consider the bill as it actually was; many seemed to see it as a "bathroom bill," and notable in its absence was open support from those on Council who campaigned as in favor of HRO expansion.

Another factor: the strong rumors that another withdrawal motion was to happen at Thursday's Committee of the Whole meeting. Whereas Council President in waiting **Lori Boyer** attempted to withdraw the bill at the previous meeting, there was thought that another Council member (perhaps a district Councilman or woman looking to get in good with leadership), would make the motion on Thursday.

Still another factor: the tepid reaction from the business community, including the Chamber and the Civic Council, in response to the procedural drama that characterized the previous Committee of the Whole meeting.

The extent to which such moves are in concert with the desires of the mayor's office on this bill is an open question. Boyer said she arrived at the withdrawal position without any urging from the mayor's office, though she did communicate her intent to do such to them ahead of the committee of the whole.

The bill could resurface this spring, after the deadline to move forth for a ballot measure on HRO expansion, something the religious right has expressed interest in doing to "send a message" and tank the HRO expansion for the foreseeable future. Or it could resurface after the November elections, when the partisan cauldron will be turned from full boil to slow simmer.

In the meantime, Hazouri hopes that Council will become better educated on the issues the bill is trying to address, say sources close to him.

Below, a statement from Hazouri:

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Today, I requested that Council President Greg Anderson give me the opportunity at the next Committee of the Whole Meeting on Thursday, February 16th to withdraw Bill 2016-002 that would expand our current Human Rights Ordinance to include the LGBT community.

Over the past few months, I have held several sunshine meetings with my colleagues, heard from hundreds of concerns citizens, and tirelessly studied this very important issue. As a result, I have come to the decision that at this time, the City Council and many citizens of Jacksonville still have sincere questions and are not ready to move forward on this issue.

Since my campaign for election to the City Council, I have vigorously supported amending our current Human Rights Ordinance to include all of Jacksonville's citizens. I believe that passing this legislation, 2016-002, is imperative if we are truly to be One City—One Jacksonville. It defines who we are as a city—a city that is inclusive and competitive. Today, we are stuck in the past, frozen in time, when it comes to human rights.

Mayor Curry should be commended for wanting to move forward on this issue by ordering a departmental directive—an Executive Order, to make certain that we have a nondiscrimination policy including the LGBT community for all City employees, and vendors who do business with the city. Clearly, however, this directive, while a step forward, does not go far enough

Passing Bill 2016-002 is vital if we are to move our city forward.

This bill and this issue is coming back.

I plan to take the next several months to continue working with the office of the General Counsel, further addressing the bill's effect on small businesses, religious organizations and public accommodations. It is also critical that we make certain that the public understands that this is not a "bathroom bill."

I want to thank my fellow co-sponsors Aaron Bowman and Jim Love, for their courageous leadership on this issue. It is my hope and expectation that when we do re-introduce this bill, that other Council Members, too, will lead on this issue that is holding Jacksonville back from being the great city we all know it can be.

We reached out to Council President **Greg Anderson**; Anderson supported Boyer's withdrawal motion in committee, but he told us that he was "surprised" by the news, and his plan had been "to carry forward with the HRO meetings, and was going to release an agenda" on Tuesday.

The mayor's office, Anderson said, has been "kind of quiet" about the process and the bills and did not lobby him on it.

Anderson "will afford Councilman Hazouri the opportunity to share his thoughts," and is interested in finding out more about why Hazouri decided as he did.

We have reached out to Council VP Boyer and Mayor **Lenny Curry** for thoughts on this also. Check back for updates.

We know this: **Bill Gulliford** will withdraw his referendum bill, as **Nate Monroe** of the T-U tweeted.

If things go as they're looking, this issue hangs in suspended animation for the time being.

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Attachment 28

Press Conference of Jacksonville Pastors and Liberty Counsel on LGBT Ordinance

 canadafreepress.com/article/press-conference-of-jacksonville-pastors-and-liberty-counsel-on-lgbt-ordina

Because without America, there is no free world.

"No council member has the right to make law-abiding citizens and religious institutions vulnerable to the depth of religious persecution that is established by this law,"

JACKSONVILLE, FL - Today leading pastors in Jacksonville are hosting a press conference regarding the concerns of the religious community about the dangerous consequences of two proposed LGBT "nondiscrimination" city ordinances. The press conference, at 2:30 p.m. ET today at the First Baptist Church, Preschool Building Lobby, First Floor, 124 West Ashley Street, Jacksonville, FL 32202, will also be joined by Liberty Counsel's Senior Litigation Counsel, Roger Gannam, to answer any reporters' questions, time permitting.

The Jacksonville City Council is considering two LGBT proposals: The first is for the Council to vote on adding sexual orientation and gender identity or expression to the city's current nondiscrimination policy. The second proposal is to have the same law presented to the voters of Jacksonville as a referendum. Both would grant enormous power to the Jacksonville Human Rights Commission to investigate complaints against law-abiding citizens of Jacksonville, subpoena their documents, impose fines and attorney's fees, sue them in court, and refer their cases for criminal prosecution. Any church that welcomes a "non-member" could lose its religious exemption; organizations with a religious mission to feed the homeless or arrange adoptions are exposed to liability for professing their beliefs; the law would redefine "male" and "female" for all nurseries and preschools, even many church schools; and any man claiming a female "identity" will gain unchallenged access to women-only bathrooms and dressing rooms.

Jacksonville Mayor Lenny Curry has held three public community meetings to discuss the ordinances, after which his opinion is that the LGBT ordinances are not needed, publicly announcing, "I do not believe any further legislation would be prudent." Now the City Council is holding three of its own community meetings: tonight, February 18, and March 3, 2016.

"No council member has the right to make law-abiding citizens and religious institutions vulnerable to the depth of religious persecution that is established by this law," said Mat Staver, Founder and Chairman of Liberty Counsel. "Nationwide, cake bakers, photographers, and florists have already lost their religious freedoms, and some were forced to close their businesses at the behest of the LGBT lobby. Jacksonville does not need to welcome this radical social experiment onto the shoulders of local business owners and taxpayers."

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Attachment 29

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EXCLUSIVE: Pastor calls proposed Jacksonville HRO an SPO 'Special Privilege Ordinance'

by Joni B. Hannigan | 01 February, 2016

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JACKSONVILLE, Fla. (Christian Examiner) – Jacksonville does not need a human rights ordinance protecting gays and lesbians according to its mayor and the pastor of one of the largest churches in town.

Mayor Lenny Curry and Mac Brunson, pastor of First Baptist Church in Jacksonville, have said the only large city in the nation that has not enacted specific protections for gay, lesbian and transgendered people has no need of such a law.

Advocates of legislation for years have pressured the City Council to expand its Human Rights Ordinance by amending the Civil Rights Act of 1964.

The New York Times reports more than 200 cities and 17 states have ordinances barring discrimination – to include sexual orientation and gender identity.

The northern Florida city – with a Southern flair and deeply imbedded traditionalism – has withstood several attempts to pass such an ordinance, the most recent in the summer of 2012.

Mayor Lenny Curry said in a Jan. 29 letter to City of Jacksonville employees that he remains committed to "honor and respect every individuals life, liberty, and opportunity to pursue happiness."

After three community meetings, however, and numerous meet-ups with various civic, faith, and community leaders in various venues – Curry said he doubted legislation would be "prudent," but that he will continue to keep an eye on violent crime and "crippling pension debt."

The newest action comes on the heels of a move by voters in Houston to overwhelmingly repeal by 61-30 percent a Human Rights Ordinance, referred to as a "bathroom bill," that would have allowed men to use women's public accommodations.

PASTOR WEIGHS IN

Brunson, who has encouraged church members to be informed, told *Christian Examiner* in an exclusive interview, "the HRO is totally and completely unnecessary."

The pastor said despite a campaign apparently designed to promote the idea that those in the LGBT community are being discriminated against, no one has produced any.

"It is simply a way for those in that community to have a rallying point and a cause," Brunson said.

The charges of discrimination, he said, are meant to "incite" the LGBT community to action.

Nonetheless, Brunson said there are those in Jacksonville who act in ways that are not reflective of the community at large.

"I realize that there are individuals here or there who are unchristian and unkind to them because of their lifestyle choice," Brunson said, but denied it is a situation which requires more specific action.

"There are enough civil laws on the books to take care of any and every legitimate issue," Brunson said.

Calling the Human Rights Ordinance (HRO) a "Special Privilege Ordinance (SPO)," Brunson said it opens the door for individuals to want to obtain "special privileges" a number of "fill in the blank" situations.

Brunson said he believes everyone should have the freedom to exercise their beliefs – just like when Baptist Hospital and other companies enacted LGBT policies.

"Now, however, the CEO of Baptist who enjoyed that freedom wants to determine that everyone else in the city of Jacksonville must enact the same policy," Brunson said.

If an HRO passes in Jacksonville, Brunson said he fears the demands will become burdensome.

"The dangers here are innumerable and will be staggering for the rest of the city, and make no mistake the counsel members pushing this are laying the ground work for never ending lawsuits and additional legislation," Brunson said.

Further, Brunson said, legislation in the form of an HRO wouldn't be enough to erase the real issue.

"An HRO would never solve the perceived persecution and the sense of rejection those in the LGBT community struggle with," Brunson said. "The fact is, their struggle is not with those who live a different lifestyle, their struggle is within themselves."

The next Jacksonville City Council meeting is scheduled for Feb. 9.

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Attachment 30

Martinsburg City Council approves nondiscrimination ordinance

Posted: Thursday, February 11, 2016 8:23 pm

MARTINSBURG, W.Va. — By a unanimous 7-0 vote, the Martinsburg City Council on Thursday adopted an ordinance to ban discrimination based on gender identity and sexual orientation.

The nondiscrimination ordinance extends employment and public-accommodation protections, including housing, that already are provided for other people to include lesbian, gay, bisexual and transgender residents.

The added protections for the LGBT community initially were requested last year by Fairness West Virginia, a state-level organization that advocates for fair treatment and equality for LGBT residents.

An attempt last year by some state lawmakers in the House of Delegates to nullify local ordinances by ensuring nondiscrimination policy is uniform statewide died.

At least six municipalities in the state, including Harpers Ferry, W.Va., already have adopted similar ordinances, and at least four communities have adopted resolutions in support, according to Fairness West Virginia.

In other business Thursday, the council unanimously voted to deny a request by the West Virginia division of the Sons of Confederate Veterans to hold a parade next month in downtown Martinsburg to celebrate Southern heritage and the birth of the Confederate flag.