



NORTH CAROLINA GENERAL ASSEMBLY
 SENATOR PHILIP E. BERGER
 PRESIDENT PRO TEMPORE
 NORTH CAROLINA SENATE

April 19, 2016

JUST CLEARING UP A FEW PROBLEMS
 IN SENATOR BERGER'S LETTER.

- YOUR FRIENDS AT THE
 HUMAN RIGHTS CAMPAIGN

CEO

Dear

Make no mistake: I supported, and continue to support, the legislation many refer to as "the ~~anti-transgender bathroom~~ bill" or ~~House~~ ^{Hate} Bill 2. I support this law because I ~~think it provides common sense~~ ^{don't care about the harm it causes countless} ~~protections for North Carolinians. Nonetheless, competing—and wildly different—narratives~~ ^{factual, evidence-based} have emerged since the bill was passed. ~~In my opinion, one of those narratives misstates the impact of the law and calls into question the motives behind it. The nature and tenor of this debate have compelled me to write to you.~~ ^{mess I and others - like Gov. McCrory and Speaker Moore - have caused}

You and many of your colleagues may be scratching your heads. You have perhaps received overtures from both sides requesting that you speak publicly for or against the bill. I respect that ^{many some} of you have already chosen to speak on this issue. ← THANK YOU! ♥♥=♥♥=

There is a time for ^{fear-mongering and flagrant lies, and this} ~~politics and partisanship, but neither~~ is what this letter is about. I want to detail for you ^{my thinking on how this new law came about, what it does and why the Charlotte local ordinance was problematic in multiple ways.} ~~how we are now spinning~~ ^{to my political ambitions} ~~which we rammed through in 10 hours,~~

I. ~~HB 2 CORRECTED AN UNPRECEDENTED MUNICIPAL INTRUSION INTO PRIVATE BUSINESS~~
^{Blocked A Totally Routine Law Similar to 100+ Other Cities}

I believe that House Bill 2 became necessary only after the City of Charlotte passed a municipal ordinance ^{dictating new bathroom policies to private businesses. In doing so, Charlotte exceeded its constitutional authority by creating a separate public accommodation law that was at odds with existing statewide criminal law. This action laid bare the potential consequences when local governments overreach and exceed their long-recognized regulatory powers. If one city can enter the marketplace and require gender-neutral bathroom facilities in private business, what stops the other 651 local governments in North Carolina from setting} ~~dictating new bathroom policies to private businesses. In doing so, Charlotte exceeded its constitutional authority by creating a separate public accommodation law that was at odds with existing statewide criminal law. This action laid bare the potential consequences when local governments overreach and exceed their long-recognized regulatory powers. If one city can enter the marketplace and require gender-neutral bathroom facilities in private business, what stops the other 651 local governments in North Carolina from setting~~ ^{like those that exist in 18 states and 100 cities - including Atlanta, Dallas and Louisville -} ^{TRUE! PLEASE CHANGE THAT.}

April 19, 2016

Page 2 of 4

UH, YOU DO REALIZE THIS IS
HOW LOCAL LAWS WORK?

ALREADY THE
CASE. THAT'S
WHY WE
NEED THE
EQUALITY ACT.

NICE TRY, BUT
NC'S LAWS DO
NOT PREVENT
LOCAL CITIES
FROM ESTABLISHING
PROTECTIONS
IN PUBLIC
ACCOMMODATIONS.

different standards and remedies in that and other areas of public accommodations? What about conditions of employment, pay, hours and benefits? Or discrimination in the workplace? Charlotte's ordinance opened the door for a patchwork of government regulations on private business that could change at every county line or city limit — a result that North Carolina's Constitution attempts to avoid by expressly tasking the General Assembly with delegating powers to local governments and a preference for statewide rules regarding trade and labor. Charlotte's actions put the General Assembly on notice of the very real threat that a hodgepodge of regulation by individual cities and counties, regardless of party affiliations, risks hamstringing our state's booming economy with confusion, red tape and legal challenges. ^{people to be protected, and continued} ^{created} ^{of harming people} ^{and} ^{because businesses are concerned about their employees and customers.}

SERIOUSLY?
LET'S STOP
THAT.

II. HB 2 REINFORCES COMMON SENSE BATHROOM SAFETY AND PRIVACY PROTECTIONS

Creates Ambiguously Enforced, Discriminatory Policies

Of primary concern for most North Carolinians: the Charlotte ordinance raised ^{no} serious safety concerns by requiring businesses to allow men and women to use the restroom or locker room they subjectively deem most consistent with their gender identity. Many people including the bill's primary author, well respected Charlotte attorney Rep. Dan Bishop, argue persuasively that the ordinance attempts to avoid running afoul of the state's legal precedent which makes it a second degree trespassing violation for a man to enter a woman's bathroom or locker room by banning any signs designating sex-specific bathrooms in public buildings and private businesses altogether. Frankly, I had hoped the need for legislation could be avoided, which is why I requested in writing that North Carolina's Attorney General act immediately in March to stop the ordinance from taking effect on the grounds that it violated existing state law. A copy of my letter to him is enclosed. ^{for me, myself and I} ^{to sneak this through the Legislature and avoid backlash} ^{pushed us to do better for our people.}

HUH? THIS
MAKES NO
SENSE. ALSO,
HAVE YOU
MET A TRANS
PERSON?

- backed by
zero evidence -

WHO ALSO HAPPENS TO BELIEVE HB2 IS UNCONSTITUTIONAL

Regardless, I believe the Charlotte ordinance created a massive safety concern for families and law enforcement by opening a loophole through which any man could enter a woman's changing facility. If questioned, such a man could report identification with the opposite gender, and under Charlotte's ordinance he would have as good a right as anyone to remain in that locker room. Sheriffs in North Carolina have stated publicly that such a subjective standard presents challenges that would impair law enforcement officers trying to keep the peace in our communities and keep our children safe. Ill-intentioned, non-transgender individuals, some with criminal pasts, have used similar ordinances elsewhere in the country to gain legal access to changing facilities and bathrooms of minors of the opposite sex. It is the risk created by these individuals — not law abiding North Carolinians from all walks of life — that required us to act. ^{The law allowed a woman who is transgender to} ^{again, change her outfit.} ^{change her outfit.} ^{across the country} ^{with 100+ cities with similar ordinances, there are no} ^{and would be arrested for voyeurism or assault if they dared.}

A GROUP OF
250+ SEXUAL
ASSAULT AND
DOMESTIC
VIOLENCE ORGS
JUST CALLED
YOUR BLUFF ON
THIS LAST WEEK.
ALSO, MORE
REPUBLICAN
ELECTED
OFFICIALS HAVE
BEEN ARRESTED
IN BATHROOMS
THAN
TRANSGENDER
PEOPLE.

House Bill 2 confirms an objective, biological sex rule for multi-occupant bathroom and changing facilities in schools and government buildings in North Carolina. As with all rules, there are exceptions: under existing law, any person having completed sexual reassignment surgery may amend his or her birth certificate. That amended birth certificate would allow him or her to enter the facility reserved for his or her post-surgical sex. Moreover, schools and ^{ate} ^{a misinformed} ^{bad rules} ^{ing} ^{have great difficulties}

- which does
not align with
facts based
on science or
medicine -

BECAUSE CARRYING A BIRTH CERTIFICATE AROUND
TO PROVE YOUR GENDER MAKES COMPLETE SENSE...

ALSO NOT SOMETHING EASILY
ACCESSED, ALWAYS SAFE OR
WANTED OR EVEN POSSIBLE FOR
YOUNG PEOPLE

separate-and-unequal government buildings ^{will be breaking federal law but can still allow transgender people to use} have flexibility to offer unique accommodations, including the use of single-occupant facilities, regardless of the sign on that bathroom's door. These avenues for accommodations ensure ^{transgender} no North Carolinian ^{s are} is discriminated against, and they are consistent with my belief that reasonable North Carolinians ^{can} can quietly ^{will} solve even the most complicated ^{ignore} challenges ^{erroneous} without government's interference. ^{the state} in local law.

It is essential to point out that House Bill 2 does ^{ate} not impose any bathroom rules on private business. Its effect is limited to schools ^{not} and government buildings. By stopping local government from ^{doing its job} dictating bathroom access to business, the legislation ^{hamstrings} leaves room for all businesses to adopt whatever bathroom policy suits their needs. This freedom is enjoyed by both for-profit and non-profit businesses, including every church and religious employer in North Carolina. It is the freedom to choose ^{was previously} not the ultimate choice ^{to me,} that is sacred in our country. ^{to discriminate}

but includes those too, in violation of several federal laws!

A FIRST IN THE COUNTRY!

III. HB 2 FOR THE FIRST TIME PROHIBITS DISCRIMINATION IN PUBLIC ACCOMMODATIONS THROUGHOUT NORTH CAROLINA ^{Requires}

House Bill 2 ^{is about} streamlines statewide rules where government injects ^{ing} itself into the operations of private business. ^{ate} Specifically, it confirms expressly what had been implicitly open to debate—state wage and hour laws shall be the single standard in North Carolina. House Bill 2 confirms that North Carolina's (1977) statement against discrimination in the workplace and the procedural mechanics it sets out shall be the state's single standard. It ^{denies} reinforces federal Title VII protections that ^{must now} can be raised in both federal and state court ^{challenged} but still leaves avenues open to file common law claims for wrongful termination. In fact, the law establishes for the first time a single, statewide prohibition against discrimination in public places like restaurants, movie theaters and stores. Its protections are stronger than those in federal law. ^{is an embarrassment.}

OHhhh REALLY? THAT'S WHAT WE ARE DEBATING?

BECAUSE WE'VE MADE NO PROGRESS IN CLOSE TO 40 YEARS...

This statewide ^{legal wreck} consistency means your business need only learn one set of rules regarding how you hire and compensate your employees and how ^{dated and discriminatory} you serve the public. If these statewide rules and protections need to change or expand, advocates can press their case here, in the legislature. If this General Assembly does not agree, each of us is accountable to the voters every two years. ^{OR DON'T} ← LIKE THE CHARLOTTE CITY COUNCILMEMBERS WHO PASSED THE ORDINANCE?

IV. HB 2 GIVES BUSINESSES FREEDOM TO TAILOR THEIR POLICIES TO THEIR NEEDS ^{Every Reason to Leave North Carolina}

A key fact shining through in this debate is that the law ^{has only upset} frees North Carolina businesses to adopt whatever workplace and accommodation policies each might choose. ^{see above} The same is true for local governments with respect to their own employees. Even the most vociferous business or local government opponents of House Bill 2 remain free to ^{ate} adopt whatever workplace or accommodation policy they choose. ^{will continue to work to build} Relying on that freedom alone, North Carolina employers have built a diverse and talented workforce, and many companies have existing policies that ^{now unwelcome in their own communities}

who will continue and find more hospitable states in which to do business.

IS IT? THIS LAW IS SO POORLY DRAFTED THAT THIS ISN'T CLEAR. JUST BECAUSE YOU KEEP SAYING IT'S SO DOESN'T MAKE IT TRUE.

April 19, 2016
Page 4 of 4

NO KIDDING.
IT'S WHY THEY
OPPOSE HB2

That is actually very true
and what's more, HB2 is
unprecedented in its blatant
requirement of discrimination
against transgender people.

exceed federal and state requirements. This law ~~preserves that~~ crucial freedom. Nothing about that is ~~discriminatory~~.

OK.

I have been elected to the North Carolina Senate eight times. My colleagues have elected me to lead the chamber three times. I volunteered for this job, and I am honored to have it. I have learned that part of legislating is ~~balancing policy choices~~. In this instance, we faced a municipal ordinance with consequences extending beyond Charlotte. These consequences not only would impact countless citizens in North Carolina and her sister states who visit Charlotte, they likely would encourage other North Carolina cities to advance their own varying conditions and restrictions on private businesses. Such restrictions ultimately will cost us jobs and productivity. As a result, we sought to strike a balance among common sense safety protections, reasonable accommodations for all North Carolinians and flexibility for private businesses to choose how best to proceed.

denying
Charlotte and
other cities
the right to

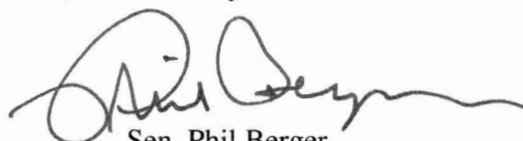
Unfortunately, much of the opposition to House Bill 2 has rested on a false premise: namely, that a decision ~~not expanding current law~~ beyond protections existing in federal law and a majority of states is an endorsement of such discrimination. ~~Nothing could be further from the truth.~~ Existing law in North Carolina protects every man, woman and child's right to be free from assault. North Carolina law provides additional civil and criminal protections for people to be free from harm driven by hate, including civil claims for violation of civil rights and criminal penalty enhancements for crimes committed because of the victim's identity. Our children are expressly protected from being bullied because of who they are. These protections existed before the bathroom controversy arose. And long before this controversy, North Carolinians thrived socially and economically in peaceful and diverse coexistence. We will continue to do so.

I fully believe our system of government is built to handle the weighty issues addressed by this new law. To be sure, healthy debate over the law continues. Like you, I look forward to refocusing on the other issues facing our state—responsible budgeting for our future, improved educational outcomes for our children, building on the tax and regulatory reforms that have revived our state's economy, and supporting the hard work you and your businesses have put in to turn our state around and fund our key priorities. I am not naïve enough to think I will convince the vocal opponents of this law that their criticism is misplaced, but I do hope reasonable minds can see that House Bill 2 ~~staves off~~ a great deal of conflict and harm all across North Carolina. Thank you for listening.

OK... SO ABOUT
THOSE SO-
CALLED SAFETY
CONCERNS?

especially
when we don't
allow any
meaningful
dialogue

Sincerely,



Sen. Phil Berger
President Pro Tempore

DOES
AMENDMENT 1
RING ANY
BELLS? HOW
ABOUT THE
VOTER ID LAW?