



NORTH CAROLINA GENERAL ASSEMBLY

SENATOR PHILIP E. BERGER

PRESIDENT PRO TEMPORE

NORTH CAROLINA SENATE

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

April 19, 2016

- YOUR FRIENDS AT THE  
HUMAN RIGHTS CAMPAIGN

[REDACTED]

CEO

[REDACTED]

[REDACTED]

Dear [REDACTED]

Make no mistake: I supported, and continue to support, the legislation many refer to as "the anti-transgender bathroom bill" or House Bill 2. I support this law because I think it provides common sense protections for North Carolinians. Nonetheless, competing—and wildly different—narratives 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.

don't care about the harm it causes countless mess I and others – like Gov. McCory 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 of you have already chosen to speak on this issue. ← THANK YOU! ❤️ = ❤️ = ❤️ = ❤️

There is a time for 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.

↑ to my political ambitions

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

TRUE! PLEASE CHANGE THAT.

like those that exist in 18 states and 100 cities – including Atlanta, Dallas and Louisville –

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.

- backed by  
zero evidence -  
  
and change  
her outfit.  
  
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.

ate  
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

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. 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 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.

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

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 across the country 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. and ignorance and fear

and would  
be arrested  
for voyeurism  
or assault if  
they dared.

ate  
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

- 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

~~will be breaking federal law but can still allow transgender people to use separate-and-unequal government buildings 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 no transgender North Carolinian is discriminated against, and they are consistent with my belief that reasonable North Carolinians can quietly solve even the most complicated challenges without government's interference.~~

~~It is essential to point out that House Bill 2 does not impose any bathroom rules on private business. Its effect is limited to schools and government buildings. By stopping local government from dictating bathroom access to business, the legislation 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—not the ultimate choice—that is sacred in our country.~~

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

\* if they operate in a publicly owned facility - for example airports, convention centers, office spaces, etc.

A FIRST IN THE COUNTRY!

### III. HB 2 FOR THE FIRST TIME PROHIBITS DISCRIMINATION IN PUBLIC ACCOMMODATIONS THROUGHOUT NORTH CAROLINA

~~House Bill 2 streamlines statewide rules where government injects itself into the operations of private business. 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 reinforces federal Title VII protections that can be raised in both federal and state court 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.~~

OHHHH  
REALLY?  
THAT'S WHAT  
WE ARE  
DEBATING?

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

~~This statewide consistency means your business need only learn one set of rules regarding how you hire and compensate your employees and how 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.~~ ← LIKE THE CHARLOTTE CITY COUNCILMEMBERS WHO PASSED THE ORDINANCE?

### IV. HB 2 GIVES BUSINESSES FREEDOM TO TAILOR THEIR POLICIES TO THEIR NEEDS

~~A key fact shining through in this debate is that the law frees North Carolina businesses to adopt whatever workplace and accommodation policies each might choose. 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 adopt whatever workplace or accommodation policy they choose. Relying on that freedom alone, North Carolina employers have built a diverse and talented workforce, and many companies have existing policies that will continue to work to build~~

→ 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.

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 ~~shoving bad bills through in less than 10 hours & believing I could get away with it.~~ 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 ~~ate~~ of our rash and senseless decisions to pass HB2 who care about their employees being treated with respect outside the office to remain in NC.

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.

the experience of millions of people covered by similar laws for more than 3 decades, and a true premise:

but are now being bullied by lawmakers who would rather violate Title IX than treat transgender students with respect.

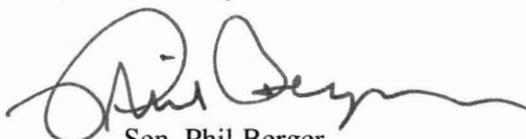
WE BET YOU DO!

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~~ despite our hateful shenanigans. my truthiness is fact has provoked

especially when we don't allow any meaningful dialogue

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

Sincerely,



Sen. Phil Berger  
President Pro Tempore