



NORTH CAROLINA GENERAL ASSEMBLY

SENATE CHAMBER

February 24, 2016

VIA ELECTRONIC MAIL ONLY

Attorney General Roy Cooper
North Carolina Attorney General's Office
9001 Mail Service Center
Raleigh, NC 27699-9001
RCooper@ncdoj.gov

Dear Attorney General Cooper:

We have grave concerns over the recent changes made to Charlotte's Code of Ordinances by the Charlotte City Council. The most concerning change allows men to share bathrooms and showers with women and young girls in places of public accommodation, violating existing criminal law. The brazenness of this policy decision is shocking, and your silence on the matter is deafening. Until the General Assembly can act, it is your duty, as our state's top law enforcement official, to ensure that Charlotte follows the law.

The City's new ordinance wildly expands what had been a common-sense, consensus protection of its citizens from discrimination. The long-standing ordinance banned discrimination on the basis of race, gender, religion, national origin, ethnicity and age. In addition, it broadly prohibited "sex discrimination" by restaurants, hotels or motels but contained clear exceptions for "[r]estrooms, shower rooms, bathhouses and similar facilities which are in their nature distinctly private," as well as the "YMCA, YWCA and similar types of dormitory lodging facilities." However, under the new ordinance, businesses and other public places must also accommodate "gender identity" and "gender expression" – undefined in the law – and none may post signs limiting access to one sex or another. While "sex" remains a protected characteristic, the clear exception for restrooms and similar, private facilities is removed.

Simply put, Charlotte's new ordinance means that a place of public accommodation may not deny men the use of its women's bathrooms, locker rooms or showers. Nor may it post a sign allowing the exclusive use of such facilities to one sex. Surely, the City Council does not envision little girls and grown men, who are otherwise strangers, showering alongside one another as a matter of course. But that is precisely what the ordinance mandates.

Beyond the fundamental flaw in flatly prohibiting sex-specific restrooms, locker rooms and showers, Charlotte's ordinance legalizes conduct which would put North Carolinians elsewhere in jail. As common sense dictates, it has been held to be criminal conduct across North Carolina for a male to knowingly enter an area marked for females' private use. *See In re S.M.S.*, 196 N.C. App. 170 (2009) (affirming adjudication of second-degree trespass after boy entered girls' locker room that was marked accordingly). Equally obvious to all, a biological man who showers naked or otherwise exposes his genitalia in an occupied female restroom or locker room further subjects himself to the criminal charge of indecent exposure. *See* N.C. Gen. Stat. § 14-190.9.¹

A patchwork of criminal law simply will not do. We cannot have acts that are criminal in one city or county but not in the others. The General Statutes expressly prohibit municipalities from passing ordinances that violate the general criminal laws. *See* N.C. Gen. Stat. § 160A-174. In other North Carolina cities, a man's use of a designated women's facility subjects him to potential criminal prosecution. Under current law, as well as through modern American history, a female may seek law enforcement's help should a biological male try to share a facility designated for the female's exclusive bathing or other hygienic use. Here, the new public accommodation ordinance would preclude a woman in Charlotte from doing so because it actually requires open access to bathrooms and cross-sex showering.

Ultimately, privacy according to one's sex is an undeniable tenet of our civil society and part of our statewide law. However well meaning, we cannot let the actual or stated "intentions" of proponents or opponents guide us here. You will find it very concerning that one of the loudest advocates for this ordinance appears to be on North Carolina's sex offender's registry, having been convicted of a lewd act on a minor under 16.

¹ There is likewise strong potential for conflict with North Carolina's "secret peeping" statutes, which limit the ability to observe others without their knowledge. *See* N.C. Gen. Stat. § 14-202. Our Building Code also shows the error of City Council's ways. Under the Code, certain commercial facilities must offer separate restrooms for men and women and designate these facilities accordingly. The ordinance contradicts these requirements. *See* N.C. Building Code, Sections 2909.2, 2902.4.

While you may disagree with our belief that Charlotte's actions are woefully misguided, you cannot dispute that North Carolina criminal law must apply everywhere in our great State. Under Charlotte's new ordinance, it would not. We further hope that the real-life consequences of Charlotte's misguided decision will lead you to reconsider your earlier support for President Obama's efforts to force children in North Carolina, Virginia and South Carolina schools to share unisex bathrooms and locker rooms.

Due to the gravity of the matter at hand, we ask you to set forth in definite terms what immediate steps you will take to ensure that North Carolina criminal law is uniformly applied to protect the people of Charlotte, as well as the numerous visitors to Charlotte from across our State, nation, and the world. Please let us know your response by close of business this Friday, February 26.

Sincerely,

PHIL BERGER

BUCK NEWTON

SHIRLEY RANDLEMAN

WARREN DANIEL

Sen. Phil Berger

Sen. Buck Newton

Sen. Shirley Randleman

Sen. Warren Daniel

Cc: Grayson Kelley & Christy Agner