



Written by [C. Mitchell Shaw](#) on May 13, 2016

## North Carolina's Bathroom Battle Over States' Rights

As North Carolina finds itself in the cross-hairs of the federal government, the Tar Heel state seems ready to stand its ground against federal intrusion into what is — at most — a state issue. The case over North Carolina's controversial HB2 may well serve to check the vital signs of States' Rights.

In February, the Charlotte, North Carolina, City Council approved an ordinance which would require all businesses in the city to allow any man or woman who claims they "identify" as the opposite sex to use whichever restroom or changing room facilities they "feel" is appropriate to their "gender identity." In response, Governor Pat McCrory called a one-day specially-convened session on March 23 and the legislature passed HB2 (the Public Facilities Privacy and Security Act) to establish a state-wide standard allowing businesses to set their own policies. The bill was immediately attacked as "discriminatory" and "bigoted."



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It appears that those who stand in opposition to [the law](#) have either not read it or are deliberately being dishonest. How else can one explain the disconnect between the way the law is portrayed and what it actually says? HB2 does not bar any company from allowing "transgendered" persons from using the restroom or changing room of the opposite sex — such as Target has done. Even where buildings under the control of the government of North Carolina is concerned, the law allows "transgenders" to use single occupancy facilities of the opposite sex. As this writer said previously:

*But wait.* Doesn't the North Carolina law "discriminate" against the LGBTQ crowd? Not if one actually reads the law. Instead, it removes government from the issue almost entirely. The only prohibitions to "outies" using the restrooms or changing rooms designated for "innies" (or vice versa) is in government buildings such as schools. In fact, the law allows schools and other government places to provide "accommodations such as single occupancy bathroom or changing facilities upon a person's request due to special circumstances." So, a person suffering from a mental disorder causing them to be confused about their external plumbing can still use a "single occupancy bathroom or changing" room, in a government building, even if the sign on the door says it is for the opposite sex.

Now, before the reader accuses this writer of being hateful for asserting that "transgenderism" is a mental illness, note that the assertion is not mine; it is that of many in the mental health profession. Most notable, perhaps, is Dr. Paul McHugh, MD, who is University Distinguished Service Professor of



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Psychiatry at Johns Hopkins Medical School and the former psychiatrist in chief at Johns Hopkins Hospital. He explains this very clearly in an [article](#) published by *The Witherspoon Institute* last year. In fact, it was only fairly recently that the term [Gender Identity Disorder](#) was replaced by the term Gender Dysphoria. That was done to remove the “mental disorder” stigma while still allowing a medical diagnosis to be given so that insurance would pick up the cost for “Gender Reassignment Surgery.” Now, Gender Dysphoria is also considered stigmatic and has been replaced again with the politically correct Transgenderism. Perhaps it is the *practice* and not the *title* which causes the stigma. Persons suffering under this delusion need treatment of the mind, not the body.

No sooner had North Carolina passed HB2 than the assault began. Presidential candidates weighed in [as if this were a federal issue](#). Then the Obama administration began trying to make it one. The Justice Department and Education Department each informed North Carolina that the law was a violation of the Obama administrations’ interpretation of [Title VII](#) and [Title IX](#) of the Civil Rights Act of 1964. Those notices threatened North Carolina with the loss of billions in federal education funds but North Carolina stood firm.

Attorney General Loretta Lynch delivered [an impassioned speech](#) at a press conference denouncing North Carolina’s law as placing “North Carolina in direct opposition to federal laws prohibiting discrimination on the basis of sex and gender identity.” Except that that’s not what those federal laws actually *say*. It is simply how they are being *interpreted*. Title VII refers to discrimination “on the basis of sex” and Title IX refers to discrimination “on the basis of sex, race, color, national origin, and religion.” Since the argument of those who support the novel idea of “gender identity” is that sex and gender are not one and the same thing, the administration’s interpretation is ridiculous. As this writer said [previously](#):

Considering that the LGBTQ crowd has made much ado about the difference between sex and gender, it is an obvious twisting of both language and logic to now take a law that deals with sex and attempt to apply it to gender. Sex is demonstrable in the human form; the new idea of “gender identity” exists only in the mind.

And:

So, rather than let the law mean what it means, the plan seems to be to pretend it means something else. After all, “the law hasn’t kept up” with the times. In a play that is naked on its face, those advocating for “transgender equality” have taken the absence of language in a law to argue for its inclusion in the interpretation of the law.

Attorney General Lynch’s comments were made after North Carolina’s deadline to reply to the notices issued by the federal government was met in the form of a lawsuit by North Carolina asking a federal court to allow HB2 to stand and to “clarify” the law. Governor McCrory issued a statement about the suit, saying, “The Obama administration is bypassing Congress by attempting to rewrite the law and set restroom policies for public and private employers across the country, not just North Carolina. This is now a national issue that applies to every state and it needs to be resolved at the federal level.” So regardless of the fact that nothing in the enumerated powers of the federal government found in Article 1, section 8 of the U.S. Constitution gives the federal government any authority over this issue, it is being considered a federal issue.

In response to the North Carolina Lawsuit filed against the federal government, the federal government counter-sued. Lynch said, “We are filing a federal civil rights lawsuit against the state of North



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Carolina, Gov. Pat McCrory, the North Carolina Department of Public Safety and the University of North Carolina. We are seeking a court order declaring House Bill 2's restroom restriction impermissibly discriminatory, as well as a statewide bar on its enforcement."

The U.S. Equal Opportunity Employment Commission (EEOC) issued a "[Fact Sheet](#)" to help employers around the country understand their responsibilities. The "Fact Sheet" defines "transgender" as a reference to "people whose gender identity and/or expression is different from the sex assigned to them at birth," and states that "the U.S. Equal Employment Opportunity Commission (EEOC) enforces Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on race, color, national origin, religion, and sex (including pregnancy, gender identity, and sexual orientation)." Of course, "sex" is not the same as "gender identity," and despite the wording of the "Fact Sheet" the phrase "gender identity" is not in the Civil Rights Act of 1964. But this does not prevent the EEOC from redefining "sex" as used in the Civil Rights Act to include "gender identity."

The EEOC "Fact Sheet" cites *Macy v. Dep't of Justice* and states that "denying an employee equal access to a common restroom corresponding to the employee's gender identity is sex discrimination," and that "contrary state law is not a defense under Title VII." Citing *G.G. ex rel. Grimm v. Gloucester Cty. Sch. Bd*, the "Fact Sheet" further says that "the Department of Education's position that the prohibition against sex discrimination under Title IX requires educational institutions to give transgender students restroom and locker access consistent with their gender identity."

But since these are merely interpretations and not the law itself, North Carolina has asked a federal court to "clarify" the law. As the case is moving forward, the Obama administration has said that those threatened federal education funds will not be withheld. Josh Earnest, press secretary for the White House, said in Thursday's daily press briefing that "The administration will not take action to withhold funding while this enforcement process is playing out in the courts." He also used the opportunity to take another jab at the Tar Heel State, saying, "Some people in North Carolina right now have been feeling like the state government, at least, is not sufficiently committed to ensuring equal treatment under the law." One is left to wonder whether Earnest is in the camp that hasn't actually read the law, or the camp that chooses to be dishonest about what the law actually says.

Another question: At what point will North Carolina, or perhaps another state, tell the U.S. government that it is operating outside the powers granted to it by the Constitution and declare the federal intrusion "null and void" within the boundaries of their state?

In this war over the rights of states to govern their own affairs, this battle could be pivotal. North Carolina's ranking state senator, Phil Berger, pointed out that Earnest's admission is tantamount to the reaction expected when a bluff is called. "Today the Obama administration admitted what we have said all along — that their threat to withhold funding and bully North Carolinians into accepting their radical argument that men have a 'civil right' to use women's bathrooms and shower facilities would have to be settled in court," Berger said in a statement.

*Graphic: North Carolina flag*



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