

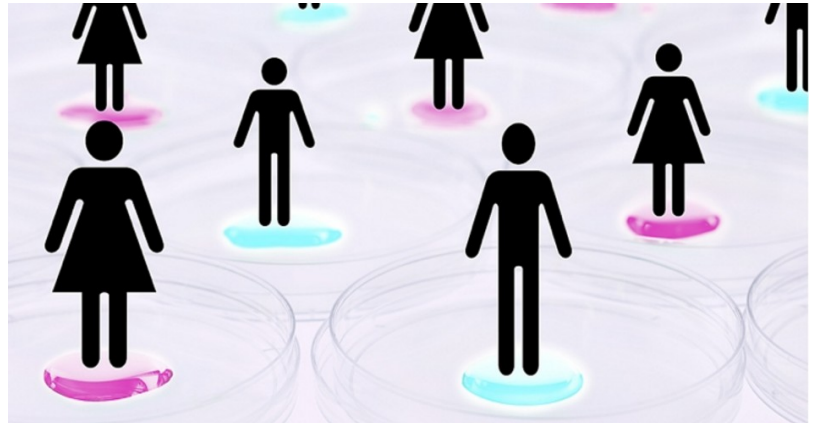


Written by [C. Mitchell Shaw](#) on May 3, 2016

Transgender Restrooms: Not a Federal Case

As the transgender restroom issue heats up, presidential candidates are weighing in. And they seem to be forgetting at least one very crucial fact: As important as this is as a *national* issue, it is not a *federal* issue.

The battle began in February when the Charlotte, North Carolina City Council passed an ordinance to allow men and women who “identify” as the opposite sex to use the restroom and changing room facilities matching their “gender identity.” North Carolina Governor Pat McCrory immediately spoke out against the ordinance and warned the Charlotte City Council via e-mail that it would “most likely cause immediate state legislative intervention which I would support as governor.” On March 23, the state legislature held a one-day specially convened session and passed HB2 (the Public Facilities Privacy and Security Act) to settle the issue for North Carolina. The law, which went into effect on March 26 establishes a standard across the state, setting aside any ordinance — such as the one in Charlotte — requiring businesses to allow transgenders to use opposite-sex bathrooms.



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Before the dust could settle, both Bernie Sanders and Hillary Clinton — who are embroiled in a battle for the Democratic nomination — took to Twitter to express their disgust at the bill, with both of them accusing the bill of “discrimination” against transgenders.

On March 24, Clinton tweeted:

LGBT people should be protected from discrimination under the law — period. <http://hrc.io/1VJABIp>
-H

-[Hillary Clinton](#) @HillaryClinton [Mar 24](#)

The “- H” indicates that Hillary typed the tweet herself. The link in the tweet is to an article dated March 23 on the website of *The Advocate*, a magazine focused on homosexual issues. The article is entitled *North Carolina Governor Signs Repeal of LGBT Protections*.

Earlier that same day, Sanders beat Hillary out of the gate with his own tweet:

It’s time to end discrimination based on sexual orientation and gender identity. This law has no



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place in America.

-[Bernie Sanders](#) @BernieSanders [Mar 24](#)

His tweet was actually a retweet of an article originally tweeted by the National LGBTQ Task Force. That [article](#) — from the *Charlotte Observer* — is entitled, *N.C. Gov Pat McCrory signs into law bill restricting LGBT protections*.

Reading their tweets, one could be left with impression that their campaigns are being advised by the same people. The articles they each posted share headlines bemoaning the loss of “LGBT protections,” and they both use the word “discrimination” in their texts. And they both seem to feel that this is an issue requiring presidential intervention.

On April 8, Sanders appeared on ABC’s *The View* and said, “As president of the United States, I would do everything I can to overturn these outrageous decisions by Mississippi, North Carolina, et cetera,” adding, “We have gone too far as a nation — God knows we have seen so much discrimination in our history, right?”

While Clinton has not stated publicly that — as president — she would overturn state laws regarding transgenders, her campaign website *does* contain a section on “LGBT equality” that states, “We should ban discrimination against LGBT Americans and their families so they can live, learn, marry, and work just like everybody else.” So, while she has not said she would interfere with North Carolina’s law, she certainly implies that she would. The section goes on to say that “as president, Hillary will ... fight for full federal equality for LGBT Americans.” Part of that “fight” — according to the site — is that “31 states do not have fully inclusive LGBT non-discrimination laws.” To remedy this imagined discrimination:

Hillary will work with Congress to pass the Equality Act, continue President Obama’s LGBT equality executive actions, and support efforts to clarify that sex discrimination includes discrimination on the basis of “gender identity” and “sexual orientation.”

The site also says that part of the Clinton 2.0 presidency would include her commitment to “protect transgender rights,” adding,

We must do more to end discrimination against the transgender community. Hillary believes no one should be held back from fully participating in our society because of their gender identity. As secretary of state, Hillary made it possible for transgender Americans to have their true identity reflected on their passports.

To build on that record, President Clinton would:

invest in law enforcement training focused on fair and impartial policing, including in interactions with LGBT individuals. Hillary will invest in law enforcement training that focuses on issues such as implicit bias, use of force, and de-escalation, as well as fair and impartial policing including in their interactions with the LGBT community, in particular transgender individuals. It will also focus on educating police officers on correctly identifying bias-motivated crimes.

More federal control over local and state police forces is more of exactly what America *does not need*.

And while the GOP candidates aren’t calling for the *federal government* to establish a bathroom policy for the nation, both Trump and Cruz jumped into the debate on the issue — without pointing out that this should not be a presidential campaign issue since there is no power in the U.S. Constitution to determine who may or may not have access to which bathrooms.



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Cruz told *The Glenn Beck Program* on April 21 that the idea of men using women's restrooms and changing rooms "is simply crazy. And the idea that grown men would be allowed alone in a bathroom with girls ... you don't need to be a behavioral psychologist to realize bad things can happen," adding, "And any prudent person wouldn't allow that. And it is only the lunacy of political correctness."

Trump — never one to pull punches even if he hasn't sorted an issue out yet — jumped into the fray by criticizing North Carolina's law. On April 21 Trump told NBC's *Today Show*, "North Carolina did something that was very strong, and they're paying a big price. And there's a lot of problems," adding that North Carolina should have left the issue alone. "Leave it the way it is," he said. "There have been very few complaints the way it is. People go. They use the bathroom they feel is appropriate. There has been so little trouble."

What Trump apparently overlooked is that the North Carolina law was a reaction to the city of Charlotte, North Carolina, passing an ordinance that did not "leave it the way it" was. As Governor McCrory's campaign said in response to Trump's ill-informed remarks:

Governor McCrory has always said that North Carolina was getting along fine before the Charlotte city council passed its unneeded and overreaching ordinance. Now that it has been overturned, businesses can adopt their own policies — like Target has — instead of being mandated to allow men into women's restrooms by government.

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.

Trump is also wrong in his assertion that "there has been so little trouble." Cases of men (some dressed as women, some not) taking photos and videos in women's restrooms and changing rooms has been [a real problem](#). Perhaps the Donald should read up on controversial topics before speaking about them. What is needed is reasoned debate, not shocking sound bites.

Cruz wasted no time attacking Trump for attacking North Carolina. At a campaign stop in Indiana, he said, "Let me make this real, real simple for our folks in the media who find this conversation very confusing. If Donald Trump dresses up as Hillary Clinton, he still can't go to the girls bathroom." Absent from his remarks is the fact that the truth of that statement depends entirely on local and state laws and the individual policies of businesses.

For instance, even in North Carolina, a cross-dressing Trump *could* use the women's restroom at any Target department store. In fact, given that the [boycott caused by Target's new policy](#) has already cost the company more than a million customers, he may find both restrooms unoccupied.

By the time Cruz made his remarks, Trump had already modified positions. He told Fox's Sean Hannity (on the evening of the same day he criticized North Carolina), "I think that local communities and states should make the decision," adding, "I feel very strongly about that. The federal government should not be involved."

North Carolina's law is a model for what *states* — not the federal government — should do. The law



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addresses only those buildings under state control and still allows the use of “single occupancy bathroom or changing facilities” by anyone and everyone. That is not heavy-handed government. That is just common sense.



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