

PUBLICATION

North Carolina Doubles Down on Transgender Bathroom Law

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It seems like an odd place to wage a civil rights war, but right now across the country there is a serious debate over public bathroom use. The LGBT community, backed by the U.S. Department of Labor (OSHA), has taken the position that a person should be able to use the bathroom of the gender to which he/she identifies, regardless of their anatomy. In response, the Minnesota-based retailer Target is now transitioning to gender-neutral restrooms. Not everyone agrees with this position.

In March of this year, North Carolina passed a bill known as HB2 that bans individuals from using public restrooms that do not correspond to their biological gender and stops cities from passing anti-discrimination ordinances to protect gay and transgender identity. The bill has received a great deal of criticism from numerous politicians and legal commenters, and resulted in the cancellation of several concerts and planned business expansions in protest (Bruce Springsteen, Demi Lovato, and Pearl Jam all cancelled concerts in N.C., and Deutsche Bank publicly cancelled plans to expand into N.C.). Lawmakers in Florida, Hawaii, Illinois, Indiana, Kansas, Kentucky, Massachusetts, Michigan, Mississippi, Missouri Minnesota, Oklahoma, Oregon, South Dakota, Tennessee, Virginia, Washington, Wisconsin and Wyoming have considered similar legislation. States are struggling to define a person's "sex."

The U.S. Department of Justice sent a letter to N.C. governor Pat McCrory last week warning that the HB2 bill is in violation of the Civil Rights Act and demanding N.C. to remedy the problem.

N.C. reacted to the government's warning letter by filing suit today against the DOJ, asking the court to declare that the law in question is not discriminatory.

There is little case law interpreting the balance between LGBT rights and religious freedoms. This recent debate over the bathroom issue may be the legal question the courts need to finally provide some clarity on the issue. We will continue to monitor the situation and keep readers updated as to the outcome.

LGBT rights issues have moved to the forefront thanks in large part to HB2 and its progeny. Employers should be concerned about the legal requirements for restrooms and other facilities to avoid discrimination suits and to keep and build good public relations. The outcome of the suit N.C. filed against the DOJ will certainly encourage or discourage (depending on the result) enactment of similar bills in states with likeminded constituents, so it will be important to follow the matter closely.