

## State and Local Government Law

The casebook (“CB”) for this class is State and Local Government Law, by Richard Briffault and Laurie Reynolds, 8<sup>th</sup> edition.

For our first class, please read CB 17 – 29, and consider the following scenario.

In February 2016, Charlotte City, North Carolina, adopted a local ordinance that prohibited discrimination in public accommodations on the basis of gender identity and allowed transgender people to use the bathroom of their choice.

Two months later, the North Carolina State Legislature convened a special session to pass a law requiring people to use public bathrooms and locker rooms that correspond to the gender on their birth certificate. The law also broadly prohibited local governments from regulating private employment practices or regulating public accommodations.

What happens to Charlotte’s ordinance?

- *Does* Charlotte have the legal authority to extend anti-discrimination protection to transgender people?
- *Should* Charlotte have the legal authority to do so?
- How would James Madison respond? How would Alexis de Tocqueville respond?

### CHARLOTTE CITY BATHROOM ORDINANCE

Chapter 2 of the Charlotte City Code is amended as follows:

(a) It shall be unlawful to deny any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation because of race, color, religion, **sex, marital status, familial status, sexual orientation, gender identity, gender expression**, or national origin.

## NORTH CAROLINA Public Facilities Privacy & Security Act (HB 2)

### SECTION 1.1. G.S. 115C-47 is amended by adding a new subdivision to read:

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#### **Single-Sex Multiple Occupancy Bathroom and Changing Facilities.**

Public agencies shall require every multiple occupancy bathroom or changing facility to be designated for and only used by persons based on their biological sex.

#### **Equal Access to Public Accommodations.**

(a) It is the public policy of this State to protect and safeguard the right and opportunity of all individuals within the State to enjoy fully and equally the goods, services, facilities...of places of public accommodation free of discrimination because of race, religion, color, national origin, or biological sex, provided that designating multiple or single occupancy bathrooms or changing facilities according to biological sex, shall not be deemed to constitute discrimination.

(b) The General Assembly declares that the regulation of discriminatory practices in places of public accommodation is properly an issue of general, statewide concern, such that this Article and other applicable provisions of the General Statutes supersede and preempt any ordinance, regulation, resolution, or policy adopted or imposed by a unit of local government...

### **Federal Anti-Discrimination Law**

#### **Public Accommodations Equal Access**

All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

#### **Equal Education**

No person in the United States shall, on the basis of **sex**, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

#### **Equal Employment Opportunity**

It shall be an unlawful employment practice for an employer \* \* \* to fail or refuse to hire or to discharge, or otherwise discriminate against any individual... because of such individual's race, color, religion, **sex**, or national origin.