



City of Winston-Salem
North Carolina
27102

COUNCIL MEMBER
WEST WARD

April 18, 2016

Re: S.L. 2016-3 Public Facilities Privacy & Security Act/HB-2

The recent actions by the City of Charlotte and the State of North Carolina have thrust the state into the national spotlight concerning sexual orientation and transgender issues. The Winston-Salem City Council will be voting this week on a resolution related to HB2. I will not be supporting that resolution but would rather communicate my concerns on the recent legislation directly to the members of the Forsyth County delegation.

As someone who has served on the City Council for fifteen years, I understand the difficulty of balancing conflicting interest while consolidating them into a workable solution. I share your concerns about the recently passed Charlotte ordinance, specifically the issue of male genitalia in female locker rooms. At the same time, I recognize the difficulty a transgender person would have in navigating a very private dilemma. The provision of a third bathroom seems part of the solution, but no one seems to have thought of this. We must, as a state, develop policies that protect civil rights of all persons while equally protecting the privacy rights of all as well.

Concerning HB2 I would like to take a moment to touch briefly upon two specific areas addressed in HB2 that I believe warrant further consideration. One area, if not addressed, has the potential to thrust the City into potential conflict with the guidance issued by the Equal Employment Opportunity Commission (EEOC) and the federal regulators that enforce such. The other area addresses the elimination of the right of citizens alleging employment discrimination to pursue a common law claim for wrongful termination based upon certain protected categories. Each section is discussed below in more detail.

Based upon Section 3.1 (c) of HB 2, the personnel policies of local governments are exempt from the provisions of HB 2 barring local governments from adopting regulations and ordinances prohibiting discriminatory practices in employment. However, the exemption is qualified by the phrase "...that are not otherwise in conflict with state law." This qualification has the potential to place the City's employment practices in conflict with the guidance issued by EEOC that interprets the term "sex" to provide certain protections to employees based upon sexual orientation and gender identity. The aforementioned provision may cause the City to choose between avoiding an

EEOC charge, federal enforcement efforts and litigation and complying with state law. I would appreciate the legislature considering an amendment to HB 2 that clearly allows local governments the ability to comply fully with the guidance issued by EEOC as it relates to its employees without running the risk of violating state law. The Governor has recently issued an executive order that attempts to address this issue. I do believe, however, that legislative action is needed to clearly give cities the ability to comply fully with both state and federal employment laws.

The second area relates to the elimination of the right of citizens alleging employment discrimination to file in state court a common law cause of action for wrongful discharge based upon race, sex, religion, color, national origin, age or handicap. It just seems fair that if a state law provides certain employee protections, an employee should be able to pursue a claim based upon those protections in state court. I would recommend that the legislature consider an amendment to HB 2 restoring this right.

I ask you all to work diligently and swiftly to develop solutions that balance all these issues. This will not be easy but it must be done and done quickly. Thank you for your time and attention to this matter. Should you have any questions, please do not hesitate to contact me at 336-416-0910 or the City Attorney, Angela Carmon at 336-747-7404.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Clark". The signature is stylized with large, flowing letters and a prominent flourish at the end.

Robert C. Clark
Council Member
West Ward