

TRANSADVOCATE

What the US Attorney General actually said about trans people & fighting NC in court

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Abstract

On Monday, May 9th, the United States Attorney General, Loretta Lynch came out swinging against North Carolina's commitment to discriminating against trans people. The speech that AG Lynch gave is incredibly striking and stands as a singular moment in the history of trans advocacy. While numerous sites will pair soundbites with their own commentary and others [...]

Article



On Monday, May 9th, the United States Attorney General, Loretta Lynch came out swinging against North Carolina's commitment to discriminating against trans people. The speech that AG Lynch gave is incredibly striking and stands as a singular moment in the history of trans advocacy. While numerous sites will pair soundbites with their own commentary and others will inevitably misrepresent her words, we at the TransAdvocate wish to simply let the AG's words and actions speak for themselves:

Good afternoon and thank you all for being here. Today, I'm joined by [Vanita] Gupta, head of the Civil Rights Division at the Department of Justice. We are here to announce a significant law enforcement

action regarding North Carolina's Public Facilities Privacy & Security Act, also known as House Bill 2.

The North Carolina General Assembly passed House Bill 2 in special session on March 23 of this year. The bill sought to strike down an anti-discrimination provision in a recently-passed Charlotte, North Carolina, ordinance, as well as to require transgender people in public agencies to use the bathrooms consistent with their sex as noted at birth, rather than the bathrooms that fit their gender identity. The bill was signed into law that same day. In so doing, the legislature and the governor placed North Carolina in direct opposition to federal laws prohibiting discrimination on the basis of sex and gender identity. More to the point, they created state-sponsored discrimination against transgender individuals, who simply seek to engage in the most private of functions in a place of safety and security - a right taken for granted by most of us.

Last week, our Civil Rights Division notified state officials that House Bill 2 violates federal civil rights laws. We asked that they certify by the end of the day today that they would not comply with or implement House Bill 2's restriction on restroom access. An extension was requested by North Carolina and was under active consideration. But instead of replying to our offer or providing a certification, this morning, the state of North Carolina and its governor chose to respond by suing the Department of Justice. As a result of their decisions, we are now moving forward.

Today, we are filing a federal civil rights lawsuit against the state of North Carolina, Governor 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 ban on its enforcement. While the lawsuit currently seeks declaratory relief, I want to note that we retain the option of curtailing federal funding to the North Carolina Department of Public Safety and the University of North Carolina as this case proceeds.

This action is about a great deal more than just bathrooms. This is about the dignity and respect we accord our fellow citizens and the laws that we, as a people and as a country, have enacted to protect them - indeed, to protect all of us. And it's about the founding ideals that have led this country - haltingly but inexorably - in the direction of fairness, inclusion, and equality for all Americans.

This is not the first time that we have seen discriminatory responses to historic moments of progress for our nation. We saw it in the Jim Crow laws that followed the Emancipation Proclamation. We saw it in fierce and widespread resistance to *Brown v. Board of Education*. And we saw it in the proliferation of state bans on same-sex unions intended to stifle any hope that gay and lesbian Americans might one day be afforded the right to marry. That right, of course, is now recognized as a guarantee embedded in our Constitution, and in the wake of that historic triumph, we have seen bill after bill in state after state taking aim at the LGBT community. Some of these responses reflect a recognizably human fear of the unknown, and a discomfort with the uncertainty of change. But this is not a time to act out of fear. This is a time to summon our national virtues of inclusivity, diversity, compassion, and open-mindedness. What we must not do - what we must never do - is turned on our neighbors, our family members, our fellow Americans, for something they cannot control, and deny what makes them human. This is why none of us can stand by when a state enters the business of legislating identity and insists that a person pretend to be something they are not, or invents a problem that doesn't exist as a pretext for discrimination and harassment.

Let me speak now to the people of the great state, the beautiful state, my state of North Carolina. You've been told that this law protects vulnerable populations from harm - but that just is not the case. Instead, what this law does is inflict further indignity on a population that has already suffered far more than its fair share. This law provides no benefit to society - all it does is harm innocent Americans.

Instead of turning away from our neighbors, our friends, our colleagues, let us instead learn from our history and avoid repeating the mistakes of our past. Let us reflect on the obvious but often neglected lesson that state-sanctioned discrimination never looks good in hindsight. It was not so very long ago that states, including North Carolina, had signs above restrooms, water fountains and on public accommodations keeping people out based upon a distinction without a difference. We have moved beyond those dark days, but not without pain and suffering and an ongoing fight to keep moving forward. Let us write a different story this time. Let us not act out of fear and misunderstanding, but out of the values of inclusion, diversity, and regard for all that makes our country great.

Let me also speak directly to the transgender community itself. Some of you have lived freely for decades. Others of you are still wondering how you can possibly live the lives you were born to lead. But no matter how isolated or scared you may feel today, the Department of Justice and the entire Obama Administration wants you to know that we see you; we stand with you; and we will do everything we can to protect you going forward. Please know that history is on your side. This country was founded on a promise of equal rights for all, and we have always managed to move closer to that promise, little by little, one day at a time. It may not be easy - but we'll get there together.

I want to thank my colleagues in the Civil Rights Division who have devoted many hours to this case so far, and who will devote many more to seeing it through. At this time, I'd like to turn things over to Vanita Gupta, whose determined leadership on this and so many other issues have been essential to the Justice Department's work.

Throughout the arc of our country's history, from tragedies of injustice to marches for equality, there have been pivotal moments where America's leaders chose to stand up and speak out to safeguard the ideal of equal justice under law. History will record your inspiring words and forceful actions today is one of those moments.

I want to take a moment to thank the entire team throughout the civil rights division and department of justice who have worked tirelessly over the last couple of weeks to ensure everyone in North Carolina has the full protection of our laws. Today, we filed a federal civil rights complaint in the middle district of North Carolina. Before I discuss the details of our legal argument, I want to make one thing clear: calling HB2 a "bathroom bill" trivializes what this is about. HB2 translates into discrimination in the real world.

The complaint we filed today speaks to public employees that feel afraid and stigmatized on the job. It speaks to students who feel like their campus treats them differently because of who they are. It speaks to sports fans who feel forced to choose between their gender identity and their identity as a fan. It speaks to all of us who have ever been made to feel inferior like somehow we don't belong in our community or don't fit in. Let me reassure every transgender individual in America that you belong just as you are; that you are supported and you are protected.

We bring three claims under three different civil rights statutes. Two of these statutes are long-standing in the employment and education context: Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendment in 1972. It is fitting these statutes which emerged from our nation's long struggle to banish a legacy of legal discrimination are now being used to defend, to uphold, and affirm the progress that resulted from that struggle; progress that represents America at its best, brightest and strongest. Title IX and Title VII prohibit discrimination based on sex. The department of justice has for some time made it clear that sex discrimination includes discrimination against transgender people. That is, discrimination based on gender identity. That is consistent with not only the language of the statute but with a legal interpretation adopted by the federal court, including the appellate court with jurisdiction over the state of North Carolina.

There is nothing radical or even particularly unusual about the notion that the word "sex" includes the concept of gender. Transgender people are discriminated against because their gender identity does not match the sex that was assigned to them at birth. HB2 denies transgender people something that all non-transgender people enjoy and take for granted: access to restrooms consistent with their gender identity. That's sex discrimination plain and simple. This view was confirmed when proponents of measures like HB2 misinterpret or make up "facts" about gender identity. Here are the facts:

- Transgender men are men. They live, work, and study as men.
- Transgender women are women. They live, work, and study as women.

Our Title VII claim is brought against the state of North Carolina, the North Carolina Department of Public Safety, and the University of North Carolina because of sex discrimination in employment. Our Title IX claim is brought against the University of North Carolina because of sex discrimination in its educational program. We also bring a claim in the Violence Against Women Act, a more recent statute specifically designed to prevent discrimination against transgender people by entities that accept certain federal funds. As with Title IX, entities that accept federal funds under VALA, including UNS and the NCDPS, pledged that they would not discriminate against sex or gender identity. Our complaint seeks to enforce that pledge and hold those entities accountable for the kind of discrimination required by HB2.

Even as we seek that compliance, we remain committed to working with any agency receiving federal funding to develop a plan to ensure their compliance with federal law. And for the reasons I highlighted, HB2 violates the law but also threatens the values that define us as a people. These values are timeless. They say that you can be who you are and deserve to live with dignity. The complaint filed today seeks to enforce these laws and protect these values. At this time, I will pass the microphone to the Attorney General.

Reporter: Charlotte passed a law that would allow transgendered [sic] people to choose a bathroom based on how they identify, but there are many municipalities that have not passed laws that specifically allow for that. Is the Justice Department thinking of intervening in places that have not passed laws like that and would you consider intervening in places with what North Carolina has done if you see a pattern that evolves?

Att. Gen. Lynch: Let me speak to the last part of your question with respect to jurisdictions that may have passed or are considering laws similar to HB2. To the extent we have been made aware of them, and

we know of a few out there and we are reviewing those situations as well, let me be clear: we remain open to discussions with any jurisdiction that has questions about whether a particular ordinance is going to fall afoul of federal law. In respect to the Charlotte ordinance, essentially added to its antidiscrimination language making it clear that it also afforded protections to those dealing with issues of sexual orientation and gender identity. HB2 in its discussion saying you cannot have that as part of your nondiscrimination laws, we move to strike that down. We would encourage jurisdictions to be as open as possible in their antidiscrimination coverage.

Reporter: you said you retain the right to curtail federal funding, what is the threshold for that and at what point will you go after North Carolina's federal funding?

Att. Gen. Lynch: with respect to federal funding, the statutes we brought this lawsuit under do provide the opportunity to curtail federal funding under Title IX in the Violence Against Women Act. But as I've said, we remain open to discussions in the state; in fact, we know the university system has reached out to us [and] their board of governors is meeting tomorrow. We remain anxious to see what those discussions will bring. And so we are deferring on requesting the curtailment of funding now, but we do retain that right. It would be premature to give a date on when we would actually take that step.

Reporter: today, the Governor said the Justice Department is bullying and engaging and overreach. What about that?

Att. Gen. Lynch: I think the people who feel bullied are the transgender individuals in the state of North Carolina, who live and work beside their neighbors without any problems and have done so for years and are now being signaled on something they have no control over and is an essential part of who they are. So, I would shift the issue of bullying to considerations along that front. The state of North Carolina has been aware we have been reviewing and monitoring these laws were sometime. We have been into mediation with the university system for several weeks now and they have been aware of this as well. As I noted in my remarks, an extension was requested and was under active consideration.

Reporter: Mississippi has passed a law that allows people to not provide services if they disagree with, for instance, same-sex marriages. Does this fall into civil rights law like this when does?

Att. Gen. Lynch: to the extent that states or jurisdictions may pass laws that allow businesses or anyone else to discriminate, we will always review those laws and see if there is, in fact, a basis for federal review and intervention. We remain open to talking to jurisdictions about this and where we see laws like this, we are actively reviewing and monitoring those. I am unable to comment now.

Reporter: One other thing the governor mentioned today is that Congress should have some clarity in the today with existing discrimination laws or clarify the intent or meaning. Do you think there is room to specify additional protective classes to remove anything that might exist?

Att. Gen. Lynch: our position is federal law has been clear for some time that discrimination against sex includes discrimination against individuals based on sexual and gender identity. The fourth circuit recently made it clear. Only about two weeks ago. I don't have any further comment on the Governor's understanding of that law. The Violence Against Women Act specifically targets gender identity. The law and the case law around Title VII, Title IX, and the Violence Against Women act clearly indicates HB2 is in violation of federal law.

Reporter: The lawsuit refers to bathroom and changing facilities. Can you explain why you don't see a difference between the two? Some say they might understand why a state might want to limit changing facilities because people are sometimes completely naked in those facilities whereas not as commonly so in bathrooms. Why do you not see any valid distinction between them?

Att. Gen. Lynch: HB2 does not distinguish among them. To the extent that the law requires state agencies to treat state employees differently, based upon gender, in those areas is in violation of the law. Now there are any number of ways to accommodate privacy interests in a bathroom or in a changing area as long as they are equally available to all students and all employees. You cannot single out one particular group of people to be treated differently.

Reporter: Doesn't the law ban all types of LGBT discrimination provisions across the state? I don't see that mentioned in the lawsuit. Is there anything the Justice Department might do about that?

Att. Gen. Lynch: this lawsuit today focus on federal statutes we have mentioned. There are other lawsuits currently pending that we feel will be moving forward at the same time as well, all of which recognize HB2 has in place state-sanctioned discrimination. We support those actions as well.

Reporter: Were you surprised by the actions of the Governor in your home state and does the Department of Justice plan to appeal the voting rights lawsuit?

Att. Gen. Lynch: with respect to the voting rights lawsuit, we have filed a notice of appeal this past Friday. As I have indicated, we have continued to enforce every individual's right to vote and keep that free and open for everyone. That motion was filed this Friday. With respect to the governor's action, I don't have any comment. We were engaged in discussions with them about the timing of a response in the hope that we could help with them ameliorating this law in some way. How it would be handled is up to the state legislature. We were hopeful we could have these discussions with them and it is unfortunate the Governor's actions curtail that. Having made that choice, we are moving forward.

Reporter: Given that it is a political season and this is a touchy subject for some, did you consult with the White House on any of this over the last week?

Att. Gen. Lynch: we make our enforcement action separately and independently. Certainly, the White House is aware of the laws and the issues and they have had their own comments on this. We have made our decisions based on what we think is the appropriate move to make at this time.

Discuss the right-wing's petulant rage in the
TransAdvocate Forums

This section will be updated with misrepresentations of what the USAG said and/or efforts on the part of media to represent the DOJ's actions as part of the "transgender debate" here:

- Breitbart: "Attorney General Janet Lynch argued May 9 that any one person's desire to choose a male or female "gender identity" is more important than Americans' right to sexual privacy in shared public facilities, such as bathrooms and school locker rooms."

Fact Check: Lynch argues that gender identity discrimination is sex discrimination, not that it's more important than "sexual privacy". Moreover, she explicitly addressed this the "privacy debate" in the media Q&A, which Breitbart chose to omit.

- Newsmax: “Former GOP presidential candidate Ben Carson didn’t buy Attorney General Loretta Lynch’s comparison of North Carolina’s bathroom law to the Jim Crow laws of the pre-civil rights era.”

Fact Check: Lynch didn’t say that sex discrimination is like Jim Crow laws. She was remarking on the fact that progress inspires discriminatory pushback saying, “This is not the first time that we have seen discriminatory responses to historic moments of progress for our nation. We saw it in the Jim Crow laws that followed the Emancipation Proclamation.”

- Syracuse.com via the AP: The title of the article falsely declares, “Loretta Lynch sues North Carolina, compares bathroom bill to Jim Crow laws” while the article itself appeals to the “transgender debate” media trope. The article, continuing to push the bogus fact assertion then writes:

Lynch, the first black woman to hold the job, elevated the profile of the Justice Department’s potentially epic clash with North Carolina over its new bathroom law by placing it in the context of America’s Jim Crow era -- when signs above water fountains and restaurants fostered race discrimination -- as well as more recent efforts to deny gay couples the right to marry.

“Instead of turning away from our neighbors, friends, and colleagues, let us instead learn from our history and avoid repeating the mistakes of our past,” Lynch said at a news conference Monday announcing the lawsuit, directly addressing North Carolina residents. “Let us reflect on the obvious but neglected lesson that state-sanctioned discrimination never looks good and never works in hindsight.

Note that the AP was unable to actually quote AG Lynch saying that sex discrimination is like Jim Crow laws. The AP article then casts the A’s unprecedented actions as just being part of the transgender debate: “Monday’s actions carry immediate practical impact, moving the debate into the courtroom and putting on notice other states that in recent months have proposed similar laws limiting protections for gay, bisexual and transgender people.”

Fact Check: Again, Lynch didn’t say that sex discrimination is like Jim Crow laws. She was remarking on the fact that progress inspires discriminatory pushback saying, “This is not the first time that we have seen discriminatory responses to historic moments of progress for our nation. We saw it in the Jim Crow laws that followed the Emancipation Proclamation.”

- The Atlantic: The sensationalized title and subtitle reads, “The Edge: When in Doubt, Sue Each Other After North Carolina filed a lawsuit against the U.S. Department of Justice over the state’s controversial “bathroom bill,” Attorney General Loretta Lynch said it’s suing right back.”

Fact Check: This misrepresents the fact that why NC is getting sued is that NC signed a contract with the federal government to not discriminate against anyone on the basis of “gender identity” when NC received Title IX and VAWA funds. NC declared that they wouldn’t honor their contractual agreements and the DOJ sued: We also bring a claim in the Violence Against Women Act, a more recent statute specifically designed to prevent discrimination against transgender people by entities that accept certain federal funds. As with Title IX, entities that accept federal funds under VALA, including UNS and the NCDPS, pledged that they would not discriminate against sex or gender identity. Our complaint seeks to enforce that pledge and hold those entities accountable for the kind of discrimination required by HB2.” - Vanita Gupta

In fact, The Atlantic’s coverage completely omits the above reason DOJ cited to reporters for their action against NC.

NOTE: Almost without exception, all news stories omit the significant fact that when NC took federal money tied to the Violence Against Women Act (VAWA) and Title IX, they signed a contract explicitly

agreeing to not discriminate against trans people. For a breakdown of this widespread misrepresentation, see [An open letter to the media regarding the AG's NC suit](#).

Suggested citation

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