

April 28, 2016

The Honorable Loretta E. Lynch  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20520

Mr. W. Neil Eggleston  
Assistant to the President and White House Counsel  
Office of the White House Counsel  
The White House  
1600 Pennsylvania, Avenue, NW  
2nd Floor, West Wing  
Washington, D.C. 20500

Dear Attorney General Lynch and Mr. Eggleston,

We write to you as leaders of legal organizations working to secure equality under the law for LGBT people. As you are both no doubt aware, we have seen an unprecedented number of bills in state legislatures this year that target people for discrimination based on their sexual orientation and gender identity. Several of these measures – in North Carolina and Mississippi most prominently – have already been signed into law. The North Carolina measure known as HB 2, or the so-called Public Facilities Privacy & Security Act, mandates systemic, statewide violation of federal laws that prohibit sex discrimination, including both Title VII and Title IX. Over 40 similar anti-transgender bills have been proposed in state legislatures this year.

This administration has been a steadfast and unrelenting champion for the rights of LGBT people. We were heartened by President Obama's recent comments in which he said that the laws in North Carolina and Mississippi were "wrong and should be overturned." We were also very grateful to have the Justice Department join our organizations in court in arguing that restrictions prohibiting transgender students from using restrooms that correspond with their gender identity are a form of sex discrimination that violates federal law.

On April 19, the U.S. Court of Appeals for the Fourth Circuit adopted the administration's position, ruling in favor of a male student in his challenge to a discriminatory restroom policy at Gloucester High School in Virginia that segregates transgender students like him from their peers by requiring them to use "alternative, private" facilities. Building on decades of case law as well as Department of Education guidance documents and enforcement actions, this ruling confirms that Title IX protects the rights of transgender students to use sex-segregated facilities that are consistent with their gender identity. This ruling stands in stark and direct contrast to laws like HB 2.

The North Carolina General Assembly returned to session on Monday, April 25. They are expected to consider legislation to fully repeal HB 2. The administration would significantly aid efforts to repeal HB 2 – as well as prevent the passage of similar legislation in other states both this year and into the future – by providing clarity that such measures violate federal laws against sex discrimination and, as a result, jeopardize a state’s entitlement to significant federal funds.

This administration must make definitively clear that wholesale requirements of sex discrimination like HB 2 will put federal funding at risk. The prospect of the loss of federal funding helped convince South Dakota Governor Daugaard to veto a similar bill, and the Tennessee legislature to drop one as well. But in North Carolina, HB2 is already law, and greater guidance from the administration about the potential loss of funding is needed.

HB 2 and copycat bills in other states present a violation of federal law that is unprecedented in its clarity and sweep; the North Carolina law mandates, on a systemic and across-the-board basis, sex discrimination by schools and government buildings. In the face of such a categorical violation of federal sex discrimination laws, the normal remedial process of filing complaints with federal civil rights agencies like the Office for Civil Rights in the Department of Education and the EEOC is wholly insufficient.

When a law like HB 2 mandates statewide violations of federal law, the federal government must respond in a manner that is proportionate to the scope and nature of the violations. The violations of federal law that are mandated by HB 2 and similar proposals require the federal government to make clear that states that go down this discriminatory road run a real risk of losing significant federal funding.

We urge you once again to stand on the side of LGBT equality by taking this important step.

Sincerely,

The American Civil Liberties Union  
GLBT Legal Advocates & Defenders  
Lambda Legal  
National Center for Lesbian Rights  
Transgender Law Center