

February 27, 2015

Members of the City Council,
City of Charlotte
600 E. 4th Street
Charlotte, North Carolina 28269

Honorable Members of the City Council of Charlotte:

We are leaders in the City of Charlotte, pastors, business leaders, and leaders of state-wide organizations. We are writing to you to ask you to vote “NO” on the proposed City ordinance that would create non-discrimination laws on the basis of “marital status, familial status, sexual orientation, gender identity, and gender expression.”

The ordinance is addressing a problem that doesn’t exist. Charlotte is already a tolerant city where people of different beliefs, religions and sexual preferences work peacefully with one another. But this ordinance will create unnecessary tensions, lawsuits and violate the Constitutional protections of all Charlotteans, including heterosexuals, homosexuals and transgendered.

This dangerous ordinance will impact the City of Charlotte and its citizens negatively in four ways:

I. The ordinance is unconstitutional. It creates undue regulatory burdens on private businesses and unnecessarily exposes them to lawsuits and liability by requiring them to give up their First Amendment rights of Freedom of Speech, Religion and Association.

Should a gay T-shirt maker be forced to create anti-gay marriage T-shirts? Should a Muslim T-shirt maker be forced to create pro-gay marriage T-shirts? That’s exactly what this ordinance will do if passed. By adding “marital status, familial status, sexual orientation, gender identity, and gender expression,” to the public accommodations laws, the City will require many businesses to provide their “goods, services, facilities, privileges, advantages, and accommodations” to promote messages or ideas (speech) that are contrary to their religious and conscience beliefs about human sexual behavior.

Business people that serve the public will be placed in the untenable position of having to choose between following the dictates of their consciences or following the City’s new non-discrimination law. Taking the freedom of choice to follow their conscience away from business owners in the City of Charlotte creates undue regulatory burdens, which in turn discourage businesses from locating or expanding in the City of Charlotte. It also exposes these businesses to lawsuits by persons included in the new specially protected categories created by the City.

Attached is a short brief of examples of the lawsuits and discrimination that have resulted from similar ordinances and laws in other parts of the country.

The ordinance will allow discrimination complaints to be filed against business owners who are simply trying to operate their businesses like they do their private lives—in accordance with their religious beliefs or dictates of their consciences. The ordinance is, therefore, a threat to the most basic freedom of all Americans—the right to freely exercise their religious beliefs and not be forced to promote speech or associations with which they disagree. Again, this ordinance would diminish the rights of *homosexuals* because it could also be used to force businesses owned by *homosexuals* to promote messages with which they disagree (such as anti gay marriage T-shirts, cakes or other products and services that are contrary to their beliefs). U.S. Const. amend. 1; N.C. Const. art. 1, § 13.

II. The ordinance puts children and women in danger and violates their sense of privacy and security.

The proposed non-discrimination ordinance will put children and women at risk of sexual assault and will violate the Constitutional right of privacy by forcing citizens to share restrooms, locker rooms, and showers with members of the opposite biological sex.

Three Circuit Courts of Appeals have held that there is a constitutional right to privacy that is violated when a government policy or action allows a member of the opposite sex to view a person while engaging in activities such as undressing, using restrooms, or showering. However, the proposed ordinance will allow males to use female restrooms, showers, and locker rooms (and visa versa) based on what gender they “identify” with. This will affect businesses, non-profits, and private clubs. It may even affect churches.

In Olympia, Washington, where the town has a similar non-discrimination law as the one you are considering, a man who identifies as a woman frequently uses the women’s showers and locker room at a local state college that shares its facilities with a children’s swim club. **Despite frequent complaints about indecent exposure in front of girls as young as 6 years old, the nondiscrimination law prevents the college from banning this man from the women’s locker rooms.**

In other states where laws have been passed prohibiting discrimination on the basis of gender identity, sexual predators have claimed to identify as women for the sole purpose of gaining access to bathrooms and women’s shelters so they can abuse and sexually assault women.

It would be irresponsible of the Charlotte City Council to pass a city ordinance that would violate the constitutional right to privacy of its citizens when engaging in personal activities like showering, dressing, and using restrooms. It would be dangerous for the

City Council to pass an ordinance that puts children and women at risk of indecent exposure and sexual assault.

Even more, passing an ordinance of this type puts businesses and organizations in an untenable position of having to choose between obeying the law or protecting the safety and privacy of their patrons. They will not be able to legally stop a male from entering a women's bathroom, locker room, or shower.

III. The ordinance requires the City of Charlotte to engage in impermissible discrimination on the basis of religion and association when it chooses businesses with which to contract and do business.

The proposed ordinance requires the City of Charlotte "not to enter into a contract with any business firm that has discriminated in the solicitation, selection, hiring or treatment of vendors, suppliers, subcontractors or commercial customers" on the basis of "sexual orientation, gender identity, or gender expression." The addition of these new terms to the City's non-discrimination law *will cause the City to discriminate* against companies that, because of their religious beliefs or associations, choose not to employ persons whose sexual behavior violates their religious beliefs or consciences. The ordinance creates an advantaged class based on sexual behavior and a disadvantaged class based on religious belief. *Current City law prohibits discrimination on the basis of religion, but this ordinance would compel it.*

Many businesses who currently have contracts with the City of Charlotte will be negatively impacted by this proposed non-discrimination ordinance. These businesses, including water and sewer contractors, vendors in athletic stadiums for food and beverages and athletic apparel, and any number of services, will be put in the dilemma of having to give up doing business with the City or violate their religious beliefs. This is unreasonable and discriminatory.

The government should not be forcing citizens to hire or fire people based on what they think about controversial cultural issues such as sexual behavior. The private sector ensures fairness quite nicely without such unconstitutional government interference. Homosexual household income is significantly higher than that of heterosexuals. So this ordinance is attempting to fix "discrimination" that doesn't exist.

IV. The ordinance violates Article II, Section 24 (j) of the Constitution of the State of North Carolina, by creating a local non-discrimination ordinance regulating labor and trade.

In order to solve a problem created by the North Carolina Constitution as originally adopted in 1776, the voters of the State amended the Constitution in 1916 to prohibit the

General Assembly from enacting “local, special, and private” legislation pertaining to certain subjects, including “labor and trade.” This new provision resolved the incongruity created by the General Assembly passing bills that resulted in the law being one thing in one locality and quite a different thing in another locality. Article II, Section 24 of the Constitution was intended to bring uniformity to the laws of the State and predictability to commerce and business.

In 2003, the North Carolina Supreme Court relied on Article II, Section 24 to strike down a non-discrimination ordinance passed by Orange County that added the terms “familial status” and “veteran status” to the categories of individuals protected by the County’s civil rights ordinance. The Court also struck down the enabling legislation that was passed by the General Assembly to allow Orange County’s actions. “The enabling legislation and the Ordinance generate different law in one locality from that applicable to other localities within the State,” said the Court. The Court concluded that there were no special circumstances that warranted granting Orange County the power to create and enforce additional employment rights beyond those accorded any other county in the State. “We are unable to conclude that conditions in Orange County alone are suspect to such an extent that the legislature legally could create a separate classification to address employment discrimination in that county only.” *Williams v. Blue Cross Blue Shield of North Carolina*, 357 N.C. 170 (2003).

The proposed ordinance before this City Council is unconstitutional, because it creates a “local, private, or special” ordinance regulating labor or trade in violation of Article II, Section 24. Adding “marital status, familial status (the specific term struck down in the *Williams* case), sexual orientation, gender identity, and gender expression” to the City’s non-discrimination laws pertaining to employment for its contractors and vendors, public accommodations, and vehicles for hire expands the categories protected by the non-discrimination ordinances of the City of Charlotte beyond those of any other county or city in North Carolina. This leads to balkanization of the State’s employment non-discrimination laws.

We caution the City Council that not only is this proposed ordinance unconstitutional, but it is not authorized by any enacting legislation of the General Assembly. As such, it is subject to a facial legal challenge.

Moreover, modifying this ordinance to exempt religious organizations (such as churches, synagogues and mosques) will not fix its problems. Such a modification would not protect religious individuals in business, nor would it protect everyone else (heterosexuals, homosexuals and transgendered) who also have First Amendment rights.

As members of the City Council, it is your responsibility to enact laws and policies that are constitutional, that foster and advance the safety of the citizens of Charlotte, and that

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encourage the growth and development of businesses in the City so that the City can thrive and prosper. This proposed ordinance does not accomplish those goals. If you choose to nevertheless pass this proposed ordinance, you will not only violate the rights of all Charlotteans, but also initiate a concerted effort to remove you from the City Council at the next election. We do not need City leaders who put social engineering at the behest of a small minority group above good governance for the whole of the City.

We have attached to this letter a 7-page memo from attorneys with the Alliance Defending Freedom outlining the legal problems with this proposed ordinance. We urge members of the Council to read this memo and to vote against this unconstitutional expansion of non-discrimination laws in the City of Charlotte. Thank you for your service to our great city.

Sincerely,

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