

Office of the Speaker Pro Tem  
North Carolina  
House of Representatives

300 N. Salisbury St., Room 612, Raleigh, NC 27603  
(919) 733-2962 – Paul.Stam@ncleg.net

Representative  
Paul Stam



NEWS RELEASE

FOR IMMEDIATE RELEASE

October 25, 2016

**The Breathtaking Hypocrisy of the NCAA (and ACC) – Part II**  
***Greensboro vs. Four New Locations – A Policy Comparison***

**Introduction**

“[The Breathtaking Hypocrisy of the NCAA](#)” was distributed on September 13th, before the NCAA (and ACC) chose alternative locations for championships. In several cases the boycott of North Carolina resulted in the relocation of championships from Greensboro, NC to other venues where the actual laws relating to discrimination are the same, virtually the same, or even less “protective” of LGBT rights than those in effect in Greensboro. This demonstrates why these sports organizations’ boycotts will have to take on much of the nation.

Left-wing groups claim that Religious Freedom Restoration Acts are discriminatory for legalizing denial of service. Remember Indiana, Mississippi and Arkansas. We do not agree that this claim has any validity. But for the NCAA and ACC we note that North Carolina has no Religious Freedom Restoration Act. Both South Carolina and Virginia do: *South Carolina Code Ann. § 1-32-40 (1999)* & *Virginia Code Ann. § 57-2.02 (2009)*.

The policies of North Carolina are reasonable. Boycotts by the NCAA and the ACC are harmful to athletes (especially women) as was shown in the original “Breathtaking Hypocrisy” article.

The City of Greensboro has now lost several tournaments. As shown in the charts below, Greensboro has provisions for non-discrimination in government employment at the state, county and city level that include the categories of sexual orientation and gender identity. These policies are expressly not preempted by HB2. House Bill 2, Section 3.1(c) amended G.S. 143-422.2 to preempt local requirements on employers “except such regulations applicable to personnel employed by that body that are not otherwise in conflict with State law.”

**In conclusion: The boycott of North Carolina by the NCAA and the ACC is:**

- A. Unreasonable as shown in [Legends vs. the Truth](#);
- B. Destructive of Women’s Competitive Sports, as shown in “[Breathtaking Hypocrisy](#),” and
- C. Misdirected even on its own terms as shown in “[The Breathtaking Hypocrisy of the NCAA \(and ACC\) – Part II](#).”

For the reasons stated under Legends #5 and #6 of [Legends vs. the Truth about HB2](#), we do not agree that “sexual orientation” or “gender identity” are reasonable categories for special legal rights. But since the NCAA and the ACC apparently do, we offer the following comparisons.

## Greensboro, NC ~ Non-Discrimination Policies

The City of Greensboro has a local non-discrimination policy for its employees that includes sexual orientation, gender expression and gender identity.

### Current Greensboro City Code:

#### Sec. 21-5. - Qualifications for appointment.

“(a) Appointments to positions within the city service shall be made on the basis of merit and fitness, and in accordance with the provisions of this chapter and any rules which may be established under its authority...

“(d) Non-discrimination policy. The policy of the city is to foster, maintain, and promote equal employment opportunity. The city shall select employees on the basis of an applicant's suitability for the job and award them, with respect to compensation and opportunity for training and advancement, including upgrading and promotion, without regard to sex, race, gender, color, ethnicity, national origin, age, familial status, marital status, military status, political affiliation, religion, physical or mental disability, genetic information, sexual orientation, gender expression or gender identity except where certain physical and mental requirements are bonafide occupational qualifications.

[emphasis added]

“(e) Implementation of policy. All personnel responsible for recruiting and employment will continue to review regularly the implementation of this personnel policy and relevant practices to assure that equal employment opportunity based on reasonable job-related job requirements is being actively observed to the end that no employee or applicant for employment shall suffer discrimination because of sex, race, gender, color, ethnicity, national origin, age, familial status, marital status, military status, political affiliation, religion, physical or mental disability, genetic information, sexual orientation, or gender identity.” [emphasis added]

(Code 1961, § 14-5; Ord. No. 15-012, § 1, 1-6-15)

The City of Greensboro is located in Guilford County. In 2007 the Guilford County Board of Commissioners added “sexual orientation” to the [County’s personnel anti-discrimination policy](#). As shown above, the city and county policies are not preempted by HB2.

On April 12, 2016, North Carolina Governor Pat McCrory signed [Executive Order No. 93](#) which expanded the non-discrimination employment policy for state employees to include the categories of sexual orientation and gender identity.

Despite this, the NCAA and ACC moved championships out of Greensboro to the following cities:

## NCAA Men’s Basketball Regional Tournament

New Location:  
**Greenville, SC**

According to the [town website](#): “The City of Greenville does not discriminate on the basis of age, disability, gender/sex, race, color, religion, national origin, veterans’ status, or genetic information. The City of Greenville is an Equal Employment Opportunity Employer.”

The City Code that covers commercial utilization of public space and facilities states: “The commercial user must make the rendered service available to members of the public without discrimination based on race, religion, national origin, gender or ethnic identity...”  
(Code 1997, § 26-44; Ord. No. 2005-42, exh., 5-23-2005)

**Neither policy prohibits discrimination based on sexual orientation, gender expression or gender identity.** Neither policy purports to cover private employment or the usage of private facilities.

The City of Greenville is located in Greenville County. According to the [County’s website](#), Greenville County’s policy on discrimination is as follows: “Discrimination by reason of race, color, national origin, religion, sex, age, marital status, physical or mental handicap, personal

	<p>appearance, political affiliation, prior arrest or conviction record or source of income is prohibited.”  <u>This policy makes no reference to sexual orientation, gender expression or gender identity.</u></p> <p><b>The State of South Carolina has no state-wide law or executive order prohibiting discrimination based on sexual orientation, gender expression or gender identity.</b></p>
--	--

**ACC Women’s Golf Championship**

<p>New Location:  <b>Pawley’s Island, SC</b></p>	<p><b>The Town of Pawley’s Island <a href="#">Personnel Policy</a> does not include sexual orientation, gender expression or gender identity:</b></p> <p>TOWN OF PAWLEY’S ISLAND PERSONNEL POLICY, AUGUST 9, 2004          “The town constantly strives to provide equal employment opportunities without regard to race, color, age, sex, national origin, religion, disability, and military reserve status. This pledge applies to all phases of employment...”</p> <p>HARASSMENT PROHIBITED.          “Our policies, as well as various laws and regulations, generally prohibit employment decisions from being made on the basis of race, sex, religion, national origin, age, and disability, and similar distinction. In addition, it is our policy to provide a working environment in which employees are free from discomfort or pressure resulting from jokes, ridicule, slurs, and harassment either relating to such distinctions or simply resulting from a lack of consideration for a fellow human being...”</p> <p><b>Pawley’s Island is located in Georgetown County. Georgetown County Ordinances do not include language prohibiting discrimination or harassment based on sexual orientation, gender expression or gender identity.</b></p> <p>According to <a href="#">Georgetown County’s website</a>, “It is the policy of Georgetown County to hire, train and promote employees without discrimination because of race, religion, color, physical disability, national origin, sex or age.”</p> <p><b>The State of South Carolina has no state-wide law or executive order prohibiting discrimination based on sexual orientation, gender expression or gender identity.</b></p>
--	---

**ACC Women’s Basketball Championship**

<p>New Location:  <b>Conway, SC</b></p>	<p><b>The <a href="#">City of Conway’s website</a> describes the City’s Equal Employment Opportunity policy for its own employees as follows:</b> “The City of Conway, South Carolina employment practices are guided by federal, state, and local rules and regulations guaranteeing employment opportunities to all persons without regard to and prohibiting discrimination or harassment on the basis of race, creed, color, sex, sexual orientation, pregnancy, age, religion, political affiliation or beliefs, national origin or handicap, unless a bona fide occupational qualification exists.” <b>While this policy includes sexual orientation, it does not include gender identity.</b></p> <p><b>The City of Conway is located in Horry County. Horry County prohibits discrimination in several county ordinances. However, none of these ordinances contain sexual orientation, gender identity or gender expression.</b></p> <p><b>Sec. 3-158. - Discrimination.</b>          “No individual, tenant, lessee, licensee, contractor or concessionaire will discriminate or permit discrimination on the grounds of race, color, sex, age, religion or national origin against any person or group of persons in any fashion prohibited by federal or state law, including but not limited to Title 49, Part 21 of the Code of Federal Regulations, or other federal, state or local laws or regulations.”          (Ord. No. 40-99, § 1, 4-6-99)</p>
---	--

	<p><b>Sec. 12.5-107. - Denial, revocation or refusal to renew license.</b>  “(b) In addition to other penalties provided by law, the license inspector may decide to revoke or refuse to renew a business license when:  ...  (4) A licensee, or any of his servants, agents, or employees, while acting within the scope of their employment, allows any unlicensed business activity by anyone on the premises, or is convicted of any felony or misdemeanor involving:  ...  b. Discrimination against any person because of religion, race age, political ideology, creed, ancestry, color, national origin, gender, mental or physical handicap...”  (Ord. No. 99-14, § 1, 5-5-15)</p> <p><b>Sec. 16-90. - Disciplinary action for public works.</b>  “(a) <i>Purpose.</i> To establish a policy and procedure to insure that when it becomes necessary for a supervisor or department head to take disciplinary action against an employee, such discipline will be administered in a fair, equitable manner without regard to race, disability, religion, age, sex, or national origin...”  (Ord. No. 40-92, § 1, 1-4-92)</p> <p><b>In April of 2016, <a href="#">Horry County Schools announced</a> that it would change its bathroom policy to allow transgender students to use the facilities consistent with the student’s gender identity. But the ACC Championship will not take place at the Horry County Schools.</b></p> <p><b>The State of South Carolina has no state-wide law or executive order prohibiting discrimination based on sexual orientation, gender expression or gender identity.</b></p>
--	--

<b>NCAA Division III Men’s and Women’s Soccer Championships</b>	
---	--

<p>New Location: Salem, VA</p>	<p><b>The City of Salem’s non-discrimination policy for its employees <u>does not</u> include sexual orientation, gender expression or gender identity.</b></p> <p><b>Current Salem City Code:</b>  <b>Sec. 2-116. - Discrimination because of political opinion, etc.</b>  “No employee or person seeking employment with the city shall in any way be favored or discriminated against because of political opinions or affiliations, race, color, religious belief, sex or national origin.” (Code 1969, § 2-28)</p> <p><b>The City of Salem’s non-discrimination policy for housing practices also <u>does not</u> include sexual orientation, gender expression or gender identity.</b></p> <p><b>Sec. 42-38. - Unlawful discriminatory housing practices.</b>  “(a) It shall be an unlawful discriminatory housing practice for any person to:  (1) Refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, national origin, sex, elderliness, or familial status.”  (Code 1969, § 13A-2(a))</p> <p><b>The City of Salem is located in Roanoke County. The County’s Personnel Policy on non-discrimination for its employees <u>does not</u> include sexual orientation, gender expression or gender identity:</b></p> <p><b>§ 6.01. - Personnel system.</b>  “A personnel system shall be established by the board of supervisors for county administrative officials and employees. Such a system shall be based on merit and professional ability without regard for race, national origin, religion, sex or political affiliation.”</p>
------------------------------------	--

**The County's [Juvenile Crimes Program](#) admissions procedure does reference sexual orientation:** "Juveniles shall not be excluded from the program nor denied access to services on the basis of race, national origin, color, creed, gender, or sexual orientation." [*emphasis added*]

**The State of Virginia has no state-wide law prohibiting discrimination based on sexual orientation, gender expression or gender identity.**

Dating back to at least *Winchester v. Redmond* in 1896, Virginia has adhered to the Dillon Rule of strict construction. The Supreme Court of Virginia described this policy in its 1980 decision *Tabler v. Fairfax County*: "Virginia follows the Dillon Rule of strict construction concerning the legislative powers of local governing bodies... The Dillon Rule provides that local governing bodies have only those powers that are expressly granted, those that are necessarily or fairly implied from expressly granted powers, and those that are essential and indispensable." In essence, local governing bodies exercise limited powers and functions of a public nature granted to them expressly or by necessary implication, and none other. Any doubts as to the existence of a power must be resolved against the locality. Absent enabling legislation from the General Assembly or the Constitution, local governing bodies cannot enact ordinances or policies that are more stringent, i.e., protect more classes of people, than do state statutes.

In HB2 North Carolina stated that local laws on discrimination were preempted. (This does not include local laws applicable to city/county employees.) But that was not a change of the law. That had been the constitutional economic position of North Carolina since 1835. The case law of Virginia stated above is to the same effect.

**On January 11, 2014 Virginia Governor Terence McAuliffe signed [Executive Order No. 1](#) which modified the state's non-discrimination employment policy for state employees to prohibit "discrimination on the basis of race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, or against otherwise qualified persons with disabilities."** [*emphasis added*] This is the same type of order signed by NC Governor Pat McCrory in April 2016 (see pg. 2).