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**To: All Concerned**  
**From: National Center for Transgender Equality**  
**Date: March 25, 2016**  
**Re: Quick Review of Federal Laws Implicated by North Carolina House Bill 2**

On March 23, 2016, North Carolina Governor Pat McCrory signed House Bill 2. Among other provisions, HB 2 requires all public schools and all other state and local government agencies in North Carolina to “require every multiple occupancy bathroom or changing facility to be designated for and only used by persons based on their biological sex.” “Biological sex” is defined as “The physical condition of being male or female, which is stated on a person's birth certificate.” HB will require state and local agencies throughout the state to routinely violate a range of federal statutes, including (but not limited to) the eight statutes discussed below.

Public school districts and public colleges and universities in North Carolina are subject to **Title IX of the Education Amendments of 1972**, which prohibits sex discrimination by federally-funded education programs.<sup>i</sup> North Carolina educational institutions receive billions of dollars in federal education funding. The U.S. Departments of Justice and Education have stated repeatedly in guidance, court briefs, and finding letters that Title IX prohibits discrimination based on gender identity, including practices that bar students from using school restrooms and changing rooms consistent with their gender identity.<sup>ii</sup> **Impact of HB 2:** HB 2 will require public educational institutions to bar transgender students from school restrooms and changing rooms consistent with their gender identity. Thus, HB 2 will require public schools, colleges and universities across North Carolina to violate Title IX.

State and local government health care facilities in North Carolina are subject to Section 1557 of the **Affordable Care Act (ACA)**, which prohibits sex discrimination by federally-funded health programs.<sup>iii</sup> This includes the UNC medical system, the Carolinas Medical Center, 100 county health departments, and other state hospitals and health facilities. The US Department of Health and Human Services published a proposed regulation on September 8, 2015, interpreting the ACA to prohibit gender identity discrimination, and specifically stating that covered entities “shall treat individuals consistent with their gender identity.”<sup>iv</sup> **Impact of HB 2:** HB 2 will require these facilities to treat many patients, residents, visitors, staff, and other individuals inconsistently with their gender identity by barring access to appropriate restrooms and changing rooms. Thus, HB 2 will require health care facilities across the state to violate the ACA.

**Title VII of the Civil Rights Act of 1964** prohibits sex discrimination in employment and applies to all state and local government entities.<sup>v</sup> The U.S. Justice Department and Equal Opportunity Commission have interpreted Title VII to include gender identity discrimination, and specifically to require employers to provide employees access to workplace restrooms and changing facilities consistent with their gender identity.<sup>vi</sup> The EEOC has sued at least one private employer partly on the basis of denying such restroom access to a transgender employee.<sup>vii</sup> **Impact of HB 2:** HB 2 will require public employers to bar transgender workers from facilities consistent with their gender identities. This, HB 2 will require public employers across North Carolina to violate Title VII.

**The Workforce Innovation and Opportunity Act** (WIOA, formerly known as the Workforce Investment Act) prohibits sex discrimination in Department of Labor-funded job centers and other workforce development programs.<sup>viii</sup> On January 26, 2016, the US Department of Labor published a proposed regulation interpreting WIOA to prohibit gender identity discrimination, and specifically prohibiting WIOA funding recipients from “Denying individuals access to the bathrooms used by the gender with which they identify.”<sup>ix</sup> **Impact of HB 2:** HB 2 will require these facilities to treat many program participants, staff, and other individuals inconsistently with their gender identity by barring access to appropriate restrooms and changing rooms. Thus, HB 2 will require job centers and other programs throughout North Carolina to violate WIOA.

**The Omnibus Crime Control and Safe Streets Act of 1968, Juvenile Justice and Delinquency Prevention Act of 1974 (JJDPA), Victims of Crime Act (VOCA) of 1984, and Violence Against Women Act (VAWA) of 1994** prohibits sex discrimination by police and sheriff departments, local prosecutors, juvenile justice facilities, courts, and victim assistance programs receiving Justice Department grants.<sup>x</sup> Under an existing Attorney General Memo, this includes discrimination based on gender identity (which is also explicitly covered in VAWA).<sup>xi</sup> Guidance from the US Office on Violence Against Women (OVW) states that under VAWA, any sex-specific program or service (including restrooms) must be accessible based on an individual’s self-identified gender. OVW states explicitly that while a program may ask an individual’s gender identity for this purpose, “The recipient may not, however, ask questions about the beneficiary’s anatomy or medical history or make burdensome demands for identity documents.”<sup>xii</sup> **Impact of HB 2:** HB 2 will require agencies to treat many program participants, staff, and other individuals inconsistently with their gender identity by barring access to appropriate restrooms and changing rooms. Thus, HB 2 will require police stations, courts, and other agencies across North Carolina to violate the Safe Streets Act, the JJDPA, VOCA, and VAWA.

**The Airport and Airway Improvement Act of 1982, the Federal-Aid Highway Act of 1956, and the Federal Transit Act** prohibit sex discrimination in highway rest stops, airports, public transit facilities, and other transportation-related facilities that receive federal funds.<sup>xiii</sup> The U.S. Department of Transportation has stated that it interprets its grants statutes to cover gender identity discrimination as a form of sex discrimination.<sup>xiv</sup> **Impact of HB 2:** HB 2 will require state and local transportation agencies to restrict access to restrooms at airports, highway rest stops, bus and rail stations, and other transportation facilities in a manner that discriminates on the basis of sex. Thus, HB 2 will require transportation agencies across North Carolina to violate these federal transportation laws.

*For questions, please contact Harper Jean Tobin, Esq., Policy Director, National Center for Transgender Equality, at [hjtobin@transequality.org](mailto:hjtobin@transequality.org) or (202) 642-4542.*

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<sup>i</sup> 20 U.S. Code § 1681.

<sup>ii</sup> *E.g.*, Brief for the United States as *Amicus Curiae*, *G.G. v. Gloucester Cty. Sch. Bd.*, No. 15-2056 (4th Cir. Oct. 28, 2015); Finding Letter from Adele Rapport, Office for Civil Rights of U.S. Department of Educ., to Daniel E. Cates, Township High School District 211 (Nov. 2, 2015).

<sup>iii</sup> 42 U.S. Code § 18116.

<sup>iv</sup> 80 Fed. Reg. 54172, 54219 (Sep. 8, 2015).

<sup>v</sup> 42 U.S. Code § 2000e-2.

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<sup>vi</sup> Attorney General Memorandum, Dec. 15, 2014, *Treatment of Transgender Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964*; *Lusardi v. McHugh*, E.E.O.C. App. No. 0120133395 (Apr. 1, 2015).

<sup>vii</sup> *EEOC v. Deluxe Financial Services Corp.*, (D. Minn. Civ. No. 0:15-cv-02646-ADM-SER, filed June 4, 2015, settled on January 20, 2016).

<sup>viii</sup> 29 U.S. Code § 3248.

<sup>ix</sup> 81 Fed. Reg. 4494, 4550 (Jan. 26, 2016).

<sup>x</sup> 42 U.S. Code § 3789d; 42 U.S. Code § 10604; 42 U.S. Code § 5672(b); 42 U.S. Code § 13925(b)(13).

<sup>xi</sup> Attorney General Memorandum, *Treatment of Transgender Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964* (Dec. 15, 2014); 42 U.S. CODE § 13925(b)(13).

<sup>xii</sup> Office on Violence Against Women, *Frequently Ask Questions: Nondiscrimination Grant Condition in the Violence Against Women Reauthorization Act of 2013* (April 9, 2014), <https://www.justice.gov/sites/default/files/ovw/legacy/2014/06/20/faqs-ngc-vawa.pdf>.

<sup>xiii</sup> 49 U.S. Code § 47123; 23 U.S. Code §324; 49 U.S. Code § 5332.

<sup>xiv</sup> Proposed Circular, *Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients* (Mar. 3, 2016), [https://www.fta.dot.gov/sites/fta.dot.gov/files/docs/FTA\\_Proposed\\_EEO\\_Circular\\_3-3-16.pdf](https://www.fta.dot.gov/sites/fta.dot.gov/files/docs/FTA_Proposed_EEO_Circular_3-3-16.pdf).