SEN. RANDLEMAN: Terry Barnhardt? Thank you. Larry Hancock? Steve McKaig? Thank you. Matt Urben? Thank you. And Dale Huff? For those who are here that would like to speak in opposition to the bill, there -- Dale Huff has a list -- sign-up sheet. We're going to allow those in support and those in opposition to sign -- to speak for two minutes, so if you want to go ahead and get your name on the list, we will take up to five speakers.

Let me introduce my co-chairs, Senator Tamara Barringer and Senator Warren Daniel. Do each -- either of you have comments? Okay. Thank you. So we will go ahead and call House Bill 2 forward. I think it's going to be handled by Senator Buck Newton and Representative Dan Bishop. Where is Buck? One moment, please.

(Members at ease.)

SEN. RANDLEMAN: So, Senator Buck Newton and Senator [sic] Dan Bishop, if you'll come forward and present the bill. Excuse -- soon -- soon to be -- soon to be, Representative. Thank you.

SEN. NEWTON: Thank you, Madam. Thank you, Madam Chairman. May I proceed?
SEN. RANDLEMAN: Please.

SEN. NEWTON: Okay. Thank you. Thank you very much, and thank you, colleagues, and -- for being here today. It's a -- actually very unfortunate that we have to be here today. I can't believe that we are -- actually, I can't believe we are here today and we're having to address this -- this -- this issue that has been sent to us gift-wrapped by the City Council of Charlotte.

As we all know, we have a problem. The City of Charlotte and their City Council has decided to push a very radical and dangerous policy, and thrust itself into the spotlight, by passing this ordinance that allows men to share the bathroom and shower facilities with young girls and women. That's why we're here today.

Charlotte's ordinance clearly violates common sense. It also violates a number of state laws, criminal trespass law, indecent exposure law and building codes. You know, I'll just say it like this: the radical left wing groups and the liberal politicians like our current Attorney General are afraid to stand up to the political correctness mob and fight for common sense. They refuse to take action to protect the safety and
privacy of women and children. I will not, and I
don't believe we will, be bullied by this political
correct mob.

They should have never passed this
ordinance. They were warned not to pass this
ordinance. The governor warned them privately, and
I think even publicly, many of the members of the
council acknowledged that they had no authority to
pass such an ordinance. Politics have reached a
new extreme when a municipality's top priority is
to find a way to allow men into a women's locker
room or bathroom. Tens of thousands of our
constituents, my constituents, your constituents,
across this state, have called on us to put a stop
to this nonsense. We've called on Roy Cooper to
put a stop to this nonsense, and he refuses to do
his job.

He refuses to enforce the law of this
state, so it falls to us. It falls to us. This
ordinance legalizes conduct, which in any other
place in North Carolina, would expose people to
going to jail. You don't have to be an attorney to
know that it's a bad idea if men start using the
ladies' room here at the General Assembly or
anywhere else. There's going to be problems, and
everywhere else, these men would be arrested, and it's basic common sense.

Sheriff B.J. Barnes said a majority of people of Guilford County should not have to compromise their safety and privacy in public bathrooms and showers. Said he didn't want his officers to be put in the awkward position of determining who is entitled to be in the bathroom.

This ordinance not only endangers women and children, but those from places far away who visit Charlotte, and I'll point out, visit Charlotte by passing through its busy airport. And it's a shame, and it's a tragedy that we have to be here today to deal with it.

You know, all you have to do is look at recent news reports from Seattle detailing how a grown man went into the changing room, I believe it was at a pool, for young girls. And when confronted over it, he claimed, "The law's changed and I have a right to be here," and that's what we're going to face if we don't address this problem.

That can and that will happen here in North Carolina if we allow this ordinance to go into effect. That is why municipalities need to
follow the same law across this state. That is why it is important that we have a statewide standard to deal with these issues.

I will point out to you that one of the leaders of this effort to pass this ordinance was a registered sex offender here in North Carolina. One of the main vocal proponents of this -- of this ordinance, and the media covered it up. They knew all about it, but they refused to tell the public. That's unacceptable. We're not going to stand for it.

So we have a solution. We have it in this bill that's before us. This bill addresses these serious safety concerns. They've been raised by Charlotte's ordinance by setting a single statewide standard to ensure that men cannot use ladies' bathrooms, locker rooms. And that the same standard applies in our public schools, public buildings and other places of public accommodation throughout the State of North Carolina. This bill does not prohibit schools or other facilities from providing reasonable accommodations like single occupancy bathrooms for people who may be facing gender identity issues. It does not prohibit those kinds of reasonable accommodations, but it does set
a single standard of multiuse facilities.

For the first time, this bill will also establish a uniform statewide antidiscrimination policy. I think this is very important for people to realize. For the first time, this bill will establish a uniform statewide antidiscrimination policy on the basis of race, religion, color, national origin, age, sex or handicap. This new antidiscrimination policy is actually stronger than federal law, and it's long overdue.

In going through the process of preparing this legislation, and trying to figure out how we were going to deal with this -- this insanity and this ordinance, we realized that this was overdue, and that this was part of the solution. This bill will take steps to prevent future situations like Charlotte's overreaching ordinance by creating statewide consistency for laws relating to employment and public accommodation. These are policies that ought to be set at the state level, and not in a patchwork, inconsistent framework. Our businesses and our citizens deserve no less than to understand that what they have in Morehead City or Greenville or Wilson or Raleigh is the same
that they will find in Charlotte. Forcing businesses to learn and comply with a patchwork of different rules in different cities across the state doesn't make any sense. It discourages them from doing business here in North Carolina, and this bill will help prevent that from happening.

    Madam Chairman, if I could, at this time, I will -- I ask if staff could go through the bill in its particulars, and then I will be happy to address questions from the committee.

SEN. RANDLEMAN: Any comments from Representative Bishop?

REP. BISHOP: No, Madam Chairman. I think that proceeding in the way that Senator Newton has outlined is just fine, and I'm here if there are any questions I can help with.

SEN. RANDLEMAN: Thank you. Then we will ask Kara McCraw to go over the bill for the members.

MS. MCCRAW (STAFF): Kara McCraw, Staff Attorney with the Legislative Analysis Division. On Page 1 of the bill, you'll see where it says starting on Line 23 of 24, Part 1, Single Sex Multiple Occupancy Bathroom and Changing Facilities, Section 1.1 and 1.2 go together.
is a conforming change. Section 1.2 would require schools or -- I'm sorry, local school administrative units and local boards of education to require that any multiple occupancy bathrooms or changing facilities in the facilities be designated for student use based on the student's biological sex. The next -- on Page 2, you'll see accommodations permitted.

The statute then goes on to say that local boards may provide accommodations upon request due to special circumstances, but it does limit those accommodations to not allowing students to use multiple occupancy bathrooms or changing facilities based -- designated for the opposite sex. There are a list of exceptions in D and reasons that someone of the opposite sex might enter the bathroom, and those are -- you can see the list there: custodial purposes, maintenance inspections, medical assistance, assistance to a student, receiving assistance in using the facility, accompanying a person other than a student who needs assistance, and temporary designation for -- based on a use by the person's biological sex. That last one would allow something like a visiting sports team to use a
boys' locker room on the night of the girls' game.

Section 1.3 then creates a similar statute for other public agencies in North Carolina, and that would cover the legislative, judicial and executive branch agencies as well as local governments. Would require those public agencies to designate multiple occupancy bathrooms for use based on biological sex. It has similar accommodations, language and similar exceptions to allow for custodial purposes, maintenance, medical assistance, rendering -- accompanying a person needing assistance for a minor using -- under the age of seven who accompanies a person caring for that minor or that have been temporarily designated for use for by that person's biological sex.

Part 2 of the bill then deals with employment and contracting. Section 2.1 is part of the Wage and Hour Act, and adds a new section that specifically preempts local governments from creating or imposing requirements upon employers pertaining to compensation of employees. There are several exceptions to this preemption. Those in -- one, local governments can still have regulation requiring their own employees. Two, economic development incentives under Chapter 143B. Three,
economic development incentives under the Local Development Act of 1925. Four, a requirement of federal community development brought block grants. And five, programs established under two statutes dealing with community development programs.

Section 2.2 and 2.3 deal with cities and counties -- they're parallel statutes -- and they would say that when a city and a county contract, they are restricted from including in the contract regulations or controls on contract -- contractors' employment practices or mandating or prohibiting provisions of goods, services or accommodations except as otherwise required or allowed in state law.

Part 3 of the bill has two sections. The first section is 3.1 and 3.2; modify the Equal Employment Practices Act in North Carolina. That act creates a public policy of employment without discrimination based on certain protected classes.

In Subsection C that's created on Page 4, there is a preemption statute that would say that local governments and other political subdivisions would not be allowed to impose regulations or requirements on employers pertaining to the regulation of discriminatory practices in
employment. However, it would still allow them to regulate their own employees. Section 3.2 adds language to specify that the Equal Employment Practices Act does not create a statutory or common law private right of action. And then on Page 5, there is a new statute, a new article being created to create an equal access to public accommodations statute in North Carolina.

That language first states the public policy of the state to protect and safeguard the rights of individuals with regard to enjoyment of goods, services, facilities, privileges, advantages and accommodation of places of public accommodation free of discrimination based on race, religion, color, national origin or biological sex. There is an exception for providing separate bathrooms.

Subsection B then has similar preemption language to the previous section that says that local governments are not permitted to regulate or impose requirements pertaining to regulation of discriminatory practices in places of public accommodation. The definition of public accommodation mirrors 168A, which deals with provision of handicapped facilities and discrimination and access to facilities for
handicapped.

And then finally, there is -- the investigation provision on Page 5 allows the Human Relations Commission at the state level to receive complaints of discrimination and to engage in a process to try to reach amicable resolution of those complaints. And then there's similar language as there was in the previous statute indicating that this does not create a statutory or common law private right of action. Section 4 is a severability clause, and then Section 5 is your effective date.

SEN. RANDLEMAN: Thank you. Senator Newton, would you like to speak further on the bill?

SEN. NEWTON: No, thank you, Madam Chairman. I'm happy to answer any questions from the committee.

SEN. RANDLEMAN: Questions from the committee? Senator Bingham?

SEN. BINGHAM: Thank you, Madam Chairman. Senator Newton, on page -- let's see, Page 3 under sub-item, or -- that would be D, it lists public authority as defined and it gives the General Statute. Would you further explain that, please?
SEN. NEWTON: I'm sorry, Senator Bingham. Could you tell me which line again you're talking about?

SEN. BINGHAM: Sorry. Page -- it's Page 3. It would be Line 1 under D. It's got public authority as defined, and what would that definition be as "public authority"? I'm just --

SEN. NEWTON: If I -- I would ask -- I'll give this answer and then if -- if it can be expanded upon by staff, I will. The intent of this purpose was to cover every -- every government entity that might be out there. So you have public authorities -- what would be a good example? If -- I'm trying to think of a good -- my mind went blank. Airport authority, different quasi-governmental authorities that have been created around the state.

SEN. BINGHAM: Okay. Thank you. Thank you, ma'am.

SEN. RANDLEMAN: Did that answer your question, or did you want to -- some explanation of the statutory reference?

SEN. BINGHAM: Well, that would be fine also --

SEN. RANDLEMAN: Okay. Kara, if you
could speak to the statutory reference, please?

MS. MCCRAW: So, the definition that's referenced there comes from the Local Government Budget and Fiscal Control Act, and "public authority" is defined there as a municipal corporation other than a unit of local government, not subject to the State Budget Act or a local government authority, board, commission, council or agency, that -- and then there are three criteria: is not a municipal corporation, is not subject to the State Budget Act, and operates on an area, regional or multi-unit basis and the budgeting and accounting systems of which are not fully a part of the budgeting and accounting systems of a unit of local government.

SEN. RANDLEMAN: Answer your question?

SEN. BINGHAM: Yes, ma'am. Thank you, Madam Chairman, Senator Newton.

SEN. RANDLEMAN: Other questions from the committee? Yes. Senator Van Duyn?

SEN. VAN DUYN: Madam Chairman, I put forth an amendment, which you --

SEN. RANDLEMAN: I -- I have those.

SEN. VAN DUYN: Okay.

SEN. RANDLEMAN: We're going to be doing
those shortly.

SEN. VAN DUYN: Thank you.

SEN. RANDLEMAN: Do you have a question?

SEN. VAN DUYN: No. Thank you very much.

SEN. RANDLEMAN: Questions from the committee? Yes. Senator Jackson?

SEN. JACKSON: Thank you. My question is about -- let's see, Page 5, Lines 25 through 31, regarding the Human Relations Commission. It says, "This article does not create and shall not be construed to create or support a statutory" -- "statutory or common law private right of action, no person may bring a civil action based upon public policy expressed herein." My question is, does that modify existing law in North Carolina? My understanding is that there is common law regarding wrongful discharge in contravention of public policy that, in effect, does allow for a private right of action when someone is discharged because of their race or because of their gender, and how does this impact that existing common law?

SEN. RANDLEMAN: Senator Newton?

SEN. NEWTON: Thank you, Madam Chairman. Thank you, Senator Jackson. It -- it is my opinion and -- and my belief that the -- those of us who
were involved in the drafting of this language, it was our intent to keep the status quo and not to create any new private right of action. And my answer to you would be, it is my opinion that it doesn't change anything that is currently existing law as it -- as it relates to the ability to bring a cause of action for a wrongful discharge. There may be others that have a different opinion. I know that question was raised to me privately before this meeting, but that is my opinion, and I haven't seen anything as of yet that would change that opinion.

SEN. RANDLEMAN: Follow up?

SEN. JACKSON: So just to specify; there is no specific objection and nothing in this bill that is intended to end the common law wrongful discharge in contravention of public policy. Is that my understanding?

SEN. NEWTON: That -- that's my understanding, and that's -- that's my opinion.

SEN. JACKSON: I have another --

SEN. RANDLEMAN: Follow up?

SEN. JACKSON: I have another question on a different subject, but I'll take my turn if someone else --
SEN. RANDLEMAN: You can proceed with your other question.

SEN. JACKSON: Okay. My other question is about Title 9 and whether this is going to impact Title 9 funding. I know the Office of Civil Rights, the Federal Office of Civil Rights, has issued legal guidance saying that sexual discrimination including against transgender students does violate -- and I know that Tennessee was considering this bill, and very recently the Republican Governor of Tennessee decided not to go forward with this bill specifically out of a concern that it would cost Tennessee billions of dollars in lost federal funding. I know that North Carolina receives billions of dollars in federal funding, and what is our level of concern that this is going to be put in jeopardy?

SEN. RANDLEMAN: Senator Newton?

SEN. NEWTON: Thank you. Thank you, Madam Chairman. Thank you, Senator Jackson.

Again, that -- that question has been brought up to us before. We don't see any risk to federal funding under Title 9. The Obama Administration has a very -- very radical and extreme view of what would constitute discrimination against
transgender. And they have tried to pursue that in court, and twice, they have been rejected, in Virginia and in Pennsylvania. So the current state of the law does not hold their view, and it is -- it is our view that -- that this would in no way jeopardize Title 9 funding.

SEN. JACKSON: Do you wish to add something?

REP. BISHOP: Yeah. Let me just add, so -- so there's not a -- not a case in the country anywhere that's embraced their view. It's on appeal in the Fourth Circuit and in the Third Circuit, but should that ever turn out going the other way in the future in law, there would be ample opportunity past that point. There would be an entitlement to a matter before an administrative law judge. Even after that's concluded, you have a period of time after that. So there's nothing in the doing of this that would have any impact whatsoever on that. And -- and in fact, if there were a decision that were adverse -- in -- in favor of the Obama Administration's position at some point in time, it would supersede and -- and there still wouldn't be a loss of Title 9 funding; it would just revert to a different rule, under
supremacy principles.

SEN. RANDLEMAN: Other questions from the committee? Yes. Senator Cook?

SEN. COOK: I -- as the grandfather of two beautiful young granddaughters, I thank you. Thank you. This is much, much needed legislation. Thank you.

SEN. NEWTON: Thank you, sir.

SEN. RANDLEMAN: Other questions or comments? Yes. Senator McInnis?

SEN. MCINNIS: Thank you, Madam Chairperson. Senator Newton, I -- I heard you say on Page 5, starting on Line 8, that we -- we found that there was a void. It appeared in our statutes that -- that left it to -- our folks were not protected against some types of discrimination, and I -- I'd just like for you to expound on that. I heard what you said, and I -- I applaud you for bringing this forward. That's one of the great things about delving into something, you find some -- you find a void in there. And this is a grand opportunity to fix something that was -- that was certainly in need of repair.

SEN. RANDLEMAN: Senator Newton?

SEN. NEWTON: Thank you. Thank you,
Madam Chairman. Thank you, Senator McInnis. I --
I appreciate your comments. There -- there's a --
a lot of, I think, confusion about where a citizen
whose -- who's being discriminated against might
have their -- their -- their way to get their day
in court. And, you know, federal law on this
matter has been clear for some time. North
Carolina -- I'm not sure exactly why, but
historically, North Carolina just had never adopted
any kind of public accommodation or -- or
antidiscrimination statewide policy to -- to, you
know, make it clear that you -- you can't
discriminate against, say, an African-American, you
know, renting a hotel room, for example. And --
and I think we all today agree and know and
understand that that's off limits and should be off
limits, but this process -- I mean -- I hate to say
there's anything good about this process, but I
guess this would be one of them.

It became clear to us that there was no
such statewide standard and policy, and it was
better for us to go ahead and -- and really do more
than what federal law was, and expand this
protection from a policy standpoint for the state,
so that -- that we -- we wouldn't be faced with
questions of, you know, in -- in this jurisdiction, you know, it was against the public policy to do X, Y, Z, but in that jurisdiction, it's only X and Y and -- and this jurisdiction it's P, D, Q, and -- and we just thought it was important for business and for our citizens to -- to have this clear public policy statement of antidiscrimination. It was -- it was long overdue, and -- and -- does that -- that fairly -- you know, when it became clear to everybody, we were like we -- we need to do that, so thank you.

SEN. RANDLEMAN: Follow up?

SEN. COOK: Yes, ma'am. I just want to say I appreciate the writers and those that have put forth the thought on this, and to -- to right the wrong that we originally came here for, and to be able to -- to add some solid things that are absolutely great for our state. And on behalf of my family and my grandchildren, as Senator Cook alluded to from his, I appreciate what you're doing here today, and we'll bring this matter to a head going about our business. Thank you so much.

SEN. NEWTON: Senator, may I add something --

SEN. RANDLEMAN: Please.
SEN. NEWTON: -- Madam Chairman. You know, I think it would be very, very, very ironic if -- if members chose to vote against expanding and clarifying the antidiscrimination policy of this state on -- on some misnomer -- some -- some mistaken idea. It's -- it's bad enough to talk about, you know, men and women's bathrooms and locker rooms, but it's hard for me to comprehend that there's members of this body that would vote against this policy that's identified in -- in this section.

SEN. RANDLEMAN: Thank you, Senator Newton. If the Sergeant-at-Arms will go ahead and pass out the amendments? We have two amendments for consideration.

(Members at ease.)

SEN. RANDLEMAN: The first amendment that we're going to call is Senator Lowe.

SEN. DANIEL: We need to make sure that she gets that.

SEN. RANDLEMAN: Okay. It would be H2-ATC-2 Version 3, Senator Lowe. And I think Senator Barringer needs a copy. Does everyone have a copy? Staff needs copies. So the first one we are calling forward is H2-ATC-2 Version 3, and I
will call on Kelly Tornow to explain the amendment.

MS. TORNOW (STAFF): Thank you, Madam Chairwoman. Senator Lowe's amendment amends the bill on Page 5, Lines 29 to 31 by deleting the sentence that states, "This article does not create and shall not be construed to create or support a statutory or common law private right of action and no person may bring any civil action based upon the public policy expressed herein," so it deletes that sentence.

SEN. RANDLEMAN: Senator Lowe, do you wish to speak to the amendment?

SEN. LOWE: Yes. One of my concerns was the -- that a person had no private right of action. In other words, there's no State recourse. If a person is being discriminated against, they would automatically, as I understand it, have to go to the federal level and not be able to do anything at the state level. And I -- and I have a real problem with discrimination at any level. So I think that to say that no change is taking place when indeed there is some change, is not true.

SEN. RANDLEMAN: Representative Bishop, are you going to respond to the amendment? What do you say?
REP. BISHOP: Senator -- Senator Newton may want to add after I do, but I would like to respond to that. There are ample cases at this time saying that section doesn't create a cause of action. There is a technical question whether there is a common law claim for termination in violation of public policy, that this is one of the articulations of public policy that could affect such a claim, but in each of those cases, the remedial of -- the remedies that are available are far more robust under federal law as things stand anyway. So there's no -- there's no harm.

The -- they all -- the other thing is -- and what we've done is we've added an entirely new statement of protection from discriminatory treatment in public accommodations, and in order to do exactly what the courts have done under the previous -- and we've made it clear that we are not creating a cause of action there, either. So in other words, there -- there's not a change of substance. There's a technical change, and it will not undermine remedies. And that's my view about it.

And so it is -- it is -- it is a distinction without a difference, and -- and the
section does -- I do want to emphasize that. There's ample numbers of cases saying that this section does not create a cause of action as of today. So I would think that it would not be an amendment that I would recommend.

SEN. RANDLEMAN: Senator Newton?

SEN. NEWTON: Thank you. Thank you, Madam Chairman. Thank you, Senator.

Senator, I -- I detect from the way you asked the question that there may be a misunderstanding about -- about the law, and I kind of touched on that before, about -- there's confusion about where a person goes to get their remedy. And in North Carolina, it is -- it has always been under -- under Title 7, and -- and other federal statutes that you have a right of action on public accommodation or employment practices for, say, racial discrimination, for example. So you can bring that action in state court, or you can bring it in federal court. It -- it -- both -- both courts can handle the matter, but you have to meet the requisite requirements to -- to bring such an action.

So when we were dealing with this, what we -- what we didn't want to do was to create a
brand new right of action. There's -- there's --
we're not changing anything in that regard in -- in
this -- in this bill. We -- we felt like that
would be problematic in terms of trying to get
support all the way through for this provision, if
we created a brand new way to sue when there's
already ample ways to bring an action if one
alleges discrimination of some kind under federal
law, and -- and, which would -- which would fit
with this -- this public policy declaration. So
the short answer is, we're not minimizing or
reducing a person's right to bring an action.
We're just not adding a new way to bring a new
cause of action.

SEN. LOWE: Follow-up?

SEN. RANDLEMAN: Follow-up.

SEN. LOWE: My understanding as I -- as I
begin to read this is that it is something new.
Right now, we can go through our state courts to
deal with discrimination, and as I understand this,
we can only do it through a federal system. Is
that what -- am I missing something, or?

SEN. NEWTON: No -- that's -- that's --

SEN. RANDLEMAN: Senator Newton?

SEN. NEWTON: -- that's -- thank you,
Madam Chairman. That's not -- that's not an accurate -- it's -- it's -- you don't have to go through the federal system. Your -- your cause of action was created under federal law, and that has existed and continues to exist, and nothing we do here today would affect that one bit. The forums are -- are the same as they were before. You can choose to file if -- if you -- if Senator Lowe is a plaintiff -- has a cause of action, you can choose to file that in Mecklenburg County Superior Court or you can choose to file it in -- you all in the Western District, right? Federal Western District Court, so you -- the choice is yours.

This doesn't change any of that, and -- and -- and for that reason, I mean, I want members to understand we're kind of getting into legal weeds here. I would -- I would strongly encourage my -- my colleagues to vote against the amendment.

SEN. RANDLEMAN: Other comments, Senator Jackson?

SEN. JACKSON: May I speak to the amendment, Madam Chair?

SEN. RANDLEMAN: Please. Proceed.

SEN. JACKSON: I think there's a really good chance that there is an unintended
consequence, and I know it's unintended because both of our bill sponsors have -- have caught it unintended. They don't mean to be reducing an existing right that exists under common law, but that may be the impact of this. This amendment would eliminate the chance of that unintended consequence. And as for there being a federal remedy and a state remedy that exists -- it's true. There's a federal remedy exists, but there is also a state remedy.

There are dozens and dozens and dozens of reported cases in which wrongful discharge in contravention of public policy have been reported in North Carolina. This is a living, breathing legal doctrine that exists in North Carolina that lots of our citizens have availed themselves of, and it may or may not go away once we pass this as written. If we adopt the amendment, we know that we protect that, and if want -- if you want to, you know, we can revisit it someday when we have more than, you know, 30 seconds to deal with all of these problems.

SEN. Randleman: Representative Bishop?

REP. Bishop: Thank you, Madam Chairman.
The remedies that are available under the federal
claim are as broad as you can imagine; back pay, front pay, reinstatement, actual damages, punitive damages, attorney's fees; all of that exists under federal law. The state law adds not one whit of remedial right.

To the point that you said there are thousands -- there are many cases arising under the common law right for termination in violation of public policy, that's true, but that goes outside of this. There are many articulations of public policy that could give rise to that claim, this being only one of them.

The remedy -- that's -- that's the point. As many of the members, the lawyer members know, if you're bringing a lawsuit, you articulate all of the claim theories in the lawsuit that you have, the different claims for relief. But what matters to a plaintiff is what remedies they can recover, what damages can they get. And to that point, that's what I am saying, there is no diminution in the remedies available whatsoever by the change that is contemplated here.

SEN. RANDLEMAN: Senator Newton?

SEN. NEWTON: I -- I would just add, Senator Jackson, you may not be aware that I've
practiced on both sides of these cases a number of times of the years on both sides, the plaintiff and the defense side. I -- I completely agree with Representative Bishop's characterization, and -- and I'm very comfortable that -- that what we've done here is -- is the right policy and does not add any -- any new right of action, nor does it diminish anything that -- that a legitimate plaintiff would bring forth in court.

SEN. RANDLEMAN: Thank you. Other comments or questions as to the amendment? Seeing none, we will call for a vote on the amendment. Those in favor say aye.

(Voice vote.)

SEN. RANDLEMAN: Those opposing, nay?

(Voice vote.)

SEN. RANDLEMAN: The nays have the vote, so the motion -- the amendment fails. Excuse me. The next amendment is H2-AST-1 Version 3. Does everybody have a copy of the amendment? I will call on staff to explain the amendment. Oh, excuse me; some members do not have copies. Everyone have a copy now? So, Kelly, if you will please explain the amendment.

MS. TORNOW: Thank you, Madam Chairwoman.
So on Page 4, Line 28, that's Section 3.1 of the bill. That adds sexual orientation and gender identity to the list of protected classes listed there. And then again, on Page 5, Line 12, which is the -- which is Section 3.3, it does the same. It adds sexual orientation and gender identity to the list of protected classes.

SEN. RANDLEMAN: Thank you. Senator Van Duyn, this is your amendment, so if you would like to speak to your amendment.

SEN. VAN DUYN: Thank you, sir -- I'm sorry. Thank you, Senator Randleman -- Madam Chairman. We still have not received a copy of -- a correct copy of the amendment.

SEN. RANDLEMAN: We're going to take care of that. If you'll hold just a second.

UNIDENTIFIED SPEAKER: Madam Chair?

SEN. RANDLEMAN: Yes, sir?

UNIDENTIFIED SPEAKER: They did distribute another copy, but it was a -- a copy for Senator Lowe's amendment.

SEN. RANDLEMAN: Okay. Making it now. I'm going to go over the amendment number again. It is H2-AST-1 Version 3. Does everybody have a copy of the amendment? Senator Van Duyn?
SEN. VAN DUYN: Thank you, Madam Chairman. I am not sure that I agree with this bill's assumption that we need statewide consistency in regulation of employment. I, for example, come from a county with an extremely high cost of living and an extremely low average wage. And so things like encouraging living wages are very important to my county. But nevertheless, if we are going to standardize our [break in audio] language statewide, I think it's very important that we say loud and clear that North Carolina is open to -- open for business to everyone. And for that reason, I think it's incumbent on us that we amend the bill to include in our nondiscrimination language sexual orientation and gender identity.

SEN. RANDLEMAN: Senator Newton?

SEN. NEWTON: Thank you, Madam Chairman. Before I comment on the amendment, may I inquire of the amendment sponsor?

SEN. RANDLEMAN: Proceed.

SEN. NEWTON: Thank you. Senator Van Duyn, how would you define gender identity in this -- with this amendment?

SEN. RANDLEMAN: Senator Van Duyn?

SEN. VAN DUYN: I think -- I think
that's -- gender identity is how someone identifies their gender.

SEN. RANDLEMAN:  Senator Newton?

SEN. NEWTON:  Follow up? Thank you. So we don't have a definition before us in this bill. And so, being a lawyer, and knowing that issues -- when you're talking about potentially opening the door for litigation -- definitions of what is gender identity would be important, so that's why I asked the question. Would it be as -- for me, gender identity would be what is on your birth certificate, and how you were born. And -- and you're saying that gender identity would be what you -- what a person, I guess, thinks they are today, or I don't know how else to describe it. So that's why I'm asking you if you would define it for me.

SEN. VAN DUYN:  Well --

SEN. RANDLEMAN:  Senator Van Duyn?

SEN. VAN DUYN:  -- thank you, Madam Chairman. I think it is clear that not everyone who gets labeled at birth continues to identify with the gender of that label, and in fact -- pursues at -- at -- at great expense emotionally and otherwise the -- the gender that they truly
identify with. And I think it's important for us to recognize the fact that -- that we need to be tolerant of those people, that they are, in fact, our neighbors, and they are very vulnerable at the time because of these gender identity issues. And I'm just suggesting that we need to acknowledge that -- that the gender at birth is not necessarily the gender that they -- they identify with as they develop.

SEN. RANDLEMAN: Senator Newton?

SEN. NEWTON: Thank you, Madam Chairman. Members, I would -- I would urge you to vote against the amendment, and I think that the -- the colloquy and the questions that -- that I've just had with Senator Van Duyn illustrate the -- the -- difficulties of adding these categories to -- to the bill.

These are discussions that are very complicated, and -- and -- and very difficult, I think, for society and as well as this body to get their minds wrapped around, as well as to come up with concrete definitions for terms that would be important to establish what the public policy of this state was. And I -- I candidly don't -- don't believe that we have -- I've never had anybody
write to me and ask me to add this -- these kinds of things to our state policy. So I think that at this time, it would be best if we did not add anything such as this into the bill, and I would urge my colleagues to vote against the amendment.

SEN. RANDLEMAN: Senator Daniel?

SEN. DANIEL: Thank you, Madam Chairman. This is a question for Senator Newton. So, Senator Newton, I guess it is my understanding that this is the similar language or maybe identical language to what was included in the Charlotte ordinance, which then prompted responses from thousands of our citizens, which resulted in us being here in a special session this week to deal with a problem that was in only one city. So why would we then come here to undo a problem in one county, and then extend it across 99 other counties. I guess to me, I just -- I don't understand the logic.

SEN. RANDLEMAN: Senator Newton?

SEN. NEWTON: I -- I think the best response I can give is, I would agree.

SEN. RANDLEMAN: Senator Jackson? Other questions from the members? Comments from the members? Seeing none, we have before us Amendment Number 2 to House Bill 2 --
SEN. BAREFOOT: Madam -- Madam Chairman --

SEN. RANDLEMAN: Excuse me. Yes?

SEN. BAREFOOT: I'm -- I'm just --

SEN. RANDLEMAN: Senator Barefoot?

SEN. BAREFOOT: Thank you, Madam Chairman. I'm just sitting here thinking through this, and I agree with the bill sponsor. We don't know what this amendment does, and I don't think it is a wise thing to be voting on something where you do -- you have no idea what it does. And so I'm -- I'm not sure if I'm stating this correctly, but I think we ought to lay this amendment upon the table, and that's my motion.

UNIDENTIFIED MEMBER: Second.

SEN. RANDLEMAN: So we have a motion to lay upon the table? We have a second. This does require a three-fifths vote in favor of the motion to lay upon the table. So those supporting the motion to lay upon the table, if you would raise your hand? Can you count, Patrick? Those opposing the motion to the lay upon the table? The motion -- the motion to lay upon the table carries, so the motion is not before the committee, so thank you.
So we're -- we're back to the bill. Do we have any other amendments to come forward regarding the bill? Seeing none. We had a signup sheet, and if we could have the Sergeant-at-Arms go back to monitor the time, we're going to rotate back and forth for those supporting and those in opposition of House Bill 2, and I will begin with Reverend Mykal Slack. Two minutes.

MR. SLACK: Good morning, Madam Chair. My name is -- is the microphone on?

SEN. RANDLEMAN: Mash the button.

MR. SLACK: Is it on? I would -- I would like to have my full time. Thank you. Good afternoon. My name is Reverend Mykal Slack. I am a minister of the Christian faith; a director of congregational life at a church here in Raleigh. I am a proud African-American Southerner, a resident of North Carolina, a husband and a soon-to-be father.

As a preacher, it is my job to speak as plainly as I can in all the places I'm called to with as much love in my heart as I can muster. So let me be plain and clear today. Telling a lie over and over and over again does not make it true. I am a transgender male, and I am not a
threat to you. Nor are other transgender people threats to you. I get up in the morning. I go to work every day. I go to church every Sunday. I kiss my wife's belly every night before we go to sleep.

This is not about protecting privacy. If it was, you'd be just as interested and invested in the citizens of North Carolina who are transgender people who are more statistically subject to harassment and physical violence in restrooms than anyone else.

This isn't about political correctness. Charlotte sought to ensure that I and other transgender people like me would feel as safe in restrooms as other people feel. The Charlotte ordinance didn't raise the bar. It actually leveled the playing field.

But this is -- this is about putting my life at risk. This is about, perhaps, your own fear. This is, perhaps, about a lack of education. These issues and these conversations are not difficult conversations to have; they're just conversations that perhaps many of us haven't had much. So the issue here is to have deeper conversation. Is this the kind of behavior do
you -- are you really interested in me being spit on and pushed around and shoved because of who I am in a restroom? I implore you not.

Legislating mistreatment, hatred and misunderstanding is shameful. Not doing your homework is irresponsible. I am a child of God, so I don't need your permission to be who I am called to be, but I do need you to legislate in ways that offer protection for me and every person in this state. It is true. You should not vote on legislation or amendments that you do not fully understand the impact that they will have, so I implore you to vote no today. Thank you.

SEN. RANDLEMAN: Thank you. Heather Garofalo?

MS. GARAFALO: Heather Garofalo, small business owner servicing Charlotte. I have friends and family in the LGBT community, and I love them. Every American private business owner in North Carolina should be free to live and work according to their beliefs without fear of punishment unjustly by the government. In 2015, the Pew Charitable Trust organization identified the top ten states for job growth. Eight out of 10 of these states do not contain state nondiscrimination
laws containing language around sexual orientation and gender identity. Charlotte is beautiful because of its diversity.

There are many worldviews and world religions. There is strength in diversity. True equality means that everyone can speak their beliefs without fear of being silenced and punished. I am pleased to report that not one case has been filed by the ACLU in Charlotte, North Carolina alleging discrimination that may have occurred on behalf of an individual or organization against our friends in the LGBT community. As a business owner servicing Charlotte and throughout the state, I am concerned about the unintended consequences of this ordinance.

It lacks for me consistency, clarity of how I will do business and -- and run my policies all across the state. Furthermore, it forces me to violate my deepest held beliefs. Either I will check these beliefs at the door, or I can be subject to $500 in fines per day; lawsuits, jail times and my business forced to close. In just nine days, if you don't overturn this ordinance, businesses across the state could have their contracts cancelled simply because they hold a
different worldview. A loss of contracts equals loss of revenue. A loss of revenue could equal tens of thousands of jobs lost across the state. This means financial hardship for so many families in North Carolina.

Our sweet transgender children deserve better than this. Switching them from one bathroom to the next does not help them with their fears of being accepted. A little girl that may dress as a boy that goes into the next bathroom could be violated. I care about them and all children.

SEN. RANDLEMAN: Debra Thompson.

MS. THOMPSON: My name is Debra Thompson. I live in Pitt County, and I come to you as a mother. My son, Sky, plays soccer. He still sleeps with his favorite stuffed animal, Charlie Cow, and he frequently makes huge messes around my house with awesome art projects. My child is also transgender. I love my child. I loved Sky when I thought he was my daughter and I love him now that he is my handsome, intelligent and very brave son. On a practical level, telling schools that my son can't use the appropriate bathroom means that my son's education is compromised. How would your day look if you couldn't go to the bathroom?
I know trans youth in my community who purposefully dehydrate themselves so they do not have to use the bathroom at school. One of my son's friends has had to have his mother pick him up from school every time he needs to use the bathroom.

But this debate is about more than just bathrooms. Seventy-four percent of youth who are transgender are sexually harassed, and 55 percent of them are physically attacked at school. Twenty-eight percent drop out of school because of this harassment, and 50 percent attempt suicide. Fifty percent. These are statistics that scare me to my core as a parent.

This debate is about whether the state cares about my son's health and safety. By telling my son he's different from other kids in North Carolina, not as worthy of protection, you're also telling me that I'm less important than other parents. You're giving Sky's teachers permission to view my son as less worthy of an education. You're giving Sky's peers permission to continue to harass, exclude and bully him. So please protect my son and tell him that he is just as important and every bit as valued as any other kid in our
great state. Please do not legislate the right to
discriminate.

SEN. RANDLEMAN: Donna Eaton.

MS. EATON: My name is Donna Eaton, and I
come to you as a concerned mother. I have never
shared my story before publicly, but I'm coming to
you today because I felt compelled that somebody
had to speak out for what was going on. You see, I
was molested when I was a kid, and the trauma that
I experienced in the days after and the years after
was intense, to say the least. I lived in fear of
finding a man in my bathroom. It -- like, I
can't -- words don't begin to express what I went
through.

When I was in Massachusetts recently, a
transgender male was in the bathroom, and please
understand me to say that I am not saying that
anyone who is transgender is a -- is a threat to
society or that they are -- in that -- predators in
any way, shape or form. I believe that everybody
deserves to be treated with dignity and respect,
but seeing this man in the bathroom that -- with
me -- brought me -- it brought me right back to
where I was that years and years ago. If this bill
is not passed, it is going to open the door for
people with malicious intent who would masquerade as transgenders to come in and actually take advantage of and have access to our kids and ourselves.

I'm here to implore -- implore you on behalf of one in four women that -- who have been sexually abused that -- to vote for common sense. That if you don't stand up for this, all North Carolinians that -- are going to be at risk for being perpetually victimized. That every time they go to the bathroom, they will have to actually turn around and face this -- this unconscionable fear. So I just -- I urge you to vote in favor of this bill. Thank you.

SEN. RANDLEMAN: Laura Nazario.

MS. NAZARIO: Hello, my name is Laura Nazario. I'm a transgender woman from Charlotte, North Carolina. I'm an Air Force veteran, a musician, and I'm an active member of my community. There are several places where I'd rather be than where I'm standing today. I'd rather be playing guitar and writing music. I'd rather be spending time eating pasta with my Italian girlfriend. I'd rather be home where it's safe.

At home, I don't have to worry about
whether someone will react to my masculine features
coupled with my feminine presentation. I don't
have to worry about someone noticing my Adam's
apple or my height or my broad shoulders. At home,
I don't have to worry about what bathroom to use.

This is a feeling that I've grown
accustomed to. The feeling that I should stay
hidden. That I should not be an active member in
my community. This feeling is fear.

The Charlotte non-discrimination
ordinance moved my city into the right direction.
It helps to create an environment where I can
simply live a normal life. Because isn't this what
any human being would want?

Removing these protections for people
like me only serve to set us back in Charlotte.
Not only in Charlotte, but in the entire state. I
urge you not to pass this bill. Help make North
Carolina a safe place for all members of the
community. Thank you.

SEN. RANDLEMAN: John Rustin.

MR. RUSTIN: Thank you, Madam Chairman.
Members of the committee, I'm John Rustin,
president of the North Carolina Family Policy
Council. On February 22nd, the Charlotte City
Council approved a set of highly controversial and hazardous ordinance changes which you've heard about today. We have three primary concerns about these ordinance changes. First, these changes mean that men can enter women's restrooms, shower rooms, bathhouses and similar facilities in any public accommodation in the City of Charlotte, placing the privacy, safety and dignity of women, children and the elderly at great risk.

The City's extremely broad definition of public accommodations mean this -- this new ordinance would apply to any business that provides goods or services. Essentially, any business. And there is no exception for churches, church schools and related church ministries.

Secondly, many citizens have sincere religious beliefs that inform the way they live their lives and conduct their businesses. Similar ordinances in other states have been used to force small business owners such as florists, bakers, photographers, bed-and-breakfast owners, and others to either conform to a government-dictated viewpoint in violation of those sincerely held beliefs or to face legal charges, fines and other penalties that have ultimately caused some to go
out of business.

The City of Charlotte should not be authorized to impose such an intolerant and unconstitutional mandate as a condition of doing business. And thirdly, Charlotte far exceeded its authority when it passed these ordinance changes. Cities and counties in North Carolina derive the full extent of their authority only from the State Constitution and acts passed by the State legislature. The North Carolina General Assembly has granted neither the City of Charlotte nor any other city in the state the authority to do what the Charlotte City Council has done.

If the ordinance changes are allowed to stand, they will serve as a precedent for other city and county governments to undermine proper governmental authority and to create a patchwork of disparate ordinances across the state. For these reasons, we applaud you for considering this legislation and ask that you give it your full support. Thank you.

SEN. RANDLEMAN: Sky Thompson.

MR. THOMPSON: Before I start, I'd like to ask something with everyone listening. If you have a firm belief on either side, please just try
to clear your mind for the next two minutes while I give my story, and please consider my side. My name is Sky Thompson, and I'm a fifteen-year-old transgender student at South Central High School in Greenville. I've dealt with bullying my whole life, and now I worry that my own state lawmakers are bullying me as well. I feel bullied by you guys.

In schools all over the place, transgender kids are bullied on the daily to the extent of physical attacks. Being in a public high school and not being allowed in the right bathroom for our own gender is embarrassing, and it gives bullies all the more reason to pick on us. Imagine yourself in my shoes, being a boy walking into a ladies room. It's awkward and embarrassing and can actually be dangerous to have to go to the wrong bathroom.

By putting this law into place, you're putting me in danger and not protecting -- or not protecting those who aren't being threatened in the first place. I've always heard people say that us, as children, have a bright future ahead, that we can be anything we want, so why is this any different? I've always been told to be myself, but
now I am being myself, and I'm being bullied for it. I'm being picked on for it.

So, please, for the sake of my peers, my friends and myself, don't vote for hate. Vote to protect my peers, to protect myself and to protect my rights and my peers' rights. Thank you.

SEN. RANDLEMAN: John Amanchukwu.

MR. AMANCHUKWU: My name is John Amanchukwu, executive director for the Upper Room Christian Academy, youth pastor for the Upper Room Church of God and Christ. In the book entitled The Marketing of Evil by David Kupelian, he says that neutrality is collaboration. And in 1967, at the Riverside Baptist Church, Dr. King said there comes a time when silence becomes betrayal. When you merge these two powerful statements together, you come to find out that neutrality is a form of collaboration and betrayal.

So today we push back against neutrality for the voiceless thousands of boys and girls in our public and private schools and the countless teachers, administrators and principals and parents who know the impending danger and harm of this ordinance. It's common sense that boys should go to the boys' room and girls should go to the girls'
room, period. I believe that God got it right in
Genesis 5 and 2 when he made them male and female.
If God didn't give you access to a male or female
bathroom via your anatomy, neither should we give
you access via ordinance or legislation, period.

According to the APA, as many as 98
percent of gender-confused boys and 88 percent of
gender-confused girls eventually accept their
biological sex after naturally passing through
puberty. In my closing, allow -- allow -- allow me
to say this: that today, I received a phone call. I
got word that someone called our school and called
me a homophobic bigot, and I want you to know today
that if standing up for my wife and for my son and
my daughter, for the precious children of this
state makes me a homophobic bigot -- bigot, I will
be a homophobic bigot until the day that I die.

SEN. RANDLEMAN: Maggie Caddell.

MS. CADDELL: Hello, my name is Maggie
Caddell. I've heard a lot today about protecting
women and girls in the state of North Carolina. I
am a woman who has been seen and raised as a woman
from the time I was born. There have been a number
of times I've been hassled and questions --
questioned in women's restrooms because of how I
look. The Charlotte ordinance would help me and others like me. This bill would not, but would discourage people to question my gender when all I need to do is use the restroom.

In addition, my partner was brought up as a girl and is now a man. However, he has not been able to change his birth certificate due to having been born overseas. Whether or not a person can change their birth certificate is based on where they were born, not where they choose to live. This bill would force him, a man with a full beard, to use women's restrooms. This bill that you're proposing would force a man with a full beard to use women's restrooms. I urge you to oppose this bill.

SEN. RANDLEMAN: Mark Creech.

MR. CREECH: Ladies and gentlemen of the committee, my name is Reverend Mark Creech, and I'm the executive director of the Christian Action League of North Carolina. I want to begin by saying that on behalf of the League and the thousands of churches that are connected to us, thank you for holding this special session of the legislature. The matter before you, as you well know, is urgent.
There are some who will argue that by overturning Charlotte's bathroom and public accommodations ordinance, that you are discriminating and victimizing one of the most vulnerable groups of people in our state. I trust that you will neither be distracted or disheartened by such claims. It is unfortunate that the great concepts of tolerance and compassion these days have been often twisted to play upon our emotions with unnecessary guilt. Tolerance doesn't mean that we should accept all truth claims as valid, and compassion doesn't require that we put our women and children in danger.

The Charlotte ordinance defies logic. It caters to the interest of a very few that embrace a purely subjective reality and then require that the rest of us adjust our reality accordingly. That's not tolerance or compassion; that's absurdity.

The real victims of Charlotte's ordinance are those who are endangered by government's forced recognition that XX or XY genetic markers are not objective, that blue is pink and pink is blue. The real victims are private businesses and churches forced to bow the knee and cast their incense upon the altar of this
new religion of gender denial and function.

You don't need to have any reservations about upending this ordinance. By upending it, you will actually be exposing its true nature, which is intolerance practiced in the name of tolerance; selfish indifference practiced in the name of compassion. We commend the bill to you and urge you to pass it.

SEN. RANDLEMAN: The Chair will recognize Senator Newton for closing remarks.

SEN. NEWTON: Thank you, Madam Chairman, thank you, members of the committee and -- and I thank the members of the public who spoke to us these last few minutes. I want to make a couple of points and -- then I hope the committee will move forward with the legislation.

First, I'd like to say that we are a state of laws. We are a state of laws. We -- we have a constitution, and it's imperative that we, as a state, enforce those laws. And this applies to whether or not a city or county has authority to issue a certain ordinance on a certain kind of policy or not. And it's important today that we set a statewide standard about what is appropriate here in the state of North Carolina as it relates
to bathroom policy, or employment practices, or what we would all agree upon today should be a public policy against discrimination.

    We are a state of laws. Assault is against the law. If I'm assaulted by someone, it's against the law. Someone else, a member of this public is assaulted, it's against the law. Those laws should be enforced. I do not wish discrimination upon anybody, and I don't believe the members of this body do either. I urge your support of the bill.

    SEN. RANDLEMAN: Senator Bingham?

    SEN. BINGHAM: Madam Chairman, I'd like to move that we move ahead with this bill and move for a favorable report.

    SEN. RANDLEMAN: Do I hear a second?

    SEN. ALEXANDER: I second, Madam Chair.

    SEN. RANDLEMAN: Thank you, Senator Alexander. Members -- members of the committee, we have a motion to give the House bill to a favorable report. Those in support of the legislation will say aye.

    (Voice vote.)

    SEN. RANDLEMAN: Those opposing?

    (Voice vote.)
SEN. RANDLEMAN: The motion carries, and this meeting is adjourned. Thank you.

(End of proceedings.)
STATE OF NORTH CAROLINA
COUNTY OF WAKE

CERTIFICATION OF TRANSCRIPT

This is to certify that the foregoing transcript of proceedings held on March 23, 2016, is a true and accurate transcript of the proceedings as transcribed by me or under my supervision. I further certify that I am not related to any party or attorney, nor do I have any interest whatsoever in the outcome of this action.

This 16th day of April, 2016.

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