

## ***Part one: To pee or not to pee....? Toilets and Gender Identity***

*This is part one of a two-part series on trans rights from leading equality and human rights barristers at [Cloisters](#). Part two will explore gender identity and children.*

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It has been an important couple of years for trans rights.

Going to the toilet is something most of us do without a second thought (unless we have a disability). Yet, for many trans people, using a public toilet carries a heightened risk of discrimination, harassment and even assault. Some don't feel safe to use public toilets at all.

The toilet has, in fact, become a key battleground for trans rights – particularly in the US.

### **Cases in the US**

Indeed, North Carolina's incumbent governor, Republican Pat McCrory, lost his bid for re-election on 8 November 2016 to State Attorney-General Roy Cooper, a Democrat. By all accounts, Pat McCrory should have had the election in the bag; but McCrory, an otherwise successful governor, had become the face of one of America's most controversial pieces of legislation to pass last year: House Bill 2. In his campaign, Roy Cooper (now Governor Cooper) vowed to work with the legislature to repeal this law.

Formally called the Public Facilities Privacy and Security Act, House Bill 2 requires individuals to use toilets and changing facilities in schools, public universities, and other government buildings based on the gender listed on their birth certificates. Because of its nature, the measure became known as "the Bathroom Bill."

State legislators pushed for the Bathroom Bill in response to the City of Charlotte passing an Ordinance allowing trans people to use toilets according to their gender identity. The Bill was described as a measure to prevent sexual predators preying on public toilet users! But,

with no evidence that such a threat even exists, the Bill plays on the stigma surrounding trans people and many believe that it places the trans community in danger of assault themselves.

The financial impact of the Bathroom Bill became one of the main talking points in the governorship election. Democrats claimed the measure cost \$500 million in lost business, with the likes of the NBA, PayPal, Deutsche Bank and Google Ventures all pulling their business from the State.

In response to the State's Bathroom Bill, U.S. Attorney-General Loretta Lynch threatened to withhold public education funds from North Carolina schools, stating that the law violated Title IX (of the Civil Rights Act), which bans discrimination based on sex.

After that, McCrory went on the offensive, filing a lawsuit against the federal government, arguing that the Obama administration had no right to tell public schools in North Carolina who could and could not use girls' toilets. The federal government countersued, and since then, the debate over how to balance the needs of trans students with the safety and privacy concerns allegedly expressed by parents and the student body has only grown.

Across the country, more than a dozen lawsuits are now in play and, later in 2017, the Supreme Court is due to tackle the issue in a case concerning a Virginia public school district trying to prevent a 17 year old trans male student (Gavin Grimm) from using the boys' toilets in his school.

### **Cases in the UK**

The issue of access to single-sex toilets has also been considered closer to home. In 2014, a trans woman (Susan Brook) won her discrimination and victimisation claim in Halifax County Court against a pub which had refused to permit her to use the ladies' toilet and, when she stood up for her rights, it barred her from the pub.

In May 2016, a trans woman (Erin Bisson) in Jersey won her claim against Condor Ferries for discrimination after a member of staff told her that she should use the disabled toilet.

Indeed, this decision was the first by the Employment and Discrimination Tribunal in Jersey since the island had passed new gender discrimination laws in September 2015 (prohibiting discrimination because of sex, gender reassignment or intersex).

Universities, schools and other venues have increasingly made provision for gender neutral toilets to ensure that facilities are accessible to all.