
H.B. 2 – A LESSON FROM HISTORY

PETER D. ISAKOFF*

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“If we can organize the Southern States for massive resistance to this order, I think that in time the rest of the country will realize that racial integration is not going to be accepted in the South.”

U.S. Sen. Harry F. Byrd, Sr. (VA), 1956, responding to the U.S. Supreme Court decision in *Brown v. Board of Education*.

“The Obama administration has not only staked out its position for North Carolina, but for all states, universities and most employers in the U.S. The right and expectation of privacy in one of the most private areas of our personal lives is now in jeopardy.”

Gov. Patrick McCrory (NC), May 4, 2016, responding to a U.S. Department of Justice letter declaring H.B. 2 to violate the Civil Rights Act of 1964.

I. INTRODUCTION

On February 4, 1960, four brave, young African-American men sat down at a “whites-only” lunch counter at Woolworth’s in downtown

* Peter D. Isakoff is a lawyer with Higgins Benjamin, PLLC in Greensboro, North Carolina. The opinions expressed herein are only those of the author. The author extends his most sincere gratitude to his wife, Leslie Isakoff, who supports and inspires him in everything he does.

Greensboro, North Carolina.¹ That day, the “Greensboro Four” initiated the first sit-in of the Civil Rights Movement.² Through subsequent years of tireless work, the Civil Rights Movement caused the enactment of crucial legislation, such as the Civil Rights Act of 1964, which guaranteed freedom from discrimination for all individuals in public facilities.³

On March 23, 2016, the North Carolina General Assembly voted to allow discrimination in public facilities.⁴ That day, after only a few hours of public floor debate, the North Carolina General Assembly passed House Bill 2 (“H.B. 2”), the “Public Facilities Privacy & Security Act.”⁵ H.B. 2 overturns Charlotte City Ordinance 7056, which prohibited discrimination on the basis of sexual orientation or gender identity in public facilities, including bathrooms.⁶ North Carolina Governor Patrick “Pat” McCrory signed the bill into law later that day. On May 4, 2016, the U.S. Department of Justice sent a public letter to Governor McCrory that did not mince words: “[A]s a result of compliance with and implementation of North Carolina House Bill 2, both you and the State of North Carolina . . . are in violation of Title VII of the Civil Rights Act of 1964.”⁷

Also on May 4, 2016, the U.S. Department of Justice sent a letter to the University of North Carolina school system, stating that as a “recipient of federal funds,” its compliance with H.B. 2 would violate Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and the Violence Against Women Reauthorization

¹ For a chronology of events of the Greensboro sit-ins, see *The Greensboro Chronology*, INT’L CIV. RIGHTS CTR & MUSEUM, <https://www.sitinmovement.org/history/greensboro-chronology.asp> (last visited Sept. 19, 2016).

² See *id.*

³ See generally Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (codified as amended in sections 42 U.S.C. § 2000a, et. seq. (2012), 2 U.S.C. §§ 1311, 1331 (2012) and 28 U.S.C. § 1862 (2012)) (discussing provisions that prohibit discrimination in public facilities).

⁴ 2016-3 N.C. Sess. Laws 1.

⁵ *Id.*

⁶ See generally Charlotte, N.C., Local Ordinance 7056 (Feb. 22, 2016), <http://charlottenc.gov/CityClerk/Ordinances/February%2022,%202016.pdf> (noting the non-discrimination provisions that H.B. 2 overturns).

⁷ Letter from Vanita Gupta, Principal Deputy Assistant Att’y Gen., U.S. Dep’t of Justice, to Patrick McCrory, Governor, the State of N.C. 1 (May 4, 2016), <http://media.charlotteobserver.com/static/images/misc/HB2050412.pdf>.

Act of 2013 (“VAWA”).⁸ Once again, the U.S. Department of Justice, in no uncertain terms, drew the line in the sand; federal education funding could vanish if North Carolina failed to comply its laws with long-standing civil rights legislation.⁹

The May 4th U.S. Department of Justice letters gave North Carolina’s government until Monday, May 9, 2016, to bring North Carolina into compliance with federal law.¹⁰ Otherwise, federal education funding may be withdrawn.¹¹ In response, Governor McCrory filed a lawsuit against the federal government on May 9th seeking declaratory judgment that H.B. 2 complies with federal law.¹² Later that day, the U.S. Department of Justice filed its own lawsuit seeking declaratory judgment that H.B. 2 violates federal law.¹³ With dueling lawsuits filed just hours apart, the battle lines have been drawn.¹⁴ The fate of federal education funding for North Carolina hangs in the balance.

Unfortunately, North Carolina has not learned from the experiences that its neighboring state of Virginia endured more than fifty years ago. In the 1950s and 1960s, the local government in Prince Edward County, Virginia, engaged in “Massive Resistance” by refusing to integrate its schools in response to *Brown v. Board of Education*.¹⁵ Instead, it turned

⁸ Letter from Vanita Gupta, Principal Deputy Assistant Att’y Gen., U.S. Dep’t of Justice, to Margaret Spellings, President, Univ. of N.C., Louis Bissette, Jr., Chairman of the Univ. of N.C. Bd. of Governors, and Thomas C. Shanahan, Senior Vice President and Gen. Counsel 2 (May 4, 2016), <http://www.charlotteobserver.com/news/politicsgovernment/article75647942.ece/BINARY/Read:%20DOJ%20letter%20to%20UNC>.

⁹ See generally *id.* (implying North Carolina could lose its federal education funding for failing to comply with Title VII, Title XI, and VAWA).

¹⁰ See Letter from Vanita Gupta, *supra* note 7. See also Local Ordinance 7056 (demonstrating the overturned portions of the ordinance that do not comply with federal law).

¹¹ See Letter from Vanita Gupta, *supra* note 7.

¹² Complaint for Declaratory Judgment, *McCrory v. United States*, No. 5:16-CV-00238-BO, 2016 WL 2616917 (E.D.N.C. May 9, 2016).

¹³ Complaint, *United States v. North Carolina*, No. 1:16-CV-00425, 2016 WL 2730796 (M.D.N.C. May 10, 2016).

¹⁴ Mark Berman, Sarah Larimer, & Sari Horwitz, *North Carolina, Justice Dept. file dueling lawsuits over transgender rights*, THE WASH. POST (May 9, 2016), https://www.washingtonpost.com/news/post-nation/wp/2016/05/09/north-carolina-justice-dept-face-monday-deadline-for-bathroom-bill/?utm_term=.489947eb39c0#.

¹⁵ See generally JOHN A. STOKES WITH LOIS WOLFE & HERMAN J. VIOLA, STUDENTS ON STRIKE: JIM CROW CIVIL RIGHTS, *BROWN*, AND ME 112–13 (Nat’l Geographic Soc’y 2008) (discussing the actions of white legislators and school board members who openly resisted the movement toward desegregation).

down federal funds and shut down its public schools for nearly five years.¹⁶ This action crippled the local economy and robbed a generation of youth of a basic education.¹⁷

Scholars and news media have already extensively detailed why H.B. 2 is unconstitutional and violates federal law, and that discussion is outside of the scope of this article. Instead, this article focuses on the secondary implications on the public of a fight between state and federal government over civil rights issues. Specifically, this article addresses the lessons from history that can be applied to the present situation, as well as the disastrous effect that North Carolina's refusal to repeal H.B. 2 could have on North Carolina's citizens.

II. PRINCE EDWARD COUNTY, VIRGINIA - 1951

Local school board officials in Prince Edward County, Virginia, established an African-American high school in 1927, many years after a white high school opened.¹⁸ However, Robert Russa Moton High School did not compare to its white counterpart. One African-American student in Prince Edward County at the time remembered that the school "had a wood or coal stove for heat and no indoor water or toilets. Kids and teachers had to use outhouses no matter what the weather."¹⁹ The white high school, however, had a gymnasium, cafeteria, and infirmary.²⁰ Dismayed with their school's condition, the students went on strike in 1951.²¹

Barbara Johns, an African-American Robert Russa Moton High School student, organized a student body meeting to argue for improved facilities.²² Another student described the event: "Man, you talk about rocking. No one was seated. It was like a heavy thunderstorm in full force."²³ Local African-American leaders contacted the NAACP. NAACP lawyers, Oliver Hill and Spottswood Robinson, took on the case

¹⁶ *Id.* at 115.

¹⁷ *Id.* at 116.

¹⁸ *Id.* at 45.

¹⁹ *Id.* at 20.

²⁰ *Id.* at 45.

²¹ *See id.* at 62–63.

²² *See id.* at 65.

²³ *Id.*

to challenge the doctrine of “separate but equal.”²⁴ The NAACP filed *Davis v. Prince Edward County School Board* in the Federal District Court for the Eastern District of Virginia.²⁵

On March 2, 1952, the District Court ruled in favor of the School Board: “In this milieu we cannot say that Virginia’s separation of white and colored children in the public schools is without substance in fact or reason. We have found no hurt or harm to either race.”²⁶ The NAACP appealed and, ultimately, combined *Davis* with four other cases to form its pivotal *Brown v. Board* lawsuit.²⁷ On May 17, 1954, the U.S. Supreme Court ruled in *Brown v. Board* that segregation in schools was unconstitutional.²⁸ It ordered desegregation “with all deliberate speed.”²⁹

The aftershock of *Brown* had a profound impact on Prince Edward County. The Prince Edward County Board of Supervisors cited ambiguous language in *Brown* to argue that desegregation need not immediately occur.³⁰ Newspapers said that “it may be a year before there is any change in present policy”³¹ and “[t]here was no indication the current school building program will be upset by the historic decision.”³² Despite the federal mandate, public opinion clearly indicated that segregation was not going away any time soon.

Aside from deeply-embedded racism, political factors also contributed to continued segregation in Virginia after *Brown v. Board*.³³ Senator Harry Byrd’s political machine dominated Virginia politics, and given his conservative voting base in Virginia’s Southside region, he saw

²⁴ See *id.* at 79–80.

²⁵ 103 F. Supp. 337, 337 (E.D. Va. 1952).

²⁶ *Id.* at 340.

²⁷ *Brown v. Bd. of Educ.*, 349 U.S. 294, 298 (1955).

²⁸ *Id.* at 294.

²⁹ *Id.* at 301.

³⁰ See generally *Griffin v. Cty. Sch. Bd.*, 377 U.S. 218, 234 (1964) (explaining that the phrase “deliberate speed” can no longer be used as a tactic to deprive students in Prince Edward County of a public education equal to that of other counties in Virginia).

³¹ *High Court Bans Separation; Change Is Not Immediate*, RICHMOND TIMES-DISPATCH, May 18, 1954, at 1.

³² *Local Area’s Reaction to Ruling Quiet: New Negro Schools to Keep Going Up, Educators Say*, NORFOLK VIRGINIAN-PILOT, May 18, 1954, at 1.

³³ RONALD HEINEMANN, JOHN KOLP, ANTHONY PARENT, JR. & WILLIAM SHADE, *OLD DOMINION, NEW COMMONWEALTH: A HISTORY OF VIRGINIA 1607-2007*, 340–41 (2007).

the *Brown* decision as a threat to his political power.³⁴ Byrd engineered the idea of Massive Resistance, or refusing federal funding for Virginia's public schools, to protest desegregation.³⁵ Penning the "Southern Manifesto," Byrd pushed Virginia's Governor to follow his plans.³⁶ Byrd appealed to his constituency's racist tendencies, sacrificing public education for his own political success.³⁷

In Prince Edward County, white leaders formed the Prince Edward County Educational Corporation (PEEC) to support private schools for white students.³⁸ Within twenty-four hours of its formation, the PEEC received more than a third of its \$212,830 goal to fund teachers for private schools.³⁹ African-American families, with limited financial resources, could not do the same.⁴⁰

In September 1955, and later in 1956, NAACP lawyer Oliver Hill filed motions petitioning the court to mandate immediate desegregation in Prince Edward County.⁴¹ Both motions were denied and the NAACP appealed to the Fourth Circuit Court of Appeals.⁴² On May 5, 1959, the Fourth Circuit determined that Prince Edward County had made no efforts to desegregate and ordered immediate desegregation for the next academic year.⁴³ In response, the Prince Edward County School Board adopted a budget allocating no funds for public schools.⁴⁴ White students attended the private schools established by the PEEC, but a generation of African-American youth was forced to forgo public education.⁴⁵

³⁴ *Id.* at 341–42.

³⁵ *Id.* at 341.

³⁶ *Id.* at 345.

³⁷ *Id.*

³⁸ Kara Miles Turner, *Both Victors and Victims: Prince Edward County, Virginia, The NAACP, and Brown*, 90 VA. L. REV. 1667, 1681 (2004).

³⁹ *Id.*

⁴⁰ See generally Gillian B. White, *Searching for the Origins of the Racial Wage Disparity In Jim Crow America*, THE ATLANTIC (Feb. 9 2016), <http://www.theatlantic.com/business/archive/2016/02/the-origins-of-the-racial-wage-gap/461892/> (stating that during Jim Crow America, black Americans were paid disproportionately lower wages than white Americans).

⁴¹ Turner, *supra* note 38, at 1682.

⁴² *Id.*

⁴³ *Id.* at 1683.

⁴⁴ *Id.*

⁴⁵ *Id.*

It was not until 1964, nearly ten years after *Brown v. Board* and numerous NAACP appeals, that the U.S. Supreme Court finally ruled that “[t]he time for mere ‘deliberate speed’ has run out, and that phrase can no longer justify denying these Prince Edward County school children their constitutional rights to an education equal to that afforded by the public schools in the other parts of Virginia.”⁴⁶ On June 23, 1964, the Prince Edward County Board of Supervisors finally allocated \$189,000 for desegregated schools.⁴⁷

Massive Resistance had a profound impact on Prince Edward County’s African-American community. Historians note that “with few exceptions, the closings wreaked havoc on the educational and emotional lives of black children, and on the viability of the black community as a whole. Some forty years after the reopening of schools, reverberations from the closings are still felt.”⁴⁸ As one of the students in the original student strike described, “[i]n the Jim Crow South, ‘equal’ was whatever the whites in power said it was It divided the human race and brought out the worst in people.”⁴⁹

The obvious immediate effect of Massive Resistance was a generation of African-American youth cheated out of a basic education.⁵⁰ Mistrust of public education spread to the children of the original students.⁵¹ One student, John Hurt, reported that his children “look at me . . . and say ‘[w]ell Daddy you didn’t do too bad, you know. I can drop out.’”⁵² The effects of Massive Resistance further hurt the local community as a whole. African-American student Kennell Jackson saw his father’s construction business close and many progressive whites leave the community, resulting in decreased tax income.⁵³ Regional and national businesses did not want to go to Prince Edward County, crippling the region economically.⁵⁴ The effects are still felt in Prince Edward County today.⁵⁵

⁴⁶ Griffin v. Cty. Sch. Bd., 377 U.S. 218, 234 (1964).

⁴⁷ Turner, *supra* note 38, at 1690.

⁴⁸ *Id.* at 1683.

⁴⁹ STOKES, *supra* note 15, at 24.

⁵⁰ Turner, *supra* note 38, at 1685.

⁵¹ *Id.* at 1685–86.

⁵² *Id.* at 1685.

⁵³ *Id.* at 1688.

⁵⁴ *Id.*

⁵⁵ *Id.* at 1691.

III. NORTH CAROLINA - 2016

Mark Twain once said that “history doesn’t repeat itself, but it does rhyme.”⁵⁶ Unfortunately for North Carolina, the current tenor in the state is remarkably similar to that of Prince Edward County, Virginia, in the 1950s and 1960s.

As cases from the Civil Rights Movement indicate, when state and local governments fail to abandon discriminatory policies, the federal government will mandate such change, whether through litigation, legislation, or administrative order.⁵⁷ Scholars and news media have already extensively discussed why H.B. 2 is unconstitutional and discriminatory.⁵⁸ This article examines the secondary effects on North Carolina’s citizens from Governor McCrory’s challenge to federal authority regarding H.B. 2. On May 4, 2016, the U.S. Justice Department made clear its mandate to North Carolina: H.B. 2 is discriminatory and violates federal law.⁵⁹ If North Carolina does not repeal H.B. 2 quickly, then the state may lose federal education funding. Despite this clear federal mandate, Governor McCrory has challenged federal authority. How will this play out for North Carolina?

⁵⁶ Frank Cornish, *History Doesn’t Repeat Itself, But It Does Rhyme – Mark Twain*, DAILY KOS (Feb. 11, 2009), <http://www.dailykos.com/story/2009/2/11/695889/>.

⁵⁷ See generally *Civil Rights 101*, THE LEADERSHIP CONF. ON CIV. & HUM. RTS., <http://www.civilrights.org/resources/civilrights101/chronology.html?referrer=https://www.google.com/> (last visited Sept. 23, 2016, 11:24 PM) (providing a detailed chronological history of the Civil Rights Movement in American History).

⁵⁸ See Enrique Armijo, *Discrimination Law ‘facially unconstitutional’*, THE NEWS & OBSERVER (Mar. 25, 2016, 6:25 PM), <http://www.newsobserver.com/opinion/oped/article68868977.html> (finding that H.B. 2 violated Supreme Court Precedent set by *Romer v. Evans*); see also Michael Gordon, et al., *Understanding HB2: North Carolina’s newest law solidifies state’s role in defining discrimination*, CHARLOTTE OBSERVER (Mar. 26, 2016, 11:00 AM), <http://www.charlotteobserver.com/news/politics-government/article68401147.html>

(explaining how North Carolina codified legal discrimination). But see Scott W. Gaylord & Thomas J. Molony, *How HB2 nondiscrimination provision holds up*, THE NEWS & OBSERVER (Apr. 27, 2016, 5:56 PM), <http://www.newsobserver.com/opinion/oped/article74280962.html> (discussing the constitutionality of H.B. 2 and differentiating it from the constitutional amendment that was at issue in *Romer v. Evans*).

⁵⁹ See Jim Morrill, *US Justice Department: HB2 Violates Civil Rights Act*, CHARLOTTE OBSERVER (May 4, 2016, 3:31 PM), <http://www.charlotteobserver.com/news/politics-government/article75601912.html> (reporting that the U.S. Department of Justice informed North Carolina that H.B. 2 violated federal law).

There will be an immediate negative effect on North Carolina schools and children. The University of North Carolina school system encompasses sixteen universities, including five of the eleven Historically Black Colleges and Universities in North Carolina.⁶⁰ Over 220,000 students attend the UNC school system, and the federal government backs about \$800 million worth of the school system's student loans.⁶¹ Federal funding accounts for about \$1.4 billion of the UNC school system's operating budget.⁶² Like in Prince Edward County during Massive Resistance, students from the lowest-income families, those who depend on federal aid and would benefit the most from higher education, will suffer the worst.

Elementary and secondary schools in North Carolina are also at risk of losing federal funds. There are over 1,800 public elementary schools and over 500 public secondary schools in North Carolina.⁶³ Nearly 1.5 million children attend North Carolina public schools.⁶⁴ Our public elementary and secondary schools receive over \$850 million in federal funding every year.⁶⁵ These funds account for over eleven percent of school expenditures, including vital child-nutrition programs.⁶⁶ In short, withdrawal of federal funding would be disastrous for North Carolina's children.

⁶⁰ See *Our 17 Campuses*, THE U. OF N.C., <https://www.northcarolina.edu/content/our-17-campuses> (last visited Sept. 23, 2016) (naming the sixteen universities and one residential high school in the UNC System); see also Stanley B. Chambers, Jr., *NC's HBCUs struggle with finances, enrollment*, WRAL, <http://www.wral.com/-fightingtosurvive-nc-hbcus-struggle-with-finances-enrollment/14372354/> (last updated Feb. 16, 2015) (indicating which campuses are HBCUs).

⁶¹ See Gary D. Robertson & Emery P. Dalesio, *NC's federal funds for public colleges in crosshairs of LGBT law*, PBS NEWSHOUR (May 5, 2016, 6:46 PM), <http://www.pbs.org/news-hour/rundown/ncs-federal-funds-for-public-colleges-in-crosshairs-of-lgbt-law/>; see also *Our 17 Campuses*, *supra* note 60 (stating that UNC's System has 220,000 students).

⁶² Robertson & Dalesio, *supra* note 61.

⁶³ *Facts and Figures 2015-16*, N.C. ST. BD. OF EDUC.–DEPT. OF PUB. INSTRUCTION, <http://www.dpi.state.nc.us/docs/fbs/resources/data/factsfigures/2015-16figures.pdf> (last visited Sept. 23, 2016).

⁶⁴ *Id.*

⁶⁵ *Highlights of the North Carolina Public School Budget*, N.C. ST. BD. OF EDUC.–DEPT OF PUB. INSTRUCTION 1 (Feb. 2016), <http://www.dpi.state.nc.us/docs/fbs/resources/data/highlights/2014highlights.pdf>.

⁶⁶ *Id.* at 3.

The impact of H.B. 2 on North Carolina's economic viability, like the impact of Massive Resistance on Prince Edward County, is self-evident. Numerous national companies have spoken out against H.B. 2, going so far as to boycott North Carolina.⁶⁷ These companies include: Red Hat, Dow Chemical, Biogen, Wells Fargo, American Airlines, Lowe's, PayPal, Marriott International, Apple, Google, Facebook, Twitter, IBM, Yelp, and Salesforce.com.⁶⁸ Entertainers have canceled concerts in North Carolina because of H.B. 2.⁶⁹ In the Piedmont Triad, the loss has been seen most significantly in the spring furniture market, the largest of its kind in the world.⁷⁰ Dozens of large-scale furniture retailers have boycotted North Carolina, resulting in millions of dollars in economic losses.⁷¹ Additionally, the NCAA has pulled seven college championship sporting events from Greensboro due to "the cumulative actions taken by the state concerning civil rights protections."⁷² The secondary effects have also impacted the regional economy, including 5,600 lost hotel-room-nights worth of local revenue.⁷³

⁶⁷ See Katherine Peralta, *Updated list: Who has spoken for, against NC's new LGBT law*, CHARLOTTE OBSERVER (Mar. 31, 2016, 3:52 PM), <http://www.charlotteobserver.com/news/business/article69251877.html> (enumerating all of the institutions, entities, and businesses who have come out in support of and in opposition to H.B. 2).

⁶⁸ *Id.*

⁶⁹ See, e.g., *A Statement from Bruce Springsteen on North Carolina*, BRUCE SPRINGSTEEN (Apr. 8, 2016), <http://bruce.springsteen.net/news/2016/a-statement-from-bruce-springsteen-on-north-carolina>.

⁷⁰ Richard Craver, *High Point Market says House Bill 2 causing businesses to cancel attendance*, WINSTON-SALEM J. (Mar. 28, 2016, 2:35 PM), http://www.journalnow.com/news/local/high-point-market-says-house-bill-causing-businesses-to-cancel/article_b388e036-f511-11e5-a072-1b2aa7cf0cbf.html.

⁷¹ *Id.*

⁷² See Stacey Osburn, *NCAA to Relocate Championships from North Carolina for 2016-17*, NCAA (Sept. 12, 2016, 6:10 PM), <http://www.ncaa.org/about/resources/media-center/news/ncaa-relocate-championships-north-carolina-2016-17>. See also, e.g., Andrew Carter, *NCAA pulls championship events from North Carolina over HB2*, THE NEWS & OBSERVER (Sept. 12, 2016, 7:38 PM), <http://www.newsobserver.com/sports/college/acc/article101457472.html>; *NCAA Pulls Several N.C. Postseason Events Because of LGBT Law*, CBS NEWS (Sept. 12, 2016, 9:29 PM), <http://www.cbsnews.com/news/ncaa-pulls-several-north-carolina-postseason-events-because-of-lgbt-law/>.

⁷³ See, e.g., *Impact of HB2*, CITY OF CHARLOTTE & MECKLENBURG CTY. GOV'T SERV. & INFO. MEMO 38, (May 20, 2016), <http://charmeck.org/city/charlotte/nondiscrimination/Documents/Impact%20of%20HB2.pdf>; Emily Patrick, *Asheville Convention and Visitor's Bureau: HB2 losses rise toward \$2 million*, CITIZEN-TIMES (Apr. 26, 2016, 7:45 AM), <http://www.citizen-times.com/story/news/local/2016/04/27/hb2-loss-nears-2-million-cvb->

Despite these costs, Governor McCrory and his supporters in the General Assembly, like Senator Byrd in 1950s Virginia, have a political incentive to support H.B. 2: they gain points with the North Carolina Republicans that voted them into office. H.B. 2 has large support in North Carolina's rural communities, but opposition in larger metropolitan centers.⁷⁴ It was these same rural communities that elected Governor McCrory into office in 2012, despite his Democratic opponent's wins in North Carolina's bigger cities.⁷⁵ At present, Governor McCrory's best bet for securing re-election is to support H.B. 2.

However, Governor McCrory has had to backtrack now that H.B. 2 has earned national media criticism, and he has also lost support from within his own base for his flip-flopping. On April 12, 2016, in response to national media attention, Governor McCrory signed Executive Order 93, which attempted to mitigate some of the most egregious provisions of H.B. 2.⁷⁶ News outlets were quick to recognize this effort as "too little,

plans/83587154; Paul A. Specht, *HB2 has quadrupled economic losses*, THE NEWS & OBSERVER (Apr. 18, 2016, 12:45 PM), <http://www.newsobserver.com/news/business/article-72440452.html>; Heather Waliga, *NC Cities Say They're Feeling Impact of HB2 Backlash*, ABC11 (Apr. 12, 2016), <http://abc11.com/politics/nc-cities-say-theyre-feeling-impact-of-hb2-backlash/1287518/>.

⁷⁴ Colin Campbell, *House Bill 2 finds support from many in rural NC communities*, THE RALEIGH NEWS & OBSERVER (Apr. 9, 2016, 6:40 PM), <http://www.newsobserver.com/news/politics-government/state-politics/article-70946672.html>; see also Sean Bueter, *On whether the divide is growing between urban and rural residents when it comes to social and economic issues*, in *Elon Poll: Half of North Carolina Residents Support HB2*, WWFD (Apr. 21, 2016, 3:59 PM), <http://www.wfdd.org/story/elon-poll-half-north-carolina-residents-support-hb2>.

⁷⁵ See Kim Severson, *G.O.P.'s Full Control in Long-Moderate North Carolina May Leave Lasting Stamp*, N.Y. TIMES (Dec. 11, 2012), <http://www.nytimes.com/2012/12/12/us/politics/gop-to-take-control-in-long-moderate-north-carolina.html>. See also *Decision 2012 by the Numbers: Why Romney, McCrory took NC*, TWC NEWS CAPITAL TONIGHT (Nov. 7, 2012), <http://capitaltonightnc.twcnews.com/2012/11/07/decision-2012-by-the-numbers-why-romney-mccrory-took-nc/>; *2012 North Carolina Governor Results*, POLITICO.COM, <http://www.politico.com/2012-election/results/governor/north-carolina/> (last updated Nov. 19, 2012, 2:48 PM); John Wynne, *Carolina Strategic Analysis: NC Political Geography*, POL. N.C. (May 13, 2013), <http://www.politicsnc.com/mecklenburg-county/>.

⁷⁶ See N.C. Gov. Pat McCrory, Exec. Order No. 93 (Apr. 12, 2016), https://ncgovernor.s3.amazonaws.com/s3fs-public/documents/files/McCrory%20EO%2093_0.pdf; Michelle Ye Hee Lee, *North Carolina governor's misleading claim about his executive order and the LGBT law*, WASH. POST (Apr. 18, 2016), <https://www.washingtonpost.com/news/fact-checker/wp/2016/04/18/north-carolina-governors-misleading-claim-about-his-executive-order-and-the-lgbt-law/>.

too late.”⁷⁷ Moreover, by withdrawing his initial whole-hearted support of H.B. 2, Governor McCrory caused his right-wing base to question his adherence to conservative values.⁷⁸

On March 28, 2016, several transgender and homosexual individuals, supported by the ACLU, Lambda Legal, and Equality North Carolina, filed *Carcaño v. McCrory*, a lawsuit challenging the legality and constitutionality of H.B. 2.⁷⁹ Their role as the vanguard of the assault on H.B. 2 is substantial. Hopefully, however, North Carolina’s General Assembly will repeal H.B. 2 without requiring a court mandate.

At the early stages of litigation, courts have been hesitant to permit enforcement of H.B. 2 until its legality and constitutionality are fully resolved. On August 26, 2016, the Middle District of North Carolina granted an Order and Preliminary Injunction, barring enforcement of H.B. 2 within the University of North Carolina school system while court action is pending.⁸⁰ The ruling acknowledges that H.B. 2 is a solution without a problem: “Ultimately, the record reflects what counsel for Governor McCrory candidly speculates was the status quo ante in North Carolina in recent years: some transgender individuals have been quietly using bathrooms and other facilities that match their gender identity, without public awareness or incident.”⁸¹ Absent legislative reform or a

⁷⁷ Mark Berman, *North Carolina governor says he wants bathroom law partially changed after backlash*, WASH. POST (Apr. 12, 2016), <https://www.washingtonpost.com/news/post-nation/wp/2016/04/12/deutsche-bank-halts-north-carolina-expansion-due-to-transgender-bathroom-law/>; see also Harold Lloyd, *McCrory’s Executive Order 93: Hoist By His Own Petard*, HUFFINGTON POST, http://www.huffingtonpost.com/harold-lloyd/mccrorys-executive-order_b_9680722.html (last updated Apr. 15, 2016); Rachel Percelay, *Memo To Media: Gov. McCrory’s Executive Order Didn’t Fix North Carolina’s Anti-LGBT Law*, MEDIA MATTERS FOR AMERICA (Apr. 13, 2016, 2:58 PM), <http://mediamatters.org/research/2016/04/13/memo-media-gov-mccrorys-executive-order-didnt-fix-north-carolinas-anti-lgbt-law/209904>.

⁷⁸ WWAY News, *LGBT Law Puts Gov. McCrory in Precarious Position*, ASSOCIATED PRESS (Apr. 20, 2016, 11:17 AM), <http://www.wwaytv3.com/2016/04/20/lgbt-law-puts-gov-mccrory-in-precarious-position/>. See Linda Qui, *NC Gov. Pat McCrory defends HB2, says it would have affected every private employer in Charlotte*, POLITIFACT (Apr. 17, 2016, 6:58 PM), <http://www.politifact.com/truth-o-meter/statements/2016/apr/17/pat-mccrory/nc-gov-pat-mccrory-defends-hb2-meet-press/>.

⁷⁹ Complaint for Declaratory Judgment and Injunctive Relief, *Carcaño v. McCrory*, No. 1:16-CV-236 (M.D.N.C. Mar. 28, 2016).

⁸⁰ Memorandum Opinion, Order and Preliminary Injunction, *Carcaño v. McCrory*, No. 1:16-CV-236 (M.D.N.C. Aug. 26, 2016).

⁸¹ *Id.* at 3.

judicial decision, the fate of federal education funding for North Carolina's schools is still undetermined.

Meanwhile, Governor McCrory continues to receive public criticism over H.B. 2. For instance, Governor McCrory faced allegations that, at a September 2016 press event, his staff “planted ‘softball’ questions from fake reporters about unrelated topics” to direct discussion away from H.B. 2.⁸² On September 16, 2016, Governor McCrory dismissed his lawsuit against the federal government, citing the “substantial costs” of litigating multiple lawsuits on similar issues.⁸³

As of shortly before this Article's publication, North Carolina awaits the upcoming November 2016 elections that will determine the make-up of the state's General Assembly. The outcome of the election will shape the future of this debate: will H.B. 2 be repealed quickly through legislation, or rather through a prolonged legal battle?

The important question is how much damage will be done before H.B. 2 is repealed? This situation has already played out in Prince Edward County, Virginia, during the 1950s and 1960s. We must hope North Carolina's government will not let history repeat itself.

IV. CONCLUSION

On May 9, 2016, U.S. Attorney General Loretta E. Lynch held a press conference announcing the federal lawsuit against North Carolina challenging H.B. 2.⁸⁴ Attorney General Lynch, herself a native of Greensboro, North Carolina, concluded her remarks with a call for justice:

⁸² See, e.g., Mark Abadi, *North Carolina's Governor Planted Questions from Fake Reporters to Avoid Talking About the State's 'Bathroom Law'*, BUS. INSIDER (Sept. 19, 2016, 5:10 PM), <http://www.businessinsider.com/pat-mccrory-fake-reports-hb2-2016-9>; Taylor Batten, *McCrory's H.B. 2 stance begs the question*, THE CHARLOTTE OBSERVER (Sept. 17, 2016, 12:42 PM), <http://www.charlotteobserver.com/opinion/opn-columns-blogs/taylor-batten/article102315532.html>.

⁸³ Plaintiffs' Notice of Voluntary Dismissal Without Prejudice, *McCrory v. United States*, No. 5:16-CV-00238-BO (E.D.N.C. Sept. 16, 2016).

⁸⁴ Press Release, Loretta E. Lynch, U.S. Att'y Gen., Press Conference Announcing Complaint Against the State of North Carolina to Stop Discrimination Against Transgender Individuals (May 9, 2016), <https://www.justice.gov/opa/speech/attorney-general-loretta-e-lynch-delivers-remarks-press-conference-announcing-complaint>.

Let me also speak directly to the transgender community itself. Some of you have lived freely for decades. Others of you are still wondering how you can possibly live the lives you were born to lead. But no matter how isolated or scared you may feel today, the Department of Justice and the entire Obama Administration wants you to know that we see you; we stand with you; and we will do everything we can to protect you going forward. Please know that history is on your side. This country was founded on a promise of equal rights for all, and we have always managed to move closer to that promise, little by little, one day at a time. It may not be easy – but we'll get there together.⁸⁵

North Carolina stands at a crossroad. Will North Carolina, like Prince Edward County, continue to violate federal law to adhere to discriminatory beliefs? History tells us where that road ends. Or instead, will we embrace what the Greensboro Four stood up for in 1960? North Carolinians fought for equality in the Civil Rights Movement. North Carolinians' actions led to the Civil Rights Act of 1964. And it will be North Carolinians' efforts that lead to the repeal of H.B. 2.

⁸⁵ U.S. DEP'T OF JUSTICE, OFFICE OF PUB. AFF., JUSTICE DEPARTMENT FILES COMPLAINT AGAINST THE STATE OF NORTH CAROLINA TO STOP DISCRIMINATION AGAINST TRANSGENDER INDIVIDUALS (May 9, 2016), <https://www.justice.gov/opa/pr/justice-department-files-complaint-against-state-north-carolina-stop-discrimination-against>.