

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

JOAQUÍN CARCAÑO; PAYTON GREY
MCGARRY; H.S., by her next friend and
mother, KATHRYN SCHAFER; ANGELA
GILMORE; KELLY TRENT; BEVERLY
NEWELL; and AMERICAN CIVIL
LIBERTIES UNION OF NORTH
CAROLINA,

Plaintiffs,

v.

PATRICK MCCRORY, in his official capacity
as Governor of North Carolina; UNIVERSITY
OF NORTH CAROLINA; BOARD OF
GOVERNORS OF THE UNIVERSITY OF
NORTH CAROLINA; and W. LOUIS
BISSETTE, JR., in his official capacity as
Chairman of the Board of Governors of the
University of North Carolina,

Defendants.

No. 1:16-cv-00236-TDS-JEP

**EXPERT DECLARATION OF ASSISTANT CHIEF OF UNIVERSITY
POLICE ARAN C. MULL IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION**

I, Aran C. Mull, declare as follows:

1. I have been retained by counsel for Plaintiffs as an expert in connection with the above-captioned litigation. This declaration is based on my personal specialized knowledge, informed by my more than 25 years of experience in law enforcement. My

background and experience are summarized in my curriculum vitae, appended to this declaration as Exhibit A. I have actual knowledge of the matters stated in this declaration, and could and would so testify if called as a witness.

2. I have been a member of the New York State University Police (“UPD”) since 1989, working in New York City, Long Island, and Albany. Since 1995, I have worked at the University at Albany, State University of New York. In that capacity, I have served as a Patrol Officer, Lieutenant, Captain, and Inspector. I currently serve as Assistant Chief of University Police for UPD. As Assistant Chief, I oversee all patrol and investigative functions of the UPD, which patrols a campus of more than 17,000 students each year.

3. Throughout my career, I have played a leading role in developing and overseeing UPD policy and instruction initiatives, programming, and security for major events. As chief firearms instructor, I developed and managed UPD’s transition from revolvers to Glock semi-automatic duty weapons. As a programming officer, I served as program manager and instructor for the University’s first RAD (women’s self-defense) course, developed the department’s Orientation Training for new students, and was active in the development and presentation of a sexual assault program for male students. The program was initially developed in the 1990s. Currently known as Men for Relationship Education and Change (“Men REACH”), the program educates students during orientation about the role men play in preventing sexual assault and assisting survivors of sexual assault.

4. In 2001, I began working on the development of a law enforcement records management software system that garnered an award from the International Association of Chiefs of Police. As part of that development I have seen all reports that move through the department and I am very familiar with what data is collected by police agencies in New York, and what data are forwarded to New York State and the Federal Bureau of Investigations in the compilation and comparison of statistics under the Uniform Crime Reporting and Incident Based Reporting System standards.

5. Since at least 2003, I have been the designated representative for our campus required by the federal Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act. In that capacity, I review all reports of crimes on campus, including sex offenses, and ensure that they are properly classified by geography and offense category. I am also the designated law enforcement representative for Title IX.

6. In my role as the department's "Safe Space" liaison with the LGBT community I have received training on LGBT-related issues and have consulted often with members of our LGBT community on issues related to law enforcement and LGBT community interests.

7. I was responsible for preparing the policy that governs UPD police officer interactions with transgender people. This policy dovetails with and helps effectuate the University at Albany's Equal Opportunity Statement, which provides that, "The University at Albany is committed to all persons having equal access to its programs,

facilities and employment without regard to . . . gender identity, gender expression . . .”

See http://www.albany.edu/diversityandinclusion/Recruitment_and_Hiring.php.

8. In preparing to write this declaration, I reviewed Plaintiffs’ Complaint, and First Amended Complaint, for Declaratory and Injunctive Relief in this case; City of Charlotte Ordinance No. 7056; and House Bill 2. I also read *G.G. ex rel. Grimm v. Gloucester Cty. Sch. Bd.*, No. 15-2056, 2016 WL 1567467 (4th Cir. Apr. 19, 2016).

9. I also reviewed legislative testimony that has been submitted in various forums by Attorneys General, law enforcement officials, and civil rights agencies, on the specific issue of whether gender identity non-discrimination protections pose a threat to the public safety. Those testifying officials, and the year their respective jurisdictions adopted non-discrimination protections (where known or applicable) are as follows: Sheriff, Richland County, South Carolina (2011); California Deputy Attorney General (2005); New Jersey Assistant Attorney General (2007); District of Columbia Office of Human Rights (2005); State of Maryland Commission on Civil Rights (2014); Minneapolis Department of Civil Rights (1993); Washington Human Rights Commission (2006); Chief of Police, Amherst, MA (at least 2009); Police Commissioner for Boston Police Department (2002); Chief of Police, Brookline, MA; Police Commissioner, Cambridge, MA (1997); Chief of Police, Lynn, MA; Chief of Police, Medford, MA (2014); Chief of Police, Melrose, MA (2014); Chief of Police, Newton, MA (2014); Chief of Police, Northampton, MA (2005); Chief of Police, Salem, MA (2014); Chief of Police, Somerville, MA (2014); Chief of Police, Swampscott, MA; Chief of Police,

Worcester, MA (2014); Massachusetts Attorney General; District Attorney, Suffolk County, MA; and Massachusetts Chiefs of Police Association and Massachusetts Major City Chiefs. True and correct copies of these legislative materials are attached hereto as Exhibit C.

10. I also reviewed an open letter issued on April 21, 2016 by the National Task Force to End Sexual and Domestic Violence Against Women, which states that it was written to debunk “the myth that protecting transgender people’s access to restrooms and locker rooms endangers the safety or privacy of others.” The letter was signed by more than three dozen national organizations, as well as statewide sexual assault and domestic violence organizations from more than 40 states. A true and correct copy of this letter is attached hereto as Exhibit D.

11. The materials that I reviewed in preparing this declaration are listed in the attached Bibliography (Exhibit B). I may rely on those documents as additional support for my opinions, and I reserve the right to supplement the materials listed in the Bibliography. I have also relied on my years of experience in this field, as set out in my curriculum vitae (Exhibit A). The materials I have relied upon in preparing this declaration are the same types of materials that experts in this field regularly rely upon when forming opinions on the subjects addressed in this declaration.

12. I am being compensated at a flat rate of \$1,000.00 for preparation of all reports and declarations; \$350.00 per hour for time spent preparing for and giving deposition or trial testimony; and \$1,000.00 per day spent in North Carolina preparing for

or attending trial. My compensation does not depend on the outcome of this litigation, the opinions I express, or the testimony I provide.

A. Non-discrimination Laws and Ordinances Do Not Pose a Threat to Public Safety.

13. Over the course of my more than 25-year-long law enforcement career, I have had the opportunity to observe the effect that the adoption of non-discrimination ordinances has had on policing practices and complaints of criminal activity. The City of Albany adopted public accommodations protections in 2004, and statewide protections were adopted by executive order in 2015 and established under regulation in 2016. When both of these sources of law were adopted I observed no negative effect on policing or public safety, in the form of increased criminal activity, impact on the regular course of police business, or in the form of suspects attempting to use those protections as justification for criminal activity.

14. Nor am I aware of any negative effect on other New York jurisdictions covered by those protections. Had those laws caused any negative consequences, I believe I would have heard about them through my normal interaction with other New York law enforcement, the news media, or the multiple professional police organizations in which I am active, including the New York State Association of Chiefs of Police, the International Association of Chiefs of Police, the State University of New York Chiefs of Police Association, the International Association of Campus Law Enforcement Administrators, and the Northeast Colleges and Universities Security Association.

15. Legislative testimony submitted on this issue by other law enforcement officials confirms this experience. For example, Sheriff Leon Lott, from Richland County, South Carolina, offered written testimony on this issue to the South Carolina legislature last month. Richland County has protected individuals from gender identity discrimination since 2011. Sheriff Lott testified, “In the 41 years I have been in law enforcement in South Carolina, I have never heard of a transgender person attacking or otherwise bothering someone in a restroom. This is a non-issue.” Exhibit C at 1.

B. In Jurisdictions with Non-Discrimination Protections, No Information Suggests That Either Transgender or Non-Transgender People Have Used Such Protections to Engage in or Justify Criminal Behavior.

16. As District Attorney Daniel F. Conley for Suffolk County, Massachusetts recently advised the Massachusetts legislature:

In my fourteen years as District Attorney, there has not been a single case – not one – of a person who ‘pretended’ to adopt another gender identity in order to commit a crime. If anyone had done so, they would have been prosecuted. And rest assured that after this bill is passed, as I hope it will be, people will still not be allowed to use gender identity claims to break the law. Period.

Exhibit C at 8.

17. I am aware of no evidence or information to support the notion that individuals will use non-discrimination ordinances to engage in, or justify, predatory or criminal behavior. I have never personally observed, or heard any reports from subordinates or officers in other jurisdictions, of any individual citing a non-discrimination ordinance or law as an excuse to commit a crime.

18. I also derive my opinion from the experiences of sexual assault survivors that I have spoken to, and worked with, over the course of my career. I have served as a self-defense instructor for many years, and while teaching those courses, spent significant time talking with women who had experienced assaults or other crimes. None of those women ever described an experience with an assailant who tried to use non-discrimination protections as an excuse, or pathway of access, for the crime committed. That also is consistent with my years of experience in investigating criminal activity.

19. The attached statement by the National Task Force to End Sexual and Domestic Violence Against Women reports similar information based on those organizations' collective experience:

Those who are pushing these proposals [to eliminate non-discrimination protections for transgender people] have claimed that these proposals are necessary for public safety and to prevent sexual violence against women and children. As rape crisis centers, shelters, and other service providers who work each and every day to meet the needs of all survivors and reduce sexual assault and domestic violence throughout society, we speak from experience and expertise when we state that these claims are false.

Nondiscrimination laws protecting transgender people have existed for a long time. Over 200 municipalities and 18 states have nondiscrimination laws protecting transgender people's access to facilities consistent with the gender they live every day. . . . None of those jurisdictions have seen a rise in sexual violence or other public safety issues due to non-discrimination laws. Assaulting another person in a restroom or changing room remains against the law in every single state. We operate and advocate for rape crisis centers and shelters all over the country, including in cities and states with non-discrimination protections for transgender people. Those protections have not weakened public safety or criminal laws, nor have they compromised their enforcement.

See Exhibit D.

20. Moreover, crime statistics that I have regularly reviewed as part of my job have long shown that the majority of sexual assault crimes are committed by someone the victim knows, and only five to 10 percent are committed by strangers.

21. In fact, it is generally transgender people who face a greater risk of violence and harassment in public places, including when they cannot access sex-specific spaces that match their gender identity. As many trainings on LGBT cultural competency for law enforcement (which I also have reviewed as part of my job) emphasize, the LGBT community faces a higher level of harassment and violence generally, and that is particularly true of transgender people. The statistics relayed in those trainings are consistent with my own experience, which has included stakeholder meetings with members of the LGBT community and the criminal reports I have taken over the years involving violence targeted at LGBT people.

22. The legislative testimony appended to this declaration reinforces this point. As Massachusetts Attorney General Maura Healey testified in front of the state legislature, non-discrimination protections “improve and protect public safety,” because “what we do see, what is real, is that transgender people are harassed and attacked in restrooms, locker rooms, and many other places of public accommodation. They are also more likely to be the victims of violent crime.” Exhibit C at 6-7. Suffolk County District Attorney Daniel F. Foley reported to the Massachusetts legislature that there is “a wealth of evidence demonstrating that transgender citizens are routinely subjected to

discrimination and even violence for who they are. The level of violence and hatred is often severe, resulting in beatings and even death.” Exhibit C at 8.

C. Law Enforcement Already Has Tools at its Disposal to Deal with Criminal Conduct; Non-Discrimination Laws Do Not Eliminate or Weaken Those Tools, and Instead Help Improve Community Well-Being and Safety.

23. Eliminating protections for transgender people, and forcing them to use sex-specific facilities that match their birth certificate without regard to their gender identity, does not enhance or improve the tools that law enforcement has to combat crime. Rather, these tools, in the form of criminal laws, continue to exist in the jurisdictions that have adopted non-discrimination protections. In fact, every state and the District of Columbia prohibits sexual assault, and in the jurisdictions that have adopted non-discrimination protections, the criminal laws allow us to continue addressing crimes in the same way that we always have. Nothing about non-discrimination protections changes the elements of criminal assault, how we gather evidence, or how we prove those crimes in criminal proceedings. Nor am I aware of any information suggesting that non-discrimination protections have affected those criminal laws in any way.

24. Rather than hampering or eliminating our tools for fighting crime, non-discrimination protections can actually make those tools more effective. This concept is illustrated by a best practice widely known as “community policing,” which “emphasizes working with neighborhood residents to co-produce public safety.” Final Report of The President’s Task Force On 21st Century Policing at 3 (May 2015). Community policing

is a core part of the policing culture in which I have worked during my time with the UPD. It is a primary focus of our department's approach to law enforcement work and has been instrumental in our success.

25. Community policing teaches that if we as police officers are not engaging the community, we are not using our citizenry most effectively and helping the public to keep themselves safe. When the government marginalizes a particular group, including a vulnerable minority, we cause that group to be unlikely to want to assist the government, or to talk to the police.

26. Diminishing those channels of communication often increases the danger that group faces, affecting the likelihood that help is requested for everything from auto accidents and the need for related medical attention, to reporting victimization that one has experienced based on a group-based identity, such as transgender status.

27. We have seen this dynamic with other groups, such as the African-American community, and the concepts apply similarly to the transgender community. As the Massachusetts Chiefs of Police Association and Massachusetts Major City Chiefs wrote to the Massachusetts legislature, "transgender people are frequently the target of criminal conduct, particularly in public spaces," and in jurisdictions where gender identity discrimination is prohibited, "we have found that these instances are reduced as a result of such protections." Exhibit C at 10.

28. Additionally, alienating a minority group not only increases danger to that group, but also can increase the danger to the rest of the community as well. For a police

department to be effective, we need the community—and all elements of that community—contributing to our work to make our communities safer, by reporting crimes and cooperating with police.

29. A law like HB 2 can have a particularly detrimental effect on the relationship between law enforcement and the community. A lack of non-discrimination protections may already pose one barrier to trust and effective communication with the police, but affirmatively removing anti-discrimination protections—as I understand HB 2 has done by preventing Charlotte’s non-discrimination ordinance from taking effect, and by blocking protections under federal law—can be even more damaging.

30. Non-discrimination protections help improve community well-being and safety. Such protections help develop a better trained and educated police force, a more knowledgeable public, and improved relationships between transgender people and other segments of the community. The process of adopting non-discrimination protections, and educating the public and law enforcement, helps address the discomfort that often arises from a lack of knowledge and understanding of transgender people. In fact, efforts to address both explicit and implicit bias are viewed as central to best policing practices, and the education and training surrounding non-discrimination protections help achieve that goal.

D. Other Law Enforcement Officials Report the Same Experience with Non-Discrimination Protections.

31. In preparing this declaration, I also consulted with law enforcement officers from a diverse set of jurisdictions that have enacted local and statewide non-

discrimination protections requiring that people be permitted to access sex-specific facilities in accordance with their gender identity. Consulting with other law enforcement officers is a standard process that our police department and other police departments use when considering issues of policy or operating procedures, across a wide array of subject areas. For example, when we revamped our operating procedures over the course of several years, we consulted with a number of other police departments about their language and experience with their policies. Similarly, when I developed the procedure for the UPD's interactions with transgender people, I consulted with the jurisdiction in California that provided the model for our policy; and when the City of Albany Police Department developed their operating procedure for interaction with transgender people, they also called and consulted with us.

32. My consultation included:

a. Retired Police Chief for the Boise Police Department in Idaho, Mike Masterson. Chief Masterson worked in law enforcement for nearly 40 years, including 28 years with the Madison Police Department in Wisconsin, and 10 years as Boise Police Chief. At least 12 municipalities in Idaho have adopted non-discrimination protections in public accommodations or city activities. If those protections had caused any public safety issues, Chief Masterson reports that he would have become aware in his capacity as Chief.

b. Albany County, Wyoming Sheriff David O'Malley. Sheriff O'Malley's career in law enforcement began in 1974, and he served as the Chief of

Police in Laramie, Wyoming, before becoming Sheriff for Albany County. Sheriff O'Malley was the lead investigator for the death of Matthew Shepard. The City of Laramie adopted gender identity protections in public accommodations in 2015, and Sheriff O'Malley would be in a position to know of any related crimes because he reviews all reports by the Laramie Police Department and Sheriff's Office on a daily basis.

c. Sergeant of the Sex Offender Apprehension and Registration Unit for the Austin Police Department in Texas, Elizabeth M. Donegan. Sergeant Donegan has worked in law enforcement for 24 years. In 2002, Sergeant Donegan took over Austin Police Department Sex Crimes Unit, where she reviewed reports of approximately 1,100 sex-related crimes per year, before assuming her current position. Sergeant Donegan also previously served as an Investigator for child abuse-related crimes. Austin adopted non-discrimination protections based on gender identity in 2004.

d. Police Officer and LGBT Liaison for the Atlanta Police Department in Georgia, Eric King. Officer King has been with the Atlanta Police Department for seven years, and in his capacity as LGBT Liaison he receives reports of crimes involving LGBT people. He also performs weekly queries to find all related reports, including those containing the word "transgender." Officer King served as part of a steering committee that helped develop the Atlanta Police Department's Standard Operating Procedure ("SOP") for interactions with transgender people, and organized a town hall to

obtain feedback on the SOP from members of the transgender community. Atlanta adopted gender identity protections in public accommodations in 2000.

e. Patrolman and LGBTQ Liaison for the Boston Police Department, Javier Pagán. Patrolman Pagán has served with the Boston Police Department for nearly 21 years, and the City of Boston adopted protections against gender identity discrimination in public accommodations in 2002. Patrolman Pagán generally reviews all police reports involving an LGBT person each day that he reports for work in his capacity as the LGBTQ liaison.

f. Police Officer and LGBT Liaison for the Seattle Police Department (“SPD”), James Ritter. Officer Ritter has worked in law enforcement for 36 years. He worked for many years in the Capitol Hill precinct, which has the largest LGBT population in Seattle. He also worked for two years in the SPD Vice Section, which focuses on sex-related crimes. Officer Ritter also recently provided legislative testimony in Washington’s capitol on behalf of the Seattle Mayor, in response to proposed legislation that would have restricted restroom use by transgender people; the legislation was defeated. Seattle has had anti-discrimination protections based on gender identity since at least 2004, and Washington State has offered such protections since 2006.

g. Detective and LGBT Liaison for the Miami Beach Police Department in Florida, Juan Sanchez. Detective Sanchez has served with the Miami Beach Police Department for 29 years, and he is currently assigned to its Special Victims

Unit, where he also monitors the sex offender registry. Miami Beach has had gender identity protections in public accommodations since 2004.

33. All of the law enforcement officers that I consulted while preparing this declaration serve in jurisdictions that have adopted non-discrimination laws or ordinances. These officers have on average more than 26 years of law enforcement experience, and most were already working in law enforcement when those protections were adopted. These officers were thus in a position to observe how the adoption of those laws impacted the public safety and law enforcement processes in those jurisdictions. Those officers uniformly reported that none of them observed, or were aware of, the non-discrimination protections having any effect on the type or number of crimes being reported in those jurisdictions.

34. The officers with whom I consulted also reported no awareness of efforts by criminal suspects to invoke non-discrimination protections as justification for committing crimes: Chief Masterson (“This is an issue that is in the media spotlight [in Idaho]. If there were these incidents I and the public would have known.”); Detective Sanchez (“No. [Transgender people] don’t want to commit a crime. They just want to be comfortable.”); Officer King (“It is just not a tool criminals utilize.”); Sergeant Donegan (“No. Absolutely not. [I haven’t heard of it happening] in my career or at national training.”). This was true of the officers both in jurisdictions with relatively new protections, and in jurisdictions with longstanding protections, indicating that law

enforcement officials are not seeing such conduct either as a knee-jerk response to new protections or in communities with more settled non-discrimination ordinances.

35. The officers also agreed that non-discrimination protections do not affect or weaken already-existing tools for fighting crime. Officer Pagán said, “If someone files the complaint, we have the tools [to address it]. Reports get filed, and crimes are prosecuted accordingly. . . . [Our non-discrimination ordinance] just gave us one more tool to protect people.”

36. Officer Ritter agreed that non-discrimination rules have a positive effect on the work of law enforcement, observing that, “[The non-discrimination law] increased the tranquility of our city after the public was educated.” Retired Chief Masterson noted that after Laramie adopted non-discrimination protections, “It improved public safety through trust building. It had a positive benefit.”

37. In summary, there is no evidence that non-discrimination protections have caused any harm to the public safety in the 18 states, District of Columbia, or well over 200 municipalities that have adopted such protections. To the contrary, the experience of law enforcement indicates that such protections actually enhance the public safety. As District Attorney Daniel F. Conley testified, “[O]ver the years, every time we came to a new step we needed to take to make our Commonwealth more just, more tolerant and more fair, we have been met with dire predictions. Each time, we overcame those arguments with reason and by appealing to people’s inherent sense of decency and

fairness. And every time we did so, as a Commonwealth, as a society, and as citizens, we emerged better.” Exhibit C at 8.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on May, 14, 2016.

By: 
Aran Mull