

# The controversy in the US over transgender access to public bathrooms

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The Obama administration on May 13 issued a letter requiring all public school districts in the country to permit transgender students to use the bathroom of their choice. This decision marks an escalation of the ongoing political and media controversy over a North Carolina statute that would require transgender individuals to use the bathroom that corresponds to their sex as stipulated on their birth certificate.

The letter, issued jointly by the Department of Education and the Department of Justice, included guidelines purportedly designed to ensure that “transgender students enjoy a supportive and nondiscriminatory school environment.” Schools that fail to follow the guidelines can face a cutoff of federal funding.

North Carolina's House Bill 2 (HB2), passed by the state legislature and signed into law by Republican Governor Pat McCrory in March, overturns a Charlotte City Council decision to allow transgender individuals to use the bathroom of the gender with which they identify. HB2 is reactionary and must be opposed, together with the rest of the recent efforts by Republican-controlled state legislatures to pass laws invoking “religious liberty” to whip up bigotry and codify intolerance against gay and transgender people.

That being said, the presentation by the Obama administration and much of the media of bathroom access for transgender people as the single most critical issue of the day is grossly disproportionate to its intrinsic significance and has the character of a political diversion. The American people, and the people of the entire world, are confronting issues of the most immense and urgent import—the growing danger of world war, the growth of poverty and inequality, the militarization of society and drive toward dictatorship. These issues are either being buried or trivialized in the US election campaign.

It is significant that the Obama administration is waging its campaign over only one of the many reactionary provisions of the North Carolina statute. Under the guise of upholding “religious liberty,” HB2 goes much further, nullifying local laws protecting residents against discrimination based not only on sexual orientation, but also on race, religion, color, national origin, gender or physical handicap. The North Carolina law also includes a provision banning any local minimum wage—a fact left out of virtually all media accounts of the controversy.

HB2 is itself only one of a number of similar anti-democratic and discriminatory laws targeting gay and transgender individuals that have been recently introduced or passed throughout the

country, including in Georgia, Indiana, Arkansas, Kentucky, West Virginia, South Dakota and other states. These laws take as their starting point the Supreme Court's reactionary 2014 *Hobby Lobby* decision upholding the “religious liberty” of corporations to refuse to pay for birth control for employees.

Perhaps the most egregious of these measures is a Mississippi bill that explicitly allows specific forms of discrimination, such as denying contracts and scholarships, withholding state benefits, denying marriage and other licenses and certifications, withholding diplomas and grades, imposing tax penalties, and carrying out workplace retaliation, including termination. The Mississippi law is not limited to gay or transgender people, but also codifies discrimination against anyone who has “sexual relations” outside of heterosexual marriage. In more than half of US states, it is currently legal for an employer to fire an employee for being gay.

These laws will have a punitive impact on gays and other targeted individuals. But their implications are far broader. They are part of an assault on the democratic rights of the population as a whole. They are bound up with a relentless attack on the separation of church and state, a keystone of the US Constitution's Bill of Rights.

This offensive is being waged on the basis of a false presentation of religious liberty that turns an important democratic principle into its opposite, i.e., the “right” of an organization or business, citing religious belief, to deny its employees access to birth control and refuse to serve gays. If an employer can fire an employee for being gay, there is no reason in principle why he cannot fire someone for being an atheist, or black, or Jewish.

These reactionary laws are not a response to popular pressure. On the contrary, recent years have seen a marked decline in these forms of intolerance within the population. It is, rather, the response of the most rabidly reactionary and fascistic elements within the ruling elite and the political establishment to the deepening crisis of American capitalism, together with the growth of social opposition and anti-capitalist sentiment. Centered in the Republican Party, this element is seeking to appeal to the most backward conceptions and whip up the most reactionary social forces.

For their part, the Obama administration and the Democratic Party are giving the issue of what bathrooms transgender individuals should use a vastly disproportionate level of political attention. A relative handful of people are directly affected in a

country where the democratic rights of hundreds of millions of people are under ferocious assault by both capitalist parties.

There is an immense element of political and electoral calculation and cynicism on both sides of this controversy. In an election dominated by mass anger over economic inequality and the control of the political system by Wall Street, there is a desire by both parties to change the subject. The Republicans are seeking to mobilize their base among more backward, disoriented and economically depressed middle class layers. The Democrats are seeking to appeal to layers of the more privileged upper-middle class that have made various issues of identity—race, gender, sexual orientation—their obsessive focus.

In a speech on May 9, Attorney General Loretta Lynch compared the campaign against the North Carolina statute to the struggles of the civil rights movement of the 1950s and 1960s against Jim Crow segregation. “This is not the first time that we have seen discriminatory responses to historic moments of progress for our nation,” she said. “We saw it in the Jim Crow laws that followed the Emancipation Proclamation. We saw it in fierce and widespread resistance to *Brown v. Board of Education*”—a reference to the 1954 Supreme Court ruling abolishing racial segregation in public schools.

The Obama administration’s attempt to cloak itself in the legacy of the civil rights movement is as fraudulent as the historical comparison is inappropriate. The Democrats have barely lifted a finger in response to the Supreme Court’s reactionary 2013 ruling gutting the 1965 Voting Rights Act, which was arguably the most significant reform that resulted from the struggles of that period. Not a single bill has been introduced on the floor of either house of Congress to revive the enforcement provisions that were struck down by the Supreme Court. The Democrats’ capitulation has emboldened Republican-controlled state governments around the country, which have shifted onto the offensive, to enact anti-democratic voter ID requirements and other measures that discriminate against working class, poor, and minority voters.

The comparison of the question of bathroom access for transgender individuals to the struggle against Jim Crow also ignores the much more complicated and sensitive cultural and legal questions involved. For example, which communal showers it is best for transgender high school students to use, and on what sports teams they should compete, are questions that cannot necessarily be resolved with simple answers. One expects that with the passage of time, architecture and customs will adapt. The Obama administration’s heavy-handed and disproportionate campaign over this issue ends up trivializing struggles over issues of much broader democratic significance.

The posturing of the Obama administration and the Democratic Party with respect to the North Carolina “bathroom bill” reflects their strategy of using identity politics to provide a cover for their own right-wing and anti-democratic policies. Identity politics, whether based on race, gender or sexual orientation, have been promoted for decades and become central components of the ideological and political arsenal of the ruling elite.

Far from promoting the interests of the vast majority of minorities or women, these policies have coincided with a sustained assault on the living standards of all sections of the

working class and a colossal growth of social inequality. The Democratic Party has presided, no less than the Republicans, over this offensive against the working class.

Obama, touted by the proponents of identity politics as the first African-American president, has overseen the biggest increase in social inequality in American history. The frontrunner for the Democratic presidential nomination in 2016, Hillary Clinton, who is marketing herself as potentially the first female president, as first lady supported her husband’s termination of federal welfare benefits for the poor and the adoption of reactionary law-and-order legislation that has resulted in the imprisonment of huge numbers of poor and minority youth for non-violent crimes.

Under Democratic and Republican administrations alike—from Clinton to Bush to Obama—civil liberties have been progressively shredded. The Obama administration, in particular, will be remembered for the militarization of police, the assertion of the president’s power to assassinate anyone in the world, amnesty for torturers and financial criminals, rampant corruption and criminality, a vast police state spying operation against the population, and the persecution of whistleblowers.

Precisely on issues that are of particular concern to women, such as birth control and abortion rights, Obama and the Democratic Party have carried out one cowardly retreat and capitulation to churches and the religious right after another, providing the right-wing majority on the Supreme Court with ammunition to uphold the “right” of businesses and other organizations to discriminate on religious grounds.

Those middle-class “left” individuals and tendencies that are falling into line behind the Obama administration’s political maneuver on the issue of transgender bathroom access are taking their obsessive fixation on issues of sex and gender to new heights of absurdity. The essential political function of all forms of identity politics is to obscure the basic class issues in society and politics and obstruct the political unification of the working class on a revolutionary socialist basis. The attempt to make the issue of transgender bathroom access the overriding issue before the American people will not be the end of such efforts.



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