



Citizens for a Responsible Government
Maryland Citizens for a Responsible Government

January 31, 2008

Dear Mr. Leggett;

Thank you sincerely for your response. Contrary to your claims, the transgender legislation at issue does not specifically exclude locker rooms or showers. Although the County Council could have easily included an amendment to exclude these areas as we had requested, they failed to do so. Nor is there any legislative history in the bill's proceedings indicating that locker rooms or showers are excluded from the bill, or that any other facilities of public accommodations are excluded from the bill. On the contrary, the legislative history clearly shows that the County's Human Rights Commission, which is in charge of enforcing the legislation when it becomes law, stated that the legislation does indeed cover locker rooms and showers. As you are aware, courts use legislative history when interpreting the intent and meaning of laws, so such legislative history is not "irrelevant." It is the Human Rights Commission which will interpret and enforce this law, long after the current Council has gone and been replaced by other members. Hence, our concerns remain valid.

Sincerely,

Dr. Ruth Jacobs
President, Maryland Citizens for a Responsible Government

For your reference, sir,

- ["Bathrooms" web page analyzing the public accommodations and their facilities language in Bill 23-07](#)
- [Montgomery County's new Public Accommodations Code which you signed into law](#)
- Attachment A - Attorney's Response to Mr. Leggett Assertion



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ATTACHMENT A – ATTORNEY’S ANALYSIS

Open Letter to
Mr. Isiah Leggett
County Executive
101 Monroe Street
Rockville Maryland 20850

Dear Mr. Leggett:

On behalf of Dr. Ruth Jacobs, I am responding to your letter to her dated January 30, 2008 on Bill 23-07.

With all due respect Mr. Leggett, it is important that we clarify exactly what the issues and risks here truly are. **Your assertion that Dr. Jacobs is in error when she contends that there are serious locker room and rest room issues concerning this law for the many of us in the county who want our decency and our children protected is simply unfounded. The truth is that, unless our referendum effort is successful, any transgender could enforce his rights under this law in a court of law next month and, relying on the plain reading of the statute, obtain entry into female locker rooms and rest rooms with little to stop him or the many who would follow him.**

What would he argue? The plain wording of the county's anti-discrimination statute specifically states that a public accommodations provider (such as the Germantown Pool or Walmart) can not discriminate on the basis of race, religion, etc., and now “gender identity”, in the use of its facilities. Will the county be so quick in court to argue that locker rooms and rest rooms are beyond the purview of its anti-discrimination law? That they are private and personal accommodations, rather than what they really are: public facilities at public accommodations? It seems to me that few judges would agree in light of the many serious race and religious discriminatory practices such a holding could engender. Please remember that the interpretation of the law will apply to, and have, serious long lasting ramifications for, *all* protected classes not just “gender identity”. Perhaps the county will, in such court case, argue that “facilities” means rest rooms and locker rooms for every other protected class (race, religion, etc) **except** the protected class of gender identity. There is no support in the statute for such a convoluted approach. The fact remains that the term “private and personal accommodations” traditionally signifies private clubs and associations rather than public rest room facilities. Your argument that this term refers to rest rooms, and that rest rooms are not public facilities at public accommodations, seriously threatens to engender discriminatory practices against other protected classes. Such an argument contravenes the clear and unambiguous language of the statute. Under settled legal principles, the court will apply the plain meaning of a statute.



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You indicate that legislative intent is somehow significant here. Even if a court would entertain arguments based on legislative intent, it will surely be informed that the head of the enforcement office reviewed the exact wording of the statute as it was passed (not a different earlier and discarded version as your letter seems to infer) and informed the county council's legislative committee before the bill's passage that the bill would afford access of transgenders into rest rooms and locker rooms of their gender choice. This is a matter of public record. Furthermore, all efforts and requests on our part to have a locker room and rest room exemption were ignored. The intent here is far from clear.

You seem to rely on your executive policy in the enforcement of the law. Such policy does not have the same force as law and will not be binding on a court. Furthermore, any such policy could be easily changed by your successors. It certainly would not have the enduring force of the law with which we must now contend. We also have yet to see an official formulation of such policy

Dr. Ruth Jacobs has spear-headed an effort which has succeeded in bringing over 10,000 citizens together who want assurance that this law will not place biologic males in female rest rooms and locker rooms in public places and in public schools, and our numbers are growing. This number was achieved by a very small group since the bill passage despite a long delay in having a petition form approved, the intervention of Christmas and other holidays, and adverse weather conditions. We will not stop until this law is defeated or amended. While you have already signed this bill into law, we urge you to act decisively now to do what is left in your power to do to protect our decency and our children, as well as prevent the other inequities that this law can and will cause. We are hopeful that you will hear us and promote legislative amendments to the county council which will make this law more equitable for everyone involved.. Specifically, we seek the following amendments:

- With respect to the public accommodations section, we seek a specific exemption from the public accommodations provisions for rest rooms and locker room and other places of shared nudity (i.e.: “Notwithstanding the above, public accommodations operators shall not be prevented or hindered from enforcing a policy of segregation of biologic males and biologic females in rest rooms, locker rooms and other places of shared nudity.”)
- With respect to the employment non-discrimination provisions, we seek
 - 1) a broader religious exemption which will exempt religious corporations and private schools from the employment provisions (as it stands, for example, Catholic Schools can not take gender identity into account except for the limited circumstance where the transgenders and transvestites are not Catholic) (ie: “Religious Corporations and private schools shall continue to have the legal right to consider gender identity of job applicants and employees in making employment decisions.”), and



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2) that all employers of employees working primarily with children in day care or educational positions have the continue right to consider gender identity of job applicants and employees in making employment decisions. (ie. “Notwithstanding the above, employers of employees working primarily with children in day care or educational positions have the continue right to consider gender identity of job applicants and employees in making employment decisions.”)

- With respect to the Housing non-discrimination provision, Renters looking for roommates to share a residential dwelling should have the continued right to consider gender identity in choosing a roommate (ie: add “In a rental situation of a residential dwelling where roommates will be sharing such dwelling, nothing in this section shall prevent a landlord or renter from stating a preference and renting to same sex roommates for cohabitation of such dwelling.)
- Statutory assurances that citizens will not be targeted or re-educated for their personal views on this subject and the right to express their viewpoints.

Finally, we would also like your support in stopping the recent county policy to encourage public accommodations operators to formulate their own individual rest room policies with respect to transgenders. This seems to be pointed at opening up female public rest rooms around the county to biologic male transgenders. We seek a reformed official policy statement at this time clarifying that rest rooms and locker rooms which are marked as being for “women” shall be for the use of biologic women only and vice versa for males. Your constituents overwhelmingly desire this and our children deserve it.

Sincerely,

Susan S. Jamison
Citizens for a Responsible Government
Attorney at Law