



Reading the fine print on the bathroom door

Battle over Lansing human rights ordinance likely to center on transgender rights

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A trip to the American Family Association of Michigan's Web site shows it loud and clear on the front page. In a large, red font, the AFA implores visitors to "urge Lansing City Council to reject discriminatory 'gay rights,' cross-dressing ordinance."

The Council is expected to soon pass an ordinance that would prohibit discrimination based on sexual orientation and gender identity or expression. Once it passes, the AFA, which led the push to constitutionally ban gay marriage in Michigan two years ago, plans to initiate a petition drive to put the issue on the ballot. A similar effort to overturn a Lansing gay rights ordinance was successful 10 years ago, and anti-LGBT-rights activists think they can do it again.

That's because while Lansing residents may be now supportive of gay rights (they rejected the 2004 gay-marriage ban), protecting transgender persons is another thing altogether. At least that's what the AFA hopes.

The AFA and its supporters will need to gather 4,371 valid signatures from registered Lansing voters within 30 days after the ordinance is passed to get the issue on the ballot. If the petition drive is successful, it will reach voters on the Aug. 7, 2007, primary election.

On its Web site, the AFA refers to transgender people as "cross dressers," invoking middle-American fears of churches, public restrooms and workplaces filled with drag queens and men posing as women just for kicks. The AFA's appeal to social conservatives, moderates and, yes, even some liberals, will likely be along these lines: Everyone loved "Tootsie," but do we really want Dustin Hoffman in the women's restroom?

"I doubt many in Lansing are supportive of men who have surgically altered themselves ... to share public restrooms with women and girls," AFA President Glenn recently told City Pulse.

Of course, Glenn also means those who haven't "surgically altered themselves." But what about them? In drafting the ordinance, Councilwoman Kathie Dunbar included the stipulation that a person's legal gender would be determined by what is listed on his or her driver's license or state ID. (Michigan law requires a transgender person to have a letter from a surgeon before his or her legal sex can be changed.)

But many LGBT activists (remember, the "T" stands for transgender), including the **National Gay and Lesbian Task Force**, opposed the ID stipulation. The Washington, D.C.-based group said in a memo to Dunbar that using legal identification as a basis for gender would be detrimental to those who are transitioning between sexes, as most sex-change doctors require recipients to spend considerable time living as the opposite sex before going under the knife.

Naturally, that transitional phase includes using the restroom of your future sex. Moreover, some transgender people never undergo surgery, although they may have hormone therapy. They still identify themselves as a member of the opposite sex.

The task force also pointed out that none of the Michigan cities with similar transgender-inclusive ordinances — Grand Rapids, Ann Arbor, East Lansing, Ypsilanti and Huntington Woods — use official identification to determine gender. Neither do the eight states with statewide protections, the task force said.

The Council's General Services Committee, which is presiding over the drafting of the ordinance, has gone back and forth over two sentences in the proposed ordinance: "It is permissible to restrict the use of distinctly private facilities including rest rooms, locker rooms, dressing rooms, and health clubs on the basis of sex. For purposes of this exception, a person's sex shall be determined by what is reflected on official identification recognized by the state of Michigan, including a driver's license or state issued identification card."

The latest draft includes both sentences, but Dunbar said she favors removing them. "I have no problem with [male-to-female transgender persons] in my bathroom," she said. On the other hand, Councilwoman Sandy Allen, who chairs the committee that is preparing the ordinance, said at the committee's last meeting that she favors keeping the language that would permit discrimination on the basis of sex. That issue could also come up when the full Council examines the ordinance.

The board of the Lansing Association for Human Rights, an LGBT advocacy group that has been in close consultation with Dunbar, voted Monday night to recommend removing both sentences. Leaving the clauses in, the board said, would still allow for discrimination against transgender people. "We want to make sure that the transgender community is not discriminated against in a non-discrimination ordinance," LAHR President Dennis Hall said.

Dunbar said removing the two sentences — thereby fully protecting transgender persons — "opens it up to requiring more public education as to what really will happen."

"I think it will open the door for people who are against it to argue irrationally and create a non-issue," she said.

But is it a non-issue? Cindy Redman, a lesbian who sits on the LAHR board, said she doesn't want to share a public shower with anyone with a penis. "If they have a penis, they're going to be identified as a man," Redman said at a recent Council committee meeting. Despite that, Redman voted to support striking both sentences at LAHR's board meeting.

So what's the alternative to a transgender woman in the women's restroom? Dunbar said it is male-to-female transgender persons being "assaulted and battered" while using men's restrooms. "I want them in the women's bathroom," Dunbar said.

For nearly a decade, Rachel Crandall, executive director of TransGender Michigan, has always used the women's restroom. Crandall, a former Lansing resident who now works in Royal Oak as a counselor for transgender people, said it's not only a matter of safety, it's also one of practicality.

"They really are women inside," Crandall, 47, said. "Like myself, I don't know how, but I always knew I was a girl."

To get a sex-change operation approved, transsexual women must live a full year as a woman, including using women's public facilities, said Crandall, who has lived as a woman for nine years.

Crandall said transgender women who "use the restrooms are just as scared as anybody else is."

"Can you imagine what it would be like if they use the men's bathroom dressed the way they are?" Crandall said. "I know transsexual women who have used the men's room because they were told to, and they got severely beaten."

Sometimes you don't even have to be transgendered to risk injury or death in the men's room. On July 29, 2001, Nashville, Tenn., resident Willie Houston was a straight man using a men's restroom under an unfortunate combination of strange coincidences featuring a purse, a friend and a homophobe.

Houston was in a public restroom, holding his fiancée's purse in one arm and guiding a blind male friend with the other, reported Bay Windows, a Boston-based LGBT newspaper. Another man hurled anti-gay insults at Houston, and the situation escalated until Houston was shot once in the chest. Among his last words to his fiancée were, "Just remember, I will always love you," Bay Windows reported.

As the law stands, it's technically illegal for people who are legally men to use the women's room. City Ordinance No. 684.04 decrees that "no person shall enter into, engage in peeping into, open the door of, or be in, any restroom or locker room which has a sign posted indicating or designating that the restroom or locker room is for the use of the opposite sex."

City Attorney Brigham Smith that ordinance will have to be taken into consideration when the final version of the human rights ordinance is voted on. "There are arguments for a tighter definition of 'sex,' and that would certainly make enforcement easier," Smith said. "But there are also arguments for a broader definition, which would provide a potentially more inclusive set of rights."

Policymakers like Dunbar, as well as LGBT advocates, can make a very strong case that allowing transgender persons to use the restroom of their choice would be safer for them. But on the flipside, what's to stop a straight male — say a frat boy engaged in a hazing ritual — from throwing on some lipstick and a wig so he can ogle naked women at the YMCA?

So under the human rights ordinance, if that person is approached and told to leave, couldn't he just say he is pre-op transgendered? "Well, the people that are pre-op are diagnosed," Dunbar said.

Do they give you a card saying you are?

"No, you don't carry a card."

So how do you prove it?

"A person who has a gender identity issue lives in their gender identity. They don't just dress up to go the Y."

But couldn't someone?

"Somebody could, but that's not a transgender person."

What if that frat boy told whomever was trying to kick him out that he was indeed in the first stage of living as a woman? Who would know for the better?

Dunbar paused. "Those are good questions for our committee next week."

Those will also be good questions for the LGBT community. Should they keep in the transgender protections and risk having the ordinance overturned by scare tactics (men in dresses in your daughter's locker room) via a referendum? Or should they play it safe and retain the ID provision, thus making it more of an "LGB" ordinance?

Mia Tioli, a male-to-female transgender woman, said the latter would be just to "appease the AFA."

"Leaving it in is to say transsexuals are molesters," Tioli said.

"I will pee in my pants before I will use the men's bathroom," she said.

Glenn and the AFA played up the transgender issue in 2001, when they battled Huntington Woods' transgender-friendly ordinance. But even so, the AFA lost in a November 2001 referendum by a 69-31 margin.

Then again, Huntington Woods, a small Detroit suburb, is extremely liberal — much more so than Lansing. For example, voters there rejected 2004's Proposal 2, a gay marriage ban, by a 78-22 margin. Lansing also voted against the ban, but only by a 52-48 spread. Does that mean there is a nine-point difference between the public's acceptance of gays and lesbians versus transgender persons? If that's indeed the case, could including full rights for transgender people endanger the entire ordinance?

Dunbar acknowledged there could be potential political ramifications to removing the ID provision, but she added the city is "taking a bold step with the ordinance."

"It's not appropriate to take a step back," she said.

The whole ID issue could have been avoided if Dunbar had looked more closely at her computer monitor. While putting the ordinance together, Dunbar lifted many portions from other ordinances. The ID portion of Dunbar's draft came from an ordinance in Cook County, Ill., she said.

"Honest to God, when I put this together, I cut and pasted it from another ordinance, and didn't look at the ramifications closely enough," Dunbar said. "And that's my fault."

"I may have created the problem by putting it in there, and should've probably not put it in there. I should have looked more carefully at what I cut and pasted. I will take full responsibility for that. I did not anticipate the consequences of that one."

There aren't a lot of transgender people in Lansing who are out of the closet, Crandall said. Because of that, it's going to take advocacy groups like LAHR, Michigan Equality and the Triangle Foundation to advocate on their behalf, she said. And if the AFA is successful with its petition drive, those groups won't have much time.

Crandall said LGBT groups will be on the side of logic, but it will still take a wide-ranging informational campaign to dispel any myths the public might have.

"I work with people like me," Crandall said. "These are not people who want to cause harm at all. These are just people that want to get into the bathroom and get out fast. Most people just don't understand that."