



What Now for North Carolina's Protesting Businesses?

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The business community's reaction to North Carolina's so-called bathroom bill was swift and strong (at least among a few key players—PayPal and Deutsche Bank, most notably). That may be why on Tuesday, North Carolina's Governor Pat McCrory made a statement in which he seemed to walk back some of the state's new law which requires transgender individuals to use public restrooms based on the gender they were assigned at birth, and takes away municipalities' ability to set anti-discrimination policies for the LGBT community.

“Simply put, I have listened to the people of North Carolina, and the people of North Carolina are entitled to both privacy and equality. We can and we must achieve both of these goals,” Governor McCrory said in a video following the release of his executive order. In his address, the governor stressed balance and compromise. But a look at the actual text of the executive order reveals that it doesn't seem the governor listened all that closely since the order fails to provide much of either. As my colleague David Graham wrote, the governor's executive order does not materially change the complicated and incendiary provisions in the law what's in the existing law. And the governor cannot unilaterally change the law, anyway.

So what happens now? The outcome is in these businesses' hands. Will they be appeased by the largely symbolic executive order, or will they continue their protests?

For much of the business community, protection of LGBT rights is not merely some passing fad. Deena Fidas, the head of the Human Rights Campaign's workplace-equality program says that corporate interest in LGBT equality issues have been gaining traction for years. The HRC provides a corporate-equality index, which scores businesses based on how inclusive and fair the policies they have in place for LGBT employees are. In 2002, Fidas says, only 13 corporations scored 100 percent, now 407 achieve the highest score. Similarly, in 2002 only 3 percent of Fortune 500 companies had gender-identity protections in place, now 75 percent do, Fidas told me. (The businesses they include in their index tend to be large, private-sector employers.)

This momentum behind corporations getting behind LGBT equality issues makes business sense, according to Walter Olson, a senior fellow at the Cato Institute. “I think there is a correlation between companies that are perceived as attractive places (for young people especially) and companies seen as open and welcoming.” To attract talent, it pays to both be a public advocate and to be inclusive internally. That means ensuring that corporate policies, corporate culture, and corporate perception are all LGBT-friendly. It’s not just about the ability to recruit LGBT individuals, it’s also about attracting the significant share of Americans who count themselves as allies and those who want to live and work in places that they feel align with their values. There’s also the benefit of appealing to the majority of American consumers, who by and large support LGBT rights.

But while businesses are certainly making a monetary calculation when it comes to how political they’re willing to get, it may also be true that at this point in American culture, LGBT issues are as much about values as they are about the bottom line. “There is symbolic struggle going on here, which transcends whether it’s an accommodation bill, or a home rule bill, or discrimination remedies or whatever,” Olson says. “If it’s perceived as a backward step for LGBT people then it’s automatically in this radioactive category and they’re not going to argue about the details.”

Critics of North Carolina’s bill and related laws in Indiana and Georgia are counting on that. But bold moves have, so far, only been made by a few companies. In North Carolina, PayPal recently pulled plans to create a facility in the state that would have employed more than 400 people, a project that would have brought an estimated \$3.6 million to the area. And the NBA has said that it will have to review current plans to host the 2017 All Star Game in the state. B-Lab, which represents more than 1,600 B-Corporations, has moved a slate of October events from the state in protest of the law. And none of these groups have hinted at altering these plans in light of the governor’s recent statements. (At the time of publication PayPal hadn’t returned a request for comment.) Other organizations too, have canceled conventions and business travel to North Carolina. HRC says that these economic losses could surpass those in states like Indiana where losses totaled about \$60 million resulting in the quick repeal of the legislation. “It is exceedingly rare, if not reckless, for lawmakers to not care about where major private-sector employers are in the state on these issues,” Fidas says.

But corporate policies and signed petitions are relatively low-stakes compared to an active political and economic boycott. “There’s a way that they can send a message without it costing them too much,” Henning said. “But I don’t think you’ll see them doing things that are economically harmful.” And in other states, like say Mississippi, corporate pressure may not mean quite as much since the economy is less reliant on big business, Henning says.

It’s also true that Republican legislatures in states like North Carolina may decide to dig their heels in. Leadership in these states are now faced with the conundrum of appeasing both socially conservative voters (who have been fired up by recent legal changes like the Supreme Court’s decision on same-sex marriage) and big-business interests. These interests used to align more neatly, but as businesses have gotten more progressive on LGBT concerns, the political calculation for these bills has become trickier than ever. In many states, lawmakers have shown that they aren’t willing to take the economic hit to the job market or to major industries like hospitality and tourism if companies blacklist them. “It may be that the message is not for North Carolina, but for the next state. Do you really want to go down this road?” Henning says.