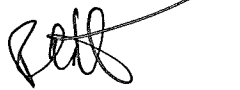


CONFIDENTIAL MEMORANDUM

TO: Mayor Bell and Board of Commissioners

CC: Eric Peterson, Town Manager
Jen Della Valle, Administrative Services Director

FROM: The Brough law Firm, PLLC/Bob Hornik 

RE: Non-Discrimination Ordinance - Employment

DATE: May 6, 2024

The Town of Hillsborough adopted its Non-Discrimination Ordinance (“NDO”) several years ago, and it is now codified in Section 5-11.a of the Town Code. The NDO generally prohibits discrimination based on, *inter alia*, race, gender, gender identity, religion, and other “protected class” status inside the Town’s limits extending to places of public accommodation and, as currently written, employment. The Town has an agreement with Orange County that its Human Relations Commission (“HRC”) would carry out enforcement investigations and processes for the Town. During the course of those discussions, we became aware that the County HRC did not enforce the employment discrimination provisions of the County’s Civil Rights Ordinance (effective date January 1, 1995) because it had been enjoined from doing so by the court.

In November 2000 an order was entered declaring the employment provisions in Orange County’s Civil Rights Ordinance to be in violation of, among other provisions, Article II, Section 24 of the North Carolina Constitution. This decision was eventually appealed to the North Carolina Supreme Court, and in June 2003 the Supreme Country issued its opinion in *Williams v. Blue Cross Blue Shield of North Carolina*, 357 N.C. 170, 581 S.E. 2d 415 (2003). North Carolina Constitution Article II, Section 24 reads, in relevant part, as follows:

The General Assembly shall not enact any local, private or special act or resolution...[r]egulating labor, trade, mining or manufacturing...Any local, private or special act or resolution enacted in violation of the provisions of this section shall be void.

Boiled down to its simplest terms, the Court’s ruling was that when the County adopted an ordinance prohibiting discrimination in employment in the County, it was regulating trade and/or labor, which regulation by local governments is prohibited (or pre-empted) by the State. The rationale was that there should be uniform laws throughout the State regulating trade and labor, rather than the potential patchwork

of differing regulations from county to county (described by the Court as the “balkanization of the state’s employment discrimination laws”, the end result of which would be “the conglomeration of innumerable discordant communities that Article II Section 24 was enacted to avoid.” (citations omitted).

Based on the North Carolina Supreme Court’s opinion in *Williams* upholding the injunction prohibiting the County from enforcing its anti-discrimination in employment ordinance, and our reliance on the County to serve as the “enforcement arm” (so to speak) for our NDO, it is my recommendation that the Town amend its NDO by deleting Section 5.11.a.c, the prohibition on discrimination in employment within the Town’s limits because that section is contrary to the Supreme Court’s holding in *Williams*, which remains the law in North Carolina.