

As most Houstonians are now aware, the Texas Supreme Court recently ruled that the City violated its own charter by refusing to accept the City Secretary's certification that enough citizens had petitioned to repeal the equal rights ordinance adopted by Council last year to force a vote on the issue. I was not surprised that the City lost this suit. It was apparent from the outset that the administration went to unprecedented lengths to disqualify signatures by applying standards that the City had never previously used. If those same petitions would have been submitted for something the administration favored, say, repeal the property tax caps, they clearly would not have received the same scrutiny.

Let me say at the outset that no right thinking person favors discrimination or the mistreatment of any of our fellow Houstonians and certainly not members of our GLBT community. I am proud to have the support of many members of that community including those serving on my steering and finance committees and on our campaign staff. Our city's diversity is one of its great strengths.

If we were simply being asked to vote on whether we all are against discrimination, the overwhelming majority of Houstonians would agree. However, that is decidedly not the question that will be on the ballot. We are instead being asked whether or not we should repeal a particular 36-page ordinance. I have heard many people express an opinion on this topic, but so far, I have talked to almost no one that has actually read the entire ordinance.

When it comes to this issue, I am mostly frustrated that the City now will continue to be racked by this divisive issue for many months to come, distracting attention away for the far more serious issues the City faces in the upcoming election regarding our crumbling infrastructure, rising crime and unsustainable finances. But this is where we are. So I sat down over the weekend and studied the ordinance as well as some of the ordinances adopted by other cities.

Of course, the issue which has engendered the most opposition to the ordinance is the "restroom" issue. This controversy arises from a provision in the ordinance that prohibits the discrimination in public accommodations, which presumably includes public restrooms. Read literally, the ordinance would prohibit any kind of sex segregated facilities.

Obviously sex segregated restrooms are part of our country's social custom and practice, and one that the vast majority of Houstonians do not want to give up. It is true that sex segregated facilities cause some problems for transgender individuals. However, there are ways to address those issues without throwing out a social norm that is overwhelmingly favored by Houstonians.

Several other cities have specifically carved out an exception for sex segregated facilities. For example, the Ft. Worth ordinance provides: "It shall not be unlawful for any person or any employee or agent thereof to deny any person entry to any restroom, shower room, bathhouse or similar facility which has been designated for use by persons of the opposite sex." If the City would have just included this kind of simple exception, I doubt we would be here today.

Having studied the ordinance, I have several other concerns as well.

First, the ordinance defines discrimination as giving either an *advantage* or a *disadvantage* to a protected class. I have not been able to find any other city's ordinance that defines giving an

advantage to a protected class to be discrimination. If literally enforced, this would lead to a number of absurd results. For example, companies' programs that give preference to hiring veterans would be illegal, as would airlines' practice of allowing veterans to board first. The same would be true for programs that work to employ disabled persons, maternity benefits, mandatory retirement ages, etc. On its face it would make the City's own MWBE program illegal.

There are also a number of other serious deficiencies with the ordinance's drafting. For example, it prohibits discrimination against people with a disability including mental illness. The same is the case with the ADA, but the ADA only prohibits discrimination for persons otherwise "qualified." In other words, you do not have hire a person with schizophrenia if that person cannot actually do the job. But under the Houston ordinance if you turned someone down for a job because they had a serious mental illness you could be fined \$5,000.

And these are just a few of the many legal drafting problems I found.

I have said on a number of occasions that, had I been mayor during this time, I would not have brought forward an equal rights ordinance just as Bill White and Lee Brown did not. I simply do not see any evidence of widespread discrimination in this City toward the members of any of the protected classes, including our GLBT community. That view has been underscored by the fact that only 11 complaints have been filed since the ordinance was adopted. There will be about that many robberies and burglaries reported in Houston in the next 2 hours.

However, even if a case could be made for widespread discrimination, there is no reason to believe that the City would be an effective enforcement agency. After all, last year there were about 30,000 burglaries and robberies about which the City did virtually nothing, and most of the victims of these crimes were members of one of the protected classes. If the City is incapable of enforcing even the most basic criminal statutes, why we would think it would do any better with discrimination cases that would be infinitely harder to prove?

It is significant that many other cities have adopted similar ordinances. In fact, most other large cities in Texas have adopted some type of anti-discrimination ordinance or policy with relatively little controversy including Dallas, Ft. Worth, Waco, El Paso, Plano, Brownsville, Austin and Grand Prairie. They are even more common outside of Texas. But it is also true that there have been relatively few complaints brought under other cities' ordinances.

But with the ordinance already on the books, I am greatly concerned about the consequences that repealing it could have. A repeal will leave many of our fellow Houstonians with bruised feelings and will be spun by some to portray Houston in a negative, and entirely inaccurate, light.

A repeal will also likely have ramifications on convention business, Houston's ability to attract and host major sporting events, and corporate relocations. Recruiters in the Texas Medical Center have told me that they fear a repeal of the ordinance will make it more difficult to attract top doctors and scientists here. We need to keep in mind that we have competitors around the country in all of these areas that will seek to take advantage of the controversy.

Houston is one of the most welcoming and inclusive cities in the world. When I talk to Houstonians about this issue I generally find that they do not believe that anyone should

suffer discrimination or be mistreated. I believe that had the administration sought the adoption of this ordinance in a collaborative process, we, as a City, would have likely reached a consensus with little controversy.

But politicians love to drag us into these kind of cultural wars because it diverts attention away from their records. Records like a police department that only solved 6% of the burglaries committed in Houston last year. Records like increasing taxes and fees by \$1 billion in six years but still not being able to balance the budget. Records like even after assessing a \$100 million annual rain tax for the last five years, Houston's streets are still in a deplorable condition and thousands of home still flood.

So once again, voters are put to a false dilemma by the politicians. If you vote for repeal, you are in favor of discrimination. If you vote against repeal, you are in favor of men using women's restrooms. Like most Houstonians, I favor neither.

I have no counsel on how Houstonians should vote on this issue. This is a highly personal decision and I can understand how people of goodwill can disagree on the best course. Because it is a false choice, I cannot in good conscience advocate either for or against the proposition.

If I am elected Mayor and the ordinance is repealed, I will honor the will of the voters. If the ordinance is not repealed, I will work with all of the interested groups to deal with some of the problems with ordinance I have outlined above. I will definitely offer amendments to deal with the restroom privacy issues.

In either case, I will work to bring this City back together and heal the wounds this divisive issue has opened. It is critical that we do, so that we can re-focus on the crucial issues our City faces with respect to our crumbling infrastructure, rising crime and unsustainable finances.