



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 4, 2013

Mayor Julian Castro  
City Hall  
100 Military Plaza  
San Antonio, TX 78205

Dear Mayor Castro:

As the San Antonio City Council moves toward voting on its so-called non-discrimination ordinance, I write to explain my legal concerns with the proposed ordinance, and to explain that passage of the ordinance will likely envelope the city in costly litigation. While many parts of the proposed ordinance are subject to legal challenge, this letter will be limited to the ordinance's most problematic provisions.

First, the proposed ordinance conflicts with the First Amendment of the U.S. Constitution and article I, sections 8 and 29 of the Texas Constitution by threatening with removal from office any appointed city official or member of a board or commission who "demonstrate[s] a bias, by word or deed" based on "sexual orientation" or "gender identity." The obvious problem with this provision is that it allows government to impose thought and speech control over any city official or board or commission member who may hold deep religious beliefs that are counter to the ordinance. The United States and Texas constitutions guarantee all Texans the liberty to practice and profess their religious beliefs without fear of adverse consequences from the government. Government officials charged with enforcing these fundamental protections must ensure that sincerely held religious beliefs are not trampled on merely because they do not conform to politically correct opinion.

The ordinance also could be enforced against any official who seeks to uphold TEX. CONST. art. I, § 32. City officials are, of course, required to comply with the Texas Constitution. Section 32 provides:

- Sec. 32. MARRIAGE. (a) Marriage in this state shall consist only of the union of one man and one woman.  
(b) This state or a political subdivision of this state may not create or recognize any legal status identical or similar to marriage.

Section 32 has an obvious potential intersection with the proposed prohibition on demonstrating a bias based on "sexual orientation." Appropriate enforcement of Section 32 may actually require a city official to take action, by word or deed, based on a person's sexual orientation.

The proposed ordinance may also violate TEX. CONST. art. I, § 4 which guarantees that no person shall “be excluded from holding office on account of his religious sentiments.” The ordinance could be read to directly violate the Texas Constitution by removing from office someone who expresses “religious sentiments” contrary to the ordinance.

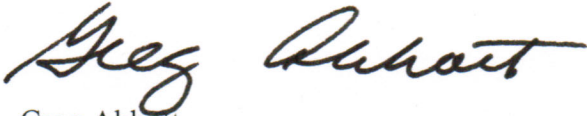
The ordinance does not say what exactly it means to “demonstrate a bias, by word or deed.” That means city bureaucrats will decide. Indeed, the proposed ordinance tasks the city’s “division of equal employment opportunity” with thought-policing city officials to make sure no one expresses an incorrect opinion about certain controversial topics. The proposed ordinance is therefore open to a constitutional challenge for vagueness.

The proposed ordinance further threatens to abridge religious liberty by requiring all places of public accommodation—restaurants, retail stores, and almost any other commercial establishment—to do business in ways that may violate their religious beliefs. This concern is not merely hypothetical. In other parts of the country, the adoption of similar policies by state and local governments has resulted in lawsuits against businesses simply because of the owners’ refusal to act against their faith. It is my understanding that a photographer in New Mexico was sued under the public accommodations law for refusing to provide services at a same-sex commitment ceremony. Similarly, a Christian was sued in Colorado for refusing to provide a wedding cake for a same-sex wedding, and a Christian florist in Washington is being prosecuted by the state and sued by a same-sex couple for refusing to provide flowers for a same-sex wedding because of religious reasons. By imposing this ordinance, you would be commanding people of faith to act contrary to their principles or face closing their businesses. That is the kind of heavy-handed government action the First Amendment and Texas Constitution were intended to prevent. Without an explicit exception for such religiously motivated objections, the city’s proposed public accommodations policy is hopelessly flawed.

The proposed ordinance also curtails religious freedom by banning from doing business with the city any business owner who does not add “sexual orientation” and “gender identity” to the business’s non-discrimination practices. This means that many religious business owners who want to remain true to their beliefs could not enter into contracts with the city. By withholding city contracts from business owners who run their businesses based on traditional religious principles, the city is sending a clear message about whose beliefs are approved by the government and whose are not. For a business owner who relies on city contracts for his livelihood, the choice is stark—comply with the city’s policy in violation of their religious convictions, or shut down the business. By excluding businesses because of their owners’ religious beliefs, or by forcing business owners to abandon their religious beliefs in order to do business with the city—without an exception for sincerely held religious objections—the policy raises serious constitutional concerns that will surely be the subject of extensive litigation.

Forced compliance with the proposed ordinance does not promote diversity. It tramples it. And when the diversity being trampled is religious diversity, the Constitution must be reckoned with. The city should scrap this proposed ordinance and, as is appropriate in a democracy, continue to allow its officials and citizens to disagree about controversial and deeply felt beliefs. If the city ignores this advice and adopts the proposed ordinance, legal action will surely follow.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Abbott". The signature is written in a cursive, flowing style with a large initial "G".

Greg Abbott  
Attorney General of Texas