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**CAREER & WORKPLACE  
COVER STORY**

# **HERO's hiccup: What took down the Houston Equal Rights Ordinance**



On the surface, a nondiscrimination ordinance seemed like a slam dunk. So, what happened?

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Reporter, Houston Business Journal  
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The nation eyed Houston closely on Nov. 3, when voters defeated the Houston Equal Rights Ordinance – dubbed HERO – by an overwhelming 62 percent to 38 percent majority.

The New York Times wrote that high-profile HERO opposers would be known as “latter-day Jim Crow elders.” The Washington Post called the “bathroom safety” campaign against HERO “perverted.” And Bloomberg reported that the failed HERO could threaten Houston’s booming \$15.5 billion travel industry.

The misconception about HERO as anything other than a nondiscrimination ordinance is what widely contributed to its loss, business experts say. HERO opposers latched onto the idea that it would’ve given men a loophole to enter women’s restrooms by claiming a female gender identity.

Bob Harvey, president of the Greater Houston Partnership, said that the ideals behind HERO already align with the policies of corporate America. As presented and originally approved by City Council, HERO was not problematic for businesses in any way, Harvey said.

“If you’re not seen as being progressive and open to all people, young talent or otherwise, you don’t make the shortlist of spots for corporate relocations,” Harvey said. “And for international companies, frankly, this issue either doesn’t come up or has already come up and has been

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resolved. Why would they want to come to a city that’s still debating basic civil rights protections?”

## **WHAT HAPPENED**

HERO, which was designed to protect individuals – regardless of age, gender, race, ethnicity, military status, religion, disability, sexual orientation, gender identity, marital status, pregnancy and several other factors – from discrimination in employment, housing and other sectors, was first introduced to the public in April 2014. The original draft gave permission for individuals to use public facilities, including restrooms, that corresponded with “that person’s expression of gender identity.” A revised version of the ordinance alluded to “accommodations” that would be made for all 15 protected groups in the workplace, housing and public services. It passed the city council in May 2014, but was only in effect for a few months amid several rounds of opposers’ legal attacks.

Eventually, the Texas Supreme Court said Houston either had to repeal HERO or place on the November 2015 ballot, leaving its fate up to voters. It wasn’t repealed. From there, a vocal and influential opposition latched onto the idea that allowing transgender people to use the bathroom would allow men to claim that they were transgender and commit assaults on women and children.

Though most business owners supported HERO as a concept, there were still some concerns surrounding the vague language of “reasonable accommodations.”

The HBJ reached out to some HERO opposers, but few would speak on the record. Mayor Annise Parker provided her reaction in a press conference, but declined to comment further.

In the more than 200 U.S. cities that allow transgender people to use the restroom of their choice, there are no recorded occurrences of trans people assaulting or harassing

non-trans people, according to the Human Rights Campaign and the American Civil Liberties Union. Meanwhile, in 2013, 70 percent of trans people reported being denied access into restrooms, verbally harassed or even physically assaulted in the restroom of their choice, according to UCLA think tank the Williams Institute.

When presented with these statistics, Jared Woodfill, spokesperson for opposition group Campaign for Houston, said it's better to act preventatively and protect non-transgender people from assaults instead of waiting until a non-trans person is attacked and "(picking) up the pieces of their lives."

Campaign for Houston and the broader rally against HERO was defined by a 30-second, black-and-white television ad in which a little girl in a school uniform is cornered in a bathroom stall, alone, by a tall man in plaid. The spooky commercial led to an outcry on social media, local news coverage and from public officials over women's perceived vulnerability.

"We believe there is right and wrong, and that's just wrong - that a registered sex offender can go into a female restroom under the protection of the law," Woodfill said.

It should be noted that HERO does not legally protect registered sex offenders from committing crimes in restrooms.

"These other arguments are stated to appeal to some person's deepest fears, at a purely emotional level, and they're not appealing to their reasoning but to some primordial sense that tells people, 'I have to protect my wife and children from this perceived evil that's presented as a black and white horror story,'" said GHP's Harvey.

But the ads, and the sentiment behind them, played a large part in HERO's overwhelming defeat in the polls.

“It was a classic David vs. Goliath case,” Woodfill said. “On one side, you have the president of the U.S., the vice president, the former secretary of state, Bernie Sanders, Apple, Eva Longoria, Sally Fields, GE, and more. And on our side, you just had Houstonians. The eyes of the nation were on Houston, and ... they sent a very clear message to the rest of the country that they stand against this ordinance.”

### **WHY IT MATTERS**

In the days since HERO’s defeat, Mike Waterman, president of the Greater Houston Convention and Visitors Bureau, has heard from four “fairly large” customers expressing concerns over why Houston couldn’t pass HERO, and what this means for the city as a whole. Waterman declined to disclose who the customers were. However, he said these customers could be conventions or events in Houston, and are “thousand-plus” customers, meaning that on peak nights, over 1,000 hotels rooms in Houston are booked for the event, Waterman said.

Losing one, let alone all four, of these customers would result in a substantial amount of business opportunity lost, Waterman said. But he also said that’s not likely to happen, and that the city has thousands of smaller events customers that are still all-in.

Still, there’s the tale of what happened in Indianapolis. Earlier this year, the Religious Freedom Restoration Act was passed in the Indiana legislature. It’s original draft protected business owners refusing to serve customers on the basis of sexual orientation or gender identity. Gov. Mike Pence signed the law into effect and a litany of businesses spoke out against it. The law was amended days later, but the damage was done: GHP’s Harvey said economic damage from lost business has totaled nearly \$900 million.

“Recruitment is a first and lasting consequence (of not passing an antidiscrimination ordinance),” Harvey said. “We

talked to folks in Indianapolis about that. It happened a year ago and they reversed course, but it created a perception problem that they're still dealing with today.”

## **WHAT'S NEXT**

Business leaders think that it's a matter of when, and not if, Houston will protect workers on the basis of sexual orientation and gender identity. After all, 96 percent of Fortune 500 companies protect employees from discrimination on the basis of sexual orientation, and 70 percent include gender identity in those protections, said Selisse Berry, CEO and founder of nonprofit Out & Equal Workplace Advocates.

If there's one game that business leaders lost, it's the marketing game. There wasn't a powerful enough message to counter the supposed legalization of people entering the opposite sex's public restrooms, which would've remained illegal under HERO.

“We hoped and expected that it would pass,” Harvey said. “But on one level, the response is obvious – we need to make the case that (HERO supporters) work with national media and contacts all around the world. It's just a matter of putting a real emphasis on getting our message points through that channel.”

Parker hasn't announced revisions to the ordinance, and very well may not, experts say. Some predict she may pass on the torch of HERO to her successor, who is yet to be determined. But there's still a concern among HERO supporters that the opposition's concerns are near impossible to placate since they're rooted in a fear that shouldn't exist.

John Collins, partner at the Houston and San Antonio offices of Seyfarth & Shaw LLP, brought up the option of including

a religious exemption to providing transgender accommodations.

“However ... that forces the city to be the arbiter of deciding whether the religious belief is bona fide, or whether somebody just doesn’t like transgender people,” Collins said.

For his part, Woodfill said the Campaign for Houston will be ready to fight in the second round of Houston’s battle for an antidiscrimination ordinance.

“If the mayor tries to play games and bring it up in the next 60 days or so she has left, we’re going to be there,” Woodfill said. “We’re going to be ready.”

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### **The making (and end) of a HERO**

**April 21, 2014** – The first draft of Proposition 1, known as the Houston Equal Rights Ordinance, or HERO, is made public. This version of the act explicitly states that individuals can use public restrooms that best fit their identifying gender.

**May 5, 2014** – The second draft of HERO is released. This version of HERO specifies that individuals cannot be discriminated in housing, employment and public accommodations on the basis of gender, race, ethnicity, military status, religion, disability, sexual orientation, gender identity and more.

**May 18, 2014** – In the third public session on HERO, the Houston City Council passes HERO 11-6, with 180 people testifying for HERO and 27 testifying against. Opponents of HERO say they will force a repeal referendum.

**July 2014** – HERO opponents deliver what they say are more than 50,000 signatures on a petition to the city of

Houston to force a repeal referendum. The opposition needs 17,249 valid signatures to force a referendum.

**Aug. 2014** – HERO opponents are shy 2,000 valid signatures to force a November repeal referendum, Mayor Annise Parker and then-City Attorney David Feldman announced.

**Oct. 2014** – The city of Houston comes under fire. City attorneys subpoena sermons from local pastors; specifically, “all speeches, presentations, or sermons related to HERO, the Petition, Mayor Annise Parker, homosexuality, or gender identity prepared by, delivered by, revised by, or approved by you or in your possession,” according to the Houston Chronicle. The subpoenas are issued during the discovery phase of the equal rights ordinance case, and are dropped two weeks later following national outcry.

**Jan. 2015 - April 2015** – A city trial begins to determine whether Parker and Feldman were correct in determining that HERO opponents are short the required 17,249 signatures. In April, the judge rules that HERO opponents are short 565 valid signatures instead of the roughly 2,000 as previously said by Parker and Feldman. Opponents appeal the ruling.

**July 2015** – The Texas Supreme Court rules that the city of Houston either has to repeal HERO or place it on the November ballot.

**Aug.-Oct. 2015** – Following the court’s decision, both opponents and supporters of HERO mobilize quickly. Celebrities and politicians align themselves on either side of the ordinance. HERO opponents aggressively market that HERO risks womens’ safety in bathrooms, which grows to define much of the fight around HERO.

**Oct. 29, 2015** – California-based Apple Inc. (Nasdaq: APPL) sends a statement to the Houston Business Journal in support of HERO. The company is soon joined by



Connecticut-based General Electric Co. (NYSE: GE) and California-based Hewlett-Packard Co. (NYSE: HPQ) in its support of Prop 1.

**Sept. 17, 2015** – The Greater Houston Partnership, the Greater Houston Conventions and Visitors Bureau and the Hotel and Lodging Association of Greater Houston issue a statement in support of HERO.

**Nov. 3, 2015** – The Houston Equal Rights Ordinance fails to earn a majority vote. It loses overwhelmingly among general voters by a margin of 62-38.

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### **A brief guide to transgender accommodations in the workplace**

Regardless of the state of HERO, many Houston business owners still want to create a work environment that's welcoming to all employees. Selisse Berry, founder and CEO of Out & Equal Workplace Advocates, shared some insights into creating such an environment.

What does it mean to be transgender? A person whose gender identity does not conform to their biological gender is considered transgender. Most states do not require people to undergo gender reassignment surgery to change the gender marker on state documents or to receive accommodations in the workplace.

On a trans employee coming out: "It's not rocket science, and it's just being thoughtful," Berry said. "A transgender person will sit down with HR and talk through their transition. Historically, a person that was transgender that would quit and then get a job under a new name. Now, (we're) encouraging the company to retain them - they're the same person with the same skills."

On work documents: The employee's manager should issue a new company ID badge with a new name and photo,

update any organization charts and change the employee's gender marker on work documents.

**On appearance:** A transgender employee should be permitted to dress consistently with his or her gender identity. He or she should be held to the same standard of dress code that all other employees are held to, according to Out & Equal's Workplace Gender Identity and Transition Guidelines.

**On bathrooms:** Business owners are obligated to provide transitioning employees the same access to facilities that they would any other employee, according to the guide, while respecting the needs of co-workers. Trans employees should be permitted to use the bathroom that best corresponds with their gender identity.

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### **Business leaders weigh in: Is there an economically founded opposition to HERO**

*"If there is, I haven't heard it."*

– **Bob Harvey, president of the Greater Houston Partnership**

*"Not that I'm aware of. The opposition clearly wasn't about economic impact, but more about how to sensationalize."*

– **Mike Waterman, president of the Greater Houston Convention and Visitors Bureau**

*"I haven't perceived it."*

– **John Collins, partner at the Houston law office of Seyfarth Shaw LLP**

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**Discrimination cases reported to the city of Houston – Here's a breakdown of the types of cases filed between May 28, 2014, and Jan. 15, 2015:**

**54%** – Race

**17%** – Gender

**15%** – Age

**4%** – Disability

**4%** – Ethnicity or national origin


**4%** – Sexual orientation or gender identity

**2%** – Veteran status

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