



May 13, 2014

David Welch
U. S. Pastor Council
P.O. Box 692207
Houston, TX 77269

Re: Removing Section 17-51(b) (the “Bathroom Language”) from Mayor Parker’s Ordinance will allow MORE biological males into the women’s facilities, not less.

Dear Mr. Welch:

Even if Section 17-51(b) (the “Bathroom Language”) is removed from Mayor Parker’s Ordinance, places of public accommodation will still be forced to allow biological males to use the women’s restrooms, locker rooms, and similar facilities. In fact, they will be forced to allow even more biological males in the women’s facilities than if Section 17-51(b) is not removed.

Section 17-51(a) makes it “unlawful for any place of public accommodation or any employee or agent thereof to *discriminate* against any person on the basis of any *protected characteristic*.” To “discriminate” means “to distinguish, differentiate, separate, or segregate ... any person on the basis of a *protected characteristic*.” (Ordinance § 17-2.) “Gender identity” is a protected characteristic. So even without the Bathroom Language, places of public accommodation that do not allow all who claim to be women, regardless of biological sex, to use the women’s facilities could face charges of discrimination pursuant to Section 17-51(a).

Section 17-51(b) provides a good faith defense to businesses that deny biological males access to the women’s facilities when they do not express themselves as female. Removing Section 17-51(b) also removes that defense. As a result, places of public accommodation will be forced to allow biological males who present as *male* (i.e., are not dressed as female) to use the women’s facilities, since the Ordinance prohibits discrimination because of gender *identity* (not gender expression). Removing Section 17-51(b) and its good faith defense will thus allow *more* biological males into the women’s facilities, not less.

Very sincerely yours,

ALLIANCE DEFENDING FREEDOM

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