U.S. Equal Employment Opportunity Commission

PRESS RELEASE
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EEOC Files First Suits Challenging Sexual Orientation Discrimination as Sex Discrimination

In Two Separate Lawsuits, Federal Agency Charges That a Gay Male Employee and a Lesbian Employee Were Subjected to Hostile Work Environments Because of Sex

WASHINGTON - The U.S. Equal Employment Opportunity Commission (EEOC) announced today that it has filed its first two sex discrimination cases based on sexual orientation. The federal agency's Philadelphia District Office filed suit in U.S. District Court for the Western District of Pennsylvania against Scott Medical Health Center, and, in a separate suit, in U.S. District Court for the District of Maryland, Baltimore Division, against Pallet Companies, dba IFCO Systems NA.

In its suit against Scott Medical Health Center, EEOC charged that a gay male employee was subjected to harassment because of his sexual orientation. The agency said that the male employee's manager repeatedly referred to him using various anti-gay epithets and made other highly offensive comments about his sexuality and sex life. When the employee complained to the clinic director, the director responded that the manager was "just doing his job," and refused to take any action to stop the harassment, according to the suit. After enduring weeks of such comments by his manager, the employee quit rather than endure further harassment.

In its suit against IFCO Systems, EEOC charged that a lesbian employee was harassed by her supervisor because of her sexual orientation. Her supervisor made numerous comments to her regarding her sexual orientation and appearance, such as "I want to turn you back into a woman" and "You would look good in a dress," according to the suit. At one point, the supervisor blew a kiss at her and circled his tongue at her in a suggestive manner, EEOC alleged. The employee complained to management and called the employee hotline about the harassment. IFCO fired the female employee just a few days later in retaliation for making the complaints, EEOC charged.

Title VII of the Civil Rights Act of 1964 prohibits discrimination because of sex. As the federal law enforcement agency charged with interpreting and enforcing Title VII, EEOC has concluded that harassment and other discrimination because of sexual orientation is prohibited sex discrimination.

On July 15, 2015, EEOC, in a federal sector decision, determined that sexual orientation discrimination is, by its very nature, discrimination because of sex. *See Baldwin v. Dep't of Transp.*, Appeal No. 0120133080 (July 15, 2015). In that case, EEOC explained the reasons why Title VII's prohibition of sex discrimination includes discrimination because of sexual orientation: (1) sexual orientation discrimination necessarily involves treating workers less favorably because of their sex because sexual orientation as a concept cannot be understood without reference to sex; (2) sexual orientation discrimination is rooted in non-compliance with sex stereotypes and gender norms, and employment decisions based in such stereotypes and norms have long been found to be prohibited sex discrimination under Title VII; and (3) sexual orientation discrimination punishes workers because of their close personal association with members of a particular sex, such as marital and other personal relationships.

"With the filing of these two suits, EEOC is continuing to solidify its commitment to ensuring that individuals are not discriminated against in workplaces because of their sexual orientation," said EEOC General Counsel David Lopez. "While some federal courts have begun to recognize this right under Title VII, it is critical that all courts do so."

Both lawsuits were brought under Title VII of the Civil Rights Act of 1964, which prohibits discrimination on the basis of sex as well as retaliation. In both the case against Scott Medical Health Center (Case 2:16-cv-00225-CB), and the case against IFCO Systems (Case 1:16-cv-00595-RDB), EEOC filed suit after first attempting to reach pre-litigation settlements through its conciliation process.

Addressing emerging and developing issues, especially coverage of lesbian, gay, bisexual and transgender individuals under Title VII's sex discrimination provisions, is one of six national priorities identified by EEOC's

Strategic Enforcement Plan (SEP). The agency has posted materials on its website relating to coverage under Title VII for LGBT individuals. In addition, in June 2015, the Commission, in coordination with the Office of Personnel Management, Office of Special Counsel, and the Merit Systems Protection Board, developed a guide for federal agencies on addressing sexual orientation and gender identity discrimination in federal civilian employment.

EEOC enforces the federal laws prohibiting employment discrimination. More information about EEOC is available on its website, www.eeoc.gov.

U.S. Equal Employment Opportunity Commission

Title VII of the Civil Rights Act of 1964

EDITOR'S NOTE: The following is the text of Title VII of the Civil Rights Act of 1964 (Pub. L. 88-352) (Title VII), as amended, as it appears in volume 42 of the United States Code, beginning at section 2000e. Title VII prohibits employment discrimination based on race, color, religion, sex and national origin. The Civil Rights Act of 1991 (Pub. L. 102-166) (CRA) and the Lily Ledbetter Fair Pay Act of 2009 (Pub. L. 111-2) amend several sections of Title VII. In addition, section 102 of the CRA (which is printed elsewhere in this publication) amends the Revised Statutes by adding a new section following section 1977 (42 U.S.C. 1981), to provide for the recovery of compensatory and punitive damages in cases of intentional violations of Title VII, the Americans with Disabilities Act of 1990, and section 501 of the Rehabilitation Act of 1973. Cross references to Title VII as enacted appear in italics following each section heading. Editor's notes also appear in italics.

An Act

To enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Civil Rights Act of 1964".

* * *

DEFINITIONS

SEC. 2000e. *[Section 701]*

For the purposes of this subchapter-

(a) The term "person" includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 *[originally, bankruptcy],* or receivers.

(b) The term "employer" means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of Title 5 *[United States Code]*), or

(2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of Title 26 *[the Internal Revenue Code of 1986]*, except that during the first year after March 24, 1972 *[the date of enactment of the Equal Employment Opportunity Act of 1972]*, persons having fewer than twenty-five employees (and their agents) shall not be considered employers.

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay,

hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) twenty-five or more during the first year after March 24, 1972 *[the date of enactment of the Equal Employment Opportunity Act of 1972]*, or (B) fifteen or more thereafter, and such labor organization-

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended *[29 U.S.C. 151 et seq.]*, or the Railway Labor Act, as amended *[45 U.S.C. 151 et seq.]*;

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by an employer, except that the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959 *[29 U.S.C. 401 et seq.]*, and further includes any governmental industry, business, or activity.

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act *[43 U.S.C. 1331 et seq.]*.

(j) The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

(k) The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 2000e-2(h) of this title *[section 703(h)]* shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: Provided, That nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.

(l) The term "complaining party" means the Commission, the Attorney General, or a person who may bring an action or proceeding under this subchapter.

(m) The term "demonstrates" means meets the burdens of production and persuasion.

(n) The term "respondent" means an employer, employment agency, labor organization, joint labor management committee controlling apprenticeship or other training or retraining program, including an on-the-job training program, or Federal entity subject to section 2000e-16 of this title.

APPLICABILITY TO FOREIGN AND RELIGIOUS EMPLOYMENT

SEC. 2000e-1. *[Section 702]*

(a) Inapplicability of subchapter to certain aliens and employees of religious entities

This subchapter shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(b) Compliance with statute as violative of foreign law

It shall not be unlawful under section 2000e-2 or 2000e-3 of this title *[section 703 or 704]* for an employer (or a corporation controlled by an employer), labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining (including on-the-job training programs) to take any action otherwise prohibited by such section, with respect to an employee in a workplace in a foreign country if compliance with such section would cause such employer (or such corporation), such organization, such agency, or such committee to violate the law of the foreign country in which such workplace is located.

(c) Control of corporation incorporated in foreign country

> (1) If an employer controls a corporation whose place of incorporation is a foreign country, any practice prohibited by section 2000e-2 or 2000e-3 of this title *[section 703 or 704]* engaged in by such corporation shall be presumed to be engaged in by such employer.
>
> (2) Sections 2000e-2 and 2000e-3 of this title *[sections 703 and 704]* shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.
>
> (3) For purposes of this subsection, the determination of whether an employer controls a corporation shall be based on-
>
> > (A) the interrelation of operations;
> >
> > (B) the common management;
> >
> > (C) the centralized control of labor relations; and
> >
> > (D) the common ownership or financial control, of the employer and the corporation.

UNLAWFUL EMPLOYMENT PRACTICES

SEC. 2000e-2. *[Section 703]*

(a) Employer practices

It shall be an unlawful employment practice for an employer -

> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
>
> (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(b) Employment agency practices

It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

(c) Labor organization practices

It shall be an unlawful employment practice for a labor organization-

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) Training programs

It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

(e) Businesses or enterprises with personnel qualified on basis of religion, sex, or national origin; educational institutions with personnel of particular religion

Notwithstanding any other provision of this subchapter, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and (2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

(f) Members of Communist Party or Communist-action or Communist-front organizations

As used in this subchapter, the phrase "unlawful employment practice" shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor management committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950 *[50 U.S.C. 781 et seq.]*.

(g) National security

Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if-

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

(2) such individual has not fulfilled or has ceased to fulfill that requirement.

(h) Seniority or merit system; quantity or quality of production; ability tests; compensation based on sex and authorized by minimum wage provisions

Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an

employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. It shall not be an unlawful employment practice under this subchapter for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 206(d) of Title 29 *[section 6(d) of the Labor Standards Act of 1938, as amended].*

(i) Businesses or enterprises extending preferential treatment to Indians

Nothing contained in this subchapter shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

(j) Preferential treatment not to be granted on account of existing number or percentage imbalance

Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

(k) Burden of proof in disparate impact cases

(1) (A) An unlawful employment practice based on disparate impact is established under this subchapter only if-

(i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; or

(ii) the complaining party makes the demonstration described in subparagraph (C) with respect to an alternative employment practice and the respondent refuses to adopt such alternative employment practice.

(B) (i) With respect to demonstrating that a particular employment practice causes a disparate impact as described in subparagraph (A)(i), the complaining party shall demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complaining party can demonstrate to the court that the elements of a respondent's decisionmaking process are not capable of separation for analysis, the decisionmaking process may be analyzed as one employment practice.

(ii) If the respondent demonstrates that a specific employment practice does not cause the disparate impact, the respondent shall not be required to demonstrate that such practice is required by business necessity.

(C) The demonstration referred to by subparagraph (A)(ii) shall be in accordance with the law as it existed on June 4, 1989, with respect to the concept of "alternative employment practice".

(2) A demonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination under this subchapter.

(3) Notwithstanding any other provision of this subchapter, a rule barring the employment of an individual who currently and knowingly uses or possesses a controlled substance, as defined in schedules I and II of section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)), other than the use or possession of a drug taken under the supervision of a licensed health care professional, or any other use or possession authorized by the Controlled Substances Act *[21 U.S.C. 801 et seq.]* or any other provision of Federal law, shall be considered an unlawful employment practice under this subchapter only if such rule is adopted or applied with an intent to discriminate because of race, color, religion, sex, or national origin.

(l) Prohibition of discriminatory use of test scores

It shall be an unlawful employment practice for a respondent, in connection with the selection or referral of applicants or candidates for employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of, employment related tests on the basis of race, color, religion, sex, or national origin.

(m) Impermissible consideration of race, color, religion, sex, or national origin in employment practices

Except as otherwise provided in this subchapter, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.

(n) Resolution of challenges to employment practices implementing litigated or consent judgments or orders

(1) (A) Notwithstanding any other provision of law, and except as provided in paragraph (2), an employment practice that implements and is within the scope of a litigated or consent judgment or order that resolves a claim of employment discrimination under the Constitution or Federal civil rights laws may not be challenged under the circumstances described in subparagraph (B).

(B) A practice described in subparagraph (A) may not be challenged in a claim under the Constitution or Federal civil rights laws-

(i) by a person who, prior to the entry of the judgment or order described in subparagraph (A), had-

(I) actual notice of the proposed judgment or order sufficient to apprise such person that such judgment or order might adversely affect the interests and legal rights of such person and that an opportunity was available to present objections to such judgment or order by a future date certain; and

(II) a reasonable opportunity to present objections to such judgment or order; or

(ii) by a person whose interests were adequately represented by another person who had previously challenged the judgment or order on the same legal grounds and with a similar factual situation, unless there has been an intervening change in law or fact.

(2) Nothing in this subsection shall be construed to-

(A) alter the standards for intervention under rule 24 of the Federal Rules of Civil Procedure or apply to the rights of parties who have successfully intervened pursuant to such rule in the proceeding in which the parties intervened;

(B) apply to the rights of parties to the action in which a litigated or consent judgment or order was entered, or of members of a class represented or sought to be represented in such action, or of members of a group on whose behalf relief was sought in such action by the Federal Government;

(C) prevent challenges to a litigated or consent judgment or order on the ground that such judgment or order was obtained through collusion or fraud, or is transparently invalid or was entered by a court lacking subject matter jurisdiction; or

(D) authorize or permit the denial to any person of the due process of law required by the Constitution.

(3) Any action not precluded under this subsection that challenges an employment consent judgment or order described in paragraph (1) shall be brought in the court, and if possible before the judge, that entered such judgment or order. Nothing in this subsection shall preclude a transfer of such action pursuant to section 1404 of Title 28 [*United States Code*].

OTHER UNLAWFUL EMPLOYMENT PRACTICES

SEC. 2000e-3. *[Section 704]*

(a) Discrimination for making charges, testifying, assisting, or participating in enforcement proceedings

It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	)	
Plaintiff,	)	**CIVIL ACTION NO.**
v.	)	
SCOTT MEDICAL HEALTH CENTER, P.C.,	)	
Defendant.	)	

NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), and Title I of the Civil Rights Act of 1991, to correct unlawful employment practices on the basis of sex (male) to provide appropriate relief to Dale Baxley. As alleged with greater particularity in paragraphs 11(a) through (h) below, the Commission alleges that Defendant subjected Baxley to a sexually hostile work environment perpetuated by Defendant's telemarketing manager, Robert McClendon. Defendant constructively discharged Baxley as a result of the intolerable working conditions and Defendant's failure to take prompt and effective action to prevent or alleviate it.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1) and (3) ("Title VII") and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the Western District of Pennsylvania.

PARTIES

3. Plaintiff, the U.S. Equal Employment Opportunity Commission (the "Commission"), is the agency of the United States of America charged with the administration, interpretation and enforcement of Title VII, and is expressly authorized to bring this action by Section 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

4. At all relevant times Defendant Scott Medical Health Center, P.C. ("Defendant"), a Pennsylvania professional corporation, has continuously been doing business in the Commonwealth of Pennsylvania and the City of Pittsburgh, and has continuously had at least 15 employees.

5. At all relevant times, Defendant has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

STATEMENT OF CLAIMS

6. More than thirty days prior to the institution of this lawsuit, Charging Parties Libby Eber, Brittany Fullard, Allyssa Griffie, Donna Mackie and Kaitlyn Wieczorek filed charges of discrimination with the Commission alleging violations of Title VII by Defendant. During the course of its investigation of the aforementioned charges of discrimination, the Commission uncovered the violations of Dale Baxley's rights under Title VII that are reflected in paragraphs 11(a) through (h) of this Complaint.

7. On July 22, 2015, the Commission issued to Defendant a Letter of Determination finding reasonable cause to believe that Title VII was violated, including the violations of Dale Baxley's rights under Title VII that are reflected in paragraphs 11(a) through (h) of this Complaint, and inviting Defendant to join with the Commission in informal methods of conciliation to endeavor to eliminate the discriminatory practices and provide appropriate relief.

8. The Commission engaged in communications with Defendant to provide Defendant the opportunity to remedy the discriminatory practices described in the Letter of Determination.

9. The Commission was unable to secure from Defendant a conciliation agreement acceptable to the Commission.

10. On September 15, 2015, the Commission issued to Defendant a Notice of Failure of Conciliation.

11. Since at least May 2013, Defendant has engaged in unlawful employment practices at its Pittsburgh, Pennsylvania facility, in violation of Section 703(a)(1) of Title VII, 42 U.S.C. § 2000e-2(a)(1). These unlawful practices include, but are not limited to, the following:

(a) Dale Baxley is a gay male. He was previously employed by Defendant in a telemarketing position.

(b) At all relevant times, Robert McClendon was the Telemarketing Manager for Defendant, a supervisor with authority to hire and fire employees who reported to him. Defendant is vicariously liable for his harassing conduct.

(c) Defendant has engaged in sex discrimination against Baxley by subjecting him to a continuing course of unwelcome and offensive harassment because of his sex (male). Such harassment was of sufficient severity and/or pervasiveness to create a hostile work environment because of his sex (male).

(d) From at least mid-July 2013 until on or about August 19, 2013, Robert McClendon routinely made unwelcome and offensive comments about Baxley, including but not limited to regularly calling him "fag," "faggot," "fucking faggot," and "queer," and making statements such as "fucking queer can't do your job." McClendon directed these harassing comments at Baxley at least three to

four times each week.

(e) From at least mid-July 2013 until on or about August 19, 2013, McClendon routinely made other unwelcome and offensive sexual comments to Baxley. For instance, upon learning that Baxley is gay and had a male partner (and to whom he is now married), McClendon made highly offensive statements to Baxley about Baxley's relationship with the partner such as saying, "I always wondered how you fags have sex," "I don't understand how you fucking fags have sex," and "Who's the butch and who is the bitch?"

(f) From at least mid-July 2013 until on or about August 19, 2013, McClendon frequently screamed and yelled at Baxley.

(g) On or about August 19, 2013, Defendant constructively discharged Baxley because of his sex (male). Baxley reported McClendon's sex discriminatory behavior to Defendant's president, Dr. Gary Hieronimus, but Hieronimus expressly refused to take any action to stop the harassment. Baxley resigned in response to Defendant's creation of, and refusal to discontinue, a sexually hostile work environment. Defendant knowingly created and permitted working conditions that Baxley reasonably viewed as intolerable and that caused him to resign.

(h) McClendon's aforementioned conduct directed at Baxley was motivated by Baxley's sex (male), in that sexual orientation discrimination necessarily entails treating an employee less favorably because of his sex; in that Baxley, by virtue of his sexual orientation, did not conform to sex stereotypes and norms about males to which McClendon subscribed; and in that McClendon objected generally to males having romantic and sexual association with other males, and objected

specifically to Baxley's close, loving association with his male partner.

12. The effect of the practices complained of in paragraphs 11(a) through (h) above has been to deprive Baxley of equal employment opportunities and otherwise adversely affect his status as an employee because of his sex.

13. The unlawful employment practices complained of in paragraphs 11(a) through (h) above were intentional.

14. The unlawful employment practices complained of in paragraphs 11(a) through (h) above were done with malice or with reckless indifference to Baxley's federally protected rights.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from engaging in sex-based harassing conduct and other employment practices which discriminate on the basis of sex.

B. Order Defendant to institute and carry out training, policies, practices, and programs which provide equal employment opportunities based on sex, and which ensure that its operations are free from the existence of a sexually hostile work environment.

C. Order Defendant to make Baxley whole, by providing appropriate backpay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to front pay.

D. Order Defendant to make Baxley whole by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in

paragraphs 11(a) through (h) above, such as debt-related expenses, job search expenses, medical expenses and other expenses incurred by Baxley, which were reasonably incurred as a result of Defendant's conduct, in amounts to be determined at trial.

E. Order Defendant to make Baxley whole by providing compensation for past and future non-pecuniary losses resulting from the unlawful practices complained of in paragraphs 11(a) through (h) above, including emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, in amounts to be determined at trial.

F. Order Defendant to pay Baxley punitive damages for its malicious and reckless conduct described in paragraphs 11(a) through (h) above, in amounts to be determined at trial.

G. Grant such further relief as the Court deems necessary and proper in the public interest.

H. Award the Commission its costs of this action.

JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by its complaint.

Respectfully submitted,

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

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U.S.

Houston Voters Reject Broad Anti-Discrimination Ordinance

By MANNY FERNANDEZ and MITCH SMITH NOV. 3, 2015

HOUSTON — A yearlong battle over gay and transgender rights that turned into a costly, ugly war of words between this city's lesbian mayor and social conservatives ended Tuesday as voters easily repealed an anti-discrimination ordinance that had attracted attention from the White House, sports figures and Hollywood celebrities.

The City Council passed the measure in May, but it was in limbo after opponents succeeded, following a lengthy court fight, in putting the matter to a referendum. The measure failed by a vote of 61 percent to 39 percent.

Supporters said the ordinance was similar to those approved in 200 other cities and prohibited bias in housing, employment, city contracting and business services for 15 protected classes, including race, age, sexual orientation and gender identity. Opponents said the measure would allow men claiming to be women to enter women's bathrooms and inflict harm, and that simple message — "No Men in Women's Bathrooms" — was plastered on signs and emphasized in television and radio ads, turning the debate from one about equal rights to one about protecting women and girls from sexual predators.

"It was about protecting our grandmoms, and our mothers and our wives and our sisters and our daughters and our granddaughters," Lt. Gov. Dan Patrick, a Republican, told cheering opponents who gathered at an election

said Dave Welch, the executive director of the Houston Area Pastor Council.

The immediate effect of the vote is unclear. Ms. Parker and her supporters said Houston would lose tourism and convention business if the city had to repeal the ordinance and became known for intolerance, just as a backlash in Indiana over a religious-objections law led to convention cancellations and boycotts before that law was changed. Supporters worried that a repeal of the Houston ordinance could also jeopardize its selection as host city for the Super Bowl in 2017.

Ric Campo, a real estate developer who is the chairman of the Houston Super Bowl Host Committee, said the committee has had conversations with National Football League officials about the ordinance. "I don't think it's the straw that creates the imbalance where you don't get a Super Bowl or lose a Super Bowl, but it's definitely part of the equation when people make decisions," Mr. Campo said.

Opponents of the measure played down any economic impact, describing the supporters' claims as a fear tactic. Mr. Patrick minced no words about the threat of losing the Super Bowl. If Roger Goodell, the N.F.L. commissioner, "would even suggest that the Super Bowl not be played here because we don't want men in ladies' bathrooms, then we need a new commissioner," Mr. Patrick said.

Both sides claimed to speak for the city. The main coalition of supporters was called Houston Unites, while the main one for opponents was Campaign for Houston. Houston Unites raised nearly $3 million, and Campaign for Houston more than $1 million. Supporters called the measure HERO, for Houston's Equal Rights Ordinance, while opponents referred to it as the Bathroom Ordinance.

In Ohio, Election Day brought a different sort of referendum debate to a head, as voters rejected a proposal to legalize marijuana.

This was more than a simple legalization issue, and even some longtime

system of free public schools," and it would have given Mississippi's chancery courts the authority to enforce the standard.

An alternative version, put forward by state lawmakers, asked whether the Legislature should "provide for the establishment and support of effective free public schools without judicial enforcement."

But after an expensive campaign that was notable for fierce rhetoric, neither plan made it through the state's complicated amendment process.

Manny Fernandez reported from Houston, and Mitch Smith from Columbus, Ohio. Alan Blinder contributed reporting from Atlanta.

A version of this article appears in print on November 4, 2015, on page A1 of the New York edition with the headline: Houston Voters Repeal Measure Ensuring Rights .

HOUSTON

Language to appear on HERO ballot approved

City Council signs off a week after wording was ruled incorrect

By Katherine Driessen | August 26, 2015 | Updated: August 26, 2015 9:56pm

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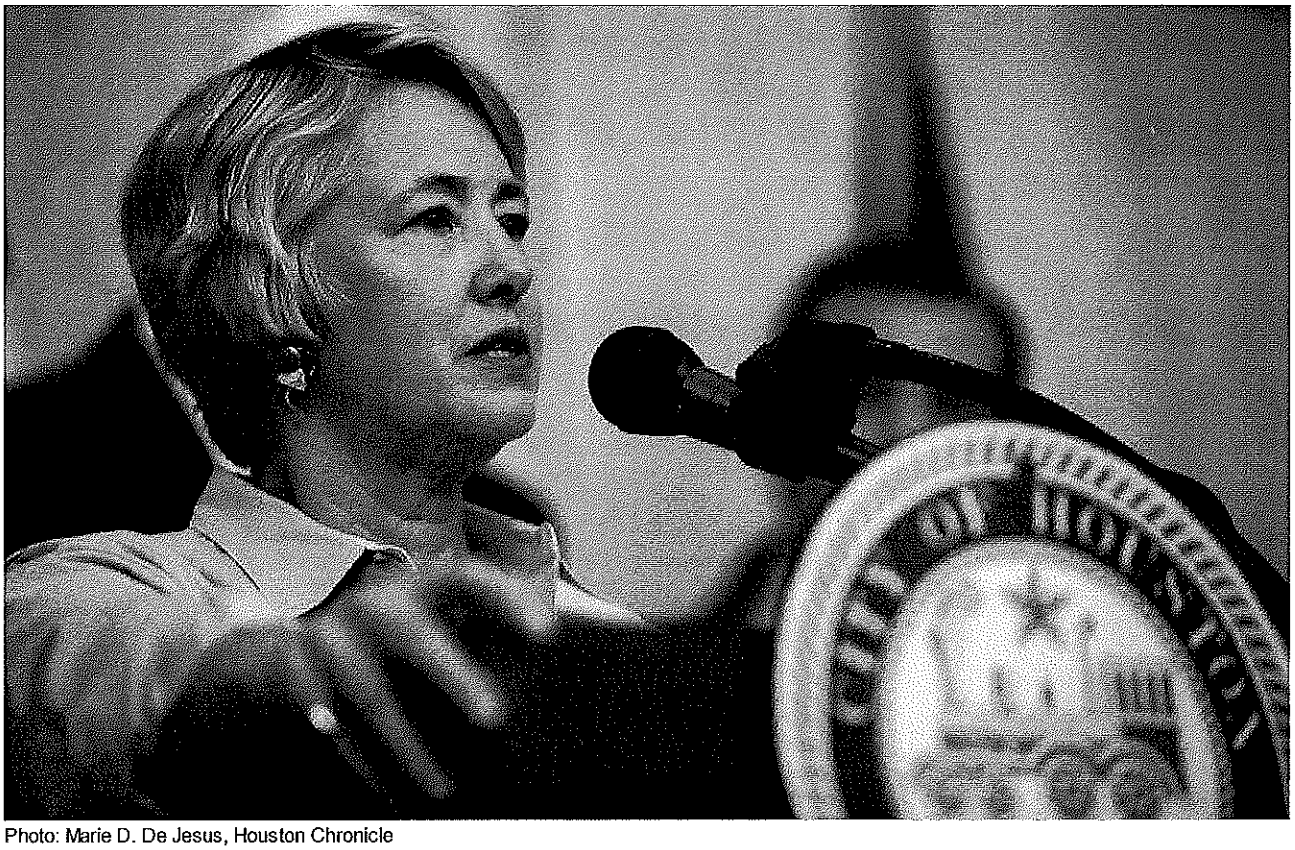

Photo: Marie D. De Jesus, Houston Chronicle

City Council on Wednesday approved the language that will appear on the November ballot for voters to decide the fate of Houston's equal rights ordinance, one week after the Texas Supreme Court ruled that the original wording was incorrect.

Mayor Annise Parker, who has been vocal about her frustration with the court ruling, said Wednesday's council discussion about the ballot language was "civil."

Earlier this month, City Council signed off on a ballot item that would have asked voters whether they wanted to repeal the ordinance. Conservative critics sued the city over the wording, saying it was intended to confuse voters that would naturally vote "no" on any item pertaining to the law - a vote that would have instead affirmed the ordinance.

After the supreme court's ruling that the city had erred, Mayor Annise Parker's administration came back with new language that instead asks voters if they favor the law. It's a technical issue, but one that both campaigns needed clarity on to craft their messaging and start running ads.

'Provocative' verbage

City Council on Wednesday went even further into the weeds on the ballot language when at-large councilman C.O. Bradford offered an amendment that would have removed from the ballot language enumerating the groups protected under the law, such as pregnant women and veterans. Bradford eventually withdrew the amendment, and City Council unanimously approved the administration's version, but not before touching off some debate.

Bradford said that naming the protected classes "simply serves as a verbage that's going to be provocative, that's going to simply arouse passion" on both sides of the issue.

The ordinance bans discrimination based not just on sexual orientation and gender identity - the flash points for opponents - but also, as federal laws do, sex, race, color, ethnicity, national origin, age, religion, disability, pregnancy and genetic information, as

well as family, marital or military status.

The ordinance applies to businesses that serve the public, private employers, housing, city employment and city contracting. Religious institutions are exempt. Violators could be fined up to $5,000.

City Council passed the ordinance 11-6 in 2014, triggering a yearlong legal battle between opponents and city officials over whether to send the issue to voters. The Texas Supreme Court in late July ordered City Council to either repeal the ordinance or affirm it and place it on the November ballot. By a 12-5 vote earlier this month, City Council opted for the latter.

'Civil' discussion

Parker, who has been vocal about her frustration with the court ruling, said Wednesday's discussion was "civil."

"The question was do you try to be generic and say 'certain characteristics' or 'special characteristics' or do you list out the characteristics that are protected in the interest of transparency," Parker said. "Clearly City Council finally came down on just listing everything out."

The full ballot language reads: "Are you in favor of the Houston Equal Rights Ordinance, Ord. No. 2014-530, which prohibits discrimination in city employment and city services, city contracts, public accommodations, private employment, and housing based on an individual's sex, race, color, ethnicity, national origin, age, familial status, marital status, military status, religion, disability, sexual orientation, genetic information, gender identity, or pregnancy?"

Katherine Driessen
City Hall reporter, Houston Chronicle