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HOUSTON

In HERO case, 8,500 signatures will decide trial

By **Katherine Driessen** | March 26, 2015

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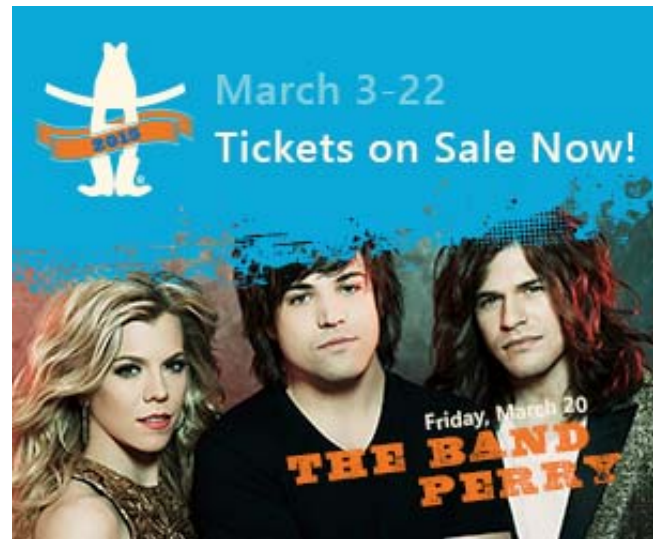
The first publicly disclosed tally since the heated trial surrounding the city's equal rights ordinance wrapped up last month leaves opponents of the law about 3,000 valid petition signatures shy of triggering a repeal referendum, though 8,500 more signatures are still in question and will decide the case.

At issue in the equal rights ordinance case is not the law itself, but whether opponents submitted a repeal referendum petition last summer with the needed 17,269 valid signatures. The city says the petition was riddled with forgery and errors, and rejected it on those grounds. Opponents, largely conservative activists, sued the city, saying it sought and falsely found problems with the petition.

Approved last May by the City Council, the ordinance bans discrimination among businesses that serve the public, private employers, in housing and in city employment

and city contracting. The ordinance itself remains on hold while the courts sort out the repeal referendum petition issue.

Thursday's tally is the product of an unusual two-step review that included both a jury and presiding Judge Robert Schaffer. After lengthy deliberation last month, a jury issued rulings about whether certain petition pages were valid. Schaffer then issued a decision upholding some of the jury's rulings, rejecting others, giving plaintiffs a significant boost after a jury decision that appeared to favor the city.



Legibility a toss-up

For the past month, attorneys on both sides have been counting signatures using the judge's rulings. As expected, they have come to different conclusions; the city contends the opponents again failed, while opponents say they have plenty more valid signatures than they need.

But attorneys on both sides agree that the legibility of circulator signatures on certain pages, affecting 8,500 total signatures, will now decide the case.

The plaintiffs argue that legibility should not be a factor.

"We can't empower the government with the right to be the judge, jury and executioner on whether somebody has a right to vote based on penmanship," said Andy Taylor, attorney for the plaintiffs.

The city, however, contends that if they can't determine who a circulator is based on their signature or printed name, all the other signatures collected on that page should be discarded, per city charter and the judge's ruling.

"The plaintiffs are mounting every desperate challenge they possibly can to try to overcome the effect of the jury's verdict and the effect of the judge's post-verdict rulings," said Geoffrey Harrison, lead attorney for the city. "The plaintiffs lost at trial. They lose on the law. They lose on the facts. But they are prolonging this process by refusing to accept reality."

Taylor said he's reviewed the signatures thrown out on legibility grounds, and he believes the judge will agree with him that many are legible.

Taylor has also submitted affidavits from several elderly people whose signatures were considered illegible. The affidavits claim the circulators, well into their 70s and 80s, have hand tremors, and that they signed the pages and legally collected signatures.

"Even my 9-year-old can read most of these signatures the city and the mayor claim they can't read," Taylor said.

A meeting with the judge Thursday morning was held in a jury room, and members of the public were not allowed to attend because of "space issues." Schaffer's clerk said a mock trial group was using the courtroom.

But attorneys said that Schaffer made clear that he will now review the contested pages and issue a decision as soon as early April.

More lenient ruling

It was Schaffer's ruling several weeks ago that further complicated the case. More than one month ago, the jury found that many high-volume signature-gatherers made mistakes in signing and subscribing the pages they collected, often failing to both print and sign their names at the bottom of the page. After that ruling, city attorneys said barely more than 2,000 petition signatures were valid.

But Schaffer's ruling was more lenient, requiring only a legible signature or printed name. Under that interpretation, Harrison said the plaintiffs now have between 14,000 and 15,500 valid signatures, still shy of 17,269.

Harrison has been particularly critical of the plaintiffs' decision to seek a jury trial, and then to reject its findings.

"This case is wildly unusual in the sense that the plaintiffs demanded a jury, were desperate for a jury and then the judge gave them a jury," Harrison said. "Now the plaintiffs are trying to forget the jury trial ever happened, like an ostrich sticking its head in the sand."



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