

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**JACK PIDGEON and
LARRY HICKS,
Plaintiffs**

v.

**MAYOR ANNISE PARKER and
CITY OF HOUSTON
Defendants**

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CIVIL ACTION NO.

NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF THE UNITED STATES DISTRICT COURT:

Pursuant to Title 28 U.S.C. §§1331,1441(a) and 1443, Defendants, Mayor Annise Parker (“the Mayor”) and the City of Houston (“the City”)(collectively “Defendants”), give notice of their removal of an action filed against them in the 310th Judicial District Court of Harris County, Texas, to the United States District Court for the Southern District of Texas, Houston Division. In support, Defendants respectfully state as follows:

Introduction

1. On or about December 17, 2013, Plaintiffs filed in state district court Cause No. 2013-75301, Jack Pidgeon and Larry Hicks, Plaintiffs, v. Mayor Annise Parker and the City of Houston, Defendants, in the 310th Judicial District Court, Harris County, Texas.¹ Plaintiffs identified the matter as relating to family law, and it was therefore filed by the

¹ See Original Petition attached hereto as Exhibit A.

district clerk in a district court that primarily handles family law matters.

2. Though Plaintiffs never properly served either the Mayor or the City with Plaintiffs' Original Petition for Application for Temporary Restraining Order, Application for Temporary Injunction and Application for Permanent Injunction, the family court conducted an *ex parte* hearing on Plaintiffs' Application for Temporary Restraining Order without proper notice to the Defendants at approximately 5:00 p.m. on December 17, 2013. The Court issued a Temporary Restraining Order at 5:13 p.m., ordering the Mayor and the City "to cease and desist providing benefits to same-sex spouses of employees that have been married in jurisdictions that recognize same-sex marriage."² Defendants, though never properly served with the Temporary Restraining Order, filed a Motion to Dissolve Temporary Restraining Order on December 19, 2013. The state family court, after conducting a hearing, denied the Motion to Dissolve on December 20, 2013. This Notice of Removal is therefore timely filed less than thirty (30) days after receipt by the Defendants of the initial pleading setting forth the claim for relief upon which such action is based. The Mayor and the City are the only defendants in this case, and both seek removal.

3. The United States District Court for the Southern District of Texas, Houston Division is the federal judicial district encompassing Harris County, Texas. Therefore the Southern District of Texas, Houston Division, is the appropriate location for a removal from Harris County, Texas, pursuant to 28 U.S.C. § 1441(a).

² See Temporary Restraining Order dated December 19, 2013 attached hereto as Exhibit B.

4. The Clerk of the District Court of Harris County, Texas and Plaintiffs' counsel have been given notice of the filing of this Notice of Removal.

Federal Question Jurisdiction

5. Defendants remove of this action to federal court based on federal question jurisdiction under 28 U.S.C. § 1143. The issues presented in this action — the equal protection and due process rights (including fundamental liberty interests) of legally married same-sex couples under the Fifth and Fourteenth Amendments to the United States Constitution — present substantial questions of federal law.

Pertinent Background

6. Plaintiffs premise their action upon the Mayor's November 19, 2013 directive to the City of Houston's Human Resources Department which, in light of the United States Supreme Court's ruling in *United States v. Windsor*, 133 S.Ct. 2675 (2013), and other relevant federal authority, directed that department to offer benefits to the same-sex spouses of the City's employees who are legitimately married in states which recognize same-sex marriage.³

7. Plaintiffs assert that the Mayor's directive, *inter alia*, violated the City of Houston Charter Article II, Section 22 which states:

Except as required by State or Federal law, the City of Houston shall not provide employment benefits, including health care, to persons other than employees, their legal spouses and dependent children; nor shall the City provide any privilege in promotion, hiring or contracting to a person or group

³ See Directive dated November 19, 2013 attached hereto as Exhibit F.

on the basis of sexual preference, either by a vote of the city council or an executive order of the Mayor. Further, the City of Houston shall not require entities doing business with the City to have any of the above benefits or policies.

If any portion of this proposed Charter amendment is declared unlawful, then such portion shall be removed and the remainder of the Charter amendment will remain in effect. Any ordinance in conflict with this section of the Charter is hereby repealed and declared invalid. (emphasis added.)

Plaintiffs have therefore invoked the federal question jurisdiction of this court by their pleading. Plaintiffs also allege that the directive violates Section 6.024 of the Texas Family Code and Article 1, Section 32, of the Texas Constitution. They accuse the City of also committing these violations by implementing the directive.

8. Defendants have complied with Local Rule 81 by attaching the following documents:

1. All executed process (none in this cause);
2. All pleadings asserting causes of action (Exhibit A);
3. All orders signed by the state court judge (Exhibit B);
4. The state court docket sheet (Exhibit C);
5. A list of all counsel of record, including addresses, telephone numbers and parties represented (Exhibit D); and
6. An index of the documents being filed (Exhibit E)

9. A written notice of the filing of this removal is being served on all adverse parties and a copy of the notice filed with the clerk of the court from which this action is removed, along with a copy of this Notice.

Conclusion

10. Because of the substantial questions of federal law raised by Plaintiffs' state court action, its removal to federal court by the Mayor and the City is proper.

WHEREFORE, Defendants Mayor Annise Parker and the City of Houston hereby give notice that this action is removed from the 310th Judicial District Court, Harris County, Texas, to the United States District Court, Southern District of Texas, Houston Division.

Dated: December 27, 2013

Respectfully submitted,

DAVID M. FELDMAN

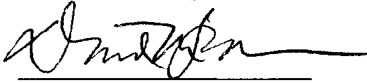
City Attorney

LYNETTE K. FONS

First Assistant City Attorney for Litigation

JUDITH L. RAMSEY

Chief, General Litigation Section

By: 

David M. Feldman

City Attorney

Texas Bar No. 06886700

Federal ID: 2994

Lynette K. Fons

First Assistant City Attorney

Texas Bar No. 13268100

Federal ID: 10562

Judith L. Ramsey

Chief, General Litigation Section

Texas Bar No. 16519550

Federal ID: 1124189

John B. Wallace

Senior Assistant City Attorney

Texas Bar No. 20769750

Federal ID: 2393

CITY OF HOUSTON LEGAL DEPARTMENT
900 Bagby, 4th Floor
Houston, Texas 77002
832.393-6438 - Telephone
832.393-6259 - Facsimile
david.feldman@houstontx.gov
judith.ramsey@houstontx.gov
Attorneys for Defendants,
MAYOR ANNISE PARKER and
THE CITY OF HOUSTON

CERTIFICATE OF SERVICE

I, David M. Feldman, hereby certify that on the **27th** of **December, 2013**, a copy of the foregoing **Notice of Removal** was served upon the following parties via electronic service, facsimile, and/or CMRRR:

Jared Woodfill
Robert Talton
Woodfill Law Firm
3131 Eastside Street, Suite 450
Houston, Texas 77098
Fax: 713.751.3058

Jonathan M. Saenz
Texas Values
900 Congress Avenue, Suite 220
Austin, Texas 78701
Fax: 512.478.2229



David M. Feldman

EXHIBIT A

12/17/2013 3:51:24 PM
Chris Daniel - District Clerk Harris County
Envelope No. 85018
By: Ruth McDugle

2013-75301 / Court: 310

CAUSE NO. _____

JACK PIDGEON AND
LARRY HICKS,
PLAINTIFFS,

v.

MAYOR ANNISE PARKER AND
CITY OF HOUSTON,
DEFENDANTS.

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IN THE DISTRICT COURT

HARRIS COUNTY, TEXAS

____ JUDICIAL DISTRICT

**PLAINTIFFS' ORIGINAL PETITION,
APPLICATION FOR TEMPORARY RESTRAINING ORDER,
APPLICATION FOR TEMPORARY INJUNCTION, AND
APPLICATION FOR PERMANENT INJUNCTION**

TO THE HONORABLE COURT:

Plaintiffs, Jack Pidgeon and Larry Hicks, complain of Defendants, Mayor Annise Parker and the City of Houston ("Defendants"), and for cause of action shows:

I. DISCOVERY PLAN

1.1 Discovery is intended to be conducted under Level 3 as set forth in Rule 190 of the Texas Rules of Civil Procedure.

II. PARTIES

2.1 Plaintiff, Jack Pidgeon, is a legal adult over the age of eighteen (18), who resides in Houston, Texas, Harris County. He is a taxpayer and qualified voter residing within the boundaries of the City of Houston; he resides at 12427 Honeywood Trail, Houston, Texas 77077.

2.2 Plaintiff, Larry Hicks, is a legal adult over the age of eighteen (18), who resides in Houston, Texas, Harris County. He is a taxpayer and qualified voter residing within the boundaries of the City of Houston; he resides at 954 Gessner, Houston, Texas 77080.

2.3 Plaintiffs are taxpayers in the City of Houston and Defendants are expending significant public funds on an illegal activity.

2.4 Defendant, Annise Parker, is an individual residing in Harris County, Texas and is Mayor of the City of Houston. She may be served at her office at City Hall, 900 Bagby St., Houston, Texas 77002.

2.5 Defendant, City of Houston, is a local governmental entity as defined by Texas Government Code §554.001 and may be served with citation by serving Mayor Annise Parker through the City of Houston, Texas, Secretary Anna Russell, located at 900 Bagby St., Houston, Texas 77002.

III. JURISDICTION

3.1 This Court has subject matter jurisdiction over this action because the amount in controversy exceeds the minimum jurisdictional limits of the court exclusive of interest and Plaintiffs seek relief that can be granted by either courts of law or equity.

3.2 This Court has jurisdiction over this lawsuit and the parties herein, and is jurisdictionally competent to render judgment in this matter.

3.3 The amount in controversy and the relief sought are within the jurisdictional limits of the Court. This Court is authorized to grant Plaintiffs prayer for relief regarding costs, including Plaintiffs' reasonable attorney's fees.

3.4 This Court is a court of law and equity.

IV. VENUE

4.1 Venue of this action is proper in Harris County under Texas Civil Practice & Remedies Code §15.001 *et. seq.* because all or a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in Harris County, Texas.

V. FACTUAL ALLEGATIONS

5.1 On November 19, 2013, a few days after being reelected to her final term as Mayor of the City of Houston, Annise Parker directed the City of Houston's Human Resource Department to offer benefits to same-sex spouses of City of employees who are married in a state that recognizes same-sex marriage. (Exhibit "A")

5.2 Specifically, Mayor Parker "directed that same-sex spouses of employees who have been legally married in another jurisdiction be afforded the same benefits as spouses of a heterosexual marriage." (Exhibit "A")

5.3 The act is a clear violation Texas Family Code §6.204, Texas Constitution Article I, Section 32, and Article II, Section 22 of the City of Houston Charter.

VI. FIRST CAUSE OF ACTION TEXAS FAMILY CODE §6.204

6.1 Plaintiffs hereby reincorporate and adopt by reference for all purposes each and every allegation contained in the preceding paragraphs and sections numbered I through V.

6.2 Texas Family Code §6.204, also known as the Texas Defense of Marriage Act ("Texas DOMA"), prohibits political subdivisions of the state from giving effect to:

1. A public act, record, or judicial proceeding that creates, recognizes, or validates a marriage between persons of the same sex or a civil union in this state or any other jurisdiction; or
2. Right or claim to any legal protection, benefit, or responsibility asserted as a result of a marriage between persons of the same sex or a civil union in this state or any jurisdiction.

Texas Family Code §6.204(c).

6.3 Mayor Parker's public act of providing taxpayer funded benefits to same sex couples married in a state that recognizes same-sex marriage creates, recognizes and validates a marriage between persons of the same sex from another jurisdiction in violation of Texas Family Code §6.204(c)(1).

6.4 By providing a benefit resulting from a marriage between persons of the same sex recognized in a state other than Texas, Mayor Parker and the City of Houston have violated Texas Family Code §6.204(c)(2).

6.5 Plaintiffs have no adequate remedy at law to correct the continuing deprivations of their constitutional rights by the Defendants' actions in violation of the Texas Family Code.

VII. SECOND CAUSE OF ACTION TEXAS CONSTITUTION-ARTICLE I, SECTION 32

7.1 Plaintiffs hereby reincorporate and adopt by reference for all purposes each and every allegation contained in the preceding paragraphs and sections numbered I through VI.

7.2 In 2005, voters approved an amendment to the Texas Constitution defining marriage as the union of only one man and one woman and prohibiting the creation or recognition of any legal status identical or similar to marriage. TEX. CONST. art.1, §32.

7.3 Article 1, Section 32 of the Texas Constitution states:

- (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.

7.4 Defendants have violated Texas Constitution- Article I, Section 32 which defines marriage as a union between a man and a woman.

7.5 By recognizing a definition of marriage contrary to the definition approved by voters in 2005, the Mayor Parker and the City of Houston violate Texas Constitution-Article I, Section 32.

7.6 Plaintiffs have no adequate remedy at law to correct the continuing deprivations of their constitutional rights by the Defendants actions in violation of the Texas Constitution.

**VIII. THIRD CAUSE OF ACTION
CITY OF HOUSTON CHARTER, ARTICLE II, SECTION 22**

8.1 Plaintiffs hereby incorporate and adopt by reference for all purposes each and every allegation contained in the preceding paragraphs and sections numbered I through VII.

8.2 City of Houston Charter, Article II §22, which was initiated by voter petition, states:

Except as required by State or Federal law, the City of Houston shall not provide employment benefits, including health care, to persons other than employees, *their legal spouses* and dependent children; nor shall the City provide any privilege in promotion, hiring, or contracting to a person or group on the basis of sexual preference, either by a vote of the city council or an executive order of the Mayor. Further, the City of Houston shall not require entities doing business with the City to have any of the above benefits or policies.

If any portion of this proposed Charter amendment is declared unlawful, then such portion shall be removed and the remainder of the Charter amendment will remain in effect. Any ordinance in conflict with this section of the Charter is hereby repealed and declared invalid. Article II, Section 22. (emphasis added.)

IX. EQUITABLE RELIEF-INJUNCTIONS

9.1 Plaintiffs hereby reincorporate and adopt by reference for all purposes each and every allegation contained in the preceding paragraphs and sections numbered I through VIII.

9.2 Plaintiffs seek a temporary restraining order, and temporary and permanent injunction enjoining Defendants, their agents, employees, and all other persons acting in active concert with them from, *inter alia*, providing benefits to same-sex spouses of employees that have been married in jurisdictions that recognize same-sex marriage providing benefits to same sex couples.

9.3 As demonstrated above, Mayor Parker's illegal directive/order is a violation of the law and Plaintiffs are likely to succeed on the merits of his lawsuit.

9.4 If the temporary restraining order and temporary and permanent injunction is not granted, Plaintiffs will suffer a probable injury. As a result of Mayor Parker's unlawful act, harm is imminent, the injury would be irreparable, and Plaintiffs have no other adequate legal remedy.

9.5 Plaintiffs are willing to post bond.

X. ACTUAL DAMAGES

A. Actual Damages

10.1 As a direct and proximate result of the acts and omissions of Defendants set forth above, Plaintiffs have incurred damages in excess of the minimum jurisdictional limits of this Court.

B. Attorney's Fees

10.2 Plaintiffs have been required to retain the services of the undersigned attorneys to bring this action. By virtue of Defendants' conduct as alleged above, an award of reasonable attorneys' fees to Plaintiffs is recoverable pursuant to §38.001 of the Texas Civil Practice & Remedies Code.

10.3 Accordingly, Plaintiffs request that the Court issue a temporary restraining order immediately, without notice, enjoining Defendants from providing benefits to same-sex spouses

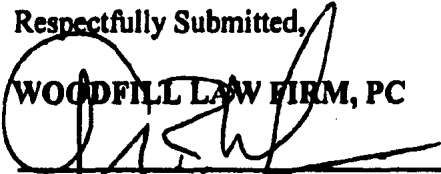
of employees that have been married in jurisdictions that recognize same-sex marriage. Further, Plaintiffs request that this restraining order be continued after hearing into a temporary injunction until final hearing, at which time a permanent injunction should be granted.

HAVING CONSIDERED THESE PREMISES, Plaintiffs request that the Court issue a temporary restraining order, temporary injunction and permanent injunction, restraining and enjoining Defendants and their agents and any persons acting in concert with them from providing benefits to same-sex spouses of City of Houston employees that have been married in jurisdictions that recognize same-sex marriages

Plaintiffs further request that Defendants be cited to appear and answer, and that upon final trial, Plaintiffs have and recover:

1. judgment against Defendants, for Plaintiffs' damages in an amount in excess of the jurisdictional limits of this Court;
2. reasonable attorney's fees;
3. pre-judgment interest as allowed by law;
4. post-judgment interest as allowed by law;
5. all costs of suits; and
6. such other and further relief to which Plaintiffs may be justly entitled.

Respectfully Submitted,


WOODFILL LAW FIRM, PC

JARED R. WOODFILL

State Bar No.: 00788715

ROBERT TALTON

State Bar No.: 19629800

River Oaks Green

3131 Eastside Street, Suite 450

Houston, Texas 77098

Telephone: 713-751-3080

Facsimile: 713-751-3058

Attorney for Jack Pidgeon and Larry Hicks,
Plaintiffs

JONATHAN M. SAENZ

State Bar No: 24041845

Texas Values

900 Congress, Ste 220

Austin, Texas 78701

VERIFICATION

STATE OF TEXAS

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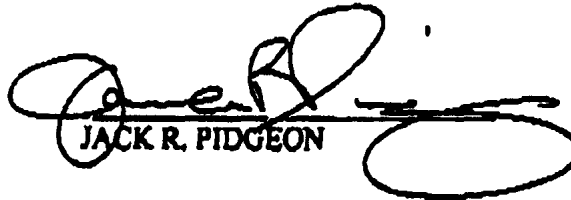
COUNTY OF HARRIS

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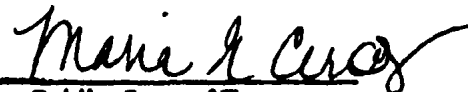
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BEFORE ME, the undersigned authority on this day personally appeared
JACK R. PIDGEON, who being by me duly sworn under oath stated as follows:

1. My name is Jack R. Pidgeon. I am over eighteen (18) years of age, and am fully competent to make this Affidavit.
2. I have read paragraphs 1 to 10 of Plaintiff's Original Petition, Application for Temporary Restraining Order, Application for Temporary Injunction, and Application for Permanent Injunction, and I have personal knowledge of the factual allegations stated therein and each of such factual allegation is true and correct.


JACK R. PIDGEON

SUBSCRIBED AND SWORN TO BEFORE me on the 17th day of December 2013, to
certify which witness my hand and official seal of office.


Notary Public, State of Texas

My Commission Expires:

9/30/2017

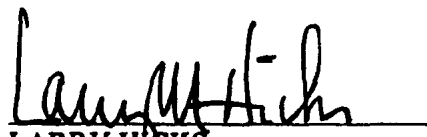


VERIFICATION

STATE OF TEXAS §
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COUNTY OF HARRIS §

BEFORE ME, the undersigned authority on this day personally appeared
LARRY HICKS, who being by me duly sworn under oath stated as follows:

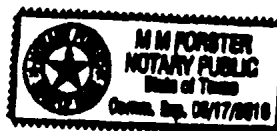
1. My name is Larry Hicks. I am over eighteen (18) years of age, and am fully competent to make this Affidavit.
2. I have read paragraphs 1 to 10 of Plaintiffs' Original Petition, Application for Temporary Restraining Order, Application for Temporary Injunction, and Application for Permanent Injunction, and I have personal knowledge of the factual allegations stated therein and each of such factual allegation is true and correct.


LARRY HICKS

SUBSCRIBED AND SWORN TO BEFORE me on the 17th day of December 2013, to
certify which witness my hand and official seal of office.


Notary Public, State of Texas

My Commission Expires:
5-17-2016





I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office this December 19, 2013

Certified Document Number: 58775509

Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

EXHIBIT B

CAUSE NO. 2013-75301

P-3
JNOHX

JACK PIDGEON AND
LARRY HICKS,
PLAINTIFFS,

v.

MAYOR ANNISE PARKER AND
CITY OF HOUSTON,
DEFENDANTS.

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IN THE DISTRICT COURT

HARRIS COUNTY, TEXAS

310 JUDICIAL DISTRICT

**ORDER ON PLAINTIFFS'
APPLICATION FOR TEMPORARY RESTRAINING ORDER**

CAME ON FOR CONSIDERATION Jack Pidgeon and Larry Hicks ("Plaintiffs") application for a Temporary Order, presented to the Court today. The Court examined the pleadings of Plaintiffs, the evidence presented, and the argument of counsel, and after due consideration finds that:

- 1) a cause of action against the Defendants exists;
- 2) Plaintiffs have a probable right to the relief sought; and
- 3) Plaintiffs will suffer a probable, imminent, and irreparable injury in the interim.

Therefore, Plaintiffs are entitled to a temporary injunction.

It is therefore ORDERED that the clerk of this Court issue a temporary injunction enjoining Defendants, Mayor Annise Parker and the City of Houston ("Defendants") and any other person(s) with knowledge of this Order, to cease and desist providing benefits to same-sex spouses of employees that have been married in jurisdictions that recognize same-sex marriage providing benefits to same sex couples. This order shall stand until further Order of this Court.

Plaintiffs have shown a probable injury because the harm is imminent; if the temporary restraining order does not issue, the injury would be irreparable; and the applicant has not other adequate legal remedy.

FILED

Chris Daniel
District Clerk

DEC 17 2013

Time: 5:30pm
By JNOHX
Harris County, Texas
Deputy

If the temporary injunction is not issued, the Defendants' unlawful policy providing benefits to same-sex spouses of employees that have been married in jurisdictions that recognize same-sex marriage providing benefits to same sex couples will remain in place; therefore, the harm to Plaintiffs' constitutional and statutory rights is imminent.

Plaintiffs' claims of statutory and constitutional injury and violation of the City of Houston's Charter, present a substantial threat that irreparable injury would result if the temporary restraining order does not issue.

Finally, Plaintiffs have no other adequate remedy at law because no amount of money can compensate Plaintiffs for the loss of their constitutional and statutory rights. However, Plaintiffs are not required to prove that they have no adequate remedy at law when they have a statutory right to an temporary restraining order, as provided by sections 106.002(a) and 110.005(a)(2) of the Texas Civil Practice and Remedies Code.

This temporary injunction is effective immediately and shall continue in force and effect until further order of this Court. This order shall be binding on Defendants, and any other person(s) who receive actual notice of this order by personal service or otherwise.

IT IS FURTHER ORDERED that this temporary injunction be effective immediately and the bond paid by Plaintiffs in the amount of \$250.00 for each Defendant, \$500.00 total payable to Defendants will extend to this temporary injunction. The Clerk of this Court is hereby ORDERED to issue citation and notice to Defendants, Mayor Annise Parker and the City of Houston.

This cause is set for ^{hearing} ~~trial~~ on January 6, 2014 at 9:00am

SIGNED on DEC 17 2013, 2013 at _____ m.

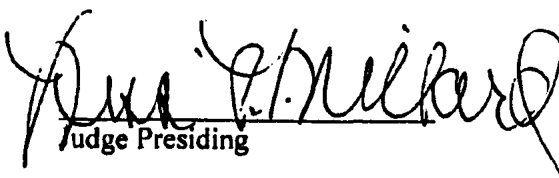
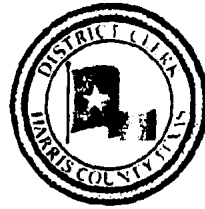

Judge Presiding

EXHIBIT C

Harris County Docket Sheet

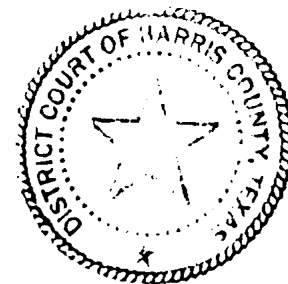
2013-75301**COURT:** 310th**FILED DATE:** 12/17/2013**CASE TYPE:** OTHER FAMILY**PIDGEON, JACK**

Attorney: WOODFILL, JARED RYKER V

VS.

PARKER, ANNISE**Docket Sheet Entries**

Date	Comment
12/17/2013	TRORX - ORDER SIGNED GRANTING TEMPORARY RESTRAINING ORDER
12/17/2013	(Movant present/ R was noticed and FTA) M for TRO - legal argument presented - all relief requested granted per Order; Hearing is set for 1/6/14 at 9 am;
12/20/2013	(CIRptr Clarisia Ramirez)(Both parties present thru counsel) City's M for Emergency Hearing - legal argument presented - denied/ M to Dissolve TRO - denied; Case set for hearing on 1/6/14 at 10 am - Ct requests Briefs be drafted by both parties and submitted for the Ct for review on or before 12/30/14;
12/20/2013	(CIRptr Clarisia Ramirez)(Both parties present thru counsel) City's M for Emergency Hearing - legal argument presented - denied/ M to Dissolve TRO - denied; Case set for hearing on 1/6/14 at 10 am - Ct requests Briefs be drafted by both parties and submitted for the Ct for review on or before 12/30/13;



STATE OF TEXAS
COUNTY OF HARRIS

I, Chris Decker, County Clerk of Harris County, Texas, certify that
this is a true and correct copy of the original as filed and/or recorded
by us, and I am duly sworn and approve on this date.
Witness my hand and seal of office this

DEC 27 2013

CHRIS DECKER, COUNTY CLERK
HARRIS COUNTY, TEXAS

Deputy

EXHIBIT D

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**JACK PIDGEON and
LARRY HICKS,
Plaintiffs**

v.

**MAYOR ANNISE PARKER and
CITY OF HOUSTON
Defendants**

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CIVIL ACTION NO.

LIST OF ALL COUNSEL OF RECORD

1. **Woodfill Law Firm, PC**
Jared R. Woodfill
Robert Talton
River Oaks Green
3131 Eastside Street, Suite 450
Houston, Texas 77098
Telephone: 713-751-3080
Facsimile: 713-751-3058

Counsel for Jack Pidgeon and Larry Hicks

2. **Texas Values**
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Austin, Texas 78701
Telephone: 512-478-2220
Facsimile: 512-478-2229

Counsel for Jack Pidgeon and Larry Hicks

3. **City of Houston Legal Department**
David M. Feldman
Lynette K. Fons
Judith L. Ramsey
John B. Wallace

900 Bagby, 4th Floor
Houston, Texas 77002
Telephone: 832.393-6438
Facsimile: 832.393-6259

Counsel for Mayor Annise Parker and The City of Houston

EXHIBIT E

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**JACK PIDGEON and
LARRY HICKS,
Plaintiffs**

v.

**MAYOR ANNISE PARKER and
CITY OF HOUSTON
Defendants**

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CIVIL ACTION NO.

INDEX OF DOCUMENTS BEING FILED

- Exhibit A: Plaintiffs' Original Petition, Application for Temporary Restraining Order, Application for Temporary Injunction, and Application for Permanent Injunction.
- Exhibit B: Order on Plaintiffs' Application for Temporary Restraining Order.
- Exhibit C: State Court Docket Sheet.
- Exhibit D: A list of all counsel of record including addresses, telephone numbers and parties represented.

EXHIBIT F



2013-75301 / Court: 310

CITY OF HOUSTON

Legal Department

Interoffice

Correspondence

To: Omar Reid

From: Mayor Annise Parker

Date: November 19, 2013

cc: David M. Feldman
City Attorney

Subject: Same-Sex Spousal Benefits

Attached is a legal opinion from the City Attorney concluding that the City's prohibition against the provision of benefits to same-sex spouses of city employees may no longer be considered constitutionally valid. As a result, I am hereby directing that same-sex spouses of employees who have been legally married in another jurisdiction be afforded the same benefits as spouses of a heterosexual marriage.

Annise D. Parker

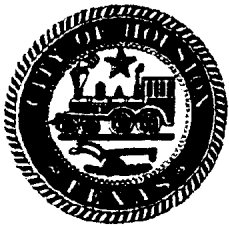


I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this December 19, 2013

Certified Document Number: 58775510

Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS



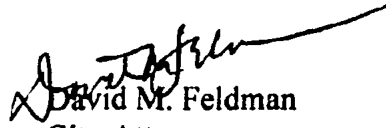
CITY OF HOUSTON

Legal Department

Interoffice

Correspondence

To: Mayor Annise D. Parker

From: 
David M. Feldman
City Attorney

Date: November 19, 2013

Subject: Legal Opinion Regarding Same-Sex
Spousal Benefits

ATTORNEY-CLIENT COMMUNICATION PRIVILEGED AND CONFIDENTIAL

A growing number of states have recognized same-sex marriage, causing the courts to give increasing attention to whether laws that do the opposite, and further discrimination based on sexual orientation, are unconstitutional. In light of this trend, and the requests by employees seeking benefits for same-sex spouses, you have asked me to review the City of Houston's authority to continue to deny benefits to same-sex spouses of employees that have been legally married in other jurisdictions, with a particular focus on the City Charter amendment of 2001, which has heretofore been relied on to prohibit the granting of such benefits.

The relevant City Charter provision, which was initiated by voter petition, reads as follows:

Except as required by State or Federal law, the City of Houston shall not provide employment benefits, including health care, to persons other than employees, *their legal spouses* and dependent children; nor shall the City provide any privilege in promotion, hiring, or contracting to a person or group on the basis of sexual preference, either by a vote of the city council or an executive order of the Mayor. Further, the City of Houston shall not require entities doing business with the City to have any of the above benefits or policies.

If any portion of this proposed Charter amendment is declared unlawful, then such portion shall be removed and the remainder of the Charter amendment will remain in effect. Any ordinance in conflict with this section of the Charter is hereby repealed and declared invalid. Article II, Section 22. (emphasis added.)

After reviewing relevant case law around the country and from the U.S. Supreme Court, I believe a court would now find that the continued application of Article II, Section 22 of the Houston City Charter to deny benefits to legally married same-sex spouses to be unconstitutional, primarily because it denies the employees of such spouses equal protection of the laws.

Equal Protection

The Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution provides that: "No State shall.....deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend XIV, §1. This prohibition applies with equal force to all governmental entities within the State of Texas, including the City of Houston, meaning that all persons similarly situated should, generally, be treated alike under the law. *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985); *Plyler v. Doe*, 457 U.S. 202, 216 (1982). In order to pass constitutional muster, the current application of the City Charter provision would have to survive rational basis review, at a minimum. In other words, there must be some rational connection between the discriminating law or policy in question and a legitimate governmental interest. See *Perry v. Schwarzenegger*, 704 F.Supp.2d 921, 1003 (N.D. Cal. 2010), *aff'd sub nom.*, *Perry v. Brown*, 671 F.3d 1052 (9th Cir. 2012), *vacated by*, *Hollingsworth v. Perry*, 133 S.Ct. 2652 (2013) (holding initiative's proponents had no standing to appeal the district court's judgment for the same-sex couple plaintiffs, and therefore effectively reinstating the district court's holding finding California's prohibition against same-sex marriage unconstitutional under due process and equal protection analyses).

In 1996, the U. S. Supreme Court considered the constitutionality of an amendment to the Colorado Constitution; the amendment prohibited all legislative, executive, or judicial action at any level of state or local government designed to protect the status of persons based on their "homosexual, lesbian, or bisexual orientation, conduct, practices or relationships." *Romer v. Evans*, 517 U.S. 620, 624 (1996). The Court held that the constitutional amendment failed for lack of a rational basis, finding that it could not be explained by "anything but animus toward the class it affects; it lacks a rational relationship to legitimate state interests." *Romer* at 632. Applying a similar test to the current application of Article II, section 22 of the City of Houston's charter yields a similar result: it seems not to further any governmental end, but simply makes homosexuals unequal to all other city employees. Application of the City of Houston's charter to deny benefits to legally married same-sex spouses arguably violates the Equal Protection Clause by treating employees differently on the basis of sexual orientation or sexual identity; that is, a female city employee may secure employment benefits for the husband she married in California, but a female city employee may not obtain the same benefits for a wife she married in California. The weight of recent court decisions would dictate that such a distinction does not serve a legitimate governmental interest.

The Supreme Court's DOMA ruling and its effect thus far

Significantly, after the U.S. Supreme Court struck down the federal Defense of Marriage Act (DOMA) in *U.S. v. Windsor*, 133 S.Ct. 2675; 2013 U.S. LEXIS 4935 (June 26, 2013), a number of federal agencies have announced that they will recognize same-sex marriages that were valid in the place of celebration, regardless where those couples now live. These agencies include the Office of Personnel Management, the U.S. Citizenship and Immigration Services, the Department of Defense, and the Federal Election Commission. In addition, the Internal Revenue Service issued an announcement on August 29th, stating that all legally married same-sex couples will be recognized as married for federal tax purposes, even if those couples reside in states that do not recognize same-sex marriage.

Texas DOMA

Although the U.S. Supreme Court struck down the federal Defense of Marriage Act's definition of marriage as a union between a man and a woman, the Court did not deprive individual states of the right to maintain their own definitions of marriage. Texas has done so in its constitution (Tex. Const. Art. I, Sec. 32), and has its own version of DOMA—a statute that prohibits political subdivisions of the state from giving effect to:

1. A public act, record, or judicial proceeding that creates, recognizes, or validates a marriage between persons of the same sex or a civil union in this state or any other jurisdiction; or
2. Right or claim to any legal protection, benefit, or responsibility asserted as a result of a marriage between persons of the same sex or a civil union in this state or any jurisdiction.

Tex. Fam. Code § 6.204.

This law has been challenged as unconstitutional, and while some courts have found it to be constitutional, others have found it to be constitutionally infirm. The Texas Supreme Court has an opportunity to rule on this law this term, but it may choose to decide the two pending cases on much narrower grounds. *In re Marriage of J.B. and H.B.*, (Tex. App. – Dallas 2010, pet. granted) 326 S.W. 3d 645; *State v. Naylor* 330 S.W.3d 434, (Tex. App. – Austin 2011, pet. granted). (Both cases involve same-sex couples who were married in other states and wish to be divorced in Texas.) While state law is significant authority for the City of Houston, the City could still face liability for complying with a law that is unconstitutional, or would cause it to apply its own laws in an unconstitutional manner.

Conclusion and Recommendation

In conclusion, it is my legal opinion that the City of Houston may extend benefits to legally married same-sex spouses on the same terms it extends benefits to heterosexual spouses. To apply Article II, section 22 of the City Charter differently would, based on my review of all relevant federal authority, be unconstitutional. Therefore, I recommend you give serious consideration to directing the Human Resources Department to offer benefits to same-sex spouses of city employees who were lawfully married in a state that recognizes same-sex marriage.