

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

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Plaintiffs

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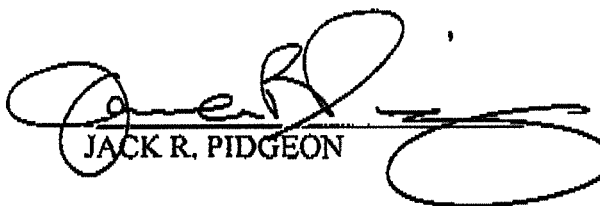
VERIFICATION

STATE OF TEXAS §
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COUNTY OF HARRIS §

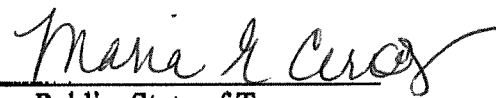
BEFORE ME, the undersigned authority on this day personally appeared
JACK R. PIDGEON, who being by me duly sworn under oath stated as follows:

1. My name is Jack R. Pidgeon. I am over eighteen (18) years of age, and am fully competent to make this Affidavit.

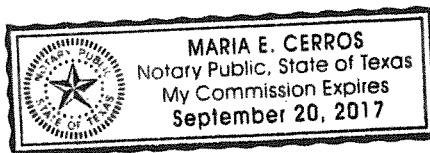
2. I have read paragraphs 1 to 10 of Plaintiff's Original Petition, Application for Temporary Restraining Order, Application for Temporary Injunction, and Application for Permanent Injunction, and I have personal knowledge of the factual allegations stated therein and each of such factual allegation 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



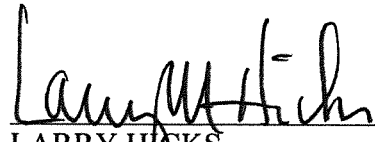
VERIFICATION

STATE OF TEXAS §
 §
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.

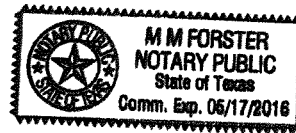
2. I have read paragraphs 1 to 10 of Plaintiffs' Original Petition, Application for Temporary Restraining Order, Application for Temporary Injunction, and Application for Permanent Injunction, and I have personal knowledge of the factual allegations stated therein and each of such factual allegation 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





CITY OF HOUSTON

Legal Department

Interoffice

Correspondence

To: Omar Reid

From: Mayor Annise Parker

Date: November 19, 2013

Annise D. Parker

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.

EXHIBIT "A"