Case No. 2014-44974

Jared Woodfill; Steven F. Hotze; F.N. Williams, Sr.; and Max Miller *Plaintiffs,*	§	In the District Court of
v.	§	Harris County, Texas
Annise D. Parker, Mayor; Anna Russell, City Secretary; and City of Houston *Defendants.*	§	152nd Judicial District Court

City of Houston's Response in Opposition
To Plaintiffs' Request for Temporary Injunction

All Defendants Join In This Response

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This Court should deny plaintiffs' request for a temporary injunction. Part I of this response discusses some background facts. Part II demonstrates that plaintiffs cannot satisfy their burden of proof as they seek an injunction to change, rather than preserve, the status quo. Plaintiffs cannot show an urgent or imminent (or any) "irreparable injury if the injunction is not granted" because their referendum would be included on the ballot (if at all) in November 2015 – over 14 months from now – not November 2014 as plaintiffs incorrectly assert. There also is no "irreparable injury" because the City voluntarily has stipulated that it will not enforce the Houston Equal Rights Ordinance ("HERO") until after a trial on the merits.

Part III demonstrates that plaintiffs cannot satisfy their burden of proof that they have a "probable right to relief" because plaintiffs are wrong on the facts and wrong on the law. Plaintiffs fabricated their lawsuit on the false foundational assumption that the City Secretary "validated" their referendum petition to repeal HERO. The City Secretary did not validate plaintiffs petition, rejected plaintiffs assertion, and today signed a sworn Affidavit confirming "The contention that my staff or I "validated" the July 3 Petition is not correct. I made no determination of the validity of the July 3 Petition." Plaintiffs also cannot overcome the fact that they and their petition-gathering associates failed to comply with mandatory provisions of the City Charter and, as a matter of law, plaintiffs' failures invalidated approximately 16,000 signatures they purport to have obtained (along with the approximately 20,000 signatures plaintiffs themselves knew were improper and withdrew).

Part IV demonstrates that plaintiffs also cannot satisfy their burden of proof that they have a "probable right to relief" because plaintiffs come to this Court with unclean hands and are not entitled to equitable relief. The evidence shows that plaintiffs and their associates

engaged in multiple instances of misconduct and fraud as they sought to advance their political agenda by scaring people into signing their petition based on gross misrepresentations about HERO's provisions. While plaintiffs are entitled to harbor their own personal beliefs – discriminatory or otherwise – they are not entitled to hijack and befoul the referendum petition process by flouting the City Charter and condoning fraudulent gathering of signatures.

This Court should deny plaintiffs' request for an injunction.

I.
Facts

This lawsuit is arises from the Houston City Council's passage of Ordinance No. 2014-530, better known as the Houston Equal Rights Ordinance ("HERO"). HERO prohibits discrimination 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 in city employment and city services, city contracts, public accommodations, private employment (excluding religious organizations), and housing. The City Council passed HERO on May 14, 2014, and HERO officially was published on June 3, 2014.

Displeased with the City Council's passage of the HERO, plaintiffs and others organized a petition drive to try to force the City Council either to repeal the HERO, or, if it was unwilling to do so, to place the ordinance on the ballot for a referendum vote.

The referendum petition process is governed by the multi-step referendum process found in Article VII-b of the City Charter. To be valid, a referendum petition must be signed and verified "in the manner and form" set out in the City Charter. The referendum

procedures cross-reference the procedures set out in the City Charter for recall petitions, under Article VII-a. City Charter Art. VII-b, §§ 3, 2(a), Art. VII-a. Among other requirements, a person collecting signatures on a petition (a "petition circulator") must sign an affidavit (a "circulator's affidavit") before a notary public on each page of signatures confirming (1) that the circulator is one of the signers of the petition, (2) that the statements in the petition are true, (3) that each signature on the page was made in the circulator's presence on the day and date it purports to have been made, and (4) that the signature is a genuine signature of the person whose name it purports to be. *See* City Charter Art. VII-a, § 3. Because the circulator's affidavit is an express requirement of the City Charter, if a page does not contain a proper circulator's affidavit, the signatures on that page are invalid and may not be counted as a matter of law. *See e.g.*, *In re Francis*, 186 S.W.3d 534, 539 (Tex. 2006) (stating that "the omission of any statutorily required information on a petition renders signatures on that petition invalid").

On July 3, 2014, plaintiffs and their fellow petition organizers presented to the City Secretary a purported Referendum Petition that they claimed included approximately 55,000 signatures, 31,000 of which they allege to have "pre-verified" – they withdrew approximately 24,000 signatures (over 40% percent of the signatures) for unexplained reasons. On August 4, 2014, the City Secretary sent Mayor Annise Parker a memorandum noting that 17,269 signatures were required under the City Charter to pass the referendum and stating, in the last paragraph, that:

> According to the City Attorney's Office and reviewed by the City Secretary the analysis of the City Attorney's Office, 2,750 pages containing 16,010 signatures do not contain sufficient acknowledgment as required by the Charter. Therefore, according to the City Attorney's Office ***only 2,449 pages***

containing 15,249 signatures can lawfully be considered toward the signatures required.

X-3 (All emphasis in this response is added). Plaintiffs' 15,249 lawful signatures were well short of the required 17,269 signatures.

On August 4, 2014, Mayor Parker and City Attorney David Feldman confirmed at a press conference that the referendum petition had been rejected, and the City issued a press release noting that "[t]housands of the signatures" on the referendum petition "failed to meet one or more of these requirements and had to be disregarded." X-1. Because the referendum petition did not contain the required number of valid signatures, the referendum process failed, and the City Council was not required to reconsider the HERO or place it on the ballot in the next City general election.

On August 5, 2014, plaintiffs filed this lawsuit. Judge Coselli that day held a TRO hearing, but did not enter an order. Judge Coselli required that the City submit a letter brief by 10:00 a.m. the next morning and, in that letter brief, the City stipulated that it would not enforce HERO until after a trial on the merits and noted that there was no reason for temporary relief because, contrary to plaintiffs' claim that the City must put the ordinance on the November 2014 ballot, the next city general election was not until November 2015. X-2.

On August 7, 2014, a second hearing was held before Judge Jeff Shadwick because Judge Coselli's appointment as ancillary judge had expired. Judge Shadwick did not enter a TRO and instead entered a "show cause order" stating that the City had agreed to suspend enforcement of the ordinance and set a temporary injunction hearing for August 15, 2014 at 1:30 p.m. in this Court.

II.

Plaintiffs Cannot Meet Their Burden Of Proof In Their Request For A Temporary Injunction

In *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002), the Texas Supreme Court explained that "A temporary injunction is an *extraordinary remedy* and does not issue as a matter of right." The Texas Supreme Court also explained that injunction applicants, like plaintiffs here, have the burden of proof: "To obtain a temporary injunction, the applicant must plead and prove three specific elements: (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim." *Id.*

Plaintiffs' burden here is even heavier because *plaintiffs do not seek to preserve the status quo*. Plaintiffs seek to *change* the status quo through a mandatory (not prohibitive) injunction, as plaintiffs (at pages 12-13 of their petition) seek "immediate reconsideration of the ERO by vote of the City Council," and if it is not "immediately repealed by vote of the City Council, then the immediate calling of an election on whether to repeal the ERO." In *Pharaoh Oil & Gas, Inc. v. Ranchero Esperanza, Ltd.*, 343 S.W.3d 875, 883 (Tex. App.—El Paso 2011, no pet.), the court noted that "A temporary mandatory injunction changes the status quo." *See also RP&R, Inc. v. Territo*, 32 S.W.3d 396, 400 (Tex. App.—Houston [14th Dist.] 2000, no pet.) ("There are two general types of temporary injunctions: prohibitive and mandatory. A prohibitive injunction forbids conduct, whereas a mandatory injunction requires it.").

A. Plaintiffs Are Off By A Year In Their Factually And Legally Mistaken Attempt To Show "Irreparable Injury" – The "Election" At Issue Is In November 2015 (Not 2014)

In *Operation Rescue-National v. Planned Parenthood of Houston & Southeast Texas, Inc.*, 975 S.W.2d 546, 554 (Tex. 1998), the Texas Supreme Court explained that "A prerequisite for injunctive relief is the threat of imminent harm." To obtain the extraordinary injunctive relief they seek, plaintiffs must – but cannot – "clearly establish" both "an actual irreparable injury if the injunction is not granted" and "a clear and compelling presentation of extreme necessity or hardship." In *RP&R, Inc. v. Territo*, 32 S.W.3d 396, 401 (Tex. App.—Houston[14th Dist.] 2000, no pet.), the court explained:

> The law is well settled that a trial court abuses its discretion in granting a temporary injunction unless it is clearly established by the facts that one seeking such relief is threatened with an actual irreparable injury if the injunction is not granted. While granting a mandatory injunction is within the sound discretion of the trial court, the grant should be denied absent a clear and compelling presentation of extreme necessity or hardship.

(Internal citations omitted).

This Court should deny plaintiffs' request for an injunction because (1) plaintiffs cannot carry their heavy burden of making "a clear and compelling presentation of extreme necessity or hardship," *id.*, (2) plaintiffs cannot prove they are "threatened with an actual irreparable injury if the injunction is not granted," *id.*, (3) plaintiffs' temporary injunction improperly asks the court to pre-judge the merits, (4) plaintiffs cannot show "a probable right to the relief sought," *Butnaru*, 84 S.W.3d at 204, and (5) plaintiffs cannot obtain equitable relief because of unclean hands. *See Sharma v. Vinmar Int'l, Ltd.*, 231 S.W.3d 405, 421 (Tex. App.—Houston [14th Dist.] 2007, no pet.),

Plaintiffs cannot establish a "clear and compelling presentation of extreme necessity or hardship," and they are *not* "threatened with an actual irreparable injury if the injunction is not granted." *RP&R, Inc.*, 32 S.W.3d at 401. Plaintiffs have attempted to manufacture a nonexistent "emergency" to support their demonstrably incorrect assertion of "irreparable injury."

The main basis for plaintiffs' injunction request is their misleading assertion at ¶ 10 of their petition that, they say, "the deadline for calling an election in November of 2014 is *August 18, 2014*. If injunctive relief is not given, then it will be too late for a timely election to be called, causing further irreparable harm to the Plaintiffs." Plaintiffs repeated their misleading assertion and misinformed Judge Coselli at the August 5, 2014 TRO hearing (transcript page 11) when they incorrectly said "the election of this November has to be called under state law no later than August the 18th."

Plaintiffs are off by a year! The "next city general election" is in November *2015*, not November 2014. There is *no* immediacy, *no* imminence, and *no* irreparable injury at issue in plaintiffs' improper request for injunctive relief.

Section 3 of Article VII-b of the City Charter – which plaintiffs cite and then selectively ignore at ¶ 10 of their petition – provides:

> If prior to the date when an ordinance or resolution shall take effect, or within thirty days after publication of same, whichever is later, a petition signed and verified, as required in section 2(a) hereof, by the qualified voters equal in number to ten percent of the total vote cast as calculated in accordance with Article V, Section 10 of this Charter, shall be filed with the City Secretary, protesting against the enactment or enforcement of such ordinance or resolution, it shall be suspended from taking effect and no action theretofore taken under such ordinance or resolution shall be legally valid. Immediately upon the filing of such petition the City Secretary shall do all things required by section 2(b) of this Article. Thereupon the Council shall immediately reconsider such ordinance or resolution and, if it does not entirely repeal the

> same, *shall submit it to popular vote at the next city general election, or the council may, in its discretion, call a special election for that purpose*; and such ordinance or resolution shall not take effect unless a majority of the qualified voters voting thereon at such election shall vote in favor thereof.

Article VII-b, Section 3.[1] The question, then, is when is the "next city general election"? It's *not* November 2014, as plaintiffs wrongly claim. ***The "next city general election" is November 2015, approximately 15 months from now.***

Section 5, Article V of the City Charter provides that "A City General Election shall be held on the first Tuesday after the first Monday in November *of every odd-numbered year* or such other day as may be prescribed by the general laws of the State of Texas." The next "odd-numbered year," of course, is 2015, and that's when "the next city general election" will take place per § 3 of Article VII-b. Even indulging the fiction that plaintiffs' referendum petition somehow could be considered legally sufficient – it most certainly is not – the vote plaintiffs seek would not occur until November 2015. Plaintiffs are wrong when they refer to their faux deadline of August 18, 2014 for "calling an election in November of 2014" – the relevant "next city general election" is a full year later in November 2015.

There is *not* any emergency or "extreme necessity or hardship" here, and plaintiffs are *not* "threatened with an actual irreparable injury if the injunction is not granted." *See RP&R, Inc.*, 32 S.W.3d at 401. Rather than rush to judgment, there is plenty of time to proceed in an orderly fashion, to permit the parties to conduct discovery, and for this Court to conduct a proper trial on the merits in the next six months.

[1] A copy of relevant excerpts from the City Charter is attached to this brief as X-10. As a charter of a Texas home rule city, however, the Houston City Charter it is entitled to judicial notice. *See Greenway Park Owners Ass'n v. City of Dallas,* 316 S.W.2d 74 (Tex. 1958).

This Court should deny Plaintiffs' request for a temporary injunction and should enter a DCO that sets this case for trial.[2]

B. Plaintiffs Cannot Show "Irreparable Injury" Because The City Voluntarily Has Stipulated That It Will Not Enforce HERO Until After A Trial On The Merits

In *Texas Industrial Gas v. Phoenix Metallurgical Corp.*, 828 S.W.2d 529, 532 (Tex. App.—Houston[1st Dist.] 1992, no writ), the court explained that to obtain injunctive relief, plaintiffs must point to something that is "more than just speculative, and the injury that flows from the act must be more than just conjectural." Plaintiffs' alleged "fear or apprehension of the possibility of injury alone is not a basis for injunctive relief." *Frey v. DeCordova Bend Estates Owners Ass'n,* 647 S.W.2d 246, 248 (Tex. 1983). Injunctions are not "intended to grant relief for past actionable wrongs or to prevent the commission of wrongs not imminently threatened." *Wiese v. Heathlake Cmty. Ass'n, Inc*., 384 S.W.3d 395, 399 (Tex. App. – Houston [14th Dist.] 2012, no pet.); *see also id.* ("the purpose of injunctive relief is to halt wrongful acts that are either threatened or in the course of accomplishment").

As a matter of Texas law, plaintiffs cannot fabricate the legally required "irreparable injury" by alleging some conjectural "harm" from the continued vitality of HERO while the

[2] Plaintiffs may attempt to salvage their meritless claim of irreparable harm by arguing that Council *could* call a special election under City Charter §3 of Article VII-b, but this argument fails as a matter of law. The Charter expressly states that calling a special election is a matter within Council's *discretion*. It provides that "Council shall immediately reconsider such ordinance or resolution and, if it does not entirely repeal the same, shall submit it to popular vote at the next city general election, ***or the Council may, in its discretion, call a special election for that purpose*** . . . ." As a matter of law and consistent with the separation of powers, plaintiffs cannot obtain a mandatory injunction ordering Council to perform an act entirely within its *discretion*. *See, e.g.*, *City of Shoreacres v. State of Texas*, 582 S.W.2d 211 (Tex. Civ. App.—Houston [1st Dist.] 1979, ref'd n.r.e.) ("Where its action is shown to be illegal or arbitrary, the court by writ of mandamus or by mandatory injunction may require the governing body to take affirmative action in order to perform its specified duties. However it is not the trial court's proper judicial function to direct the governing body in a specific method or manner of performing the required action."); *see also Cornette v. Aldridge*, 408 S.W.2d 935, 942 (Tex. Civ. App.—Amarillo 1966, writ denied) (finding a court may "compel the exercise of discretion where there has been a refusal to act at all," but cannot compel a state official "for the purpose of directing the exercise of discretion in a certain manner").

case is adjudicated because plaintiffs' alleged "fear" or "apprehension" is insufficient to justify temporary injunctive relief. *See Ark. La. Gas Co. v. Fender*, 593 S.W.2d 122, 123 (Tex. Civ. App. — Tyler 1979, no writ).

The City publicly has stipulated that it will not enforce HERO until after a trial on the merits. The City so stipulated before Judge Coselli, and that stipulation is reflected in Judge Shadwick's August 7, 2014 order. The City here again stipulates that it will not enforce HERO until after a trial on the merits.

This Court should deny plaintiffs' request for a temporary injunction because the City's agreement to forebear enforcement of HERO pending this Court's resolution on the merits eliminates any conjectural "injury," and because the issue of repeal will not be on the ballot (if ever) until November 2015.

C. Plaintiffs Cannot Satisfy Their Burden Of Proof By Improperly Asking This Court To Prejudge The Merits

In *Texas Foundries v. International Moulders Union*, 248 S.W.2d 460, 464 (Tex. 1952), the Texas Supreme Court explained that "It is error for a trial court to grant a temporary injunction, the effect of which would be to accomplish the object of the suit. To do so would be to determine rights without a trial." *Id.* In *Pharaoh Oil & Gas, Inc. v. Ranchero Esperanza, Ltd.*, 343 S.W.3d 875, 883 (Tex. App. – El Paso 2011, no pet.), the court cited *Texas Foundries* and similarly cautioned:

> We note, however, that the trial court decided ultimate issues related to the merits of the suit. In particular, the trial court determined that Ranchero has an exclusive right to the surface. The court also appeared to decide that Pharoah's use of the surface for storage is unreasonable. *These issues should not be finally resolved in a temporary injunction proceeding but should instead be reserved for a trial on the merits.*

In this case, plaintiffs are seeking to do exactly what Texas law prohibits. Plaintiffs improperly seek to obtain through a temporary injunction "all the relief they would be entitled to if successful in a trial on the merits." *See State Dep't of Highways & Pub. Transp. v. Elkins Lake Mun. Util. Dist*., 593 S.W.2d 401, 402-03 (Tex. App – Houston [14th Dist.] 1980, no writ)

In *Garza v. City of Mission*, 684 S.W.2d 148, 154 (Tex. App. – Corpus Christi 1984, writ dism' woj), the court explained that "***a trial court should not issue a temporary injunction if the applicant would thereby obtain substantially all the relief which is properly obtainable in a final hearing***." *See also Elkins Lake Mun. Distr.*, 593 S.W.2d at 402 (finding a mandatory temporary injunction improper where the consequence of forcing appellants to commence a proceeding would grant appellees all the relief they sought). The very purpose of a temporary injunction is to "preserve the subject matter of the controversy or maintain the existing situation, position, or condition pending final trial on the merits." *Id.* (citing *Janus Films, Inc. v. City of Fort Worth*, 163 Tex. 616, 358 S.W.2d 589 (1962)). Worse, plaintiffs here seek a mandatory injunction to *change* the status quo.

Ignoring these well-established rules of Texas law, plaintiffs improperly ask this Court to pre-judge the merits and grant plaintiffs the final relief they seek *without* requiring plaintiffs to prove their case at a trial on the merits. Plaintiffs ask for an injunction forcing "immediate reconsideration of the ERO by vote of the City Council." This Court cannot decide whether City Council reconsideration is required until after this Court decides the central underlying merits question of whether plaintiffs' HERO Referendum Petition complies with the City Charter's requirements for Council consideration. Texas law does not allow Plaintiffs breathlessly to cut corners and avoid their burden of proof by making false

claims of urgency, by asking the Court summarily to rule on the merits in a truncated proceeding that plaintiffs hope will enable them to side-step the overwhelming evidence of the highly fraudulent (and perhaps illegal) way plaintiffs and their associates conducted their signature campaign.

This Court should deny plaintiffs' request for a temporary injunction.

III.
Plaintiffs Cannot Show A Probable Right To Relief On The Merits

This Court should deny plaintiffs' request for a temporary injunction because plaintiffs must, but cannot, show "a probable right to the relief sought." *Butnaru*, 84 S.W.3d at 204. In *EMS USA, Inc. v. Shary*, 309 S.W. 3d 653, 657 (Tex. App.—Houston [14th Dist.] 2010, no pet.), the court explained that "To show a probable right of recovery, the applicant must present evidence to sustain the pleaded cause of action."

Plaintiffs cannot satisfy their burden of proof. Plaintiffs cannot present evidence to sustain their claim for declaratory judgment because plaintiffs' claim fails as a matter of fact and fails as a matter of law. As discussed in Part III below, plaintiffs also cannot show a probable right to relief because they come to this Court carrying a fraud-tainted petition in their unclean hands.

A. Plaintiffs Are 100% Wrong When They Falsely Say – As The Centerpiece Of Their Lawsuit – That The City Secretary "Validated" Their Petition

Plaintiffs allege (in bold and italics) at ¶ 13 of their petition that "the ERO Referendum Petition has been validated by the Houston City Secretary." This allegation is the cornerstone of plaintiffs' lawsuit. Plaintiffs are 100% wrong.

The City Secretary Anna Russell's memorandum (issued on August 4, 2014, though dated August 1) does not say she "validated" the petition, as plaintiffs falsely assert. The

City Secretary simply "verified" that at least 17,846 *signatures* corresponded with the printed name, were from registered voters in the City of Houston, and were signed on or after June 3, 2014, while noting that the City Attorney determined that 2,750 pages containing 16,010 signatures did not contain the acknowledgments required by the City Charter and, thus, pages containing "15,249 signatures can lawfully be considered towards the signatures required." The City Secretary's memo states:

> According to the City Attorney's Office and reviewed by the City Secretary the analysis of the City Attorney's Office, 2,750 pages containing 16,010 signatures do not contain sufficient acknowledgment as required by the Charter. Therefore, according to the City Attorney's Office ***only 2,449 pages containing 15,249 signatures can lawfully be considered toward the signatures required.***

X-3. In their lawsuit – as the key allegation in their lawsuit – plaintiffs flat out misrepresented the City Secretary's memo.

On August 14, 2014, City Secretary Anna Russell addressed and debunked plaintiffs' false allegations, and signed an Affidavit showing that plaintiffs' entire lawsuit is based on plaintiffs' trumped-up false notion that their referendum petition was validated when, in fact, it was not. The City Secretary swore under oath in her Affidavit that:

> ***The contention that my staff or I "validated" the July 3 Petition is <u>not</u> correct. I made no determination of the validity of the July 3 Petition***. Rather, I verified that 17,846 signatures on the Petition contained: (1) a signature, (2) a printed name corresponding to the signature, (3) a voter registration number or residence address within the City of Houston, and (4) a date of signing on or after June 3, 2014.

Russell Aff. at ¶ 12 X-4. The City Secretary's Affidavit confirms that she reviewed plaintiffs' petition to verify only the signature, printed name, voter registration number, or residence address, and date of signing of the persons who signed, and that she was advised that the City Attorney was simultaneously reviewing the petition for actual compliance

with the acknowledgement requirements of the City Charter. *Id.* at ¶¶ 8-10, 14. The City Secretary reviewed the City Attorney's analysis, attached a copy of the analysis as a part of her memo, and stated that the City Attorney determined that the petition did *not* have a sufficient number of signatures because "***only 2,449 pages containing 15,249 signatures can lawfully be considered toward the signatures required.***" City Sec. Memo at 2, X-3; Russell Aff. at ¶ 14, X-4; *see also* City Charter, Art. VII-a, § 3.

Plaintiffs' entire lawsuit is based on their failure of understanding. Plaintiffs are wrong on the facts, wrong on the law, and cannot meet their burden to prove "a probable right to the relief sought."[3]

B. Plaintiffs Compound Their Error By Attempting To Rely On *In re Roof*

Plaintiffs amplify the error of their false assumption about their petition's validity and sufficiency by misrepresenting the Fourteenth Court of Appeals' decision in *In re Gregory R. Roof,* 130 S.W.3d 414 (Tex. App.—Houston [14th Dist.] 2004, no pet.). At ¶ 15 of their petition, plaintiffs miscited *In re Roof* for the incorrect proposition that, they say, the City's obligation is to determine "whether the minimum required number of signers are registered to vote within the City of Houston. Nothing more, nothing less."

[3] Plaintiffs try to defend their legally insufficient petition by claiming that the City Attorney should have played no role in reviewing the petition. That is incorrect. The fact that the City Attorney was involved in reviewing the sufficiency of the petition and its compliance with the City Charter is perfectly appropriate. The City Attorney is expected – indeed required – to advise other departments and department heads (including the City Secretary) about the legal requirements of their jobs. *See* Code of Ordinances, Chapter 2, art. VII, § 2-258 ("[The City Attorney] shall render opinions and advice to the mayor or city council upon any legal matter affecting municipal affairs. He shall render opinions and advice to city boards, commissions, or directors of city departments . . . upon any legal matter affecting the affairs of such board, commission or department."). The fact that the City Attorney offered such advice here with respect to the petition's noncompliance with the City Charter is entirely proper, and the City Secretary is entitled to rely on that advice. *See e,g., Navarro v. City of San Juan, Tex.*, No. 7:12-CV-66, 2014 WL 2694174, at *10 (S.D. Tex. June 13, 2014) (finding city secretary did not violate any duty under city charter either by consulting with city attorney, outside counsel, an expert, and the Secretary of State's website to determine proper procedure for validation of signatures or by receiving assistance to investigate and perform that process from those parties).

Plaintiffs made a similar misrepresentation at the TRO hearing where plaintiffs (at page 9 of the TRO hearing transcript) cited "In Re Roof" and incorrectly said the case was "about well, you know, maybe, maybe I can't read one of the signer's signatures, it's not legible or, you know, I'm not sure that the circulator signed this correctly, those kinds of questions aren't justiciable, because this goes on the ballot." That's what plaintiffs said.

The *In re Gregory R. Roof* court itself made clear that none of that was at issue. The *In re Gregory R. Roof* court expressly noted that the number of valid signatures on the petition was *not* at issue in that case, and the case did *not* involve any dispute about the number of signatures, signature qualifications, or defects in the form of the petitions. *See id.* at 415 ("The City Secretary did not contest the number of qualified signatures on the petition, but replied that she could not certify the petition because, in her estimation, the proposed charter amendment conflicts with the city charter, general state law, and the Texas Constitution."); *id.* at 417 n.5 ("All parties agreed that the petitions complied with article 1170 and the city did not argue that there was a defect in form in the petitions.").

C. Plaintiffs Misstate The Law By Claiming The Circulator Affidavit Is Not Required

Plaintiffs' claim for relief is based on the false premise that they need only present signatures from persons registered to vote in Harris County, and is based on their contra-legal hope that that they somehow can get away with failing to comply with the City Charter's unambiguous mandatory requirement that petition circulators must provide the required oath and acknowledgment. Plaintiffs (at ¶ 13 n.2 of their petition) offer their misguided notion that "sufficient acknowledgment" of a signature is a "gratuitous insertion of a requirement not specified in the Charter." Plaintiffs are wrong as a matter of law.

The City Charter expressly includes exactly such a requirement – a requirement plaintiffs know they and their associates failed to satisfy.

- Article VII-(b) of the City Charter provides that a petition for referendum must be "signed and verified, as required by section 2(a)."

- Section 2(a) requires the petition be "signed and verified in the manner and form required for recall petition in article VII-a."

- Section 3 of Article VII-a, titled "Form of Petition," expressly requires the person collecting signatures on a petition (a "petition circulator") to sign an affidavit (a "circulator's affidavit") before a notary public on each page of signatures confirming that (a) the circulator is one of the petition signers, (b) the statements in the petition are true, (c) each signature on the page was made in the circulator's presence on the day and date it purports to have been made, and (d) the signature is a genuine signature of the person whose name it purports to be.

Section 3 of Article VII-a provides in particular that:

> Each signature to said petition shall be proved or acknowledged . . . as follows:
>
> STATE OF TEXAS §
> COUNTY OF HARRIS §
>
> I, _____, being first duly sworn on oath depose and say that I am one of the signers of the above petition, that the statements made therein are true, and that each signature appearing thereto was made in my presence on the day and date it purports to have been made, and I solemnly swear that the same is a genuine signature of the person whose name it purports to be.
>
> _____
>
> Sworn to and subscribed before me the ____day of _____, 2____.
>
> Notary Public, State of Texas

Contrary to plaintiffs' false notion that the circulator oath is "a gratuitous insertion of a requirement not specified in the Charter," the truth is that the City Charter specifically

requires it. Plaintiffs quoted some City Charter provisions in their petition, but plaintiffs conspicuously were silent about § 3 of Article VII-a.

The City Charter expressly requires a proper affidavit from petition circulators and, thus, all signatures on petition pages without a proper circulator affidavit are legally invalid and may not be counted. In *In re Francis*, 186 S.W.3d 534, 539 (Tex. 2006), the Texas Supreme Court confirmed that "We agree that the omission of any statutorily required information on a petition renders signatures on that petition invalid." That is particularly true here, because Texas courts treat requirements for repeal petitions of this sort as "analogous to requirements for candidates to get on the ballot, which repeatedly have been held mandatory and ***therefore require strict compliance***." *City of Sherman v. Hudman*, 996 S.W.2d 904, 918 (Tex. App.—Dallas 1999, pet. granted, judgm't vacated w.r.m.).[4]

Plaintiffs told Judge Shadwick at the TRO hearing (at transcript page 3) that plaintiffs "helped organize the entire effort, along with the Area Council of Pastors…." Plaintiffs knew all about the legal requirements for circulator affidavits at the time they and their associates conducted their signature gathering campaign. Indeed, they stressed to their signature-gathering colleagues that a defective circulator's affidavit would invalidate every signature on the page.

The head of the Houston Area Pastor Council, Dave Welch, worked with plaintiffs to solicit signatures for the referendum petition and led a videotaped training session on how to gather signatures properly. Welch's videotaped training session is available on the

[4] The judgment in *Hudman* was vacated pursuant to settlement, but the Supreme Court did not set aside the court of appeals opinion. *See* Tex. R. App. Proc. 56.3; *see* Texas Supreme Court Order Sheet, February 3, 2000 (https://www.supreme.courts.state.tx.us/historical/2000/feb/020300.htm).

internet (along with his false and inflammatory mischaracterizations about the anti-discriminatory protections HERO provides). In the video, Welch makes clear that the plaintiffs' "coalition" knew there were specific requirements for the circulator properly to sign and notarize the petition, and knew their failure to comply "would invalidate the entire sheet" of signatures and they would be "thrown out." Welch told a room full of soon-to-be signature gatherers/petition circulators:

 **Pastor Dave Welch**	You can't just drop this – drop this [petition sheet] by, ***it has to be notarized before it actually counts***. If the person who is dropping - who completes the petition doesn't have it notarized and just drops it off and leaves, that sheet can't be used. Okay. ***Those steps are very important.***

See http://vimeo.com/98676462 (Welch speaking at minute 11:07).

 **Pastor Dave Welch**	It's less important if someone who's not a registered voter signs the petition. That doesn't invalidate the petition, but ***if somebody goes in to notarize the sheet of the petition who is not a registered voter that would invalidate the entire sheet. OK, let me repeat that so that everybody really understands that. If somebody inadvertently signs the petition who is not a registered voter, that signature is not valid, but the rest of them will be. But, if the person collecting them who takes that to the notary to have it notarized and signed is not a registered voter in the City of Houston, the whole sheet is thrown out***. OK. So it's very important that we validate that whoever who is in the church is gathering the signatures and overseeing that

	is a registered voter. It's not that hard. In most of our churches we have registered voters. We just need to make sure.

See http://vimeo.com/98676462 (Welch speaking at minute 6:30).

Contrary to plaintiffs' incorrect made-for-litigation notion that the circulator's affidavit supposedly is not a required part of the petition, the truth is that the City Charter expressly requires it, *and* plaintiffs and their associates knew it, and knew noncompliant circulator affidavits would disqualify every signature on the page.

D. The City Correctly Determined That At Least 2,750 Pages Containing Roughly 16,010 Signatures Were Not Valid

Plaintiffs cannot show "a probable right to relief" because the City properly concluded, as stated in the City Secretary's memo, that "2,750 pages containing 16,010 signatures do not contain sufficient acknowledgment as required by the Charter." That left a maximum of 15,249 potentially valid signatures, which is well below the 17,269 required. (Plaintiffs' petition refers to over 50,000 signatures, but plaintiffs and their associates *themselves* crossed-out approximately *24,000* signatures because they were not registered voters and for other reasons.) The City Secretary attached a 26-page exhibit to her memo listing each of the 2,750 invalid pages, showing the number of signatures on each page, and identifying the reason each page does not comply with the City Charter's requirements.

First, 347 pages with 2,694 signatures were invalid because there was no record that the circulator had signed the petition as required by Section 3 of Article VII-a.

Second, the circulator's name was illegible on 764 pages with more than 4,900 signatures and, thus, there was no way to confirm the circulator signed the petition as

required. This defect is a result of plaintiffs' and their associates' failure to include a space for the circulators to sign *below the oath* as required by the Charter (and as is typical of any written oath). Some circulators signed in the blank following the first word of the oath ("I, _____, being first duly sworn on oath . . ."), a space designed for the circulator to print his or her name to identify who is taking and signing the oath. Just as the requirements for a valid petition signature provide for the individual to include both the signer's printed name and signature, the space in the oath where the name would typically be printed permits the person to be identified if the signature is illegible. *See* Tex. Elec. Code Ann. § 277.002(a)(1)(A).

Third, there was no circulator's signature on pages with more than 6,400 signatures. Often the circulator's name would be printed in the blank found at the beginning of the oath ("I, _____, being first duly sworn on oath . . ."), but the circulators did not affix their signatures to the petition page. That is legally insufficient. Section 3 of Article VII-a of the City Charter expressly provides that the oath is to be sworn to and subscribed before a notary. Although some oaths may be taken orally (e.g., a witness in court or deposition), an oath must be signed in order to be subscribed as the City Charter requires. *See Wasson v. Clarendon Coll. & Univ. Training Sch.*, 131 S.W. 852, 852-53 (Tex. Civ. App.—Austin 1910, no writ) ("'Subscribe' means to sign one's own name beneath at the end of an instrument"); *Wade v. State*, 2 S.W. 594 (Tex. Ct. App. 1886) (equating sign with subscribe).

Fourth, on 128 pages with 615 signatures, circulators improperly notarized their own oath. Texas Government Code § 406.008(b)(2) requires the Secretary of State to provide a notary a list of prohibited acts with her commission, and Item 6 on that list of

prohibited acts is that "A Notary Public may not: . . . (6) notarize the notary's own signature." Notary Public Information, *List of Prohibited Acts,* at http://www.sos.state.tx.us/statdoc/edinfo.shtml#List. It has long been "established in this state, that a person who identifies himself with the transaction by placing his name on the face of an instrument as an active and essential party thereto, is not competent to give it authenticity as an officer." *Clements v. Texas Co.*, 273 S.W.993, 1004 (Tex. Civ. App.—Galveston 1925, writ ref'd).

Fifth, an additional 243 pages with 1,347 signatures were invalidated for other reasons, including (1) on some pages, the sponsors had crossed out all of the signatures on the page, so there were no remaining signatures on the page to be considered, and (2) some people signed the petition before June 3, 2014, but the petition was filed with the City Secretary on July 3, 2014, the last day it could have been filed. *See* City Charter art. VII-b, § 3 ("within thirty days after the publication of [the ordinance]"). According to the § 3(a) of Article VII-a, however, "no signature to such petition shall remain effective or be counted which was placed thereon more than thirty days prior to the filing of such petition or petitions with the City Secretary." Thus, the signatures of persons who signed before June 3 are not valid, and they may not serve as circulators. Also, in some cases, (3) the notary did not sign the verification, there was no notary seal affixed, or the notary's commission had expired; (4) on other pages, there was no circulator listed; and (5) on at least one page, the notary's verification was dated before any of the signatures.

The chart below summarizes and reflects the various defects detailed above:

Reason Page or Signatures Invalid	**Pages Invalid**	**Signatures Invalid**

Reason Page or Signatures Invalid	Pages Invalid	Signatures Invalid
The circulator did not sign the petition or was among the names deleted from the petition by Plaintiffs. *See* City Charter, art. VII-a § 3 (requiring the circulator to sign the petition). All signatures verified by that circulator are therefore invalid.	347	2694
The circulator's name was illegible and therefore could not be verified. *See* City Charter, art. VII-a § 3 (requiring the circulator to sign the petition). All signatures verified by that circulator are therefore invalid.	764	4911
The circulator did not sign his or her name to the verification. *See* City Charter, art. VII-a § 3 (expressly requiring the circulator to swear and subscribe his or her oath before a notary). All signatures verified by that circulator are therefore invalid.	1268	6443
The circulator notarized his or her own signature, violating the basic proscription under Texas law that a notary may not notarize his or her own signature. All signatures verified by that circulator are therefore invalid.	128	615
The circulator signed his or her name more than thirty days before the petition was submitted to the City. *See* City Charter, art. VII-a § 3a (explaining signatures are only effective if signed within thirty days of the petition's submission to the City Secretary). All signatures verified by that circulator are therefore invalid.	71	519
The page is not verified by a circulator; is not notarized by a notary; or has other problems related to the notarization. *See* City Charter, art. VII-a § 3 (expressly requiring the circulator to verify the signatures and to swear and subscribe his or her oath before a notary). All pages containing those problems are therefore invalid.	59	378
Additional pages were invalid for other reasons.	113	450
Total	2,750	16,010

That's plenty of defects, and it's just what the City has identified in the short time so far. There almost certainly are *many* other invalid pages and signatures – plaintiffs and their associates themselves found fault with over 20,000 signatures. Indeed, the 26-page

attachment to the City Secretary's memo listing specific pages contains a note on page 26 to the total number of valid pages that says: "Please note that this count includes pages that may not be valid, because the circulator did not sign below the acknowledgement." This refers to the fact that the Section 3 of Article VII-a of the City Charter requires the circulator's oath to be "sworn to and subscribed" before a notary. Under Texas law, for an oath to be subscribed, it must be signed, and the signature must come *below* the oath. *See Colter v. State*, 6 S.W.2d 769 (Tex. Crim. 1928) (distinguishing between "sign" and "subscribe" on the basis that the location of a signature is unimportant if the statute uses the word "sign"); *Wasson*, 131 S.W. at 852-53 ("'Subscribe' means to sign one's own name beneath at the end of an instrument"); *Wade*, 2 S.W. 594 ("'subscribe,' which means to place a signature at the bottom of a written instrument;" holding that a signature "at some other place in the instrument will not authenticate the statement"). That is consistent with the literal meaning of the word and its Latin origin (*subscribere*, literally meaning to write beneath, Webster's Seventh New Collegiate Dictionary, at 876 (1963)), and signing an oath below the oath is important because signing elsewhere (such as above the oath) does not make it clear that the signature is intended as evidence that the person is agreeing to the statement contained in the oath. To be sufficient, an affidavit must be direct and unequivocal so that it would support a charge of perjury. *See, e.g., Burke v. Satterfield*, 525 S.W.2d 950, 955 (Tex. 1975). A signature elsewhere on the document does not afford the direct and unambiguous assurance that the individual is swearing to the content of the oath.

This is a serious issue here because plaintiffs and their associates oddly *did not follow the City Charter's form* and, instead, reproduced the oath on all the versions of their

referendum petition *without a place for the circulator to sign*. As a result of plaintiffs' suspect approach, some persons signed above the oath, some signed in the blank for identifying the circulator ("I, _____, being first duly sworn"), and others did not sign at all. Pages where circulators did not sign at all do not count as valid signature pages, and pages where circulators did not sign below the oath (and thus did not subscribe to it) also do not meet the requirements of the City Charter. Plaintiffs and their associates did not comply with the City Charter and did not obtain the required number of legally valid signatures even without reaching this issue whether a circulator who failed to sign below meets the requirement of a subscribed oath.

IV.

Plaintiffs Cannot Show A Probable Right to Relief
Because They Have Unclean Hands And Are Not Entitled To Equitable Relief

Plaintiffs cannot meet their burden of proof to show the requisite level of imminent threat of "irreparable injury," and cannot meet their burden to show a "probable right to relief." Even if plaintiffs somehow could meet their burden on these critical points – they cannot –plaintiffs still would not be entitled to the injunctive relief they seek. The petition process managed by plaintiffs and their self-styled "coalition" is rife with badges of fraud and misconduct and plaintiffs' unclean hands bars them from obtaining equitable relief. This, of course, will be the subject of discovery and a key issue at trial.

A. Plaintiffs And Their Associates Have Unclean Hands

In *Sharma v. Vinmar International, Ltd.*, 231 S.W.3d 405, 421 (Tex. App.—Houston [14th Dist.] 2007, no pet.), the court explained that "A party seeking an equitable remedy such as an injunction, must do equity and come into court with clean hands." The doctrine of unclean hands "assumes even wider and more significant proportions" in this

case "where a suit in equity concerns the public interest as well as the private interests of the litigants." *Precision Instrument Mfg. Co. v. Auto. Mainten. Mach. Co.*, 324 U.S. 806, 815 (1945).

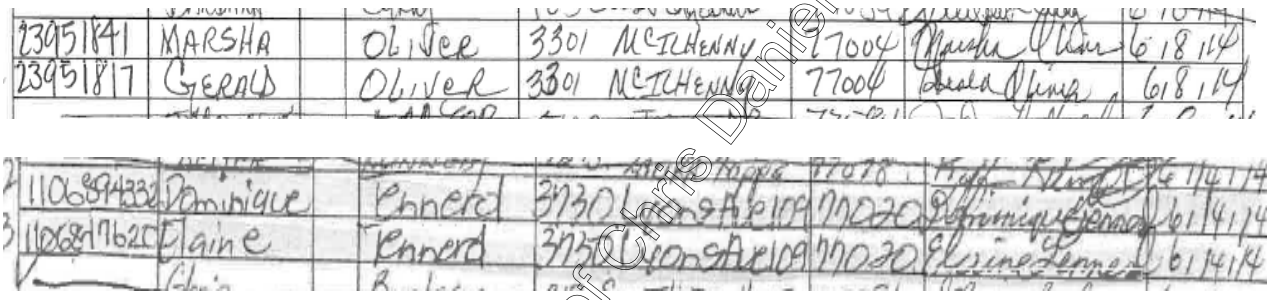
The evidence shows that plaintiffs and their coalition associates engaged in multiple instances of misconduct, scare tactics, and potential fraud. The evidence of plaintiffs' unclean hands highlights the importance of the City's careful review, and highlights the importance of adherence to the City Charter's requirements that serve to safeguard the integrity of the petition process and ferret out and prevent abuse of the type plaintiffs and their associates are trying to perpetrate here.

The City has a valid legal interest in applying the City Charter's requirements "to protect the integrity and reliability" of the referendum process, and the City's interest "is particularly strong with respect to efforts to root out fraud." *Doe v. Reed*, 561 U.S. 186, 187-88 (2010). The U.S. Supreme Court has made clear that the City's "interest in preserving electoral integrity is not limited to combating fraud. That interest extends to efforts to ferret out invalid signatures caused not by fraud but by simple mistake, such as duplicate signatures or signatures of individuals who are not registered to vote . . . ." *Id.* n.8; *see also Storer v. Brown*, 415 U.S. 724, 730 (1974) ("[A]s a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes."); *In re Bell*, 91 S.W.3d 784, 785 (Tex. 2002) (finding the statutory purpose of preventing election fraud serves as a guide when construing petition requirements).

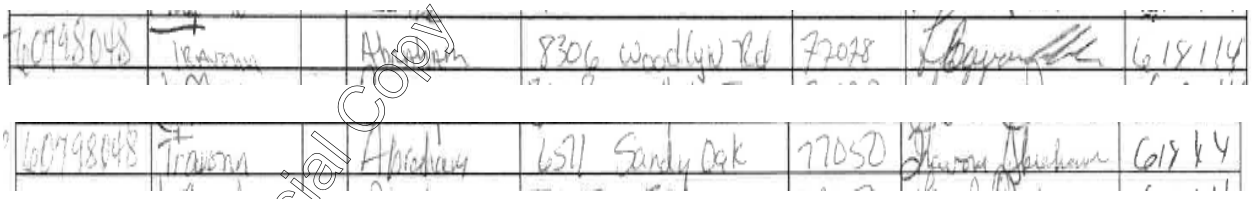
B. Plaintiffs' Signature Pages Are Rife With Fraud

Many aspects of the plaintiffs' petition process indicate potentially serious wrongdoing that forecloses the availability of injunctive relief. The full extent of wrongdoing by plaintiffs and their associates will be explored more fully during discovery and a trial on the merits.

Multiple different individuals' signatures improperly are signed in the handwriting of a single individual.[5] This indicates that many individuals purporting to sign the petition did not in fact do so.



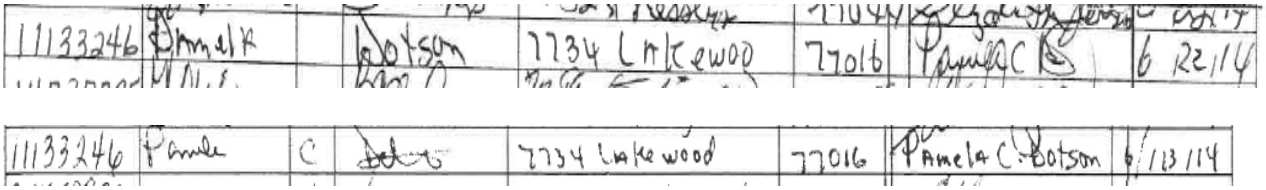
Multiple individuals' names were signed more than once on a petition, sometimes in the same handwriting, and sometimes in different handwriting:[6]



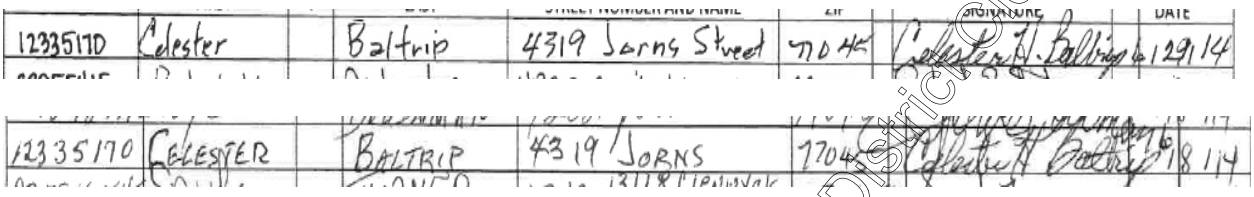
[5] *See, e.g.*, X-5, Petition Excerpts, at 3061, 3226; *see also id.* at 1, 72, 172, 366, 451, 706, 1235, 1609, 1934, 2148, 2160, 2166, 2245, 2368, 2688, 2732, 3042, 3199, 3225, 3337, 3341, 3952, 4341, 4508, 4524, 4674, 4840, 4856, 5033, 5063, 5081, 5146.

[6] *See, e.g.*, X-6, Petition Excerpts, at 2245 & 3042 (Travonn Abraham at different addresses); 1168 & 2270 (Pamela Dotson at the same address); 1536 & 2160 (Celester Baltrip at the same address); *see also id.* at 2732 & 5063 (Wilma Warren at the same address); 3061 & 3064 (Lawrence Reese at the same address); 3129 & 3731 (Patsy Simien at the same address); 3337 & 3341 (Bruce Sampay at the same address); 3461 & 3465 (Wilma Morris at the same address); 3583 & 3749 (Sharron Jones at different addresses); 3908 & 3945 (Michael Simmons at the same address); 4019 & 4178 (Angela/Annie Lemons at the same address); 4840 & 5081 (Lafondria Pennie at different addresses).

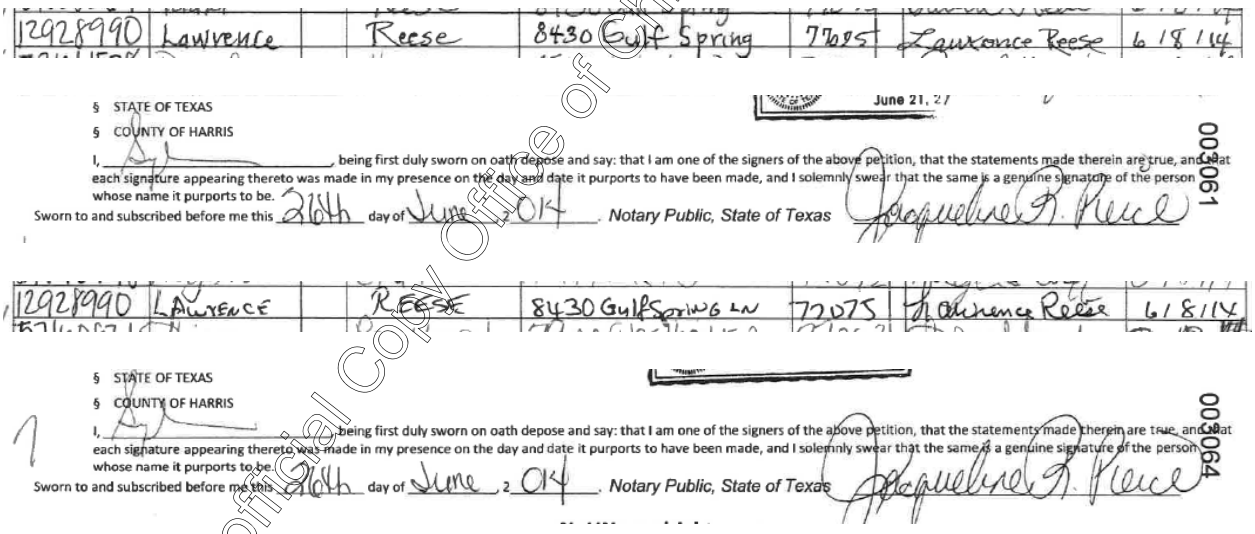
and



and



The *same* person sometimes signed the petition in front of the same circulator on the *same* day, such as Lawrence Reese who signed twice before the same circulator on June 8, 2014:[7]



§ STATE OF TEXAS
§ COUNTY OF HARRIS

I, _____, being first duly sworn on oath depose and say: that I am one of the signers of the above petition, that the statements made therein are true, and that each signature appearing thereto was made in my presence on the day and date it purports to have been made, and I solemnly swear that the same is a genuine signature of the person whose name it purports to be.

Sworn to and subscribed before me this 26th day of June, 2014. *Notary Public, State of Texas*

0003061

§ STATE OF TEXAS
§ COUNTY OF HARRIS

I, _____, being first duly sworn on oath depose and say: that I am one of the signers of the above petition, that the statements made therein are true, and that each signature appearing thereto was made in my presence on the day and date it purports to have been made, and I solemnly swear that the same is a genuine signature of the person whose name it purports to be.

Sworn to and subscribed before me this 26th day of June, 2014. *Notary Public, State of Texas*

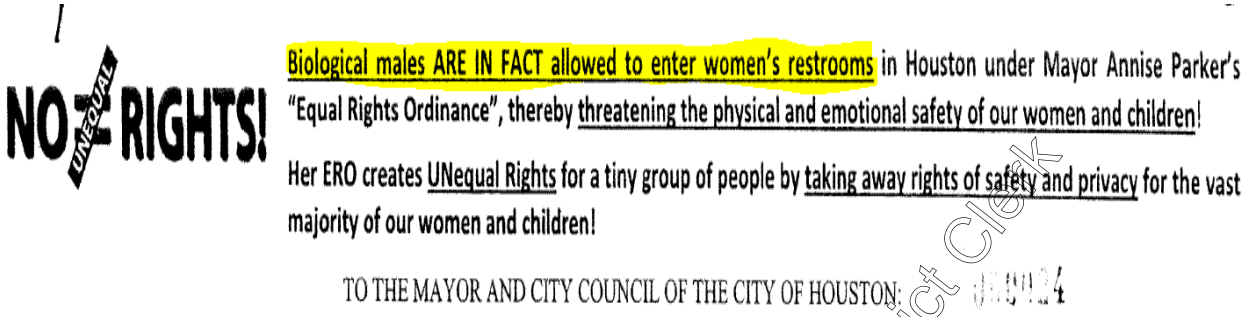
0003064

C. Plaintiffs' Petition Is Tainted By Plaintiffs' False Characterizations, False Representations To This Court, And Scare Tactics

Plaintiffs and their associates appear intentionally to have used falsehoods and taken wild liberties with the truth as they sought to frighten people into supporting and signing

[7] *See* X-7, Petition Excerpts, at 3061 & 3064.

their referendum petition. Their petition includes this false and inflammatory propaganda across the top:



Plaintiffs' falsity might be dismissed as misguided potty humor if it were remotely funny. But this is serious. Plaintiffs' restroom bit is the lead hook plaintiffs used to confuse and scare people into signing their petition. It's false. And plaintiffs know it.

While a draft of the ordinance did address restroom access, the final as-adopted version of HERO does not. On July 3, 2014, Mayor Parker made this clear to plaintiffs in her public press release:

> Since City Council approval of the ordinance in May, opponents and the uninformed have been spreading a lot of misinformation. Bathrooms have been the subject of the most heated discussion. Mayor Parker stressed that there is no mention of the use of bathrooms in the ordinance. "Let's be clear, this in no way grants men the unfettered right to access women's bathrooms or locker rooms," said Parker. "It is simply not true and I know Houstonians are wise enough to see through the misrepresentations and exaggerations."

X-8. On June 23, 2014, the City Attorney similarly confirmed in writing that "As originally presented to City Council, HERO included additional language to clarify the use of restroom facilities by transgender individuals. As finally adopted, the ordinance makes no special provision for the use of restrooms or other similar facilities…." X-9. In fact, the City by ordinance expressly makes it unlawful "for any person to knowingly and intentionally enter any public restroom designated for the exclusive use of the sex opposite

to such person's sex without the permission of the owner…or other person in charge of the premises, in a manner calculated to cause a disturbance," *Id.* (citing Code of Ordinances §28-30).

By featuring their false "restroom" issue, plaintiffs and their fellow petition organizers deceptively chose to flout the truth for political gain. Plaintiffs and their associates used scare tactics and false pretenses to try to garner sufficient signatures to defeat the ordinance.

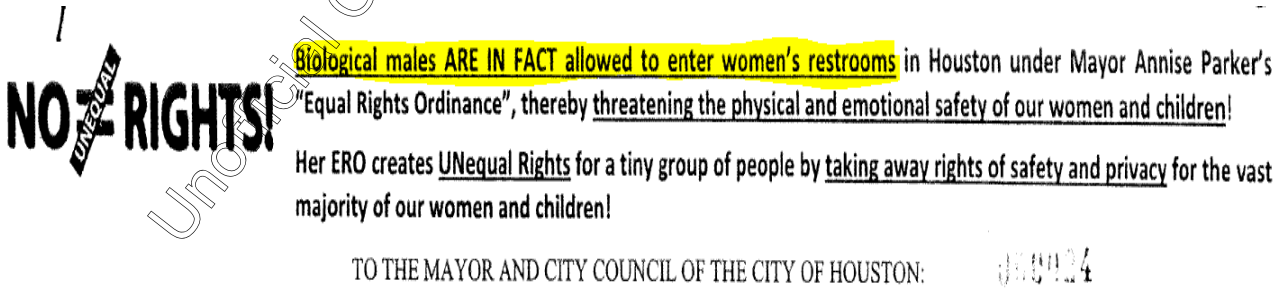
Courts in Texas and across the country have invalidated petitions under similar circumstances. *See, e.g.*, *Smith v. Counts*, 282 S.W.2d 422, 424 (Tex. Civ. App. – El Paso 1955, no writ) (invalidating local election because election was called on the basis of a petition that did not contain the statutorily proscribed description of the initiative); *Britten v. Williams*, 293 S.W.2d 853, 857 (Tex. Civ. App.—Amarillo 1956, writ ref'd n.r.e) (holding that misstatement of an issue and failure to follow the statutorily proscribed language in a petition is fatal to the petition's validity); *State ex rel. McCord v. Delaware Cty. Bd. of Elections*, 835 N.E.2d 336, 345 (Ohio 2005) (explaining that a petition is invalid where "the summary is misleading, inaccurate, or contains material omissions which would confuse the average person" and invalidating petition that "could have conveyed the mistaken impression to petition signers that they were requesting a vote on the same rezoning that had previously been defeated"); *San Francisco Forty-Niners v. Nishioka*, 89 Cal. Rptr. 2d 388, 398 (Cal. Ct. App. 1999) (noting that petition organizers are "free to circulate an initiative petition with persuasive language devoid of false and misleading statements" and holding that "where an initiative petition contains misleading assertions of

fact that are false beyond dispute, a writ may issue to prevent the circulation of the undisputed falsehoods").

Plaintiffs themselves must be aware of the deceptive nature of the "restroom" language on their referendum petition. Plaintiffs attached a ***different version*** of their petition summary to their filings before this Court – a version that ***is not representative of the inflammatory language included on over 5,000 pages of the petition.*** At ¶ 9 of their complaint, plaintiffs state that "An example of what the ERO Referendum Petition looked like is attached hereto as Exhibit 2." That's false. The version plaintiffs attached to their complaint as Exhibit 2 says only this at the top:

Whereas, The City of Houston's City Council adopted an ordinance that in addition to other grievances allows a biological male to enter women's restrooms by declaring that his expression of gender is female, thereby threatening the physical and emotional safety of women and girls; that threatens to penalize businesses for interfering with such behavior and doing business according to their faith and conscience; that uses ambiguous terms; and that creates a new investigative bureaucracy in Houston to define what is a religious organization, we as registered voters in the city of Houston exercise our right to referendum as per Article VII-b, Section 4 of the City of Houston Charter:

But that is *not* what the actual petition looked like. The actual petition contained this false and inflammatory rhetoric:



Indeed, after reviewing each of the 5,199 total pages, it is not clear that even *a single page* of the petition looked like the false (and sanitized) "example" that plaintiffs attached to their complaint and cited to this Court.

The emerging evidence of plaintiffs' fraud slams the door on any right to injunctive relief. *See Sharma*, 231 S.W.3d at 421. The failure of plaintiffs and their associates to comply with the requirements of the City Charter and Texas law, coupled with the evidence of plaintiffs' fraud and scare tactics, defeats their request for an injunction and, at a minimum, illustrates the need for further factual development and a trial on the merits. *See, e.g., Tex. Foundries*, 248 S.W.2d at 464 ("[T]o grant a temporary injunction, the effect of which would be to accomplish the object of the suit . . . would be to determine rights without a trial."). Plaintiffs should be prepared to face counterclaims and requests for reimbursement of the attorneys' fees they improperly have caused the City to incur.

V.
Conclusion

This Court should deny plaintiffs' request for temporary injunction. The City requests that the Court enter a DCO and set this case for a trial on the merits in the next six months.

Respectfully submitted,

By: /s/ *Geoffrey L. Harrison*

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Certificate of Service

I certify that on August 14, 2014 a true and correct copy of this document properly was served on the following counsel of record in accordance with the TRCP via electronic efiling.

/s/ *Geoffrey L. Harrison*
Geoffrey L. Harrison