

No. \_\_\_\_\_

## IN THE SUPREME COURT OF TEXAS

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IN RE JARED WOODFILL, §  
STEVEN F. HOTZE, MD §  
F.N. WILLIAMS, SR. and §  
MAX MILLER, §  
RELATORS. §

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### ORIGINAL PETITION FOR WRIT OF MANDAMUS

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RELATORS REQUEST ORAL ARGUMENT

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City of Houston,  
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David W. Robinson, At Large 2  
Michael Kubosh, At Large 3  
C.O. "Brad" Bradford, At Large 4  
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Larry Green, District K;  
and Anna Russell,  
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**Table of Contents**

Identity of Parties and Counsel..... ii

Index of Authorities..... vi

Statement of the Case ..... viii

Statement of Jurisdiction..... ix

Issue Presented ..... ix

Statement of Facts ..... 1

Summary of the Argument..... 11

Argument ..... 12

    A. Relevant Legal Principles Pertaining  
        to a Writ of Mandamus..... 12

    B. Respondents Have Not Complied With the Law..... 16

    C. Anticipated Defenses from the Respondents..... 16

    D. Ample Case Law Supports Relators’ Request  
        for Immediate Mandamus Relief..... 19

Prayer ..... 21

Certificate of Service ..... 23

Certificate of Compliance ..... 25

Verification..... Appended

Appendix..... Attached

## Index of Authorities

<u>Case</u>	<u>Page</u>
<i>Blanchard v. Fulbright</i> , 633 S.W.2d 617 (Tex. Civ. App.–Houston [14 <sup>th</sup> Dist.] 1982, orig. proceeding) .....	19
<i>Burns v. Kelly</i> , 658 S.W.2d 731 (Tex. App.--Fort Worth 1983, orig. proceeding) .....	20
<i>Coalson v. City Council of Victoria</i> , 610 S.W.2d 744 (Tex. 1980).....	20
<i>Gonzalez v. King</i> , 548 S.W.2d 66 (Tex. Civ. App.-Corpus Christi 1970, orig. proceeding) .....	20
<i>Howard v. Clack</i> , 589 S.W.2d 748 (Tex. Civ. App. -- Dallas 1979, no writ).....	20
<i>In Re Balsamo</i> , 1999 Tex. App. LEXIS 7281 (Tex. App. – Beaumont, Sept. 24, 1999, no pet.) .....	20
<i>In re Donald Ray Lee</i> , 412 S.W.3d 23 (Tex. Civ. App. – Austin 2013, orig. proceeding) .....	20
<i>In re McAllen</i> , 275 S.W.3d 458 (Tex. 2008) .....	13
<i>In re Prudential Ins. Co. of Am.</i> , 148 S.W.3d 124 (Tex. 2004).....	13, 14
<i>In re Reece</i> , 341 S.W.3d 360 (Tex. 2011).....	12

<i>In re Roof,</i> 130 S.W.3d 414 (Tex. Civ. App. -Houston [14 <sup>th</sup> Dist.] 2004) .....	15-16
<i>In re Team Rocket, L.P.,</i> 256 S.W.3d 257 (Tex. 2008).....	14
<i>Walker v. Packer,</i> 827 S.W.2d 833 (Tex. 1992).....	13, 14
<i>Young et al v. State,</i> 87 S.W.2d 520 (Tex. Civ. App.-Fort Worth 1935, writ ref'd).....	20

<u>Statutes and Other Authority</u>	<u>Page</u>
Texas Constitution article 5, section 3(a) .....	12
Texas Constitution article 5, section 6.....	viii
Texas Election Code § 273.061.....	viii, 13
Texas Government Code § 22.002(a).....	12
Texas Government Code § 22.221(a).....	viii
Texas Rules of Appellate Procedure, Rule 52.....	viii
Section VII-a of the Houston’s City Charter .....	3-4
Section VII-b of the Houston’s City Charter .....	3-4

## Statement of the Case

Relators bring this Petition for Writ of Mandamus to require Mayor Annise Parker, the City of Houston, the Houston City Council, and City Secretary Anna Russell, to immediately perform each of their respective clear and unambiguous ministerial duties under Article VII-b, Section 3, of the City of Houston Charter. More specifically, Relators seek mandamus relief requiring Respondents to: (1) suspend the Mayor's so-called Equal Rights Amendment ("ERO") from taking effect; (2) immediately reconsider whether the ERO should be repealed by City Council in its entirety; and (3) if City Council does not entirely repeal the ERO, then the City Council shall submit the ERO to popular vote. This Mandamus Petition has become necessary because Respondents refuse to perform their ministerial duties, in violation of state law. Relators requested this same relief from the 14<sup>th</sup> Court of Appeals on August 11, 2014. On August 14, 2014, the Court of Appeals denied the Petition for Writ of Mandamus via Memorandum Opinion. The panel consisted of Justices Boyce, Christopher and Jamison. *In re Jared Woodfill, et al*, No. 14-14-00648-CV; 2014 App. LEXIS 9084 (Aug. 15, 2014). Appendix, Tab 1.

### **Statement of Jurisdiction**

This Court has jurisdiction to issue writs of mandamus under Texas Constitution article 5, section 6; TEXAS GOVERNMENT CODE section 22.221(a); TEXAS ELECTION CODE section 273.061; and Rule 52 of the TEXAS RULES OF APPELLATE PROCEDURE. No genuine issues of material fact exist to divest this Court of mandamus jurisdiction.

### **Issue Presented**

Did Respondents' refusal and failure to comply with the Houston City Charter, Section VII-b, Section 3, constitute a violation of a ministerial duty such that mandamus should issue?

## Statement of Facts

### **A. The Parties**

Relators Jared Woodfill, Steven F. Hotze, F.N. Williams Sr. and Max Miller are each registered voters who reside in Harris County and within the City of Houston, Texas. Each Relator signed a Referendum Petition to repeal the Mayor's so-called "Equal Rights Ordinance" ("ERO"). The Respondents herein are Annise D. Parker, Houston's Mayor, the City of Houston, each member of the Houston City Council, and Anna Russell, Houston's City Secretary.

### **B. The Issue**

This Petition for Writ of Mandamus involves whether Relators' Referendum Petition—which seeks the repeal of ERO—triggered certain non-discretionary ministerial duties under the Houston City Charter, requiring Respondents to: (1) suspend the enforcement of the ERO; (2) immediately vote on whether to repeal the ERO; and (3) if the ERO is not repealed in its entirety, then call and hold an election on whether to repeal the ERO.

### **C. The Undisputed Facts**

City of Houston Ordinance No. 2014-530 is known as the Mayor's so-called Equal Rights Ordinance ("ERO"). This ordinance was officially published on June 3, 2014. A true and correct copy of the ordinance can be found at MR: Vol. 1, Tab A.<sup>1</sup>

Along with each of the Relators herein, a broad coalition of church pastors, religious and civic leaders, and others ("the Coalition") organized a petition drive to force the City of Houston to either repeal this ill-conceived law, or, if not willing to do so, to place this ordinance on the ballot for potential repeal by the voters of the City of Houston. The Coalition's chief concern about the ERO is that it would potentially endow a biological male with the legal right to forcibly enter a women's public restroom without the knowledge or consent of the adult or minor females using that Houston facility. A representative example of what the ERO Referendum Petition looked like is included at MR: Vol. 1, Tab B.

The City of Houston is a home-rule municipality operating under the auspices of a governing city charter. Houston's City Charter specifically

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<sup>1</sup> For ease of reference, when referring to the Mandamus Record, Relators will use the abbreviation MR. The Mandamus Record will be filed as a separate document.

reserves the power of the Houston citizenry to exercise their right to repeal ordinances by way of a referendum petition. Relators' repeal effort is regulated by the referendum provisions contained within Section VII-b of Houston's City Charter. More specifically, Section VII-b, Section 3 states:

"If prior to the date when an ordinance or resolution shall take effect, or within thirty days after the 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 legal and 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."

Thus, because June 3 was the official publication date of the ERO, the thirty day deadline to gather signatures and file the petitions with the Houston City Secretary fell on July 3, 2014. Section 2(a), referenced above, provides as follows:

“Petition. A petition signed and verified in the manner and form required for recall petition in Article VII-a by qualified voters equal to fifteen per cent of the total vote cast as calculated in accordance with Article V, Section 10 of this Charter, next preceding the filing of said petition, accompanied by the proposed legislation or measure in the form of a proposed ordinance or resolution, and requesting that such ordinance or resolution be submitted to a vote of the people, if not passed by the Council, shall be filed with the City Secretary.”

Article VII-a, in turn, provides as follows:

“All petitions for recall of any officer of the City of Houston, shall be instituted by filing with the City Secretary a verified written petition requesting the removal of such officer, which said petition shall be signed by qualified voters of the City of Houston, in number not less than twenty-five per cent of the total votes cast calculated in accordance with Article V, Section 10 of this Charter, based on the votes cast city-wide if the officer sought to be recalled was elected city-wide, or if the officer sought to be recalled was elected by district, based on the votes cast in the district which the officer sought to be recalled currently serves. The signers of said petition shall also set opposite their respective names, the number of his residence, naming the street, and shall also state the day of the month and the year when such signature was affixed. “

Section 2(b) provides that:

“On or before the thirtieth day after the date of filing of the petition the City Secretary shall certify to the City Council (a) the greatest total vote cast for Mayor at any city general election held within three years next preceding the date of the filing of such petition, and (b) the number of valid signatures on said petition, and shall present such petition and certificate to the Council.”

As a result of the hard work of all concerned, a successful Referendum Petition drive produced over 55,000 signatures, and the Coalition pre-verified the voter registration status of over 31,000 signatures. Thereafter, on July 3, 2014, the ERO Referendum Petition was timely filed with the Houston City Secretary.

Under the terms of the Houston City Charter, quoted above, City Secretary Anna Russell had a ministerial and mandatory duty to review the ERO Referendum Petition upon filing and to certify no later than thirty days later to the Houston City Council the following: (a) the greatest total vote cast for Mayor at any city general election held within three years next preceding the date of the filing of such petition; and (b) the number of valid signatures on said petition. Respondent Russell partially complied with her ministerial duties under (a) above and certified that fact on August 1, 2014. However, rather than verify the total number of valid signatures on the Referendum Petition, Respondent Russell only attempted to verify 19,177 signatures, which is only approximately 30+% of the total number of signatures. Even though Respondent Russell failed to review the remaining signatures, she nevertheless found a sufficient number of valid

and verified signatures to certify Relators' compliance with the requirements of the Houston City Charter. In so doing, Respondent Russell specifically certified that the number of valid and verified signatures on the ERO Referendum Petition was 17,846, which is more than the minimum required number of 17,269.<sup>2</sup> Indeed, the verification success rate of the batch of signatures actually reviewed by Respondent Russell was 93%. A true and correct copy of her certification is included at MR: Vol. 1, Tab C. Accordingly, the ERO Referendum Petition has been validated by the Houston City Secretary, automatically triggering certain non-discretionary ministerial duties, and the consequences of such validation must be honored by each of the Respondents<sup>3</sup>.

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<sup>2</sup> Mayor Parker and City Attorney David Feldman are using 17,269 as the required minimum number of signatures required to force the Referendum provisions of the City's Charter. For purposes of this Mandamus, Relators will accept that number as correct. However, Relators reserve the right to object to this number, should further investigation and discovery prove otherwise.

<sup>3</sup> Not satisfied with letting the people vote, the Houston City Attorney's Office prepared paperwork which is attached to Respondent Russell's certification that 16,010 signatures on the ERO Referendum Petition did not "contain sufficient acknowledgment as required by the Charter." See MR: Vol. 1, Tab C. The gratuitous insertion of a requirement not specified in the Charter is improper and violates each of the Respondents' ministerial and unconditional obligations to accept both the Referendum Petition and the consequences flowing from there, e.g., immediate suspension of enforcement of the ERO, reconsideration of the ERO by vote of the City Council, and, should the ERO not be repealed by Council, then the calling and holding of an election on whether to repeal the ERO. Careful review of MR: Vol. 1, Tab C demonstrates that Respondent Russell did not—contrary to Respondents' protestations to the contrary—adopt the so-called "findings" of Respondent Parker or her City Attorney. Indeed, the

Rather than abide by the City Secretary's findings and certifications on August 1, 2014, however, Respondent Parker and David Feldman, Houston's City Attorney, held a press conference three days later to announce that the ERO Referendum Petition would be rejected because too many signatures were invalidated to reach the required minimum. Conspicuously absent from the press conference was the City Secretary, Respondent Anna Russell. Respondents simultaneously issued a press release, making it clear that the ERO Referendum Petition was not sufficient, that the ERO would not be reconsidered by the Houston City Council, and that the City of Houston would neither call nor hold an election on whether to repeal the ERO. A true and correct copy of the Mayor's press release is included at MR: Vol. 1, Tab D. In so doing, Respondents breached mandatory ministerial duties for which no discretion exists, giving rise to Relators' Petition for Writ of Mandamus.

Prior to seeking original mandamus relief from this Court, Relators attempted in vain to receive immediate relief in both the Trial Court and

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City Secretary's clear and unambiguous certification appears on page 1 of MR: Vol. 1, Tab C, paragraph 3 ("The number of signatures verified on the petition submitted on July 3, 2014 was 17,846"). Only at the end of her cover letter does it refer to the Mayor's handiwork, twice stating that, "according to the City Attorney's Office." See MR: Vol. 1, Tab C.

the Houston Court of Appeals. On August 5th, one day after the Mayor refused to comply with her ministerial duties, Relators filed a state court lawsuit in Harris County, styled as Cause No. 2014-44974; *Jared Woodfill, et al v. Annise D. Parker, et al*; In the 152<sup>nd</sup> Judicial District Court for Harris County, Texas (“State Court Suit”). A true and correct copy of Relators’ live pleadings in the State Court Suit is included at MR: Vol. 1, Tab E and Tab F, while a copy of each Respondents’ live answer is included at MR: Vol. 1, Tab G, Tab H and Tab I. This State Court Suit sought both declaratory and injunctive relief. A hearing for a temporary restraining order occurred that same day, but Judge Coselli, sitting as the Ancillary Judge, took the matter under advisement, stating that he would rule the next day. Prior to ruling, however, Respondents quickly removed the case to Federal Court, thereby frustrating Relators’ chances of obtaining any quick relief. A true and correct copy of the Notice of Removal is included at MR: Vol. 1, Tab J. Within 24 hours, the Federal Judge to whom the removed case was assigned, remanded the case back to state court, sua sponte. A true and correct copy of the Order of Remand is included at MR: Vol. 1, Tab K. Two days later, on August 8<sup>th</sup>, Judge Shadwick, now assigned as the current Ancillary Judge, conducted a telephone hearing

and Relators' renewed their request for a temporary restraining order. During that telephonic hearing, Respondents' City Attorney stipulated that the Mayor would temporarily "suspend" the enforcement of the ERO until a hearing could be held on Relators' request for temporary injunction. But the Respondents refused to agree to conduct a vote by City Council on whether to repeal the ERO or to agree to call an election in the event that City Council failed to repeal the ERO in its entirety. Relators' persisted in their request for a temporary restraining order. That request was denied, based upon the fact that Respondents agreed to "voluntarily" suspend the enforcement of the ERO until a temporary injunction hearing could take place the following week. Relators' request to post a cash bond in the amount of \$100 in order to give any interim order the power of contempt should it be ignored or otherwise violated was also denied. Judge Shadwick instead entered a show cause order reciting the fact that Respondents had agreed to suspend the ERO for one week. A true and correct copy of the Trial Court's show cause order is included at MR: Vol. 1, Tab L. Finally, Judge Schaffer conducted a short hearing on Relators' request for temporary injunctive relief on August 15<sup>th</sup>, but indicated that injunctive relief seemed like an improper attempt to obtain final and

permanent mandatory injunctive relief on the merits prior to trial. Although the Trial Court asked a few questions of all counsel, he did not take any evidence or testimony, and several times instructed Relators' counsel not to describe the evidence that was available, but to instead restrict comments to legal matters. After calling for a recess and conducting an in chambers meeting with all counsel of record, the Trial Court announced that Relators withdrew their current request for temporary injunctive relief as such was no longer necessary, that the Respondents had agreed to suspend the enforcement of the ERO until time of trial, and that a trial on the merits would be set for January 19, 2015. No Trial Court orders have been entered to confirm the Trial Court's oral statements as of the date of the filing of this Mandamus. Relators additionally requested that Respondent Russell be ordered to finish her review of the Referendum Petition signatures, and that the City Council be required to vote "up or down" on whether to repeal the ERO. The Trial Court said it would not consider any mandamus relief at this hearing.

Separate and apart from the State Court Suit, on August 11<sup>th</sup>, Relators sought Original Mandamus relief from the Houston 14<sup>th</sup> Court of Appeals. On August 15<sup>th</sup>, that Court denied relief on the mistaken belief that

Relators had an adequate remedy at law in that they may pursue an appeal of any final judgment eventually entered by Trial Court, presumably at some point in calendar year 2015. A true and correct copy of the Court of Appeals denial of Mandamus is attached hereto Appendix, Tab 1.4. Because the Houston City Charter requires *immediate* action by Respondents, Relators deny that they have an adequate remedy at law, and hereby seek original mandamus relief from this Court to require each Respondent to perform their non-discretionary ministerial duties immediately.

### **Summary of Argument**

As will be demonstrated herein, the only person charged with the responsibility and imbued with the authority to review and either approve or disapprove the ERO Referendum Petition is Respondent Russell, Houston's City Secretary. Respondent Parker does not have the authority to ignore the impact of Respondent Russell's certification, even if Respondent Parker and/or the City Attorney feel she is wrong. To the

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<sup>4</sup> This ruling occurred a few hours before the Trial Court's hearing started on Relators' request for a temporary injunction. Given the unavailability of mandamus relief, Relators quickly filed a supplemental petition seeking mandamus relief from the Trial Court. See MR: Vol. 1, Tab F. Judge Schaffer refused to hear that request, given that it was not asserted until a few hours prior to the commencement of the temporary injunction hearing.

contrary, Respondent Parker is free to file a lawsuit and litigate what she perceives to be the flaws in the ERO Referendum Petition. In the interim, however, Respondents must obey the mandatory referendum provisions contained within the Houston City Charter, and have no discretion but to simply fulfill their ministerial duties to: (1) suspend the ERO; (2) immediately vote whether to repeal the ERO; and, if not repealed in its entirety, then (3) call and hold an election on whether to repeal the ERO. In the alternative, Relators request the Court mandamus Respondent Russell to complete her review of all the Referendum Petition Signatures and certify the number of validated signatures immediately.

### **Argument**

#### **A. Relevant Legal Principles Pertaining to a Writ of Mandamus.**

##### **1. *Source of Mandamus Authority.***

As explained in the case of *In Re Reece*, 341 S.W.3d 360 (Tex. 2011) (orig. proceeding), this Court's constitutional and statutory grant of mandamus jurisdiction is very broad. *Id.* at 374; *see* TEX. CONST. art. V, § 3(a) (granting the Court power to issue writs of mandamus as specified by the Legislature); TEX. GOV'T CODE § 22.002(a) (permitting the Court to issue writs of mandamus "agreeable to the principles of law regulating those

writ"). The Texas Election Code provides a remedy through mandamus "to compel the performance of any duty imposed by law in connection with the holding of an election[.]" *See* Tex. Elec. Code Ann. § 273.061.

## 2. *Scope of Mandamus Authority.*

Mandamus is an "extraordinary remedy, not issued as a matter of right, but at the discretion of the court." *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 138 (Tex. 2004) (orig. proceeding). "Mandamus review of significant rulings in exceptional cases may be essential to preserve important substantive and procedural rights from impairment or loss . . . ." *Id.* at 136. Mandamus is a remedy not restricted by "rigid rules" that are "necessarily inconsistent with the flexibility that is the remedy's principle virtue." *Id.*; *see also In re McAllen*, 275 S.W.3d 458, 464(Tex. 2008) (orig. proceeding) (noting that whether a clear abuse of discretion can be remedied on appeal "depends heavily on circumstances, it must be guided by analysis of principles rather than simple rules that treat cases as categories"). And mandamus is a proper vehicle for this Court to correct blatant injustice that otherwise would elude review by the appellate courts. *See In re Prudential*, 148 S.W.3d at 138.

### 3. *Adequacy of Appeal.*

Mandamus is generally appropriate only when the relator has no adequate remedy on appeal. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135-40 (Tex. 2004) (citing *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992)). The “adequacy” of an appellate remedy must be determined by balancing the benefits of mandamus review against the detriments. *In re Team Rocket, L.P.*, 256 S.W.3d 257, 262 (Tex. 2008) (orig. proceeding). In evaluating the benefits and detriments, this Court should consider whether mandamus will preserve important substantive and procedural rights from impairment or loss. *Id.*

In addition to impairment of rights, this Court should consider whether mandamus will "allow the appellate courts to give needed and helpful direction to the law that would otherwise prove elusive in appeals from final judgments." *Prudential*, 148 S.W.3d at 136. Finally, this Court should consider whether mandamus will spare litigants and the public "the time and money utterly wasted enduring eventual reversal of improperly conducted proceedings." *Prudential*, 148 S.W.3d at 136. "[A]n appellate remedy is not inadequate merely because it may involve more expense or

delay than obtaining an extraordinary writ," *Walker*, 827 S.W.2d at 842, but extraordinary relief can be warranted when a trial court subjects taxpayers, defendants, and all of the state's district courts to meaningless proceedings and trials. *See Prudential*, 148 S.W.3d at 137.

“The operative word, "adequate", has no comprehensive definition; it is simply a proxy for the careful balance of jurisprudential considerations that determine when appellate courts will use original mandamus proceedings to review the actions of lower courts. These considerations implicate both public and private interests.” *Id.* at 136. “An appellate remedy is "adequate" when any benefits to mandamus review are outweighed by the detriments. When the benefits outweigh the detriments, appellate courts must consider whether the appellate remedy is adequate.” *Id.* Thus, whether an appellate remedy is "adequate" so as to preclude mandamus review depends heavily on the circumstances presented and is better guided by general principles than by simple rules. *Id.*

## **B. Respondents Have Not Complied with the Law.**

Under the law governing this area, the Houston City Secretary has a ministerial and mandatory duty to inspect Relators' timely-filed Referendum Petition. Her ministerial job, though, is restricted to an inspection to confirm: (a) whether the signatures on the document exceed the minimum required amount; and, if so, (b) whether the minimum required number of signers are registered to vote within the City of Houston. Nothing more, nothing less. *In Re Roof*, 130 S.W.3d 414 (Tex. App. -Houston [14th Dist.] 2004, orig. proceeding). Even a cursory review of the ERO Referendum Petition demonstrates compliance with these ministerial requirements as a matter of law. Indeed, over 55,000 signatures were turned in, and the Coalition itself verified over 31,000 signers were properly registered to vote. Unfortunately, however, even though Relator Russell certified the result, the ERO Referendum Petition was wrongfully rejected.

## **C. Anticipated Defenses From The Respondents**

It is important to note that Respondents may challenge this Court's subject matter jurisdiction to issue a mandamus on the basis that a

“material” fact issue exists with respect to the validity of the number of signatures on the Referendum Petition. In anticipation of this defense, Relators make the following points: First, the only Respondent with the power and authority to ascertain the number of validated signatures is Respondent Russell—not the Mayor, the Houston City Attorney, or any elected members of the Houston City Council. Second, Respondent Russell did in fact certify that a sufficient number of valid signatures had been reached, which should end the inquiry with respect to the application and triggering of the various mandatory and ministerial duties which flow therefrom. Thus, any potential “disqualification” of valid signatures by other Respondents are irrelevant, such that this “disputed fact” does not rise to the level of a “genuine issue of material fact.”<sup>5</sup> Third, to the extent this Court holds otherwise, it should be reemphasized that Respondent Russell only reviewed 30% of the Petition signatures. At bare minimum, she should be ordered to review 100% of all 55,000+ signatures, or, in the alternative, she should be ordered to extrapolate the expected total number

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<sup>5</sup> Any disputed issues of fact that relate to any issues outside of Respondents' ministerial duties can be dealt with in the case Relators filed in Harris County District Court on August 5, 2014. In the aforementioned case, Relators tried to get injunctive relief, but only received partial relief for a few days. Cause No. 2014-44974; *Jared Woodfill, et al v. Annise D. Parker, et al*; In the 152<sup>nd</sup> Judicial District Court for Harris County, Texas. See MR: Vol. 1, Tab E.

of valid signatures based on the rate of acceptance of the signatures she found to be valid so far. Accordingly, for each of these reasons, there is no fact issue which would be material and thus this Court is not deprived of its jurisdiction to enter mandamus relief.

It is likewise important to anticipate Respondents' likely defense that mandamus relief should not issue due to an alleged adequate remedy at law (e.g., Relators will either win their trial before the Trial Court in January of 2015 or, if Relators lose that trial, they may pursue an appeal of an adverse final judgment). This argument, first advanced by the Court of Appeals, is misguided for several reasons. First, "adequacy" of legal remedy must be judged against the fact that the Houston City Charter requires "immediate" action by the Respondents. As a matter of law and fact, "immediate" is not satisfied by the potential of a ruling next year in January. Second, there is absolutely no guarantee whatsoever that the Trial Court will not continue the January 2015 trial setting for a host of reasons, not the least of which is the busy trial schedule of the army of attorneys representing Respondents in the case below. Third, even if "adequacy" is remotely plausible under these facts, this Court has made clear that it possesses the power to "weigh" those facts without losing jurisdiction,

given the fact that mandamus relief is an equitable writ in the first place. Fourth, it is not a foregone conclusion that the presence of an “adequate legal remedy” forecloses any potential for obtaining Mandamus relief. For example, Respondent Russell has not completed her ministerial duty of reviewing all of the Referendum Petition signatures. If the Court does not issue Mandamus based on her partial review (which Relators argue the Court should, as Respondent Russell already certified a sufficient number of validated signatures exist, no other Respondent has the power or authority to overrule or disagree or ignore that certification, and the appropriate forum to challenge the sufficiency of the Referendum Petition is the State Court lawsuit), then the Court at the very least should order Respondent Russell to finish her review. In addition, not every mandamus opinion from this Court or from lower appellate courts have always required the absence of an adequate remedy at law before granting mandamus relief. For each of these reasons, Relators should prevail.

**D. Ample Case Law Supports Relators’ Request for Immediate Mandamus Relief.**

Similar outcomes to the case at bar may be found in multiple reported decisions involving citizen-initiated recall elections. *Blanchard v.*

*Fulbright*, 633 S. W.2d 617 (Tex. App. -Houston [14<sup>th</sup> Dist.], orig. proceeding); *Howard v. Clack*, 589 S.W.2d 748 (Tex. Civ. App. -- Dallas 1979); *Young et al v. State*, 87 S.W.2d 520, 522 (Tex. Civ. App.-Fort Worth 1935, writ ref'd); *Gonzalez v. King*, 548 S.W.2d 66 (Tex. Civ. App.-Corpus Christi 1970, no writ); *Burns v. Kelly*, 658 S.W.2d 731 (Tex. App.--Fort Worth 1983, no writ); *In Re Balsamo*, 1999 Tex. App. LEXIS 7281 (Tex. App.--Beaumont CA, 1999) (orig. proceeding) (unpublished opinion); *Coalson v. City Council of Victoria*, 610 S.W.2d 744 (Tex. 1980).

In a case strikingly similar to the case at bar, the Relators, along with other qualified voters in the City of Brady, initiated the recall-election process. *In Re Donald Ray Lee*, 412 S.W.3d 23 (Tex. Civ. App. – 2013)(orig. proceeding)(holding that mandamus relief was warranted because there was no dispute that the recall petition included the correct number of signatures nor was there an explicit discretionary duty relied upon by the City Secretary for refusing to certify the recall petition as sufficient or by the City Council for refusing to order a recall election).

## Prayer

For the reasons detailed above, Relators JARED WOODFILL, STEVEN F. HOTZE, MD AND F.N. WILLIAMS, SR. and MAX MILLER, respectfully request the following relief:

- a. Cite each Respondent to appear herein;
- b. Issue an immediate writ of mandamus ordering and compelling Annise D. Parker, Houston Mayor, and the City of Houston, and each of the Members of City Council, and Anna Russell, Houston City Secretary, to perform the following ministerial acts: (i) immediate suspension of the enforcement of the ERO; (ii) immediate reconsideration of the ERO by vote of the City Council; and, (iii) should the ERO not be immediately repealed by vote of the City Council, then the calling of an election on whether to repeal the ERO.
- c. All costs of suit;
- d. All other and further mandamus relief to which Relators may show themselves to be justly entitled.

Respectfully Submitted,

ANDY TAYLOR & ASSOCIATES, P.C.

BY: /s/ Andy Taylor

Andy Taylor

State Bar No. 19727600

Amanda Peterson

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WILLIAMS, SR. AND MAX MILLER

CERTIFICATE OF SERVICE

By affixing my signature above, I , Andy Taylor, hereby certify that a true and correct copy of the above Original Petition for Writ of Mandamus has been delivered via electronic mail to the parties below on the 26th day of August, 2014.

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/s/ Andy Taylor  
Andy Taylor

TRAP 52.3(j) CERTIFICATION

Pursuant to TRAP 52.3(j), the undersigned certifies that he has reviewed the above Petition for Writ of Mandamus and concluded that every factual statement in the petition is supported by competent evidence included in the appendix and or the record.

/s/ Andy Taylor  
Andy Taylor

CERTIFICATE OF COMPLIANCE

I, Andy Taylor, Counsel for Relators certify that this document was generated by a computer using Microsoft Word which indicates that the word count of this document is 4468. The typeset is Book Antiqua – 14 pt for text and 12 pt for footnotes.

/s/ Andy Taylor

**Appendix**

**Document**

**Tab**

Court of Appeals Opinion .....1

Jared Woodfill’s Verification .....2

# Tab 1

**Petition for Writ of Mandamus Denied and Memorandum Opinion filed  
August 15, 2014.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-14-00648-CV**

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**IN RE JARED WOODFILL, STEVEN F. HOTZE, MD, F.N. WILLIAMS,  
SR., AND MAX MILLER, Relators**

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**ORIGINAL PROCEEDING  
WRIT OF MANDAMUS  
152nd District Court  
Harris County, Texas  
Trial Court Cause No. 2014-44974**

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**MEMORANDUM OPINION**

On August 11, 2014, relators Jared Woodfill, Steven F. Hotze, MD, F.N. Williams, Sr., and Max Miller filed a petition for writ of mandamus in this Court. *See* Tex. Elec. Code Ann. § 273.061; *see also* Tex. R. App. P. 52. In the petition, relator ask this Court to compel respondents, Annise D Parker, Mayor of the City of Houston; Anna Russell, City Secretary of the City of Houston; and Houston City Council Members Stephen C. Costello, David W. Robinson, Michael Kubosh,

C.O. “Brad” Bradford, Jack Christi, Brenda Stardig, Jerry Davis, Ellen Cohen, Dwight Boykins, Dave Martin, Richard Nguyen, Oliver Pennington, Ed Gonzalez, Robert Gallegos, Mike Laster, and Larry Green, to (1) suspend the enforcement of the Houston Equal Rights Ordinance (HERO); (2) notify the public of such suspension and of the consequence that no action taken under HERO may be legal or valid; (3) reconsider whether HERO should be repealed in its entirety; and (4) if the City Council does not repeal HERO, then submit HERO to popular vote.

Relators are simultaneously pursuing the same relief in *Woodfill, et al. v. Annise D. Parker, et al.*, No. 2014-44974 in the 152nd District Court of Harris County. Without addressing the merits of relators’ petition, we conclude that mandamus relief is foreclosed because relators have an adequate remedy by appeal after judgment in the pending trial case. *See In re Reece*, 341 S.W.3d 360, 364 (Tex. 2011) (orig. proceeding) (requiring relator to show lack of an adequate remedy by appeal to be entitled to mandamus).

Relators have not established that they are entitled to mandamus relief. Accordingly, we deny relators’ petition for writ of mandamus.

PER CURIAM

Panel consists of Justices Boyce, Christopher, and Jamison.

# Tab 2

No. \_\_\_\_\_

## IN THE SUPREME COURT OF TEXAS

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IN RE JARED WOODFILL, §  
STEVEN F. HOTZE, MD §  
F.N. WILLIAMS, SR. and §  
MAX MILLER, §  
RELATORS. §

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### Verification

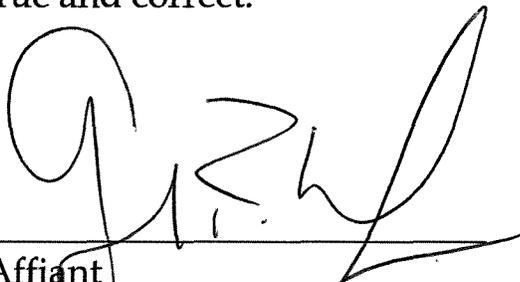
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STATE OF TEXAS §  
§  
COUNTY OF HARRIS §

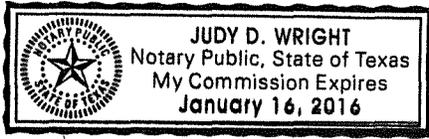
On this day, Jared Woodfill, appeared before me, the undersigned notary public. After I administered the oath to him, upon his oath, he said:

"My name is Jared Woodfill. I am over the age of 18 years old and I am competent to make this affidavit in all respects. I have read the Original Petition for Writ of Mandamus in the above-referenced matter. The facts states therein are within my personal knowledge and are true and correct."

Further affiant sayeth not.

  
\_\_\_\_\_  
Affiant

SWORN AND SUBSCRIBED TO BEFORE ME on the 26<sup>th</sup> day of August, 2014.



Judy D. Wright  
Notary Public in and for  
The State of Texas