

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

JACK PIDGEON and  
LARRY HICKS,  
  
Plaintiffs,

*versus*

MAYOR ANNISE PARKER and  
CITY OF HOUSTON,  
  
Defendants.

CASE NO. 4:13-cv-03768  
**(“*Oldest Case*”)**  
The Honorable Lee H. Rosenthal  
United States District Judge

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NOEL FREEMAN,  
YADIRA ESTRADA, and  
RONALD REESER,  
  
Movants and  
Proposed Intervening Defendants.

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NOEL FREEMAN,  
YADIRA ESTRADA, and  
RONALD REESER,  
  
Plaintiffs,

*versus*

ANNISE D. PARKER, in her official capacity  
as Mayor of the City of Houston;  
  
*and*  
  
THE CITY OF HOUSTON, a Texas  
municipality,  
  
Defendants.

CASE NO. 4:13-cv-03755  
The Honorable Sim Lake  
U.S. District Judge

**MOTION TO CONSOLIDATE FILED ON BEHALF OF NOEL FREEMAN,  
YADIRA ESTRADA, AND RONALD REESER**

Noel Freeman, Yadira Estrada, and Ronald Reeser are Movants and  
Proposed Intervenors in Case No. 4:13-cv-03768 (Rosenthal) and Plaintiffs in Case

No. 4:13-cv-03755 (Lake). They move the Court to consolidate these proceedings pursuant to Rule 42(a) of the Federal Rules of Civil Procedure and Local Rule 7.6

### Nature and Stage of Proceedings

1. The “Oldest Case,” as defined by Local Rule 7.1(D), is *Pidgeon v. Parker*, filed on December 17, 2013, in Harris County, Texas, District Court. On December 27, 2013, the Defendants removed that case to federal court under Case No. 4:13-cv-03768. It is assigned to The Honorable Lee H. Rosenthal. The later-filed case is *Freeman v. Parker*, filed on December 26, 2013, under Case No. 4:13-cv-03755. It is assigned to The Honorable Sim Lake.

2. Both cases are brought against the same Defendants: Mayor Annise Parker and The City of Houston.

3. Both cases arise out of the same core set of facts and occurrences: the Mayor’s decision to extend spousal benefits to employees married to a same-sex spouse in jurisdictions that permit them to do so. The Mayor’s decision, triggered by legal advice of the City Attorney, was her effort to comply with both the Houston City Charter and federal law to ensure that all employees’ legal spouses have access to spousal benefits.

4. Both cases share a common issue of law, which is determinative of the outcome: Are the marriage restrictions in the Texas Constitution and the Texas Family Code, which purport to prohibit the City from recognizing legal marriages from other jurisdictions where same-sex couples may marry, unconstitutional under the Fourteenth Amendment to the United States Constitution?

5. The cases seek inconsistent relief from the Defendants and expose them to inconsistent judgments.

6. The parties in the oldest case are addressing issues of jurisdiction and standing. The Defendants have not yet answered.

7. The defendants were served in the Freeman case, but have not yet answered and their time for doing so has not yet run. The Attorney General has received Notice of the constitutional issues in that case but has not yet intervened and his time for doing so has not run.

8. The parties' consent to consolidation is not required, however, under the local motion conference rule, Movants represent: the Defendants do not oppose consolidation; Plaintiffs in the Oldest Case oppose consolidation.

9. If consolidation is granted, Movants Motion to Intervene in the Oldest Case will be moot.

### **Issue Presented, Authority, and Standard of Review**

Considerations governing consolidation under Rule 42(a) of the Federal Rules of Civil Procedure are fairly summarized in *Morrison v. Amway Corp.*, 186 F.R.D. 401 (S.D. Tex. 1998):

The Court has broad discretion to decide whether consolidation is desirable under Rule 42(a) and may even consolidate cases *sua sponte*. Actions involving the same parties are likely candidates for consolidation, but a common question of law or fact is sufficient. Thus, the proper solution to the problems created by the existence of two or more cases involving the same parties and issues simultaneously pending in the same court is to consolidate them . . . .

*Id.* at 402-03 (citations omitted).

### Argument

The Plaintiffs in this case and the Plaintiffs in the related case seek inconsistent relief against the City of Houston arising out of the Mayor's determination that the City must, consistent with federal law, provide spousal benefits to employees who legally married their same-sex partners in jurisdictions that permit them to do so. The common legal issue, dispositive in **both** cases, is whether Texas may, consistent with federal due process and equal protection jurisprudence, restrict the City's recognition of those legal marriage—especially when City Charter itself expressly authorizes the City to provide spousal benefits to **all legal spouses** of City employees consistent with **federal law**.

Actions in which different parties seek inconsistent relief from a single defendant pose a particularly appropriate situation warranting consolidation, as long as the basic requirement of Rule 42(a) that there be a common question of law or fact is satisfied. *See, e.g., Cable Belt Conveyors, Inc. v. Alumina Partners of Jamaica*, 669 F.Supp. 577 (S.D.N.Y.1987), *aff'd* 857 F.2d 1461 (2d Cir. 1987); *Swacker v. Interstate R.R. Co.*, 32 F.R.D. 234 (W.D.Va.1962 ).

### Conclusion

Based on the foregoing, the Court should consolidate Case No. 4:13-cv-03768 and Case No. 4:13-cv-03755.

Respectfully submitted this 9th day of January, 2014.

LAMBDA LEGAL DEFENSE AND  
EDUCATION FUND, INC.

By: s/ Kenneth D. Upton, Jr.

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ATTORNEYS FOR MOVANTS

**CERTIFICATE OF SERVICE**

On January 9, 2014, I electronically submitted the foregoing document to the clerk of court for the U.S. District Court, Southern District of Texas, using the electronic case filing system of the Court. I hereby certify that I have served the following counsel of record electronically through the Court's ECF system.

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