

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

NOEL FREEMAN,	§	
YADIRA ESTRADA, and	§	
RONALD REESER,	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	Civil Action No. 4:13-CV-3755
	§	
ANNISE D. PARKER, in her official	§	
capacity as mayor of the city of	§	
Houston, and	§	
THE CITY OF HOUSTON, a Texas	§	
municipality,	§	
<i>Defendants.</i>	§	

**BRIEF OF THE STATE OF TEXAS
AS AMICUS CURIAE IN SUPPORT OF NEITHER PARTY**

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INTEREST OF AMICUS CURIAE

The State of Texas has an interest in this litigation because the plaintiffs have challenged the constitutionality of Texas's marriage laws.¹ Pls.' Orig. Compl. (Doc. 1) at ¶¶ 58-59.

ARGUMENT

A federal court must dismiss on its own initiative any action over which it lacks subject-matter jurisdiction. *See* FED. R. CIV. P. 12(h)(3). The court lacks subject-matter jurisdiction for three reasons.

First, federal courts lack authority to act in “friendly or feigned proceedings,” and there is no adversarial relationship between the plaintiffs and the defendants in this case. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 71 (1997). When litigants “desire precisely the same result” there is “no case or controversy within the meaning of Art. III.” *Moore v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 47, 48 (1971). The plaintiffs and defendants all desire a regime that extends health benefits to the same-sex partners of city employees who obtained marriage licenses from other jurisdictions, and the defendants are refusing to obey state laws that prohibit them from recognizing out-of-state same-sex marriages. Article III does not permit the plaintiffs to sue city officials (who are giving the plaintiffs everything that they want) and ask a judge to ratify the city officials' violation of state law. And Article III does not permit city officials to join private litigants in

¹ No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

asking a federal court to enjoin them from enforcing state laws that they have no intention of obeying. *See United States v. Johnson*, 319 U.S. 302, 304 (1943) (forbidding federal courts to resolve cases in the “absence of a genuine adversary issue between the parties . . . especially when it assumes the grave responsibility of passing upon the constitutional validity of legislative action.”); *Lord v. Veazie*, 49 U.S. (8 How.) 251, 255 (1850) (“[A]ny attempt, by a mere colorable dispute, to obtain the opinion of the court upon a question of law which a party desires to know for his own interest or his own purposes, when there is no real and substantial controversy between those who appear as adverse parties to the suit, is an abuse which courts of justice have always reprehended, and treated as a punishable contempt of court.”); *id.* (“[T]here must be an actual controversy, and adverse interests.”).

That the defendants were temporarily subject to a state court’s injunction does not establish an adversarial relationship between the plaintiffs and the city officials. The temporary restraining order issued by the state district court has expired, and the proceeding has been removed to a federal district court. *See Pidgeon v. Parker*, No. 4:13-CV-03768 (S.D. Tex.). On December 30, 2013, the federal district court denied a motion to extend the temporary restraining order, *see Order, Pidgeon v. Parker*, No. 4:13-CV-03768 (S.D. Tex. Dec. 30, 2013), allowing city officials to resume their recognition of out-of-state same-sex marriages. The defendants appear to have no intention of obeying the state’s marriage laws absent compulsion by a judge. That means the plaintiffs’ true grievances are not with city

officials but with the state-court judges that enforce state law against those city officials.

Second, the plaintiffs are no longer suffering an Article III injury because the mayor and city of Houston have resumed offering health benefits to the plaintiffs' same-sex partners now that the state-court temporary restraining order has expired. None of the court-created exceptions to mootness is applicable here. Although it is possible to imagine that another state court might enjoin city officials from recognizing out-of-state same-sex marriages, the plaintiffs' constitutional claims will not "evade review" because they will be raised by city officials as a defense in those state-court proceedings, and if the city officials fail to raise those constitutional claims the plaintiffs can move to intervene. *Mot. to Intervene, Pidgeon v. Parker*, 4:13-CV-03768 (S.D. Tex. Dec. 31, 2013); *cf. S. Pac. Terminal Co. v. I.C.C.*, 219 U.S. 498, 515 (1911) (noting exception to the mootness doctrine for claims that are "capable of repetition, yet evading review").

Finally, the plaintiffs' grievances are not with the mayor or city of Houston, but with the state court that temporarily enjoined the mayor's actions. Federal courts have no authority to entertain collateral attacks on injunctions issued by state courts, or to enjoin or preempt state-court proceedings in the manner proposed by the plaintiffs. *See Ex Parte Young*, 209 U.S. 123, 163 (1908) (forbidding federal courts "to restrain a [state] court from acting in any case brought before it, either of a civil or criminal nature"); *id.* ("[A]n injunction against a state court would be a violation of the whole scheme of our government."). Although this lawsuit is

nominally brought against the mayor and city of Houston, it is in fact an attempt to preempt the now-expired temporary restraining order and to prevent state courts from issuing similar injunctive relief against the mayor of Houston in the future. The real party in interest is the state court, not the mayor or city of Houston.

CONCLUSION

The case should be dismissed for lack of subject-matter jurisdiction.

Respectfully submitted.

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Dated: January 17, 2014

CERTIFICATE OF SERVICE

I certify that on January 17, 2014, this document was served on counsel of record for Plaintiffs, via the Court's CM/ECF Document Filing System. A copy has also been electronically mailed to counsel for Defendants.

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