

I.

PRELIMINARY STATEMENT

On Monday, November 13, 2006, the City Council adopted, among other things, Ordinance No. 2892 (“Ordinance 2892” or “2892”) and Ordinance No. 2893 (“Ordinance 2893” or “2893”) (collectively with Ordinance 2892 the “Ordinances”), two politically-charged, highly controversial and ill-conceived ordinances. Both Ordinances were transparently targeted at the City’s immigrant population, the overwhelming majority of which are Latino. As expected, the Ordinances have already proven to be divisive among the City’s residents.

Most important for the purpose of this suit is that, in passing the Ordinances, Defendants repeatedly violated the Texas Open Meetings Act (“TOMA”). In fact, Defendants routinely met in closed sessions and cynically schemed to deny the public access to the deliberations and discussions regarding the Ordinances.

Plaintiff brings this action to rectify the City Council’s wrongful acts and to prevent future violations of TOMA. To that end, Plaintiff seeks a judicial declaration that the Ordinances are null and void, *ab initio*, and injunctive relief to prevent Defendants from enforcing or taking any action in furtherance of the Ordinances.

II.

DISCOVERY CONTROL PLAN

1. Discovery shall be conducted under Discovery Control Plan Level 2 pursuant to Texas Rule of Civil Procedure 190.

III.

PARTIES

A. Plaintiff

2. Guillermo Ramos is a Texas resident with his principal place of residence in Farmers Branch, Texas.

B. Defendants

3. Defendant City of Farmers Branch is a municipal corporation located in North Dallas County. It may be served by serving Janie Scarbrough, its Texas registered agent, at 4100 McEwen, Suite 174, Farmers Branch, Texas.

4. Defendant Phelps, Mayor of the City of Farmers Branch, is a resident of Farmers Branch, Texas. He may be served with process at 12705 Epps Field, Farmers Branch, Texas 75234.

5. Defendant O'Hare, a City of Farmers Branch council member, is a resident of Farmers Branch, Texas. He may be served with process at 2606 Dixiana, Farmers Branch, Texas 75234.

6. Defendant Moses, a City of Farmers Branch council member, is a resident of Farmers Branch, Texas. He may be served with process at 3118 Pin Oak Court, Farmers Branch, Texas 75234.

7. Defendant Bird, a City of Farmers Branch council member, is a resident of Farmers Branch, Texas. He may be served with process at 14415 Valley Hi Circle, Farmers Branch, Texas 75234.

8. Defendant Smith, a City of Farmers Branch council member, is a resident of Farmers Branch, Texas. He may be served with process at 2811 Bay Meadow Circle, Farmers Branch, Texas 75234.

9. Defendant Robinson, a City of Farmers Branch council member, is a resident of Farmers Branch, Texas. He may be served with process at 13824 Wooded Creek, Farmers Branch, Texas 75234.

IV.

JURISDICTION AND VENUE

10. Jurisdiction is proper in this Court pursuant to, *inter alia*, Texas Const. Art. 5 § 8.

11. Venue is proper in this Court pursuant to Tex. Civ. Prac. & Rem. Code §§ 15.002. Defendants are all domiciled within Dallas County, Texas, and or a substantial part of the events or omissions giving rise to the claim occurred in Dallas County, Texas.

12. The Court has personal jurisdiction over all Defendants. The City of Farmers Branch is a governmental entity in located in Dallas County, Texas and all the other defendants are residents of Texas.

V.

REQUEST FOR DISCLOSURES

13. Plaintiff requests that Defendants make all disclosures required by Texas Rule of Civil Procedure 194 within 50 days of the service of this Original Petition and Request for Disclosures.

VI.

STATEMENT OF RELEVANT FACTS

A. Plaintiff

14. Plaintiff resides in the City of Farmers Branch, Texas (the "City"). He also operates a real estate brokerage business in the City, which, like other businesses in Farmers Branch, will suffer from the negative impacts likely to result from the Ordinances.

B. Defendants

1. City of Farmers Branch and the City Council

15. Farmers Branch was founded by John Neely Bryan in 1841 and formally incorporated as a city on February 2, 1856. It is a Home-Rule Municipality that operates a “council-manager” form of government. The six individual defendants currently make up the City’s six-member City Council; five council members and Mayor Phelps.

16. Since 1970, the City of Farmers Branch has grown from a small, predominantly White suburban community with a declining population into a growing city of almost 30,000 people. It is home to approximately eighty corporations and more than 2,600 small and mid-size firms, many of them minority-owned.

17. According to the U.S. 2000 Census figures, the racial composition of the City is 55.8% White, 37.2% Hispanic/Latino, and 7% a combination of other races. 25.2% of the City’s population are foreign-born individuals, of which 82% are reported as being born in Latin America. Without any regard to immigration status, the Census identifies a total of just over 5,500 persons in the City as being non-U.S. citizens.

C. Farmers Branch and Councilman O’Hare’s Proposal

18. In August 2006, Defendant O’Hare publicly proposed that the City undertake a “crack down” on illegal immigration in the City by , *inter alia*, prohibiting landlords from leasing to illegal aliens, penalizing businesses that employ illegal aliens, making English the city’s official language and eliminating subsidies for city-funded youth programs that involve the children of illegal immigrants.

19. Without any supporting evidence, O’Hare argued that an influx of illegal immigrants into the City was responsible for the poor reputation of the public schools in the local

district, a lack of “acceptable appreciation” in property values and a high crime rate. Each of those theories lack any empirical support and are “misguided.”¹

20. Nevertheless, on September 5, 2006, the City Council passed Resolution 2006-099 (the “Resolution”), titled:

A RESOLUTION IMPLORING AND URGING PRESIDENT GEORGE W. BUSH AND THE EXECUTIVE BRANCH OF THE UNITED STATES GOVERNMENT AND THE UNITED STATES SENATE AND THE UNITED STATES HOUSE OF REPRESENTATIVES (CONGRESS) TO STRONGLY ENFORCE THE UNITED STATES IMMIGRATION AND NATIONALITY ACT, TITLE 8 U.S.C. 1101-1536 IMMIGRATION (THE ACT) AND TO APPROVE INTO LAW THIS FALL OF 2006 ANY AMENDMENTS NECESSARY TO FURTHER ADDRESS OUR CITIZENS’ CONCERNS ABOUT THE NEGATIVE IMPACT OUR POROUS BORDERS ARE HAVING ON OUR NATIONAL SECURITY AND THE QUALITY OF LIFE IN OUR CITIES AND IN OUR STATES AND NATION

21. The Resolution was sent to elected federal officials from Texas urging them to act promptly to pass comprehensive federal immigration reform legislation. In addition, the Resolution was sent to the city councils of every municipality in the State of Texas, members of Community College Boards and the Boards of Trustees of every Texas school district.

22. About that same time, other small towns and cities around the country began considering local ordinances which targeted immigrant populations within their communities. It is not surprising that in each instance where such ordinances have been adopted, Federal courts have enjoined the enforcement of those ordinances due to their obvious violation of constitutional, Federal and State law.

23. Nonetheless, Defendants launched Farmers Branch into the national spotlight by adopting the two anti-immigrant ordinances which are the subject of this action

¹ See Stephanie Sandoval, *Dallas Morning News*, September 5, 2006, (“‘That’s not true,’ [Mayor] Phelps said. ‘Our crime rate is down, our schools have moved up to recognized, property values are up.’ He said Mr. O’Hare’s assertions about the state of Farmers Branch and suggestions to control illegal immigrants in the city were misguided.”).

D. The Illegal Landlord Conscription Act: City Ordinance 2892

24. On Monday, November 13, 2006, the City Council adopted, as a so-called emergency measure, Ordinance No. 2892, titled:

AN ORDINANCE AMENDING CHAPTER 26, BUSINESSES, ARTICLE IV APARTMENT COMPLEX RENTAL, MANDATING A CITIZENSHIP CERTIFICATION REQUIREMENT PURSUANT TO 24 C.F.R. 5 ET SEQ.; PROVIDING FOR ENFORCEMENT; PROVIDING A PENALTY; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

25. Ordinance 2892 was adopted without deliberation, consideration or debate by council members in any open meetings. The “emergency” that Defendants claimed necessitated 2892 was that “the present ordinances and regulations of the City of Farmers Branch, Texas are inadequate to properly safeguard the health, safety, morals, peace and general welfare of the public.” Ordinance 2892 was, therefore, passed as an exercise of City police power, purportedly “to protect the health, safety, and welfare of the citizens of Farmers Branch.” Defendants did so without placing into the public record any supporting evidence that undocumented immigrants jeopardize the health safety or welfare of the public, let alone that an emergency existed. Instead, the “emergency” adoption of 2892 was done as a thinly veiled effort to thwart public debate and to circumvent the anticipated public outcry.

26. Essentially, Ordinance 2892 forces private landlords to act as immigration officials by requiring them to engage in police efforts which would be unconstitutional if engaged in directly by the police. Apartment complex owners are to commence making inquiry regarding the citizenship and immigration status of their tenants and prospective tenants and to provide that information to City officials.

27. Ordinance 2892 requires that as a prerequisite to a landlord’s entering into a lease or rental agreement, or to renewing or extending any existing agreement, the landlord must

obtain, copy and retain “evidence of citizenship or eligible immigration status for each tenant family.” Evidence is to be obtained from each “family member,” a phrase which is undefined. Furthermore, notwithstanding contractual obligations to the contrary, landlords are forced to evict tenants and prohibit occupancy by any family member that has not submitted sufficient evidence.

28. Ordinance 2892 imposes harsh penalties upon landlords if any provision of that ordinance is violated. It does so strictly and without regard to whether any violation was intentional or accidental. Fines for violations are up to \$500-a-day, with each day during which an alleged violation is claimed to have occurred constituting a separate offense.

29. Ordinance 2892 is a divisive force among the City’s residents. Local business owners report that City businesses are already being negatively impacted by the mere potential of 2892 being enforced. More importantly for the purposes of this suit, Ordinance 2892 was adopted without any meaningful opportunity for public input and in violation of the Defendants’ obligations under the Texas Open Meeting Act.

E. Defendants Violated TOMA

30. Defendants violated the Texas Open Meetings Act, Tex. Gov. Code § 551.001 *et seq.*, commonly referred to as “TOMA.”

1. The Texas Open Meetings Act

31. TOMA proceeds from the requirement that all meetings of any governmental body must be open to the public. TOMA applies to all meetings involving a “quorum” of a governmental body. The City Council of Farmers Branch is a governmental body. Therefore, any four members of the City Council constitutes a quorum. Even in the absence of a quorum, however, a violation of TOMA occurs if a “member or group of members knowingly conspires

to circumvent this chapter by meeting in less than a quorum for the purpose of secret deliberations in violation of this chapter.”

32. TOMA permits closed meetings only under very limited circumstances, each of which is narrowly construed consistent with the overarching principle of open governmental meetings. Naturally, the limited exceptions do not apply if a third-party is present at the closed meeting. TOMA also requires that in most instances, unless an exception to recording is applicable, minutes or tape recordings must be kept of all closed or executive sessions.

33. Violations of TOMA are not taken lightly. Initially, all official actions taken in violation of TOMA are voidable. Further, mandamus and injunctive relief are expressly sanctioned by the Act. In addition, TOMA makes it a crime (misdemeanor), to circumvent TOMA, to participate in an improperly closed meeting, to close a regular public meeting to the public and discuss topics not covered by a closed meeting exception, or to participate in a closed meeting knowing that a certified agenda or tape recording is not being made.

2. Defendants violated TOMA in connection with Ordinance 2892

34. Although the purpose of Ordinance 2892 is ostensibly to protect the public welfare, Defendants intentionally prevented the public from observing or participating in the negotiation, deliberation, consideration or debate regarding 2892. In fact, the public was prevented by Defendants’ conduct from any real discussion of the ordinance prior to its adoption.

35. The City Council did not hold an open meeting concerning Ordinance No. 2892. Defendants intentionally prevented public input and participation by shrouding themselves within executive session meetings to discuss topics that were ambiguously identified and incorrectly identified as exempt from public discussion.

36. Ordinance 2892 was approved at the City Council meeting on November 13, 2006. It was only after the vote on 2892 was held that the floor was opened for public

discussion. The lack of debate over an ordinance of this magnitude was no accident. Rather it was the result of Defendants' cynical scheme to circumvent TOMA and thwart public participation in and observation of the debate on this Ordinance. Notably, Defendants engaged in closed session discussions during which the provisions of the Ordinances were deliberated upon, negotiated and debated. Among other things, during those closed sessions, Defendants discussed the need and importance of there being a unanimous vote by the City Council in support of the Ordinances. Consequently, the Ordinances were modified and revised to appease all Defendants such that when the City Council voted publicly on the Ordinances the public vote was rendered merely a rubber-stamp of Defendants' closed session agreement.

F. The Yard Act: City Ordinance 2893

37. In addition to Ordinance 2892, the City Council has also adopted another divisive ordinance in violation of TOMA - Ordinance 2893 ("2893"). 2893 focuses on residential property maintenance. For example, Ordinance 2893 imposes a ban on empty flower pots and dirty garage doors.

38. On November 23, 2006, the Dallas Morning News reported that:

City Council member Tim O'Hare has said efforts to clean up the city were behind his drive to make it harder for illegal immigrants to live and work in the city, saying they don't maintain their properties, causing values of neighborhood properties to decline.

39. In the same article, Mayor Phelps commented on the adoption of Ordinance 2893, stating, "I guess the main thing was, I guess, the yard art, too much junk in the yard." The City Council adopted 2893 following a bus tour that it took on October 10, 2006. The "tour" moved through neighborhoods in which residents were predominantly Hispanic and without regard to immigration status of neighborhood residents.

40. Ordinance 2893 is unmistakably and improperly directed toward a definable ethnic group – Hispanics – in Farmers Branch. Importantly for the purpose of this suit, the measure

was negotiated in a “back room,” away from the public light, and designed to decrease the Hispanic population in Farmers Branch.

G. Defendants violated TOMA in connection with Ordinance 2893.

41. Defendants failed to comply with TOMA in connection with its passage of Ordinance 2893. 2893, which imposes new minimum property maintenance standards, was discussed and contemplated by the Mayor, City Council, and unidentified individuals from the code enforcement division and city staff at the bus tour meeting on October 10, 2006. It was also discussed in City Council executive sessions. Those discussions occurred in closed meetings, thereby preventing the constituents of the City from observing or participating in applicable discussions. This is precisely the type of conduct TOMA is designed to prevent.

42. The bus tour constituted a meeting of a governmental body in violation of TOMA. Although the public was made aware that a “bus tour” meeting by the City Council would occur, there was no meaningful opportunity for the public to accompany and participate in that meeting. Tour attendees were restricted to a small group of invited individuals, including Mayor Phelps, all City Council members, and others selected from the code enforcement division and city staff.

43. Additionally, certain Defendants met together in unnoticed or unscheduled meetings to discuss the proposed Ordinance. At such meetings, Defendant O’Hare and others routinely pressured and persuaded other Defendants to agree to support O’Hare’s proposals and 2893.

H. The City Council thwarted debate by erroneously claiming their discussions of the Ordinances and illegal immigration issues were exempt from public discussion.

44. As set forth above, the City Council continually discussed the Ordinances only behind closed doors. To shut the public out, Defendants wrongfully asserted that the narrow attorney consultation exception to TOMA applied to close meetings to the public in violation of,

inter alia, Tex. Gov. Code §§ 551.002 and 551.144. The attorney consultation exception does not apply to discussions regarding general negotiations, policy discussions the wisdom of particular clauses or matters unrelated to litigation or the rendition of attorney advice. The fact that Defendants' discussions occurred in the presence of the city's attorney does not avail Defendants of the narrow attorney consultation exception.

45. Defendants' meeting agendas, for meetings on September 5, 2006, September 18, 2006, and November 17, 2006, evidence that Defendants conducted closed executive session discussions concerning: 1) proposed ordinances; 2) resolutions; 3) other issues related to the City's English language proclamation; 4) illegal immigration; 5) business and rental licensing; and 6) other matters not directly related to litigation or attorney's legal advice. Those issues are not within the ambit of the attorney consultation exception. Accordingly, TOMA required Defendants to conduct those discussions in open meetings. Defendants failed to do so. By discussing the above-referenced matters in closed sessions, Defendants have clearly violated TOMA.

VII.

CLAIMS

A. CLAIM 1: Temporary Injunction: Ordinances 2892 and 2893

46. Plaintiff repeats the preceding paragraphs.

47. Plaintiff's request for injunctive relief is authorized by the TEX. CIV. PRAC. & REM. CODE §65.011 to prevent Defendants' continued violations and their enforcement of the unlawful and invalid Ordinances detailed above, all of which create a substantial threat of irreparable injury to Plaintiff and his business interests for which there is no adequate remedy at law.

48. Plaintiff has a substantial likelihood of success on the merits of its claims and the balancing of the equities and public policy weigh heavily in Plaintiff's favor.

49. Plaintiff is entitled to a temporary injunction prohibiting enforcement of either of Ordinance 2892 or Ordinance 2893 and prohibiting Defendants from further violations of TOMA.

50. As detailed above, Defendants have persistently, systematically, and intentionally violated TOMA throughout the process of considering, discussing, commenting upon and adopting the Ordinances. At every turn, the public has been intentionally shut out of the process. Defendants have repeatedly and intentionally violated TOMA. Their violations have contaminated the entire process concerning Ordinance Nos. 2892 and 2893. There is no sign that this pattern will change and every indication it will not change. Defendants' ongoing conduct and zealous pursuit of O'Hare's proposed immigration "crackdown" evidences that they are likely to continue their wrongful conduct.

51. Additionally, following issuance of the temporary injunction, a permanent injunction is proper to enjoin Defendants from enforcing or taking any action with respect to Ordinance 2892 or Ordinance 2893.

B. CLAIM 2: Request For Declaratory Judgment Voiding Ordinance 2892 and Ordinance 2893

52. Plaintiff repeats the preceding paragraphs.

53. As demonstrated above, an actual, substantial and justiciable controversy exists regarding the validity of the Ordinances and Defendants' compliance with TOMA in adopting those Ordinances Plaintiff maintains that the Ordinances are invalid and void. Defendants, however, contend that the Ordinances are valid and that they were adopted in compliance with

the law. Defendants' violations of TOMA in pursuing and adopting the Ordinances make the Ordinances voidable.

54. Accordingly, Plaintiff requests that this Court issue a declaratory judgment declaring that: (i) the City Council violated TOMA with respect to each of the Ordinances; (ii) Ordinance 2892 is invalid and void *ab initio*; and (iii) Ordinance 2893 is invalid and void *ab initio*.

C. CLAIM 3: Injunctive Relief: Violations of TOMA

55. Plaintiff repeats the preceding paragraphs.

56. Defendants, as described above, have repeatedly violated TOMA.

57. Plaintiff requests that all Defendants be required to produce to Plaintiff all minutes and/or recordings of the City Council's meetings, negotiations, or other communications regarding Ordinance No. 2892 and/or Ordinance No. 2893.

58. In addition, Plaintiff requests that Defendants be required to produce to the Court, for *in camera* review, all minutes and/or recordings of all executive session meetings of the City Council relating to the issues presented in Ordinance No. 2892 and/or Ordinance No. 2893 to determine which, if any, should not be immediately made available to Plaintiffs and the public, and order that such be done forthwith.

59. Finally, Plaintiff requests that Defendants be ordered to comply with TOMA.

D. CLAIM 4: Attorneys' Fees

60. Plaintiff repeats the preceding paragraphs.

61. As a result of Defendant's conduct, Plaintiff was forced to retain the undersigned counsel to pursue these causes of action. Plaintiff is, therefore, entitled to recover attorneys' fees pursuant to Texas Civil Practice and Remedies Code § 37.001 *et seq.*

VIII.

DEMAND FOR JURY TRIAL

62. Plaintiff demands a jury trial on all applicable issues.

IX.

REQUEST FOR RELIEF

WHEREFORE Plaintiff respectfully requests that the Court enter judgment for Plaintiffs and award Plaintiff the following relief:

- (a) a temporary injunction enjoining Defendants from enforcing Ordinance 2892 or Ordinance 2893 and prohibiting Defendants from further violating TOMA;
- (b) a declaratory judgment declaring that Defendants violated the Texas Open Meetings Act;
- (c) a declaratory judgment declaring that Ordinance No. 2892 is invalid and void *ab initio*;
- (d) a declaratory judgment declaring that Ordinance No. 2893 is invalid and void *ab initio*;
- (e) an injunction requiring Defendants to produce to Plaintiffs all minutes and/or recordings of the Farmers Branch City Council's meetings, negotiations, or other communications;
- (f) an injunction requiring Defendants to produce to the Court, for *in camera* review, all minutes and/or recordings of all closed session meetings of the Farmers Branch City Council relating to Ordinance Nos. 2892 and 2893's issues to determine which, if any, should be made available immediately to Plaintiffs and the public, and entering of an Order requiring the release such minutes and/or recordings;
- (g) a permanent injunction: 1) preventing Defendants from enforcing or taking any action in furtherance of Ordinance No. 2892; 2) preventing Defendants from enforcing or taking any action in furtherance of Ordinance No. 2893; and 3) requiring Defendants to comply with the Texas Open Meetings Act;
- (h) all attorneys' fees and reimbursement of the costs incurred in connection with this suit; and
- (i) all other appropriate relief to which Plaintiff is entitled.

Respectfully submitted,

BICKEL & BREWER STOREFRONT, P.L.L.C.

By: _____

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