

No. _____

IN THE
Supreme Court of the United States

ADRIAN PERKINS, in his official capacity as
MAYOR OF THE CITY OF SHREVEPORT,
LOUISIANA,

Petitioner,

v.

CELCOG, LLC, dba STRAWN'S EAT SHOP TOO,
MONJUNI'S OF PORTICO, INC., AIR U
SHREVEPORT, LLC, THE BRIAN TRAIN, LLC,
and BEARING SERVICE & SUPPLY, INC.,

Respondents.

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE LOUISIANA COURT OF APPEALS,
SECOND CIRCUIT*

APPENDIX

Nichole M. Buckle, Bar No. 305018
CARMOUCHE, BOKENFOHR, BUCKLE & DAY
6425 Youree Drive, Suite 380
Shreveport, Louisiana 71105
Phone: (318) 629-0014
Fax: (318) 404-1571
nikki@cbbd.com

APPENDICES

A.	November 1, 2022 Writ Denial from the Louisiana Supreme Court	2a
B.	May 18, 2022 Opinion of the Louisiana Court of Appeals, Second Circuit	3a
C.	December 18, 2020 Judgment of the First Judicial District Court, Caddo Parish, Louisiana	20a
D.	Plaintiffs-Respondents Verified Petition for Declaratory and Injunctive Relief and Motion for Appointment of Process Server, filed July 10, 2020	22a
E.	Plaintiffs-Respondents' Motion for Attorney's Fees, filed September 18, 2020	44a

APPENDIX A

**THE SUPREME COURT OF
THE STATE OF LOUISIANA**

No. 2022-C-00959

CELCOG, LLC, dba STRAWN'S EAT SHOP TOO,
MONJUN'S OF PORTICO, INC., AIR U
SHREVEPORT, LLC, THE BRIAN TRAIN, LLC,
and BEARING SERVICE & SUPPLY, INC.,
Plaintiffs-Appellees

v.

ADRIAN PERKINS, in his official capacity as
MAYOR OF THE CITY OF SHREVEPORT,
LOUISIANA,
Defendant-Appellant

[Filed: November 01, 2022]

Writ application denied.

JLW
SJC
JTG
JBM

Hughes, J., would grant.
Crain, J., would grant.
Griffin, J., would grant.

APPENDIX B

COURT OF APPEAL
SECOND CIRCUIT
THE STATE OF LOUISIANA

No. 54,254-CA

CELCOG, LLC, dba STRAWN'S EAT SHOP TOO,
MONJUN'S OF PORTICO, INC., AIR U
SHREVEPORT, LLC, THE BRIAN TRAIN, LLC,
and BEARING SERVICE & SUPPLY, INC.,
Plaintiffs-Appellees

v.

ADRIAN PERKINS, in his official capacity as
MAYOR OF THE CITY OF SHREVEPORT,
LOUISIANA,
Defendant-Appellant

[Filed: May 18, 2022]

OPINION

Before: COX, STEPHENS, and ROBINSON, JJ.

STEPHENS, J.

Defendant, Adrian Perkins, in his official capacity
as Mayor of the City of Shreveport, Louisiana, appeals

(3a)

judgments of the First Judicial District Court, Parish of Caddo, State of Louisiana, in favor of plaintiffs, Celcog, LLC., dba Strawn's Eat Shop Too, Air U Shreveport, LLC, The Brain Train, LLC, and Bearing Service & Supply, Inc., granting plaintiffs' motion for attorney fees and awarding them attorney fees in the amount of \$36,000. For the following reasons, we affirm the judgments of the trial court.

FACTS AND PROCEDURAL HISTORY

In response to COVID-19 pandemic, the governor of Louisiana declared a statewide public health emergency on March 11, 2020. Subsequently, on or about July 8, 2020, the mayor of the City of Shreveport, Louisiana, Adrian Perkins, issued an executive order requiring citizens to wear masks or facial coverings when inside business establishments in Shreveport, Louisiana (The "Mayor's Order"). In response to Mayor's Order, local businesses Celcog, LLC, dba Strawn's Eat Shop Too, Air U Shreveport, LLC, The Brain Train, LLC, and Bearing Service & Supply, Inc. ("Businesses"), filed a petition for declaratory and injunctive relief, requesting an injunction and temporary restraining order pursuant to La C.C.P. art. 3603.¹ They alleged the enforcement measured contained in the Mayor's Order violated the Louisiana Constitution and Louisiana state law and that Mayor Perkins lacked the authority to make such an order.

¹ Monjuni's of Portico, Inc., was initially named as a plaintiff in the petition but was later removed.

Specifically, the alleged constitutional violations were set forth as follows:

COUNT II – RIGHT TO DUE PROCESS OF LAW

41. The preceding allegations are incorporated in full as if fully set forth.
42. Article I, Section 2, of the Louisiana Constitution provides that “No person shall be deprived of life, liberty, or property, except by due process of law.”
43. The Order purports to permit enforcement by undefined measures.
44. The Order threatens to terminate or suspend protected property rights, including utility services, permits, and licenses without due process.
45. The Order is vague in that it requires determination of whether certain actions are “impractical.”
46. The Order poses a direct conflict with La.R.S. 14:313 and thereby presents citizens with conflicting legal obligations.

COUNT III – EQUAL PROTECTION

47. The preceding allegations are incorporated in

full as if fully set forth.

48. The Order applies arbitrarily, capriciously, and without rational basis.

COUNT IV – RIGHTS TO FREE EXPRESSION,
FREE EXERCISE OF RELIGION AND TO
ASSEMBLE PEACEABLY

49. The preceding allegations are incorporated in full as if fully set forth.
50. Article I, Section 7 of Louisiana Constitution provides: “No Law shall curtail or restrain the freedom of speech or of the press. Every person may speak, write, and publish his sentiments on any subject, but is responsible for abuse of that freedom.”
51. Article I, Section 8, of the Louisiana Constitution provides: “No Law shall be enacted respecting an establishment of religion or prohibiting the free exercise thereof.”
52. Article I, Section 9, of the Louisiana Constitution provides: “Not law shall impair the right of any person to assemble peaceably[.]”
53. The Order purports to restrict the rights of citizens to assembly peaceably unless they undertake symbolic political activity.

- 54. The Order purports to command businesses to post signage with political content and/or to condition their right to do business on posting signage with political content.
- 55. The Order purports to permit large, risky protests without masks while requiring worshipers to wear masks at religious gatherings.

COUNT V – RIGHT TO PRIVACY

- 56. The preceding allegations are incorporated in full as if fully set forth.
- 57. Article I, Section 5, of the Louisiana Constitution provides: “Every person shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasions of privacy. No warrant shall issue without probable cause supported by oath or affirmation, and particularly describing the place to be searched, the persons or things to be seized, and the lawful person or reason for the search. Any person adversely affected by a search or seizure conducted in violation of this Section shall have standing to raise its illegality in the appropriate court.”
- 58. Neither the Order nor any purported violation of the Order provides grounds for any fire marshal, police officer, or other government agent to

search, inspect, or demand access to any private property.

Thereafter, the trial court issued a temporary restraining order and set the matter for hearing, which occurred on July 20, 2020. The sole issue before the trial court was whether Mayor Perkins had the authority to issue the Mayor's Order. The trial court ultimately held Mayor Perkins lacked the authority to issue the Mayor's Order and that the order was "unconstitutional in that it violates separation of powers and plaintiffs' constitutional rights to due process of law." The trial court converted the previously granted temporary restraining order to a preliminary injunction. The trial court further ordered that the issue of attorney fees remain open. Mayor Perkins did not seek supervisory review of the trial court's judgment.

Businesses subsequently filed on a motion for attorney fees, alleging they were entitled to an award of attorney fees pursuant to 42 U.S.C. §1988 as their petition asserted claims that were actionable under both state and federal law. They asserted that because Louisiana is a fact-pleading state, their allegations of violations of the Louisiana Constitution were sufficient to prove violations of the United States Constitution and that they met the requisites for an award of attorney fees under 42 U.S.C. §1988(b) was inapplicable because Businesses failed to allege a single violation of the United States Constitution or any other federal statute and failed to assert any other claim arising under federal law. He further noted that had he attempted to remove this case to

federal court based upon the applicability of the United States Constitution to Businesses' claims, he would have been unable to do so because Businesses had intentionally and carefully drafted their petition to include only state law claims.

A hearing on Businesses' motion was held on December 14, 2020, where, in addition to the above arguments, Businesses asserted the claims alleged in their petition were sufficient to state a cause of action under federal law because the due process clause of the Louisiana Constitution was merely a codification of the due process clause of the United States Constitution; thus the trial court inevitably must have considered the United States Constitution in determining the constitutionality of the Mayor's Order. By contrast, Mayor Perkins pointed out that the trial court had ruled only on Businesses' state law claims asserted in their petition, not on the basis of any federal law.

Thereafter, the trial court granted Businesses' motion. In doing so, it acknowledged Businesses' petition specifically referred to only Louisiana statutes and the Louisiana Constitution but noted the petition also stated Businesses were entitled to relief because "the conduct sought to be restrained is unconstitutional." The trial court held that both the Louisiana and United States Constitutions were at issue in the case and clarified that its prior ruling was that both were violated by the Mayor's Order. A written judgment in accordance with the trial court's ruling was rendered on December 18, 2020. Mayor Perkins filed an application for writ of supervisory

review, which was denied by this court on January 28, 2021, and a motion to reconsider, which was denied by the trial court on March 17, 2021.

Following a hearing on the traversal of invoices submitted by Businesses' counsel, additional invoices were provided by Businesses and both sides filed memoranda in support of their argument. Businesses ultimately requested attorney fees of approximately \$41,800. Mayor Perkins asserted the attorney fees requested by Businesses were excessive and unreasonable and noted Businesses' counsel incurred significantly more hours of work on the issue of attorney fees than on the merits of the underlying litigation. He further argued that the invoices submitted by Businesses' counsel contained numerous instances of noncompensable work, including duplicative billing and charges for clerical work. Mayor Perkins urged that, in keeping with the applicable Lodestar Method, Businesses' counsel's hourly rate, as well as the hourly rate of any paralegal work, should be reduced and the total number of hours awarded should be reduced to account for the instances of noncompensable work. On the other hand, Businesses argued the hourly rates requested were normal hourly rates charged for established clients, and that the invoices submitted contained only necessary work on the underlying merits litigation and issue of attorney fees. The trial court rendered a written judgment on March 17, 2021, awarding Businesses \$36,000 in attorney fees. This appeal by Mayor Perkins ensued.

DISCUSSION

Entitlement to Attorney Fees

In his first assignment of error, Mayor Perkins asserts the trial court abused its discretion in granting Businesses' motion for attorney fees under 42 U.S.C. §1988(b) because this provision is inapplicable where Businesses' claims were made solely and specifically under the Louisiana Constitution and Louisiana Revised Statutes.

On appeal, Mayor Perkins reiterates his arguments made below—as Businesses' claims were strictly, solely, and specifically made under Louisiana law, their claims are unquestionably state claims, *not* actions enforceable under 42 U.S.C. §1988(b). As there is clearly no basis for federal jurisdiction, it logically follows there would be no basis for an award of attorney fees under a statute that specifically provides for attorney fees only in an action or proceeding to enforce rights under enumerated federal law. Mayor Perkins asserts businesses, as masters of their claim made a tactical decision to avoid removal of their case to federal court by confining their allegations to include only those causes arising under state law and the mere fact that claims arising under federal law may have been available to them is no sufficient to trigger the application of 42 U.S.C. §1988(b).

In response, Businesses first note that as the trial court had concurrent jurisdiction over any federal

claims, it acted within its discretion to enforce their rights under 42 U.S.C. §1983 and by awarding attorney fees pursuant to 42 U.S.C. §1988. They further assert the primary objective of all procedural rules is to secure to parties the full measure of their substantive rights and that the aim of a pleading is threefold: (1) to show that the court is vested with subject matter jurisdiction in a particular case; (2) to set forth the bounds of a controversy; and (3) to allow the parties to explore the issues within the bounds of the controversy. Businesses contend their petition satisfied all three goals of a pleading and note Mayor Perkins obviously considered the bounds of the issue to include federal constitutional claims since in support of this argument that his Mayor's Order was constitutional, he only cited cases interpreting and applying the federal constitution.

Significantly, Businesses argue the trial court did not abuse its discretion in awarding attorney fees under 42 U.S.C. §1988(b) because Louisiana is a fact-pleading state and they properly and factually raised violations of both the Louisiana and U.S. Constitutions, noting the Louisiana Constitution provides the same due process protections as the United States Constitution.

It is well established that Louisiana law utilizes a system of fact pleading wherein no technical forms of pleading are required. The plaintiff need not plead a theory of the case, but only facts that would support recovery. La. C.C.P. art. 854, *Ramey v. DeCaire*, 2003-1299 (La. 3/19/04), 869 So.2d 114; *Robinson v. Allstate Ins. Co.*, 53940 (La. App.2 Cir. 5/26/21), 322 So. 3d

381, *writ denied*, 2021-00906 (la. 10/19/21), 326 So.3d 264. In order to plead “material facts” within Louisiana’s fact-pleading system the pleader must state what act or omission he will establish at trial. *Miller v. Thibeaux*, 2014-1107 (La. 01.28/15), 159 So.3d 426; *Zimmerman v. Progressive Sec. Ins. Co.*, 49,982 (La. App. 2 Cir. 8/12/15), 174 So.3d 1230, *writ denied*, 2015-1955 (La. 11/30/15), 184 So.3d 36. The petition must set forth the facts upon which recovery is based; otherwise the defendant would have neither adequate notice of the allegation nor an opportunity to counter the claim. *Zimmerman, supra*; *Robertson v. West Carroll Ambulance Serv. Dist.*, 39,331 (La. App. 2d Cir. 01/26/05), 892 So.2d 772, *writ denied*, 2005-0460 (La. 4/22/05), 899 So.2d 577.

42 U.S.C. §1983 provides as follows:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable exclusively

to the District of Columbia shall be considered to be a statute of the District of Columbia.

While the bulk of §1983 cases are brought in federal court, state courts may also exercise jurisdiction over §1983 cases pursuant to the principle of concurrent jurisdiction. *Richard v. Bd. Of Sup'rs of Louisiana State Univ. and A & M College*, 2006-0927 (La. App. 1 Cir. 3/28/07), 960 So.2d 953.

As a general rule, attorney fees are not allowed in Louisiana unless they are authorized by statute or provided for by contract. *State, Dept. of Transp. & Dev. V. Wagner*, 2010-0050 (La. 5/28/10), 38 So. 3d 240; *Quinlan v. Sugar-Gold*, 53,348 (La. App. 2 Cir. 3/11/20), 293 So.2d 722, *writ denied*, 2020-00744 (La. 10/6/20), 302 So.3d 536. 42 U.S.C. §1988(b) provides for an award of attorney fees only in actions to enforce enumerated provisions of federal law, as follows:

In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318, the Religious Freedom Restoration Act of 1993, the Religious Land Use and Institutionalized Persons Act of 2000, title VI of the Civil Rights Act of 1964, or section 12361 of Title 34, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction.

In *Hughes v. Livingston Parish Sch. Bd.*, 459 So.2d 10 (La. App 1 Cir. 10/9/1984), write denied, 462 So.2d 1250 (La. 1985), the plaintiff filed suit in state district court alleging only violations of Article I, Section 3 of the Louisiana Constitution of 1974 and a separate allegation that he was a “victim of discrimination because of his race in that members of his race consist of approximately fifteen percent of the population of Livingston Parish, but there are no black members of the Livingston Parish School Board and that their voting strength is diluted. . .” without reference to the Louisiana or U.S. Constitution and demanded attorney fees. *Id.* At 11. The First Circuit found that there was no contractual basis for attorney fees or any Louisiana statute which would allow attorney fees in an action of this kind based on Louisiana law. *Id.* However, it held that Hughes factually stated a demand for recovery under federal law, specifically 42 U.S.C. §1983, after alleging discrimination based upon race even without referencing either the Louisiana Constitution or the U.S. Constitution. *Id.*

Here, as in *Hughes*, Businesses’ petition clearly contains material facts sufficient to support a demand for recovery under. §1983. The claims made against Mayor Perkins in the original petition were factually based on the Due Process Clause of the Louisiana Constitution which confers “rights, privileges or immunities” within the meaning of 42 U.S.C. §1983. Whether or not Mayor Perkins could have prevailed in an attempt to remove the matter to federal court is irrelevant as the criteria for removal to federal court and sufficient fact-pleading in a Louisiana state court

are simply not the same. Accordingly, since Businesses prevailed on the merits of their claims, having successfully established a violation of the due process clause, they were entitled to the recovery of costs incurred pursuant to 42 U.S.C. §1988. Furthermore, where a party is forced to litigate payment of a fee to which it is entitled, courts have allowed collection of an additional fee for the work as well. *Quinlan. Supra.* Thus, the trial court did not err in finding that Businesses are entitled to recover the costs incurred on the issue of attorney fees in addition to those costs incurred on the merits of the underlying litigation. This assignment of error is without merit.

Amount of Attorney Fees

In his second assignment of error, Mayor Perkins asserts the trial court abused its discretion in awarding excessive and unreasonable attorney fees to Businesses where a significant portion of the work expended was unproductive, excessive, redundant, duplicative, or clerical.

Mayor Perkins argues that while the Lodestar Method for calculating reasonable attorney fees requires multiplying the number of hours reasonably expended by a reasonable hourly rate, the hourly rates submitted by Businesses for both attorney and paralegal work are not consistent with the market rates in Caddo-Bossier Parish legal market. He further claims the total number of reasonable hours expended in this case by lead counsel, associate counsel, and paralegals is clearly excessive.

Specifically Mayor Perkins argues the submitted invoices show Businesses south to be awarded attorney fees for numerous examples of unproductive, excessive, redundant, duplicative, and clerical hours and that despite his concise and detailed traversal of Businesses' invoices, the trial court failed to reduce the award of attorney fees for numerous instances of unnecessary work by Businesses' counsel and his employees. He acknowledges the trial court did reduce the award by approximately \$5,000 but asserts that in doing so, the trial court abused its discretion by failing to account for the numerous examples of unproductive, excessive, redundant, duplicative, and clerical hours provided by Businesses. According to Mayor Perkins, the trial court's reduction is simply insufficient.

Businesses, on the other hand, assert the trial court did not abuse its discretion in the amount of attorney fees awarded, noting the trial court reviewed all evidence in the record, applied the Lodestar Method, and exercised its great discretion to reduce the amount of fees awarded. Businesses further argue fees awarded under 42 U.S.C. §1988(b) include time spent on related matters, such as enforcement of the successful claim.

The U.S. Supreme Court established in *Hensley v. Eckerhart*, 461 U.S. 424, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983), that the initial estimate of a reasonable attorney fee is properly calculated by multiplying the number of hours reasonably expended on the litigation times as reasonable hourly rate, otherwise known as the "lodestar method." A "reasonable hourly

rate” is to be calculated according to the prevailing market rates in the relevant community. *Covington v. McNeese State Univ.*, 2012-2182 (La. 5/7/13), 118 So.3d 343, 348. A reasonable attorney fee is determined by the facts of an individual case. *Cupit v. Hernandez*, 45,670 (La. App. 2 Cir. 9/29/10), 48 So. 3d 1114, *writ denied*, 2010-2466 (La. 12/17/10), 51 So.3d 7. The trial court is vested with considerable discretion in setting attorney fees and will not be disturbed absent an abuse of that discretion. *Knight v. Tucker*, 52,438 (La. App. 2 Cir. 1/16/19), 263 So.3d 625.

Here, the record clearly shows that the trial court did not arbitrarily calculate the amount of reasonable attorney fees to award Businesses. Instead, it is evident that the trial court reviewed the evidence presented, and upon consideration of such evidence, saw fit to reduce the amount requested by Businesses. The trial judge in fact stated on the record that he had “gone through everything and I’ve calculated it,” and further explained he was reducing the award after finding “some duplication” and “more clerical stuff.” The trial court was in the best position to consider the facts and criteria for determining the reasonableness of an attorney fee award. Based upon our own review of the record, the trial court did not abuse its vast discretion in the amount of attorney fees awarded in this case. This assignment of error is without merit.

Businesses did not file an answer to the appeal, yet in brief they ask this court to award an additional amount of attorney fees for work done in conjunction with this appeal. An appellee who neither appeals

form the trial court's judgment nor answers an appeal is not entitled to additional attorney fees for legal services rendered on appeal. La.C.C.P. art. 2133; *Trejo v. Canaan Constr., LLC*, 52, 697 (La. App. 2 Cir. 6/26/19), 277 So. 3d 499; *RSI Bldg. Prod., LLC v. Advantage Roofing & Constr. Of Louisiana, Inc.*, 51.987 (La. App. 2 Cir. 5/23/18), 248 So.3d 601. *See also, Hughes v. Cap. City Press, L.L.C.*, 2021-0201 (La. App. 1 Cir. 12/7/21), 332 So.3d 1198, writ denied, 2022-00023 (La. 2/22/22), 333 So. 3d 444.

CONCLUSION

For the foregoing reasons, the trial court's judgments in favor of Plaintiffs, Celcog, LLC, dba Strawn's Eat Shop Too, Air U Shreveport, LLC, The Brain Train, LLC, and Bearing Service & Supply, Inc., are affirmed. In compliance with La.R.S. 13:5112, costs in the amount of \$2,011.58 are assessed to Defendant, Adrian Perkins, in his official capacity as mayor of the City of Shreveport, Louisiana.

AFFIRMED.

APPENDIX C

**FIRST JUDICIAL DISTRICT COURT
CADD O PARISH
THE STATE OF LOUISIANA**

No. 624,744

CELCOG, LLC, dba STRAWN'S EAT SHOP TOO,
MONJUNI'S OF PORTICO, INC., AIR U
SHREVEPORT, LLC, THE BRIAN TRAIN, LLC,
and BEARING SERVICE & SUPPLY, INC.,
Plaintiffs

v.

ADRIAN PERKINS, in his official capacity as
MAYOR OF THE CITY OF SHREVEPORT,
LOUISIANA,
Defendant

[Filed: December 18, 2020]

JUDGMENT

This matter came before the Court on December 14, 2020 at 1:30pm on the Motion for Attorney's Fees filed by Plaintiffs herein. Plaintiffs, CELCOG, L.L.C. dba STRAWN'S EAT SHOP TOO, THE BRIAN TRAIN, LLC, AND BEARING SERVICE & SUPPLY, INC., appeared through their counsel of record, Glenn L. Langley. Defendant, MAYOR ADRIAN PERKINS,

appeared through his counsel of record, Nichole M. Buckle. Considering the argument of counsel and the pleadings filed herein:

IT IS ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion for Attorney's Fees is GRANTED.

IT IS FURTHER ORDERED that counsel for Plaintiffs will supply counsel for Mayor Perkins with a copy of his fee records with minimal redactions on or before close of business December 18, 2020. Thereafter, the parties will confer regarding the fee application and, failing an agreement on the amount of attorney's fees to be awarded to Plaintiffs' counsel, a hearing shall be held on **February 1, 2021** at 9:30 a.m. to permit Defendant's counsel to traverse Plaintiffs' counsel on the matter of attorney's fees, after which the court will decide the amount thereof.

JUDGMENT RENDERED in Open Court on December 14, 2020 in Shreveport, Caddo Parish, Louisiana

APPENDIX D

**FIRST JUDICIAL DISTRICT COURT
CADDO PARISH
THE STATE OF LOUISIANA**

No. 624,744

CELCOG, LLC, dba STRAWN'S EAT SHOP TOO,
MONJUN'S OF PORTICO, INC., AIR U
SHREVEPORT, LLC, THE BRIAN TRAIN, LLC,
and BEARING SERVICE & SUPPLY, INC.,
Plaintiffs

v.

ADRIAN PERKINS, in his official capacity as
MAYOR OF THE CITY OF SHREVEPORT,
LOUISIANA,
Defendant

[Filed: July 10, 2020]

**VERIFIED PETITION FOR DECLARATORY
AND INJUNCTIVE RELIEF AND MOTION FOR
APPOINTMENT OF PROCESS SERVER**

NOW INTO COURT, through undersigned counsel, come Plaintiffs who submit this petition for an injunction and temporary restraining order pursuant to the Louisiana Code of Civil Procedure article 3603 as more specifically outlined below:

PARTIES

1. Plaintiffs herein are:

- a. CELCOG, L.L.C., a Louisiana limited liability company registered with the Louisiana Secretary of State, doing business as STRAWN'S EAT SHOP TOO (hereinafter "Strawn's");
- b. MONJUNI'S OF PORTICO, INC. , a business corporation authorized to do and doing business in the State of Louisiana (hereinafter "Monjuni's");
- c. AIR U SHREVEPORT, LLC, a Louisiana limited liability company registered with the Louisiana Secretary of State (hereinafter "Air U");
- d. THE BRAIN TRAIN, LLC, a Louisiana limited liability company registered with the Louisiana Secretary of State (hereinafter "Brain Train"); and
- e. BEARING SERVICE & SUPPLY, INC., a business corporation authorized to do and doing business in the State of Louisiana (hereinafter "Bearing Service")

(collectively herein "Petitioners")

2. Defendant herein is:

- a. ADRIAN PERKINS, in his official capacity as MAYOR OF THE CITY OF SHREVEPORT, LOUISIANA (hereinafter “Mayor Perkins”)

(sometimes hereinafter “Defendant”).

JURISDICTION AND VENUE

3. Venue is proper pursuant to Louisiana Code of Civil Procedure article 42 because all defendants are domiciled in this judicial district.

FACTUAL ALLEGATIONS

4. COVID-19 is an infectious disease that originated in Wuhan, China in 2019 and was present in the United States by early 2020.
5. In response to the COVID-19 pandemic, the Secretary of the United States Department of Health and Human Services declared a public health emergency on January 31, 2020, and the President of the United States declared a national emergency on March 13, 2020.¹

¹ Declaring a National Emergency Concerning the Novel Coronavirus Disease 9COVID-19) Outbreak, Fed. Reg. 15337 (March 18, 2020)

6. The Governor of Louisiana likewise declared a statewide public health emergency on March 11, 2020.¹ The Governor then issued a series of “Stay at Home” orders that, among other things, ordered the people of Louisiana to stay at their homes unless taking essential trips or to travel to or from a place of employment, ordered some non-essential businesses to be closed, and placed limitations on other businesses that were allowed to remain open.
7. The Stay at Home orders were driven largely by concerns that ventilators, hospital capacity, and personal protective equipment (“PPE”) supplies would be exhausted, and the orders were at least colorably authorized by statute.
8. Since the time the original Stay at Home order, the number of new COVID-19 cases and COVID-related hospitalizations in Louisiana have decreased, with the peak of hospitalizations occurring on or near April 13, 2020.²
9. The severity and adverse outcomes of COVID-19 infections appear to have decreased. Experts have identified several factors driving that trend. Increased testing allows for earlier intervention when available treatments seem to work best. Earlier, more effective

¹ Proclamation 25 JBE 2020.

² See Proclamation 74 JBE 2020.

treatments also reduce pressure on medical professionals and hospitals, thereby allowing better treatment of patients who are seriously ill. The medical profession has also gained a better hand on how to treat COVID-19 via techniques such as proning, blood thinners, an administration of certain steroids. These same factors have greatly reduced the concerns that drove the Stay at Home orders.

10. On May 15, 2020, consistent with guidance issued by the White House Coronavirus Task Force, the Governor ordered the State of Louisiana into Phase I of recovery and reopening. As part of his Phase 1 order, the Governor lifted portions of the Stay at Home orders.³

11. On June 4, 2020, consistent with guidance issued by the White House Coronavirus Task Force, the Governor ordered the State of Louisiana into Phase II of recovery and reopening. As part of this Phase II order, the Governor lifted additional portions of the Stay at Home orders.⁴

MASKS ARE MADE POLITICAL

12. In the early days of the pandemic, leading medical professionals and media figures repeatedly claimed masks were not effective in

³ Proclamation 58 JBE 2020.

⁴ Proclamation 74 JBE 2020.

protecting the public from COVID-19, and they affirmatively discouraged the public from wearing them. For example, on February 27, 2020, the Director of the Centers for Disease Control and Prevention told the House Foreign Affairs Committee that “[t]here is no role for . . . masks in the community.” On February 29, the U.S. Surgeon General tweeted:

Seriously people-STOP BUYING MASKS!

They are NOT effective in preventing general public from catching #Coronavirus, but if healthcare providers can’t get them to care for sick patients, it puts them and our communities at risk!

13. That same day, the New York Times quoted Dr. Mike Ryan, executive director of the World Health Organization’s Health Emergencies Program as stating: “Not having a mask does not necessarily put you at any increased risk of contracting this disease.” Indeed, on March 30, Dr. Ryan told reporters:

There is not specific evidence to suggest that the wearing of masks by the mass population has any potential benefit. In fact, there’s some evidence to suggest the opposite in the misuse of wearing a mask properly or fitting it properly.

14. In early April, the CDE suddenly reversed course and recommended that people 2 years of age and older wear a cloth face covering in public settings and when around people who don't live in the same household, especially when other social distancing measures are difficult to maintain. Medical leaders made clear, however, that masks are merely a backup to proper social distancing. That view is consistent with scientific evidence indicating that cloth masks provide minimal benefit.
15. In May and June, large numbers of medical professionals departed from the CDC's advice and urged that the political benefits of certain protests outweighed the epidemiological costs of further spreading COVID-19.⁵ Elected officials – including Perkins – followed along, supporting the protests without expressing any concern for the COVID-19 infections that would inevitably result, or for violations of existing emergency orders. Indeed, at a June 4 protest, Mayor Perkins told protestors that they “have the full support of the Mayor of Shreveport” and “the full support of the Shreveport Police Department; they're going to do everything they can to keep demonstrations safe today and for however long you demonstrate and exercise your constitutional right.”

⁵ <https://time.com/5847212/doctors-supporting-protests/>

16. Judge James Ho, of the U.S. Court of Appeals for the Fifth Circuit, noted the disparate treatment:

In recent weeks, officials have not only tolerated protests – they have encouraged them as necessary and important expressions of outrage over abuse of government power.

For people of faith demoralized by coercive shutdown policies, that raises a question: if officials are now exempting protestors, how can they justify continuing to restrict worshippers? The answer is that they can't. Government does not have carte blanche, even in a pandemic, to pick and choose which First Amendment rights are "open" and which remain "closed."

Spell v. Edwards, 962 F.3d 175 (5th Cir. 2020) (ho, J., concurring).

17. The consequences of elected leaders tolerating large gatherings to support their favored political causes have not been limited to the legality of COVID-related orders. Rather, the wearing or not wearing of masks have become deeply imbued with political overtones, including respect for individual liberties and self-determination in contrast to blindly following the latest government diktat.

**ENTER MAYOR PERKINS, DECREEEING
MASKS FOR ALL (EXCEPT HIM)**

18. On July 2, 2020, nearly six months since COVID-19 was detected in the United States, four months after the Governor declared an emergency, and two months after the Governor began reopening the State of Louisiana, TV station KSLA quoted Mayor Perkins as stating “We are considering mandating masks. I am speaking with city leaders on both sides of the river, as well as business owners, about this potential next step.”

19. For days later, on July 6, 2020, Mayor Perkins held a press conference and announced:

After consulting with many of our area businesses, consulting with many of our area leaders, I am issuing an executive order requiring that customers wear masks or face coverings when entering a business establishment. It also requires businesses to post signage at entrances clearly indicating requirements and prohibitions. This executive order goes in to effect Wednesday, July 8 at 5pm. And in effect until August 8 at 11:59pm. ⁶

20. With respect of enforcement, Mayor Perkins stated that the order:

⁶<http://www.facebook.com/MayorofShreveport/videos/270101257650132/>

Applies to all businesses that interact with the public, to all customers with the exception of those with medical conditions that prevent one from wearing a mask. The Shreveport Police Department will be enforcing this mandate, and businesses will be issued documented warnings on their first violation, and up to a maximum fine of \$500 on their second violation. We are asking citizens to call [Shreveport Police Department] at 673-7300 to report any violations

There's other measures as well. The Fire Marshal goes out to inspect business. The Shreveport Police will be somewhat proactive with it as well."

21. During the press conference, Mayor Perkins identified no legal basis for the order.

22. Implicitly acknowledging the political implications of his order, Mayor Perkins claimed the order "is not about politics."

23. Louisiana Department of Health Region 7 Director Dr. Martha Whyte joined Perkins at the press conference. Similarly acknowledging the political implications of Mayor Perkins' order, Dr. White claimed:

This is not a political issue. . . If you are listening to people who are telling you it is wrong to wear masks because of one political party or another, don't listen to them. . . When you walk into a church, a place of worship, and 35% of the people are wearing masks and 62 aren't, you need to turn around and walk out and worship at home. If you walk into a store, you need to make sure they are meeting these guidelines. If not, let the police know because. . . they will help us enforce this mandate.⁷

24. Undercutting any claim of emergency or imminent threat, Dr. Whyte acknowledged that “right now, we’re ok in Region 7 as far as our ICU and our vents, because. . .there’s been a change in the way we treat people, and also we have younger, healthier people who are getting sick right now.”

25. Tellingly, neither Perkins nor Dr. Whyte wore a mask at the press conference.

26. Although Mayor Perkins had time to post social medical commentary along with colorful, artistic signs for businesses to put in place to comply with his order, upon information and belief, no draft of his executive order was

⁷<https://www.facebook.com/MayorOfShreveport/videos/270101257650132/>

posted online or in any public place on June 6 or July 7.

27. Indeed, Mayor Perkins delayed signing and publishing the content of his order for two days after he announced it, until the morning of July 8. A true and correct copy of the Mayor Perkins' order is attached hereto as Exhibit A ("Order"). The content of the order differs significantly from his description of the order on July 6.
28. For example, the Order makes no reference to fines, which are not authorized by La.R.S. 29:737, but instead threatens to punish non-compliance by enforcement measures "that include, but are not limited to, revocation of a business' [sic] ability to remain open under Phase 2 guidelines and cessation of water service to the business." Yet imposition of penalties for violation of the Order has not been authorized by the legislature or the Shreveport city council implicates an unlawful delegation of legislative power and would constitute a violation of the Due Process Clause of the Louisiana Constitution.
29. The Order is defective even as to basic statutory requirements. On its face, the order purports to extend for 31 days, in contravention of La.R.S. 29:737(c). And upon information and belief, Mayor Perkins did not "notify the parish president and advise him of the nature of the disaster or emergency and the emergency

response measures being undertaken” as required by La.R.S. 29:727(A).

30. Perkins could have, but did not, seek council approval for this action which would have been the proper avenue.

31. Many citizens, including Plaintiffs, will comply with the Order only to avoid the penalties threatened in the Order.

IRREPARABLE HARM

32. The Stay at Home orders were economically devastating, including to Plaintiffs. Indeed, according to the United States Bureau of Labor Statistics, over 200,000 Louisiana jobs were lost between December 2019 and May 2020, and the unemployment rate rose from 5.2% to 13.3%.⁸ The Order threatens further severe economic and business disruption.

33. Compounding the disruption caused by the Order itself, consumers have threatened to boycott businesses that comply with the Order in view of the potent political symbolism that is associated with masks. This could result in a loss of good will to these businesses with masks, and for other individual reasons.

34. Uncertainty over the lawfulness of the Order, including vis-à-vis the contrary command of

⁸ https://www.bls.gov/eag/eag_la.htm#eag_la.f.2

La.R.S. 14:313, will cause some Plaintiffs to cease doing business until the uncertainty is resolved.

35. Regardless, Plaintiffs are “entitled to injunctive relief without the requisite showing of irreparable injury [because] the conduct sought to be restrained is unconstitutional or unlawful.” *Jurisich v. Jenkins*, 749 So.2d 597, 599 (La. 1999) (citing *S. Cent. Bell Tel. Co. v. La. Pub. Serv. Comm’n*, 555 So.2d 1370 (La. 1990)).

COUNT I – ULTRA VIRES ORDER

36. The preceding allegations are incorporated in full as if fully set forth.

37. Mayor Perkins has no inherent authority to command any conduct by citizens;

38. Particularly in view of Mayor Perkins’s lengthy delay in issuing the Order and Dr. Whyte’s statement that “right now, we’re ok in Region 7 as far as our ICU and our vents,” there is no situation within or outside Shreveport that requires immediate action to preserve the public peace, property, health, or safety within [Shreveport] or to provide for continued operation of municipal government,” and no situation requires “immediate emergency response measures” within Shreveport. Any contrary determination is factually

unsupported, arbitrary, capricious, an abuse of discretion, and contrary to law.

39. The Order is not authorized by La.R.S. 29:737 and is contrary to the Shreveport City Charter, such that it is null and void. Particularly, no authority authorizes Perkins to impose penalties for violation of the Order.

A comparison of the status cited by Mayor Perkins in his Order with the statute empowering the Governor to issue executive orders makes it clear that the Legislature chose not to grant Mayor Perkins the sweeping powers assumed by him in the July 8 Order.

LSA-R.S 29:724 provides, in part:

A. The governor is responsible for meeting the dangers to the state and people presented by emergencies or disasters, and in order to effectuate the provisions of this Chapter, the governor may issue executive order, proclamations, and regulations and amend or rescind them. Executive orders, proclamations, and regulations so issued **shall have the force and effect of law.**

E. In the event of an emergency declared by the governor pursuant to this Chapter, any person or representative of any firm, partnership, or corporation

violating any order, rule, or regulation promulgated pursuant to this Chapter, shall be fined not more than five hundred dollars or confined in the parish jail for not more than six months, or both. **No executive order, proclamation, or regulation shall create or define a crime or fix penalties.** (Emphasis supplied)

The two statutes must be read in *pari materia* with each other, particularly when such far-reaching police powers are attempted to be exercised by the government. *Luv N' Care Ltd. V. Jackel Int'l*, No. 2019-C-0749, 2020 WL 499164 (La. 1/29/2020); see also *U.S. v. Caldera-Herrera*, 930 F.2d 409, 411-12 (5th Cir. 1991) (statutory provisions in *para materia* but having difference language are construed to mean different things).

No similar language is found in LSA-R.S. 29:737. Therefore, the Mayor's Order *does not* have the "force and effect of law." Nor does the Mayor have the power to levy or impose fines or to fix penalties.

40. To the extent the Order is authorized by law, it is procedurally defective, such that it is null and void.

COUNT II – RIGHT TO DUE PROCESS OF LAW

- 41. The preceding allegations are incorporated in full as if fully set forth.
- 42. Article I, Section 2, of the Louisiana Constitution provides that “No person shall be deprived of life, liberty, or property, except by due process of law.”
- 43. The Order purports to permit enforcement by undefined measures.
- 44. The Order threatens to terminate or suspend protected property rights, including utility services permits, and license without due process.
- 45. The Order is vague in that it requires determination of whether certain actions are “impractical.”
- 46. The Order poses a direct conflict with La.R.S. 14:313 and thereby presents citizens with conflicting legal obligations.

COUNT III – EQUAL PROTECTION

- 47. The preceding allegations are incorporated in full as if fully set forth.
- 48. The Order applies arbitrarily, capriciously, and without rational basis.

**COUNT IV – RIGHTS TO FREE EXPRESSION,
FREE EXERCISE OF RELIGION, AND TO
ASSEMBLE PEACEFULLY**

49. The preceding allegations are incorporated in full as if fully set forth.
50. Article I, Section 7 of the Louisiana Constitution provides: “No law shall curtail or restrain the freedom of speech or of the press. Every person may speak, write, and publish his sentiments on any subject, but is responsible for abuse of that freedom.”
51. Article I, Section 8, of the Louisiana Constitution provides: “No law shall be enacted respecting an establishment of religion or prohibiting the free exercise thereof.”
52. Article I, Section 9, of the Louisiana Constitution provides: “No law shall impair the right of any person to assemble peacefully[.]”
53. The Order purports to restrict the rights of citizens to assemble peacefully unless they undertake symbolic political activity.
54. The Order purports to command businesses to post signage with political content and/or to condition their right to do business on posting signage with political content.

55. The Order purports to permit large, risky protests without masks while requiring worshipers to wear masks at religious gatherings.

COUNT V – RIGHT TO PRIVACY

56. The preceding allegations are incorporated in full as if fully set forth.

57. Article I, Section 5, of the Louisiana Constitution provides: “Every person shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasions of privacy. No warrant shall issue without probable cause supporting by oath or affirmation, and particularly describing the place to be search, the persons or things to be seized, and the lawful purpose or reason for the search. Any person adversely affected by a search or seizure conducted in violation of this Section shall have standing to raise its illegality in the appropriate court.”

58. Neither the Order nor any purported violation of the Order provides grounds for any fire marshal, police officer, or other government agent to search, inspect, or demand access to any private property.

APPOINTMENT OF PRIVATE PROCESS SERVER

59. Because of the rapidity with which Mayor Perkins can sabotage the businesses of Plaintiffs through social media, news media, etc., upon the issuance of the Order prayed for herein, Plaintiffs request to be granted the power to serve the temporary restraining order issued by this Court on Mayor Perkins.
60. Therefore, Plaintiffs seek the appointment of their attorney, Glenn L. Langley, as a private process server with the power to serve Mayor Perkins with the temporary restraining order issued by this Court as authorized under Louisiana Code of Civil Procedure article 1292(B).
61. Notification to Mayor Perkins in advance of the signing of this motion should not be required because of the nature of the injunction sought and the rapidity with which Mayor Perkins can sabotage the businesses before the Temporary Restraining Order can be obtained.
62. Plaintiffs show that the temporary restraining order and injunction should issue without bond, as the restriction is illegal and violates constitutional liberties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court:

(a) Declare the Order null, void, and unenforceable;

(b) Enter a temporary restraining order, preliminary injunction, and permanent injunction against enforcement of the Order, including without limitation via any penalty;

(c) Enter a temporary restraining order, preliminary injunction, and permanent injunction against any search or inspection based on purported violations of the Order or to determine compliance with the Order;

(d) A hearing to be set to determine whether to convert the temporary restraining order into a preliminary injunction;

(e) Enter the temporary restraining order and injunction without bond because the restriction is illegal and violates constitutional liberties;

(f) Mayor Perkins be ordered to respond to the motion for injunctive relief prior to the hearing by a certain date set by the Court;

(g) Plaintiffs be directed that they may file a reply to Mayor Perkins' response by a certain date set by the Court;

(h) Order Perkins to issue a public statement forthwith that the Order is unenforceable and that he has no authority to issue executive orders enforceable

by civil or criminal penalties, with Perkins to use the same modes of communication as he used to advertise his Order;

(i) Glenn L. Langley, attorney for Plaintiffs, be appointed as a private process server and granted the power to serve Mayor Perkins with the temporary restraining order by delivering a copy to the Office of the Mayor as well as to the City Attorney, via facsimile or email;

(j) Award Plaintiffs their costs; and

(k) Award Plaintiffs their attorney fees to the extent provided by law.

Respectfully submitted,

LANGLEY & PARKS, LLC

By: /s/ Glenn L. Langley

Glenn L. Langley, Bar No. 8019
401 Market Street, Suite 1100
Shreveport, LA 71101
(318) 383-6422: Telephone
(318) 383-6405: Facsimile
glangley@languelparks.com

Attorneys for Plaintiffs

APPENDIX E

**FIRST JUDICIAL DISTRICT COURT
CADDO PARISH
THE STATE OF LOUISIANA**

No. 624,744

CELCOG, LLC, dba STRAWN'S EAT SHOP TOO,
MONJUN'S OF PORTICO, INC., AIR U
SHREVEPORT, LLC, THE BRIAN TRAIN, LLC,
and BEARING SERVICE & SUPPLY, INC.,
Plaintiffs

v.

ADRIAN PERKINS, in his official capacity as
MAYOR OF THE CITY OF SHREVEPORT,
LOUISIANA,
Defendant

[Filed: September 18, 2020]

**PLAINTIFFS' MOTION FOR
ATTORNEY'S FEES**

NOW INTO COURT, through undersigned counsel, come CELCOG, L.L.C. dba STRAWN'S EAT SHOP TOO, AIR U SHREVEPORT, LLC, THE BRAIN TRAIN, LLC and BEARING SERVICE & SUPPLY, INC. (hereafter "Plaintiffs"), who request that MAYOR ADRIAN PERKINS ("Defendant") be

assessed with attorney's fees in this matter, as follows:

1.

Plaintiffs filed a Petition for Declaratory and Injunctive Relief against Defendant on July 10, 2020 seeking a temporary restraining order and permanent injunction against Defendant, prohibiting him from enforcing a mask mandate and any penalties therefrom.

2.

The temporary restraining order was granted by this Court on the same date. The matter came for hearing on July 20, 2020, at which time the mask mandate was found to be unconstitutional and the preliminary injunction was granted without bond. Judgment signed by this Court on July 21, 2020 assessing Defendant with the costs of the proceedings, and the issue of attorney's fees remained open.

3.

Plaintiffs are entitled to recover attorney's fees in this matter pursuant to 42 USC 1988. Louisiana is a fact pleading state, so the allegations of the petition cover any relief to which Plaintiffs are entitled. *Robertson v. West Carroll Amb. Serv.*, 892 So.2d 772,777 (La. 2d Cir. 2005). Due process is both a state and federal claim, and a violation would be actionable under 42 USC 1988. *Smith v. Ouachita Parish School*

Bd., 702 So.2d 727,734 (La. App. 2d Cir. 1997). Plaintiffs made allegations of violations of their constitutional rights in paragraphs 28, 35, 42-42, 50-55, 57-58 and 62 of the Petition, and are therefore entitled to an award of fees.

4.

This Court found that the Mayor Perkins “did not have authority to issue the Order dated July 8, 2020 mandating personal protective masks or face coverings within the City of Shreveport.” The Court also found the Order “unconstitutional in that it violates separation of powers and Plaintiffs’ constitutional rights to due process of law.”

5.

Plaintiff’s request attorney’s fees in the amount of \$21,165.50 to the date of filing this matter. This amount is reasonable and well supported by the attached invoice itemizing all fees incurred herein, including meetings with clients, research, preparation of pleadings, communications with clients and opposing counsel, negotiating joint stipulations, hearing preparation, hearing attendance, and additional preparation of pleadings and communications following the Court’s ruling. Additionally, the engagement raised novel issues and the work had to be performed on an expedited basis, which caused undersigned counsel to eschew other engagements.

WHEREFORE, considering the forgoing, Plaintiffs, CELCOG, L.L.C. dba STRAWN'S EAT SHOP TOO, AIR U SHREVEPORT, LLC, THE BRAIN TRAIN, LLC and BEARING SERVICE & SUPPLY, INC., request that the Court grant this motion, awarding attorney's fees in the amount of \$21,165.50, and additional amounts for the motion, costs and hearing before this Court, and such other relief as is just and equitable under the circumstances.

Respectfully submitted,

LANGLEY & PARKS, LLC

By: /s/ Glenn L. Langley

Glenn L. Langley, Bar No. 8019
401 Market Street, Suite 1100
Shreveport, LA 71101
(318) 383-6422: Telephone
(318) 383-6405: Facsimile
glangley@languelparks.com

Attorneys for Plaintiffs