

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

HAROLD PIATT	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	Civil Action No. _____
	§	
CITY OF AUSTIN,	§	
TOBY FUTRELL,	§	
<i>In her official capacity as City Manager</i>	§	
<i>of the City of Austin</i>	§	
STANLEY L. KNEE,	§	
<i>In his official capacity as Police Chief</i>	§	
<i>of the City of Austin</i>	§	
ART ACEVEDO,	§	
<i>In his official capacity as Police Chief</i>	§	
<i>of the City of Austin</i>	§	
<i>Defendants</i>	§	
	§	
	§	
	§	
	§	

PLAINTIFF’S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES **HAROLD PIATT** (hereinafter “Plaintiff,” or “Piatt”), complaining of the **CITY OF AUSTIN, TEXAS** (hereinafter “City”), **TOBY FUTRELL, in her official capacity as the city manager of the City of Austin, Texas** (hereinafter “Futrell”), **STANLEY L. KNEE, in his official capacity as the police chief of the City of Austin, Texas** (hereinafter “Knee”) and **ART ACEVEDO, in his official capacity as the police chief of the City of Austin, Texas** (hereinafter “Acevedo”) (collectively referred to as “Defendants”), and for cause of action shows unto the Court the following:

I. PRELIMINARY STATEMENT

1. Plaintiff Piatt, an Austin police officer since 1979 and an Austin Police Commander since January of 2000, was denied promotion to Assistant Chief of Police by Austin Police Chief Stanley L. Knee (hereinafter “Knee”) on or about March 19, 2006. Knee subsequently left the employ of the City of Austin for work in Afghanistan, and the current Austin Police Chief is Art Acevedo. Piatt’s suit against the City, Futrell and Knee, and Acevedo, in his official capacity only, arises from Knee’s actions. Acevedo is included in the suit solely because he has succeeded to Knee’s former position. Knee made his decision not to promote Piatt based on Piatt’s race, in violation of federal statutes, and the federal and Texas Constitutions.

II. PARTIES

2. Plaintiff Harold Piatt is an individual citizen and resident of the State of Texas.

3. Defendant City of Austin is a political subdivision of the State of Texas. Service of Citation upon Defendant City of Austin may be had by serving the City Manager, Toby Futrell, at 301 W. 2nd, 3rd floor, Austin, Texas 78701.

4. Defendant Toby Futrell, an individual sued in her official capacity as City Manager of the City of Austin, is a resident of the State of Texas. Service of Citation upon Defendant Futrell of Austin may be had by serving her at Austin City Hall, at 301 W. 2nd St., Second Floor, Austin, Texas 78701.

4. Defendant Stanley L. Knee, an individual sued in his official capacity as former Police Chief of the City of Austin, is a resident of the State of Texas. Service of Citation upon Defendant Knee of Austin may be had by serving him at _____ Deepwoods Drive, Austin, Texas 78731.

4. Defendant Art Acevedo, an individual sued in his official capacity as Police Chief of the City of Austin, is a resident of the State of Texas. Service of Citation upon Defendant Acevedo of Austin may be had by serving him at Police Department Headquarters, at 715 E. 8th St., Austin, Texas 78701.

III. JURISDICTION AND VENUE

5. The court has federal question subject matter jurisdiction over this lawsuit under 28 U.S.C. §1331, pursuant to Plaintiff's claims under Title VII of the 1964 Civil Rights Act, as amended, 42 USC § 2000 (e) *et. seq.* ("Title VII"), and 42 USC §1983.

6. The subject matter in controversy is within the jurisdictional limits of this court.

7. This court has jurisdiction over the parties because Defendant Acevedo is a Texas resident and Defendant City of Austin is a political subdivision of the State of Texas located in Travis County, and conduct that forms the basis of this suit occurred in Travis County, Texas.

8. Venue in the Western District of Texas, Austin Division is proper in this cause under the general federal venue statute, 28 USC § 1391, because all or a substantial part of the events or omissions giving rise to this lawsuit occurred in Travis County, Texas. *See also* 28 USC §124(a)(4).

IV. NATURE OF ACTION

9. This action arises under Title VII of the 1964 Civil Rights Act, as amended, 42 USC § 2000 (e) *et. seq.* ("Title VII"), 42 USC §1983, the Fourteenth Amendment to the United States Constitution, the Texas Commission on Human Rights Act, TEX. LAB. CODE §21.001 *et. seq.*, and the City of Austin Unlawful Employment Practices ordinance, §5-3-4(A)(1)-(2), because the Plaintiff was discriminated against on account of his race, white.

V. STANDING

10. Plaintiff timely filed with the federal Equal Employment Opportunity Commission (“EEOC”), a charge of discrimination against Defendant City of Austin and the Austin Police Department, and against Acevedo’s predecessor, Stanley L. Knee. Plaintiff received a Notice of Right to Sue from the EEOC within 90 days of the filing of this complaint. A copy of the Notice of Right to Sue is attached with the Original Complaint as Exhibit “A”.

VI. FACTS

11. Harold Piatt was passed over for promotion by Chief Knee on or about March 19, 2006. Knee promoted instead one Charlie Ortiz, a Hispanic officer with less experience at all levels than Officer Piatt. Mr. Piatt was, at the time, the most qualified officer in the City of Austin Police Department for this promotion. Moreover, at the time Officer Ortiz was promoted, Officer Ortiz was subject to a “performance improvement plan,” an internal City of Austin Police Department mechanism for improving the substandard performance of its officers. After his promotion, Officer Ortiz, unlike the other assistant chiefs, had a full-time aide assigned to assist him with the completion of his duties, one Commander Rick Hinkel. Ortiz was subsequently demoted in January of 2007, and replaced by Leo Enriquez.

12. Chief Knee had previously expressed, in January of 2006, in an official meeting with no less than eighteen high ranking department employees present, that in his selection of assistant chief, that he would “exercise his prerogative to maintain the racial balance” of the Austin Police Department assistant chiefs.

13. The Austin Police Department has a longstanding policy of employing racial set-asides for positions for assistant chief. This policy, in existence since at least the mid-1980’s, is unwritten, unjustified and unlawful. One beneficiary of this policy of racial set-asides, a Hispanic officer who was promoted to assistant chief, but skipped two grades in order to achieve

this promotion, was subsequently sentenced to state prison on a felony conviction. Moreover, the promotions to assistant chief are made subject to the interference of members of the Austin City Council, in violation of the Austin City Charter.

14. The position of assistant chief, which by statute is the highest position for Austin police officers other than Chief and the highest position not appointed by the City Council, is a highly prized position. This position is a senior management position, but is not a position with extensive contact with the media or the public.

15. This policy of racially set-aside appointments to senior management positions in the Austin Police Department is not only harmful to individual officers, but, because it places persons in senior positions without regard to who is best qualified, this policy has the potential to negatively affect public safety.

VII. Injuries

16. Plaintiff suffered the following injuries as a direct and proximate result of Defendants' conduct:

- (a) Plaintiff was denied promotion to Assistant Chief, resulting in lost pay and benefits.
- (b) Plaintiff suffered damage to his pension or retirement benefits
- (c) Plaintiff was compelled to hire legal representation and file this lawsuit to vindicate his rights, incurring legal expenses as a result.

VIII. PRAYER

17. WHEREFORE, PREMISES CONSIDERED, Piatt respectfully requests that the Court enjoin defendants to pay Piatt the difference in pay between Commander and Assistant Chief from February 2003 through his retirement (currently anticipated in June 2009), to pay his retirement package and salary at the rate appropriate to an Assistant Chief's promoted to that

position on March 19, 2006, and asks that the Court further enjoin the defendants to make all future promotions regardless of rank based on merit and performance and not racial set-asides, and grant Piatt attorney's fees, exemplary damages, and costs incurred in prosecuting this suit, and such other and further relief as he may be justly entitled at law or equity.

PLAINTIFF RESPECTFULLY REQUESTS A JURY TRIAL.

Respectfully submitted,

TEXAS LEGAL FOUNDATION
P.O. Box 926
Austin, Texas 78767
Telephone: (512) 923-6188
Facsimile: (512) 252-7257

By: _____
DAVID ROGERS
Texas Bar No. 24014089
Steven Wayne Smith
Texas Bar No. 18685873

ATTORNEYS FOR PLAINTIFF