

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

NOEL FREEMAN and WILLIAM  
BRADLEY PRITCHETT, a married  
couple;  
YADIRA ESTRADA and JENNIFER  
FLORES, a married couple; and  
RONALD REESER and VINCENT  
OLIVIER, a married couple

Plaintiffs,

*versus*

SYLVESTER TURNER, in his official  
capacity as Mayor of the City of  
Houston;

THE CITY OF HOUSTON, a Texas  
municipality;

JACK PIDGEON; and

LARRY HICKS,

Defendants.

CASE NO. 4:17-cv-02448

**PLAINTIFFS' ORIGINAL COMPLAINT FOR PRELIMINARY AND  
PERMANENT INJUNCTIVE RELIEF AND DECLARATORY JUDGMENT**

**I. INTRODUCTION**

1. The United States Supreme Court held in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), that the Fourteenth Amendment requires States to recognize and give equal effect to marriages of same-sex spouses with respect to all aspects of marital status under state law, a requirement that includes providing equal access to employment benefits such as health insurance and workers' compensation. Relying on *Obergefell*, the Fifth Circuit in *De Leon v. Abbott*, 791 F.3d 619 (5th Cir. 2015), struck down laws in Texas mandating that the State disregard the marriages

of same-sex couples and deny them government benefits otherwise available to different-sex married couples. Indeed, very recently the Supreme Court in *Pavan v. Smith*, 137 S. Ct. 2075 (2017), reaffirmed *Obergefell's* holding in a summary reversal, reiterating clearly that same-sex spouses are fully entitled to “the constellation of benefits that the States have linked to marriage,” and that differential treatment of these couples violates the Constitution.

2. Plaintiffs are Houston City employees and their same-sex spouses whose constitutional rights, rights as married spouses, and employment protections are under assault. This Complaint seeks to enjoin the Defendants from relying on or otherwise enforcing two Texas provisions expressly held unconstitutional in *De Leon* and which plainly violate the holdings in *Obergefell* and *Pavan*. These provisions, Section 6.204 of the Texas Family Code (“Texas DOMA Statute”)<sup>1</sup> and

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<sup>1</sup> Section 6.204 provides:

RECOGNITION OF SAME-SEX MARRIAGE OR CIVIL UNION

(a) In this section, "civil union" means any relationship status other than marriage that:

- (1) is intended as an alternative to marriage or applies primarily to cohabitating persons; and
- (2) grants to the parties of the relationship legal protections, benefits, or responsibilities granted to the spouses of a marriage.

(b) A marriage between persons of the same sex or a civil union is contrary to the public policy of this state and is void in this state.

(c) The state or an agency or political subdivision of the state may not give effect to a:

- (1) public act, record, or judicial proceeding that creates, recognizes, or validates a marriage between persons of the same sex or a civil union in this state or in any other jurisdiction; or
- (2) right or claim to any legal protection, benefit, or responsibility asserted as a result of a marriage between persons of the same sex or a civil union in this state or in any other jurisdiction.

Article I, Section 32 of the Texas Constitution (“Texas Marriage Amendment”),<sup>2</sup>— both of which were held unconstitutional in *De Leon v. Abbott*— may not hinder the City of Houston, a public employer, from fulfilling its obligations, consistent with federal constitutional law, under Article II, Section 22 of the Houston Charter (“City Charter Amendment of 2001”)<sup>3</sup> to provide equal compensation and benefits to all legally married City employees, including those, like Plaintiffs, whose spouses are of the same sex. Plaintiffs seek to block ongoing efforts by certain Defendants to demean their marriages and strip their families of health insurance and other important employment spousal benefits and protections. They ask this Court to enforce their rights affirmed in *Obergefell*, *Pavan*, and *De Leon*.

## II. JURISDICTION AND VENUE

3. Plaintiffs bring this action under 42 U.S.C. §§ 1983 and 1988 to redress the deprivation under color of state law of rights secured by the United

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<sup>2</sup> Article I, Section 32 provides:

### MARRIAGE

(a) Marriage in this state shall consist only of the union of one man and one woman.

(b) This state or a political subdivision of this state may not create or recognize any legal status identical or similar to marriage.

<sup>3</sup> Article II, Section 22 provides:

### DENIAL OF BENEFITS TO SAME SEX PARTNERS AND RELATED MATTERS

Except as required by State or Federal law, the City of Houston shall not provide employment benefits, including health care, to persons other than employees, their legal spouses and dependent children; nor shall the City provide any privilege in promotion, hiring, or contracting to a person or group on the basis of sexual preference, either by a vote of the city council or an executive order of the Mayor. Further, the City of Houston shall not require entities doing business with the City to have any of the above benefits or policies.

If any portion of this proposed Charter amendment is declared unlawful, then such portion shall be removed and the remainder of the Charter amendment will remain in effect. Any ordinance in conflict with this section of the Charter is hereby repealed and declared invalid.

States Constitution.

4. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343. Jurisdiction to grant the declaratory relief requested is provided under 28 U.S.C. § 2201.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because the defendants reside and have their offices within the district and a substantial portion of the events giving rise to Plaintiffs' claims occurred in this district.

### **III. THE PARTIES**

6. Plaintiffs NOEL FREEMAN and WILLIAM BRADLEY PRITCHETT are a married same-sex couple who are citizens of and reside in Houston, Texas. Freeman is employed by the City of Houston. As part of his employment compensation, Freeman is entitled to receive spousal benefits provided by the City for the benefit of Pritchett.

7. Plaintiffs YADIRA ESTRADA and JENNIFER FLORES are a married same-sex couple who are citizens of and reside in Houston, Texas. Estrada is employed by the City of Houston. As part of her employment compensation, Estrada is entitled to receive spousal benefits provided by the City for the benefit of Flores.

8. Plaintiffs RONALD REESER and VINCENT OLIVIER are a married same-sex couple who are citizens of and reside in Houston, Texas. Reeser is employed by the City of Houston. As part of his employment compensation, Reeser is entitled to receive spousal benefits provided by the City for the benefit of Olivier.

9. Defendant SYLVESTER TURNER (“the Mayor”) is sued in his official capacity as Mayor of the City of Houston. Mayor Turner is a citizen and resident of Houston, Texas. In his official capacity as Mayor, he maintains an office at Houston City Hall, 901 Bagby Street, Houston, Texas 77002.

10. Defendant THE CITY OF HOUSTON (“the City”) is a home rule city authorized by Article XI, Section 5 of the Texas Constitution with the full power of local self-government pursuant to the charter provisions and ordinances adopted by its citizens in accordance with Texas Local Government Code Section 51.072. As a political subdivision, the City is a “person” subject to suit pursuant to 42 U.S.C. § 1983. The City may be served by delivering a copy of the Summons and Complaint to Anna Russell, the City Secretary of the City of Houston, at 900 Bagby, Public Level, Rm. 101, Houston, Texas 77002. *See* TEX. CIV. PRAC. & REM. CODE Section 17.024(a).

11. Defendants JACK PIDGEON and LARRY HICKS (collectively “the Taxpayers”) purport to be citizens and taxpayers residing in Houston, Texas. They are Plaintiffs/Petitioners in a lawsuit against the Mayor and the City currently pending in the Texas Supreme Court, *Pidgeon v. Turner*, Docket Number 15-0688 (“the Texas Lawsuit”). The City employees and their spouses (the Plaintiffs who bring this action) are *not* parties to the Texas Lawsuit. The Taxpayers’ suit seeks to force the Mayor and the City to cease providing spousal benefits to any married City employees with a same-sex spouse, including the Plaintiffs here. The Taxpayers

plan to bring further proceedings to force the City to collect reimbursement from these employees and their spouses for any spousal benefits previously paid.

12. The Taxpayers claim an interest relating to the subject of this action and are so situated that disposing of this action in their absence will necessarily impair the interests they seek to advance in the Texas Lawsuit. Because the Taxpayers are subject to service and their participation will not deprive this Court of subject-matter jurisdiction, their joinder pursuant to Federal Rule of Civil Procedure 19(a)(1) is required to permit the Court to accord complete relief among the parties without potentially exposing the Mayor and the City to substantial risk of incurring inconsistent obligations.

13. The Texas DOMA Statute and the Texas Marriage Amendment previously were determined by the Fifth Circuit to be unconstitutional in litigation involving the Governor and the Attorney General, so no constitutional question remains nor is presented here as to the invalidity of those laws. Thus, Federal Rule of Civil Procedure 5.1 does not require notice be served on the Attorney General of Texas. Indeed, because in *De Leon* the Governor, Attorney General, and other State officials advised the Fifth Circuit that *Obergefell* was determinative of the issues raised in the *De Leon* appeal and that the trial court's injunction should be affirmed, Letter to Ct., *De Leon v. Abbott*, No. 14-50196 (5th Cir. Jun. 30, 2015), ECF No. 00513100429, they are judicially estopped from taking an opposing view in this or other litigation concerning the same issues. Further, the *De Leon* trial court on remand entered final judgment permanently enjoining them from enforcing

these laws. Final Judgment, *De Leon v. Perry*, No. 5:13-cv-00982, (W.D. Tex. Jul 7, 2015), ECF No. 98. That judgment is res judicata as to the State.

#### IV. FACTUAL BACKGROUND

14. In 1996, Congress passed the Defense of Marriage Act (“Federal DOMA”), 28 U. S. C. § 1738C, which, among other things, denied federal recognition to same-sex couples legally married in a State or other jurisdiction, thus imposing a hardship based on the sex and sexual orientation of the spouses. The federal government’s refusal to recognize those legal marriages, pursuant to the Federal DOMA, disqualified same-sex spouses from a variety of federal protections, including employment benefits.

15. A number of States, including Texas, passed similar statutes and constitutional amendments that not only mimicked the non-recognition effect of the Federal DOMA, but also denied same-sex couples the right to marry. The Texas DOMA Statute (enacted in 2003) and the Texas Marriage Amendment (passed in 2005) both mirror the design, purpose, and effect of the Federal DOMA by identifying a subset of state-sanctioned marriages and denying those marriages any recognition under Texas law, thus making them unequal to the marriages of different-sex couples and demeaning same-sex couples and their families.

16. In June 2013, the United States Supreme Court in *United States v. Windsor*, 133 S. Ct. 2675 (2013), struck down the Federal DOMA’s denial of federal recognition to same-sex couples legally married under state law. The Supreme Court observed that when government relegates same-sex couples’ relationships to

a “second-tier” status, the government demeans the couple, humiliates children raised by same-sex couples, and deprives these families of equal dignity, in addition to causing them countless tangible harms, all in violation of basic due process and equal protection principles.

17. Subsequently, Mayor Turner’s predecessor, Mayor Annise Parker, requested and received a legal opinion from the Houston City Attorney concerning whether, given *Windsor*, the City could continue to deny benefits covering same-sex spouses of employees legally married in jurisdictions outside of Texas without subjecting the City to potential litigation and liability.

18. The Houston City Attorney issued an opinion concluding that the City could not, consistent with the reasoning of *Windsor*, continue to deny benefits covering same-sex spouses of City employees legally married in another jurisdiction. In response to and in reliance on the City Attorney’s opinion, Mayor Parker directed the City Human Resources Director to afford the same benefits to City employees legally married to a same-sex partner as the City provides to City employees legally married to a different-sex partner.

19. After Mayor Parker’s announcement that employees legally married in another jurisdiction to a same-sex spouse could access spousal benefits, including healthcare coverage, employees—Plaintiffs among them—enrolled for those benefits (collectively, the “City Employees and their Spouses”).

20. The City offers eligible employees and their spouses an array of valuable employee benefits, including, for example, medical, dental, vision, and



supplemental insurance; family medical leave; access to life insurance; health flexible spending accounts; and retiree protections.

Noel Freeman and Brad Pritchett

21. Plaintiff Noel Freeman is a Division Manager for the Public Works and Engineering Department of the City of Houston. He has been employed by the City of Houston for nearly 13 years.

22. On August 1, 2010, Noel married William Bradley Pritchett ("Brad") in Washington, D.C., where same-sex couples can legally marry. At that point, they had already been in a committed relationship together for eight years.

23. Noel enrolled Brad for spousal benefits, including healthcare coverage, within about 45 minutes of learning about the change in the City of Houston's eligibility policy. Up to that time, for the entire twelve years they had been together, Brad had not had healthcare coverage—a fact that had always loomed over them like a dark cloud. Upon enrolling for spousal benefits, which included healthcare coverage, Brad made appointments to update his eyeglasses' prescription and to identify and treat various ailments, such as disorientation and vertigo, as well as little-to-no hearing in his right ear.

24. Although Brad is employed, he only had healthcare benefits through his employer beginning in 2015. Brad now receives medical and dental health insurance through his employer. Brad remains enrolled for vision care benefits with the City of Houston.

25. Aside from spousal healthcare coverage, because the City currently recognizes their marriage, Noel and Brad continue to benefit from access to Family Medical Leave and the Employee Assistance Programs.

26. Also of great importance to them is knowing that, should Brad lose his job, he would once again have access to spousal and medical benefits through the City.

Yadira Estrada and Jennifer Flores

27. Plaintiff Yadira Estrada is a police sergeant for the City of Houston. She has been employed by the City of Houston for more than 9 years.

28. On July 23, 2013, Yadira married Jennifer Flores in Maine, where same-sex couples can legally marry. They had been in a committed relationship with one another for seven and a half years when they married.

29. Yadira enrolled Jennifer for spousal benefits, including healthcare coverage, about a week after learning about the change in the City of Houston's eligibility policy. Jennifer's employer did not provide healthcare benefits at that time. While Jennifer is still employed, and her employer does now provide healthcare coverage, her employer's benefits plan is far more expensive and offers fewer options. Yadira and Jennifer share a primary care physician and Jennifer's physical therapy treatments are provided through Kelsey-Seybold Clinic, which is not an option under her employer's plan. Jennifer's employer does not offer coverage for vision and dental care like the City does.

30. Jennifer relies upon her health insurance coverage via the City of Houston for continued prescriptions, medical care, physical therapy for a knee injury, and access to behavioral/mental health care services and providers.

31. As the spouse of a police officer, Jennifer is eligible for added protections if Yadira is injured or dies in the line of duty. As someone who has pledged her service to the City of Houston, it is important to Yadira to know that Jennifer would be treated with the same dignity and respect as any other spouse of a fellow police officer.

32. Yadira and Jennifer are considering starting a family soon and continuous healthcare coverage is important.

Ronald Reeser and Vince Olivier

33. Ronald Reeser ("Ron") is a Central Network Administrator for the City of Houston. He has been employed by the City of Houston for approximately 12 years.

34. Ron married Vincent Olivier ("Vince") on August 18, 2008, in Vancouver, British Columbia, where same-sex couples can legally marry. They had been in a committed relationship together for more than two years at the time they married.

35. Ron enrolled Vince for spousal benefits, including healthcare coverage, within one month after learning about the change in the City of Houston's eligibility policy.

36. Due to the advanced age of Vince's parents, Ron wanted to ensure access to the City of Houston's family bereavement leave if that became necessary. Both Vince's parents have since passed away and because of the benefits, Ron was able to take three days when each parent passed. The spousal health insurance available to Vince through the City is more financially advantageous with better coverage and better rates than he could obtain elsewhere—a benefit that saves Ron and Vince hundreds of dollars per month. Vince has high blood pressure and takes medications that are covered by the City's benefits plan.

37. Ron and Vince both consider themselves fortunate to have continuing coverage through the City. Losing spousal coverage would pose significant hardship given that they are both aging, making replacement coverage increasingly more expensive and potentially unaffordable.

## V. SUMMARY OF PRIOR LITIGATION

### *Pidgeon v. Parker (Pidgeon I)*

38. On December 17, 2013, the Taxpayers filed *Pidgeon v. Parker* (“*Pidgeon I*”), No. 2013-75301 (310th Dist. Ct., Harris Cnty., Tex.), in a Texas family court challenging the City’s decision to permit same-sex spouses of City employees to obtain benefits on the same basis as different-sex spouses of City employees. On that date, the District Court for Harris County, Texas issued a temporary restraining order enjoining Mayor Parker and the City “and any other person(s) with knowledge of [that court’s] Order, to cease and desist providing benefits to same-sex spouses of employees that have married in jurisdictions that recognize same-sex marriage.” As a result, the City advised the City Employees and their

Spouses that the spousal benefits they had purchased and were relying upon were subject to being interrupted and terminated without further notice.

39. Because the Taxpayers' right to relief turned on the constitutionality of the Texas DOMA Statute and the Texas Marriage Amendment, both of which bore striking similarity to the Federal DOMA struck down in *Windsor*, the City removed *Pidgeon I* to the United State District Court for the Southern District of Texas (Civil Action No. 4:13-cv-03768 (Rosenthal, C.J.)).

40. The state-court-issued TRO expired by its own terms before the City was forced to withdraw the benefits. Judge Rosenthal later determined that removal jurisdiction was not established on the face of the state-court petition itself, although the constitutionality of the Texas laws would likely prove relevant to the outcome. She acknowledged that every federal court to have recently considered the constitutionality of marriage restrictions on same-sex couples had struck down those laws. Further, she noted that the very same federal question was raised in another case then pending in the Southern District (*see Freeman I*, below), but nonetheless remanded the case to state district court. In the state court, *Pidgeon I* was dismissed for want of prosecution.

*Freeman v. Parker (Freeman I)*

41. Soon after learning their spouses' benefits were subject to being withdrawn without further notice, the City Employees filed a lawsuit pursuant to 42. U.S.C. § 1983 against the City and Mayor Parker in the United State District Court for the Southern District of Texas, *Freeman v. Parker*, Civil Action No. 4:13-

cv-03755 (Lake, J.), to enjoin the City from withdrawing the benefits and to seek a declaration that the Texas DOMA Statute and the Texas Marriage Amendment were unconstitutional. (As noted in the preceding paragraph, Judge Rosenthal expressly referenced this pending case when she remanded *Pidgeon I* to state court.)

42. While *Freeman I* was pending, the U.S. District Court in the Western District of Texas issued a preliminary injunction against enforcement of the Texas DOMA Statute and the Texas Marriage Amendment in *De Leon v. Perry*, finding them to violate the Fourteenth Amendment to the U.S. Constitution. The Order was immediately appealed to the Fifth Circuit.

43. The parties in *Freeman I* advised the Court of the ruling in *De Leon* and the pending interlocutory appeal to the Fifth Circuit. Judge Lake then issued a preliminary injunction in *Freeman I* on August 28, 2014. Because the *De Leon* appeal involved direct action against State officials, including the Attorney General and Governor, and was being reviewed on a well-developed record, the City did not appeal the *Freeman I* injunction (and it was not stayed). Unopposed Mot. & Auth. to Enter Prelim. Inj. & Stay Proc. Pending Final Det. of Const. Tex. Marriage Ban at 3, n.2, *Freeman v. Parker*, No. 4:13-cv-03755 (S.D. Tex. Aug. 28, 2014), ECF No. 12. The parties agreed that *De Leon* likely would be determinative of the issues in *Freeman I* and, at their request, Judge Lake stayed further proceedings pending resolution of the *De Leon* appeal.

44. On June 26, 2015, the United States Supreme Court handed down its decision in *Obergefell* striking down as unconstitutional state restrictions

prohibiting same-sex couples from marrying or denying recognition of the marriages of same-sex couples already married in other jurisdictions.

45. One week later, the Fifth Circuit affirmed *De Leon* and, on remand, the trial court entered a permanent injunction against the Texas State officials prohibiting enforcement of the Texas DOMA Statute or the Texas Marriage Amendment. The State of Texas did not seek review by *writ of certiorari*.

46. The parties in *Freeman I* agreed that *Obergefell* and *De Leon* were dispositive of the issues in the Houston benefits case. The City agreed to abide by *Obergefell* and *De Leon* without the necessity of further proceedings. The City also agreed it would provide benefits to same-sex spouses of City employees on the same terms as those provided to different-sex spouses of City employees. On July 6, 2015, the Court lifted the stay of proceedings, dissolved the preliminary injunction, and dismissed the case without prejudice.

## VI. THE CURRENT LITIGATION IN TEXAS COURTS

47. On October 22, 2014, during the period the City was subject to the federal court's preliminary injunction in *Freeman I*, the Taxpayers refiled their lawsuit in state district court in Harris County (*Parker v. Pidgeon*, No. 2014-61812 (310th Dist. Ct., Harris Cnty., Tex.), "*Pidgeon II*"). Again, relying on the Texas DOMA Statute and the Texas Marriage Amendment, the Taxpayers obtained a temporary injunction against Mayor Parker and the City ordering the City to withhold benefits from same-sex spouses of City employees on November 5, 2014—a mere two weeks after they had commenced their suit. The City and Mayor Parker

immediately appealed to the Texas Fourteenth Court of Appeals. Although the trial judge refused to stay the injunction, the order was nonetheless stayed by operation of law when the City included in the appeal a plea to the trial court's jurisdiction.

48. The City Employees and their Spouses were not parties to the renewed lawsuit; nor were they given notice of the proceedings in the state district court.<sup>4</sup>

49. *Obergefell* and *De Leon* were both decided while *Pidgeon II* was on appeal. In response to the intervening federal decisions, the Fourteenth Court of Appeals reversed the injunction and remanded *Pidgeon II* for further proceedings consistent with *Obergefell* and *De Leon*.

50. The Taxpayers sought discretionary review of the Fourteenth Court's decision from the Texas Supreme Court, which initially declined the petition for review. The Taxpayers then asked the Court to reconsider its denial and, after the Court was heavily lobbied by State officials, legislators, political groups and others, the Texas Supreme Court reversed its position and granted rehearing.

51. On June 30, 2017, the Texas Supreme Court reversed the Fourteenth Court of Appeals and ordered the Taxpayer's lawsuit to be sent back to the state district court and reinstated. The Texas Court held that *Obergefell* left many issues unresolved. Among other errors, the Texas Court questioned whether the Constitution requires governments to provide the same benefits to both same-sex and different-sex married couples, *Obergefell* and *Pavan* notwithstanding. The

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<sup>4</sup> Texas rules concerning intervention do not apply at the appellate stage and, therefore, the City Employees and their Spouses had no opportunity to participate as parties at the appellate phases of *Pidgeon II*.



Texas Court also signaled that the constitutionality of both the Texas DOMA Statute and the Texas Marriage Amendment was still an unsettled question for the trial court's consideration.

52. The Texas Supreme Court has not yet issued its mandate returning jurisdiction to the state district court. Nonetheless, the Taxpayers prematurely filed an Amended Petition and Brief seeking a new preliminary injunction against the Mayor and the City to prohibit them from continuing benefits to same-sex spouses of employees, including the Plaintiffs. The filing also shows the Taxpayers will request an order requiring the City to claw back benefits previously paid for spousal coverage to same-sex spouses of City employees, including Plaintiffs.

53. Barring the filing of a petition for rehearing by the City or a stay granted pending a petition for *certiorari* to the United States Supreme Court, the Texas Court's mandate will vest jurisdiction back in the trial court as early as August 17, 2017, at which time there is a substantial likelihood the state district court will issue another temporary injunction—the *third* one issued by that court—ordering the City to withdraw, and even claw back (*i.e.*, demand immediate reimbursement from the employees), spousal benefits from the City Employees and their Spouses without further notice.

**VII. FIRST CLAIM FOR RELIEF**  
**Declaratory and Injunctive Relief**  
**Deprivation of Substantive Due Process**  
**U.S. Const. Amend. XIV**

54. Plaintiffs incorporate by reference all previous paragraphs of this Complaint as if fully set forth here.

55. The Fourteenth Amendment to the United States Constitution, enforceable pursuant to 42 U.S.C. § 1983, provides that no State shall “deprive any person of life, liberty, or property, without due process of law.” The Due Process Clause has a substantive component that provides heightened protection against government interference with fundamental rights and liberty interests.

56. The right to marry is a fundamental right inherent in the liberty of the person. Under the Due Process Clause, couples of the same sex may not be deprived of that right and that liberty. Rather, same-sex couples must be permitted to exercise that right on the same terms and conditions as different-sex couples.

57. Furthermore, there is no lawful basis for a State to refuse to recognize a marriage between same-sex couples performed in another jurisdiction on the ground of its same-sex character.

58. As *Obergefell* confirmed, marriage is a keystone of our social order. Just as a couple vows to support each other, so does society pledge to support the couple, offering not only symbolic recognition but also material benefits to protect and nourish their union. Indeed, while the States are in general free to vary the benefits they confer on all married couples, they have made marriage the basis for an expanding list of governmental rights, benefits, and responsibilities.

59. The City may not deny married same-sex couples access to the constellation of benefits that it has linked to marriage. The City Charter expressly provides that employment benefits, including health care, will be provided exclusively to its employees, *their legal spouses*, and dependent children. Having

chosen to make certain benefits available to the spouses of its employees, the City may not now deny married lesbian, gay, or bisexual employees participation in those benefits without substantially interfering with the exercise and enjoyment of the fundamental right to marriage. The Texas DOMA Statute and the Texas Marriage Amendment cannot alter this result.

60. The Texas DOMA Statute and the Texas Marriage Amendment, on which the Taxpayers rely in their attempt to force the City to withdraw spousal benefits to the same-sex spouses of married employees, are unconstitutional because those laws infringe on the fundamental right of same-sex spouses to marry, to have their marriages recognized, and to participate in and enjoy fully the constellation of benefits the government ties to that marital status. Thus, those Texas laws violate the liberty guarantee of the Fourteenth Amendment to the U.S. Constitution.

61. Defendants' conduct puts Plaintiffs at substantial risk of losing their spousal health insurance, family leave, and other related benefits without further notice. Termination of medical coverage and related benefits result in harm that is not merely financial, and cannot be later undone through monetary remedies. Absent these benefits, same-sex spouses of married City employees lack both access to much needed medical care and the right to the qualified provider of their choice. Such loss of benefits and loss of choice constitute irreparable harm for purposes of a preliminary injunction.

62. Furthermore, the City's reliance on the Texas DOMA Statute and the Texas Marriage Amendment to deny benefits only to same-sex spouses of married employees would violate their clearly-established constitutional rights—a deprivation that no amount of money can compensate. Loss of constitutional freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.

63. The Court should declare that Defendants may not rely on the Texas DOMA Statute and the Texas Marriage Amendment, which have previously been held unconstitutional under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, to justify depriving Plaintiffs access to the same spousal benefits provided other married employees.

64. Further, the Court should enjoin enforcement of the Texas DOMA Statute and the Texas Marriage Amendment to withdraw or claw back benefits from the City Employees and their Spouses.

**VIII. SECOND CLAIM FOR RELIEF**  
**Declaratory and Injunctive Relief**  
**Deprivation of Equal Protection**  
**U.S. Const. Amend. XIV**

65. Plaintiffs incorporate by reference all previous paragraphs of this Complaint as if fully set forth here.

66. The Fourteenth Amendment to the United States Constitution, enforceable pursuant to 42 U.S.C. § 1983, provides that no State shall deny any person the equal protection of the laws.

67. As *Obergefell* confirmed, the right of same-sex couples to marry that is part of the liberty promised by the Fourteenth Amendment is derived, too, from that Amendment's guarantee of the equal protection of the laws. The Due Process Clause and the Equal Protection Clause are connected in a profound way, though they set forth independent principles.

68. The equality guarantee of the Fourteenth Amendment proscribes disparate treatment of same-sex couples in exercising their fundamental right to marry. The City may not exclude same-sex couples from civil marriage on the same terms and conditions as different-sex couples. Those terms and conditions—the “rights, benefits, and responsibilities” to which same-sex couples, no less than different-sex couples, must have access—include spousal employment benefits specifically linked to marital status of the employee.

69. The City provides married employees spousal benefits that are not available to unmarried employees. Having made that choice, the City may not, consistent with the equality guarantee of the Fourteenth Amendment, deny married lesbian, gay, and bisexual employees the same benefits for their same-sex spouses. The Texas DOMA Statute and the Texas Marriage Amendment cannot alter that result.

70. The Texas DOMA Statute and the Texas Marriage Amendment, on which the Taxpayers rely in their attempt to force the City to withdraw spousal benefits to the same-sex spouses of employees, are unconstitutional because they deny same-sex couples equal participation in and full enjoyment of the constellation

of benefits the government ties to that marital status. Thus, those Texas laws violate the equality guarantee of the Fourteenth Amendment.

71. Defendants' conduct puts Plaintiffs at substantial risk of losing their spousal health insurance, family leave, and other related benefits without further notice. Termination of medical coverage and related benefits result in harm that is not merely financial, and cannot be later undone through monetary remedies. Absent these benefits, same-sex spouses of married City employees lack both access to a much needed medical care and the right to the qualified provider of their choice. Such loss of benefits and loss of choice constitute irreparable harm for purposes of a preliminary injunction.

72. Furthermore, the City's reliance on the Texas DOMA Statute and the Texas Marriage Amendment to deny benefits only to same-sex spouses of married employees would violate their clearly-established constitutional rights—a deprivation that no amount of money can compensate. Loss of constitutional freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.

73. The Court should declare that Defendants may not rely on the Texas DOMA Statute and the Texas Marriage Amendment, which have previously been held unconstitutional under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, to justify depriving Plaintiffs access to the same spousal benefits provided other married employees.

74. Further, the Court should enjoin enforcement of the Texas DOMA Statute and the Texas Marriage Amendment to withdraw or claw back benefits from the City Employees and their Spouses.

75. The City's withdrawal of spousal benefits to married lesbian and gay employees, and only those employees, by invoking the Texas DOMA Statute and the Texas Marriage Amendment, would also violate the equality guarantee of the Fourteenth Amendment by discriminating against those employees based on their sex and sexual orientation.

76. A public employer's disparate treatment of a class of employees based solely on the employees' sex or sexual orientation is inherently suspect and must be analyzed under heightened (strict or, at least, intermediate) scrutiny. Such employer conduct will be presumed to violate the guarantee of equal protection unless the government can demonstrate that the classification is necessary to meet a sufficient (compelling or important) government interest or objective. The classification used by the employer, as well as the resulting discriminatory conduct, can be defended only by its actual governmental purpose, not a different rationalization invented after the fact.

77. Here, the City can offer no important or compelling governmental interest as a public employer that would sufficiently justify providing different compensation packages to similarly situated, married employees solely because of the sex or sexual orientation of the employee. Nor could the City justify demeaning

and stigmatizing same-sex employees and spouses by denying them equal recognition of their marriages and access to family protections and benefits.

78. Even without application of heightened scrutiny analysis, the City's withdrawal of spousal benefits from married lesbian, gay, and bisexual employees still fails the Constitution's equal protection guarantee under the most deferential level of scrutiny because it bears no rational relationship to any legitimate governmental interest.

79. In the absence of an independent legitimate governmental interest, a classification that compensates lesbian, gay, and bisexual employees differently and worse than other employees because of their sex or sexual orientation solely for the purpose of expressing moral disapproval of their same-sex relationships constitutes a classification for its own sake motivated by animus and, therefore, is constitutionally impermissible.

80. The Texas DOMA Statute and the Texas Marriage Amendment cannot change this analysis; they can provide neither refuge nor solace to the City or the Taxpayers. These Texas laws violate the equality guarantee of the Fourteenth Amendment.

81. Defendants' conduct puts Plaintiffs at substantial risk of losing their spousal health insurance, family leave, and other related benefits without further notice. Termination of medical coverage and related benefits result in harm that is not merely financial, and cannot be later undone through monetary remedies. Absent these benefits, same-sex spouses of married City employees lack both access



to much needed medical care and the right to the qualified provider of their choice. Such loss of benefits and loss of choice constitute irreparable harm for purposes of a preliminary injunction.

82. Furthermore, the City's reliance on the Texas DOMA Statute and the Texas Marriage Amendment to deny benefits only to same-sex spouses of married employees would violate their clearly-established constitutional rights—a deprivation that no amount of money can compensate. Loss of constitutional freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.

83. The Court should declare that Defendants may not rely on the Texas DOMA Statute and the Texas Marriage Amendment, which have previously been held unconstitutional under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, to justify depriving Plaintiffs access to the same spousal benefits provided other married employees.

84. Further, the Court should enjoin enforcement of the Texas DOMA Statute and the Texas Marriage Amendment to withdraw or claw back benefits from the City Employees and their Spouses.

#### **IX. PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray that this Court enter judgment:

- (A) Issuing a preliminary injunction pursuant to Federal Rule of Civil Procedure 65 enjoining the Mayor and the City from withdrawing or denying spousal benefits for same-sex spouses of lesbian and gay employees, or attempting to claw back previously paid benefits, until such time as the Court can make a final determination on the merits;

- (B) Declaring, pursuant to Federal Rule of Civil Procedure 57, that Defendants' conduct in denying spousal benefits to same-sex spouses of City employees would violate Plaintiffs' due process and equal protection rights under the United States Constitution;
- (C) Declaring that Defendants may not rely on the Texas DOMA Statute and the Texas Marriage Amendment, which have previously been held unconstitutional, to justify depriving Plaintiffs access to the same spousal benefits provided other married employees;
- (D) Issuing a permanent injunction enjoining the Mayor and the City from withdrawing or denying spousal benefits for same-sex spouses of lesbian, gay, and bisexual employees, or attempting to claw back benefits previously paid;
- (E) Awarding statutory costs pursuant to 28 U.S.C. § 1920;
- (F) Granting reasonable attorneys' fees pursuant to 42 U.S.C. § 1988; and
- (G) Granting such other and further relief to which Plaintiffs are entitled.

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Respectfully submitted,

/s/ Stefanie R. Moll

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