

Cause No. 2019-4534-4

Dianne Hensley, on behalf of herself and
others similarly situated,

Plaintiff,

v.

**State Commission on Judicial
Conduct; David C. Hall**, in his official
capacity as Chair of the State
Commission on Judicial Conduct;
Ronald E. Bunch, in his official capacity
as Vice-Chair of the State Commission on
Judicial Conduct; **Tramer J. Woytek**, in
his official capacity as Secretary of the
State Commission on Judicial Conduct;
David M. Patronella, in his official
capacity as Member of the State
Commission on Judicial Conduct;
Darrick L. McGill, in his official capacity
as Member of the State Commission on
Judicial Conduct; **Sujeeth B.
Draksharam**, in his official capacity as
Member of the State Commission on
Judicial Conduct; **Ruben G. Reyes**, in
his official capacity as Member of the
State Commission on Judicial Conduct;
Lee Gabriel, in his official capacity as
Member of the State Commission on
Judicial Conduct; **Valerie Ertz**, in her
official capacity as Member of the State
Commission on Judicial Conduct;
Frederick C. Tate, in his official capacity
as Member of the State Commission on
Judicial Conduct; **Steve Fischer**, in his
official capacity as Member of the State
Commission on Judicial Conduct; **Janis
Holt**, in her official capacity as Member
of the State Commission on Judicial
Conduct; **M. Patrick Maguire**, in his
official capacity as Member of the State
Commission on Judicial Conduct,

Defendants

IN THE DISTRICT COURT

MCLENNAN COUNTY, TEXAS

170TH
____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL CLASS-ACTION PETITION

Plaintiff Dianne Hensley serves as a justice of the peace in Waco, having served her community in this position since January 1, 2015. As a justice of the peace, Judge Hensley is authorized by Texas law to officiate at marriage ceremonies. *See* Texas Family Code § 2.202(a). Prior to June 2015, Judge Hensley officiated eighty (80) weddings. Between June 26, 2015, and August 1, 2016, Judge Hensley—along with the majority of justices of the peace and other public officials authorized to officiate marriages in McLennan County—officiated no weddings.

Judge Hensley's conscience is informed by the teachings of her Christian faith. To remain faithful to her firmly held religious beliefs, she cannot officiate a same-sex marriage ceremony. These same religious convictions compel Judge Hensley to treat all people, regardless of sexual preference or orientation, with dignity, respect, and kindness. Her Christian belief in the dignity of the individual led Judge Hensley to consider how to accommodate those seeking a local wedding officiant. Not wishing to bind the conscience of others, Judge Hensley sought to provide the public with reasonable alternatives.

At her own expense, Judge Hensley invested extensive time and resources to compile a referral list of alternative, local, and low-cost wedding officiants in Waco that she provides to people for whom she is unable to officiate due to time constraints or her religious convictions. One such officiant operates a walk-in wedding chapel located just a short walk (three blocks) from Judge Hensley's courtroom. Those who mention that the referral to this walk-in wedding officiant came from Judge Hensley receive a discounted rate to comport with Judge Hensley's rate.

Judge Hensley's referral solution has provided a means by which many more couples—including same-sex couples—are able to marry than by the predominant practice of many public officials, who have simply ceased officiating weddings altogether. Judge Hensley has officiated wedding ceremonies for 328 couples since August

2016—and dozens more have taken advantage of the referral system instituted by Judge Hensley.

No one complained about Judge Hensley’s referral system. Nonetheless, the State Commission on Judicial Conduct launched a lengthy investigation of Judge Hensley’s activities in May 2018. On November 12, 2019, the Commission issued a “Public Warning,” sanctioning Judge Hensley for operating the referral system developed to accommodate her religious convictions and serve her community. *See* Exhibit 1. Without a single public complaint, the Commission punished Judge Hensley’s attempt to reconcile her religious beliefs with the needs of her community.

The Commission’s public punishment of Judge Hensley—as well as its threat to impose further discipline if Judge Hensley persists in recusing herself from officiating at same-sex weddings—violates Judge Hensley’s rights under the Texas Religious Freedom Restoration Act. By investigating and punishing Judge Hensley for acting in accordance with the commands of her Christian faith, the Commission and its members have substantially burdened the free exercise of her religion, with no compelling justification. Judge Hensley sues to recover damages, costs, and attorneys’ fees as authorized by the Texas Religious Freedom Restoration Act. *See* Tex. Civ. Prac. & Rem. Code § 110.005(a).

Judge Hensley also intends to continue recusing herself from officiating at same-sex weddings—her conscience demands it—despite the Commission’s warning. She therefore seeks a declaratory judgment that her referral system complies with Texas law, and that the law of Texas prevents the Commission from imposing any further discipline on justices of the peace who recuse themselves from officiating at same-sex marriage ceremonies.

DISCOVERY CONTROL PLAN

1. The plaintiff intends to conduct discovery under Level 3 of the rules set forth in Rule 190 of the Texas Rules of Civil Procedure.

PARTIES

2. Plaintiff Dianne Hensley resides in McLennan County.

3. Defendant State Commission on Judicial Conduct is an independent Texas state agency. It may be served at its offices at 300 West 15th Street Austin, Texas 78701.

4. Defendant David C. Hall is chair of the State Commission on Judicial Conduct. He may be served at the Commission's offices at 300 West 15th Street, Austin, Texas 78701. Chairman Hall is sued in his official capacity.

5. Defendant Ronald E. Bunch is vice-chair of the State Commission on Judicial Conduct. He may be served at the Commission's offices at 300 West 15th Street, Austin, Texas 78701. Vice-Chairman Bunch is sued in his official capacity.

6. Defendant Tramer J. Woytek is secretary of the State Commission on Judicial Conduct. He may be served at the Commission's offices at 300 West 15th Street, Austin, Texas 78701. Secretary Woytek is sued in his official capacity.

7. Defendant David M. Patronella is a member of the State Commission on Judicial Conduct. He may be served at the Commission's offices at 300 West 15th Street, Austin, Texas 78701. Member Patronella is sued in his official capacity.

8. Defendant Darrick L. McGill is a member of the State Commission on Judicial Conduct. He may be served at the Commission's offices at 300 West 15th Street, Austin, Texas 78701. Member McGill is sued in his official capacity.

9. Defendant Sujeeth B. Draksharam is a member of the State Commission on Judicial Conduct. He may be served at the Commission's offices at 300 West 15th Street, Austin, Texas 78701. Member Draksharam is sued in his official capacity.

10. Defendant Ruben G. Reyes is a member of the State Commission on Judicial Conduct. He may be served at the Commission's offices at 300 West 15th Street, Austin, Texas 78701. Member Reyes is sued in his official capacity.

11. Defendant Lee Gabriel is a member of the State Commission on Judicial Conduct. He may be served at the Commission's offices at 300 West 15th Street, Austin, Texas 78701. Member Gabriel is sued in his official capacity.

12. Defendant Valerie Ertz is a member of the State Commission on Judicial Conduct. She may be served at the Commission's offices at 300 West 15th Street, Austin, Texas 78701. Member Ertz is sued in her official capacity.

13. Defendant Frederick C. Tate is a member of the State Commission on Judicial Conduct. He may be served at the Commission's offices at 300 West 15th Street, Austin, Texas 78701. Member Tate is sued in his official capacity.

14. Defendant Steve Fischer is a member of the State Commission on Judicial Conduct. He may be served at the Commission's offices at 300 West 15th Street, Austin, Texas 78701. Member Fischer is sued in his official capacity.

15. Defendant Janis Holt is a member of the State Commission on Judicial Conduct. She may be served at the Commission's offices at 300 West 15th Street, Austin, Texas 78701. Member Holt is sued in her official capacity.

16. Defendant M. Patrick Maguire is a member of the State Commission on Judicial Conduct. He may be served at the Commission's offices at 300 West 15th Street, Austin, Texas 78701. Member Maguire is sued in his official capacity.

JURISDICTION AND VENUE

17. The Court has subject-matter jurisdiction under the Texas Constitution, Article V, § 8, as the amount in controversy exceeds the minimum jurisdictional limits of the court exclusive of interest. The plaintiff seeks relief that can be granted by courts of law or equity.

18. The Court has jurisdiction over the plaintiff's requests for damages and declaratory relief under the Texas Religious Freedom Restoration Act because the statute waives sovereign immunity and specifically authorizes lawsuits for money damages against state agencies. *See* Tex. Civ. Prac. & Rem. Code § 110.008(a) ("Subject to Section 110.006, sovereign immunity to suit and from liability is waived and abolished to the extent of liability created by Section 110.005, and a claimant may sue a government agency for damages allowed by that section."). The waiver of immunity in the Texas Religious Freedom Restoration Act prevails over any other grant of immunity that may appear in Texas statutes or judicial decisions. *See* Tex. Civ. Prac. & Rem. Code § 110.002(c) ("This chapter applies to each law of this state unless the law is expressly made exempt from the application of this chapter by reference to this chapter.").

19. The Court has jurisdiction over the plaintiff's request for declaratory relief against the individual members of the Commission because they are acting *ultra vires* by pursuing disciplinary proceedings against judges and justices of the peace who recuse themselves from officiating at same-sex weddings. *See City of El Paso v. Heinrich*, 284 S.W.3d 366, 368–69 (Tex. 2009).

20. Plaintiff Dianne Hensley has standing because she is suffering injury on account of the defendants' actions.

21. The Court has personal jurisdiction over each of the defendants.

22. Venue is proper because a substantial portion of the events giving rise to the claims occurred in McLennan County, Texas. *See* Tex. Civ. Prac. & Rem. Code §§ 15.002, 15.003, 15.005, 15.035.

23. Judge Hensley brings her claims for relief exclusively under state law. She is not asserting any federal cause of action, and she is not relying on federal law to support her claims for relief.

FACTS

24. Plaintiff Dianne Hensley serves as a Justice of the Peace in McLennan County, Texas. She has held this office since January 1, 2015.

25. As a Justice of the Peace, Judge Hensley is authorized but not required to officiate at weddings. *See* Tex. Family Code § 2.202(a).

26. The law of Texas prohibits wedding officiants “from discriminating on the basis of race, religion, or national origin against an applicant who is otherwise competent to be married.” Tex. Family Code § 2.205(a). Judge Hensley obeys section 2.205(a) and has never discriminated against any person or couple seeking to be married on any of these grounds.

27. Before the Supreme Court’s ruling in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), Judge Hensley officiated approximately 80 weddings as a Justice of the Peace.

28. After the Supreme Court’s ruling in *Obergefell*, Judge Hensley officiated four additional weddings that had been previously scheduled before the Court’s ruling, and then her office did not book any more weddings between June 26, 2015, and August 1, 2016.

29. Judge Hensley is a Christian, and her religious faith forbids her to officiate at any same-sex marriage ceremony.

30. In addition, the Constitution and laws of Texas continue to define marriage as the union of one man and one woman. *See* Tex. Const. art. I, § 32 (“(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.”); Tex. Family Code § 6.204(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.”). Texas has not amended its Constitution or its marriage laws in response to the Supreme Court’s opinion in *Obergefell*.

31. For these reasons, Judge Hensley initially quit officiating weddings entirely following the *Obergefell* decision.

32. In August of 2016, Judge Hensley decided that there was a need in her community for low-cost wedding officiants because no judges or justices of the peace in Waco were officiating any weddings in the aftermath of *Obergefell*.

33. Rather than categorically refusing to officiate weddings, and wanting to provide a reasonable accommodation for everyone, regardless of sexual preference or orientation, Judge Hensley decided that she would resume officiating weddings between one man and one woman, as she had done before *Obergefell*. Judge Hensley also decided to recuse herself from officiating same-sex weddings and politely refer same-sex couples to other officiants in McLennan County who are willing to perform their ceremonies.

34. Judge Hensley and her staff researched and compiled a list of every officiant they could find for same-sex weddings in McLennan County and its surrounding counties. One of these officiants, Ms. Shelli Misher, is an ordained minister who operates a walk-in wedding chapel three blocks away and on the same street as the courthouse where Judge Hensley's offices are located.

35. Ms. Misher has agreed to accept referrals from Judge Hensley's office of any same-sex couple seeking to be married. *See* Exhibit 10.

36. Although Ms. Misher charges \$125 for her services, which is \$25 more than the \$100 that Judge Hensley charges for a justice-of-the-peace wedding, Ms. Misher has generously agreed to provide a \$25 discount to any couple that Judge Hensley refers to her, so that no extra costs are imposed on couples that Judge Hensley refers to her business.

37. The website for Ms. Misher's chapel can be found at <https://www.wacoweddingsandevents.com> (last visited on December 16, 2019).

38. Judge Hensley has also made arrangements with Judge David Pareya, a fellow justice of the peace in McLennan County, who has agreed to accept referrals of any same-sex couple who is seeking a justice-of-the-peace wedding. Judge Pareya's offices are located in West, Texas, about 20 miles from Judge Hensley's offices in Waco.

39. All three of Judge Hensley's clerks are licensed to officiate weddings.

40. If a same-sex couple asks Judge Hensley's office about whether she will officiate weddings, Judge Hensley's staff is instructed to provide them with a document that says:

I'm sorry, but Judge Hensley has a sincerely held religious belief as a Christian, and will not be able to perform any same sex weddings.

We can refer you to Judge Pareya (254-826-3341), who is performing weddings. Also, it is our understanding that Central Texas Metropolitan Community Church and the Unitarian Universalist Fellowship of Waco perform the ceremonies, as well as independent officiants in Temple and Killeen (www.thumbtack.com/tx/waco/wedding-officiants/)

They are also instructed to hand them a business card for Ms. Misher's wedding chapel, which is three blocks down the street. A copy of that document is attached as Exhibit 2 to this petition.

41. Judge Hensley's referral system benefits both same-sex and opposite-sex couples when compared to her earlier practice of refusing to officiate weddings for anyone. It benefits same-sex couples by providing them with referrals to every known officiant in McLennan County that is willing to officiate same-sex weddings. And it benefits opposite-sex couples by allowing them to obtain a justice-of-the-peace wedding, because no other judges or justices of the peace in Waco are willing to officiate any weddings after *Obergefell*.

42. No same-sex couple has ever complained to the State Commission on Judicial Conduct about Judge Hensley's referral system, nor has anyone complained to her.

THE COMMISSION'S PROCEEDINGS

43. On May 22, 2018, the State Commission on Judicial Conduct (the Commission) initiated an inquiry into Judge Hensley's referral system after learning of it in a newspaper article published in the Waco Tribune. The Commission sent Judge Hensley a letter of inquiry and demanded that she respond to written interrogatories about her referral system within 30 days.

44. Judge Hensley submitted her written responses to these interrogatories on June 20, 2018. *See* Exhibit 3.

45. Judge Hensley explained to the Commission that her Christian faith prohibits her from officiating at same-sex weddings, and for that reason she initially quit officiating weddings entirely after *Obergefell*. *See id.*

46. Judge Hensley also explained that her decision to stop officiating weddings created inconveniences for couples seeking to be married in Waco, because no other justices of the peace or judges in Waco would perform *any* weddings in the aftermath of *Obergefell*. The only justice of the peace in McLennan County willing to officiate weddings of any sort post-*Obergefell* was Judge Pareya, whose offices are located in West, Texas—20 miles away from Waco. As Judge Hensley explained:

Following *Obergefell*, only one of the six Justices of the Peace in McLennan County continued performing weddings and he wasn't available all the time. As far as I am aware, none of the other judges in the county were performing weddings either. Perhaps because my office is located in the Courthouse across the street from the County Clerk's office where marriage licenses are issued, we received many phone calls and office visits in the next year from couples looking for someone to marry them. Many people calling or coming by the office were very frustrated and some literally in tears because they were unaffiliated with

or didn't desire a church wedding and they couldn't find anyone to officiate.

Id.

47. Judge Hensley explained to the Commission that she “became convicted that it was wrong to inconvenience ninety-nine percent of the population because I was unable to accommodate less than one percent.” *Id.* She therefore began officiating weddings again on August 1, 2016, with the referral system described in paragraphs 33–41.

48. On January 25, 2019, the Commission issued Judge Hensley a “Tentative Public Warning.” *See* Exhibit 4.

49. The Tentative Public Warning accused Judge Hensley of violating Canon 3B(6), of the Texas Code of Judicial Conduct, which states: “A judge shall not, in the performance of judicial duties, by words or conduct manifest a bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status” *Id.*

50. The Tentative Public Warning also accused Judge Hensley of violating Canon 4A of the Texas Code of Judicial Conduct, which states: “A judge shall conduct all of the judge’s extra-judicial activities so that they do not: (1) cast reasonable doubt on the judge’s capacity to act impartially as a judge; or (2) interfere with the proper performance of judicial duties.” *Id.*

51. Finally, the Tentative Public Warning accused Judge Hensley of violating Article V, Section 1-a(6)A of the Texas Constitution, which allows a judge to be sanctioned for “willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice.” *Id.*

52. The Commission’s Tentative Public Warning allowed Judge Hensley to choose between accepting the Commission’s tentative sanction or appearing before

the Commission. Judge Hensley chose to appear before the Commission, and a hearing was held on August 8, 2019.

53. At the hearing, Judge Hensley argued that the Texas Religious Freedom Restoration Act protected her right to recuse herself from officiating same-sex weddings in accordance with the commands of her faith, and to refer same-sex couples to other officiants willing to officiate such marriages.

54. Judge Hensley also argued that the Commission lacked authority to sanction her under Canon 3B(6) because officiating weddings is not a “judicial duty” within the meaning of the Canon, as the law of Texas authorizes but does not require judges or justices of the peace to officiate at weddings. *See* Texas Family Code § 2.202(a).

55. On November 12, 2019, after hearing Judge Hensley’s testimony, the Commission issued its final sanction and issued a “Public Warning” to Judge Hensley. *See* Exhibit 1.

56. Unlike the Commission’s Tentative Public Warning of January 25, 2019, the Commission’s Public Warning of November 12, 2019, did not accuse Judge Hensley of violating Canon 3B(6) of the Texas Code of Judicial Conduct, nor did it accuse Judge Hensley of violating Article V, Section 1-a(6)A of the Texas Constitution. Instead, the Commission declared only that Judge Hensley had violated Canon 4A(1) of the Texas Code of Judicial Conduct, which states: “A judge shall conduct all of the judge’s extra-judicial activities so that they do not cast reasonable doubt on the judge’s capacity to act impartially as a judge” The Commission declared that Judge Hensley:

should be publicly warned for casting doubt on her capacity to act impartially to persons appearing before her as a judge due to the person’s sexual orientation in violation of Canon 4A(1) of the Texas Code of Judicial Conduct.

See Exhibit 1.

57. The Commission’s Public Warning of November 12, 2019, did not acknowledge or address the Texas Religious Freedom Restoration Act, and it did not respond to the arguments that Judge Hensley had made in reliance on that statute.

INDIVIDUAL CLAIMS FOR RELIEF

58. Judge Hensley sues the Commission and its members under three separate causes of action: (1) the cause of action established in the Texas Religious Freedom Restoration Act, *see* Texas Civ. Prac. & Rem. Code § 110.005; (2) the Texas Declaratory Judgment Act, *see* Tex. Civ. Prac. & Rem. Code §§ 37.003; and (3) an *ultra vires* cause of action against the individual commissioners, *see City of El Paso v. Heinrich*, 284 S.W.3d 366, 368–69 (Tex. 2009).

1. Violation of the Texas Religious Freedom Restoration Act

59. The Commission violated the Texas Religious Freedom Restoration Act by investigating and punishing Judge Hensley for recusing herself from officiating at same-sex weddings, in accordance with the commands of her Christian faith.

60. The Commission’s investigation and punishment of Judge Hensley for acting in accordance with the commands of her Christian faith is a substantial burden on Judge Hensley’s free exercise of religion. *See* Texas Civ. Prac. & Rem. Code § 110.003(a) (“[A] government agency may not substantially burden a person’s free exercise of religion.”). The Commission’s threat to impose further discipline on Judge Hensley if she persists in recusing herself from officiating at same-sex weddings is also a substantial burden on Judge Hensley’s free exercise of religion.

61. The Commission’s investigation and punishment of Judge Hensley—and its threat to impose further discipline on Judge Hensley if she persists in recusing herself from officiating at same-sex weddings—does not further a “compelling governmental interest” of any sort. *See* Tex. Civ. Prac. & Rem. Code § 110.003(b)(1). If Judge Hensley is forbidden to recuse herself from officiating at same-sex weddings, then she

will stop officiating weddings entirely, as she did in the immediate aftermath of *Obergefell*. That outcome does nothing to alleviate inconveniences that Judge Hensley's referral system might impose on same-sex couples. Indeed, the Commission's actions have the perverse effect of imposing even greater inconveniences on same-sex and opposite-sex couples seeking low-cost weddings. Same-sex couples will no longer have the benefit of Judge Hensley's referral system, and opposite-sex couples will have one fewer option from an already short (and shrinking) list of low-cost weddings officiants in Waco.

62. There is no compelling governmental interest in preventing judges or justices of the peace from openly expressing a religious belief that opposes homosexual behavior. The Commission claimed that Judge Hensley's actions "cast reasonable doubt on [her] capacity to act impartially as a judge," presumably because she had publicly stated her inability to officiate at same-sex marriage ceremonies on account of her Christian faith. But disapproval of an individual's *behavior* does not evince bias toward that individual as a *person* when they appear in court. Every judge in the state of Texas disapproves of at least some forms of sexual behavior. Most judges disapprove of adultery, a substantial number (though probably not a majority) disapprove of pre-marital sex, and nearly every judge disapproves of polygamy, prostitution, pederasty, and pedophilia. A judge who publicly proclaims his opposition to these behaviors—either on religious or non-religious grounds—has not compromised his impartiality toward litigants who engage in those behaviors. It is absurd to equate a judge's publicly stated opposition to an individual's behavior as casting doubt on the judge's impartiality toward litigants who engage in that conduct. Otherwise no judge who publicly opposes murder or rape could be regarded as impartial when an accused murderer or rapist appears in his court.

63. In addition, there are thousands of judges and justices of the peace in Texas who publicly demonstrate that they hold religious beliefs against homosexual behavior

and same-sex marriage by openly belonging to churches that condemn homosexual conduct—including the Roman Catholic Church, the Southern Baptist Convention, the United Methodist Church, and the Church of Jesus Christ Latter-Day Saints. Many of those judges and justices of the peace financially support those churches as well as charities that hold similar religious beliefs. There is no compelling governmental interest in suppressing judicial affiliation with organizations that oppose homosexual behavior for religious reasons—on the ground that this somehow casts reasonable doubt on the judge’s “impartiality” toward homosexual litigants.

64. The Texas Religious Freedom Act authorizes Judge Hensley to sue for declaratory relief, injunctive relief, compensatory damages up to \$10,000, and costs and attorneys’ fees. *See* Texas Civ. Prac. & Rem. Code § 110.005.

65. Judge Hensley is entitled to recover compensatory damages against the Commission for the costs she incurred responding to the Commission’s investigation and for the income that she lost when she ceased officiating weddings in response to the Commission’s investigation and sanctions. *See* Texas Civ. Prac. & Rem. Code § 110.005(a)(3), (b), (d).

66. Judge Hensley is entitled to a declaratory judgment that the Commission and its members violated her rights under the Texas Religious Freedom Act by investigating and sanctioning her for recusing herself from officiating at same-sex weddings, and by threatening to impose further discipline if she persists in recusing herself from officiating at same-sex weddings. *See* Texas Civ. Prac. & Rem. Code § 110.005(a)(1).

67. Judge Hensley is entitled to reasonable attorneys’ fees, courts costs, and other reasonable expenses incurred in bringing this action. *See* Texas Civ. Prac. & Rem. Code § 110.005(a)(4).

68. Judge Hensley provided the notice required by section 110.006 of the Texas Civil Practice and Remedies Code more than 60 days before bringing suit. *See* Exhibits 5–9.

2. Texas Declaratory Judgment Act

69. Judge Hensley also brings suit under the Texas Declaratory Judgment Act, and she seeks declaratory relief that protects her right to recuse herself from officiating at same-sex wedding ceremonies.

70. The Commission sanctioned Judge Hensley for violating Canon 4A of the Texas Code of Judicial Conduct, which states: “A judge shall conduct all of the judge’s extra-judicial activities so that they do not: (1) cast reasonable doubt on the judge’s capacity to act impartially as a judge; or (2) interfere with the proper performance of judicial duties.” But a judge who merely expresses disapproval of homosexual *behavior* has not cast doubt on his or her impartiality as a judge. Every judge disapproves of at least some forms of sexual behavior, and no one thinks that a judge who publicly announces his disapproval of adultery—or who publicly disapproves of pre-marital sex—has compromised his impartiality toward litigants who engage in those behaviors. It may not be as fashionable to publicly disapprove homosexual behavior as it once was, but that is not a reason to question the impartiality of a judge who openly expresses a religious belief that marriage should exist only between one man and one woman. Judge Hensley seeks a declaratory judgment that a judge does not violate Canon 4A merely by expressing disapproval of homosexual behavior or same-sex marriage.

71. The Commission’s interpretation of Canon 4A calls into question whether a judge may openly affiliate with churches and charitable institutions that oppose homosexual behavior and same-sex marriage. Many judges publicly belong to churches that condemn homosexual conduct and oppose same-sex marriage—including the

Roman Catholic Church, the Southern Baptist Convention, the United Methodist Church, and the Church of Jesus Christ Latter-Day Saints—and many judges give generously to Christian charities that hold similar views. Many activists, however, equate financial support for organizations of this sort as a manifestation of “anti-LGBT bias.” *See* Associated Press, *Chick-Fil-A Halts Donations to 3 Groups Against Gay Marriage* (Nov. 18, 2019). Judge Hensley seeks a declaratory judgment that a judge does not violate Canon 4A by belonging to or supporting a church or charitable organization that opposes homosexual behavior or same-sex marriage.

72. Judge Hensley also seeks a declaration that the Commission’s interpretation of Canon 4A violates article I, section 8 of the Texas Constitution. *See* Tex. Const. art. I § 8 (“Every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press.”); *Davenport v. Garcia*, 834 S.W.2d 4, 10 (Tex. 1992) (“[A]rticle one, section eight of the Texas Constitution provides greater rights of free expression than its federal equivalent.”). Judicial canons of “impartiality” may not be used to prevent judges from expressing their opposition to homosexual behavior, any more than they may be used to prevent judges from expressing opposition to pre-marital sex, adultery, polygamy, prostitution, pederasty, or pedophilia.

73. At the very least, the Commission’s interpretation of Canon 4A raises serious constitutional questions under article I, section 8, and it should be rejected for that reason alone. *See Brooks v. Northglenn Ass’n*, 141 S.W.3d 158, 169 (Tex. 2004) (“[W]e are obligated to avoid constitutional problems if possible.”).

74. The Commission’s Tentative Public Warning of January 25, 2019, accused Judge Hensley of violating Canon 3B(6) of the Texas Code of Judicial Conduct, which states: “A judge shall not, in the performance of judicial duties, by words or conduct manifest a bias or prejudice, including but not limited to bias or prejudice

based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status” *Id.* Judge Hensley seeks a declaratory judgment that the officiating of weddings is not a judicial “duty” under Canon 3B(6) because judges are not required to officiate at weddings; they merely have the option of doing so. The Commission therefore lacks authority to discipline Judge Hensley under Canon 3B(6) for recusing herself from same-sex weddings.

75. The Commission’s Tentative Public Warning of January 25, 2019, also accused Judge Hensley of violating article V, section 1-a(6)A of the Texas Constitution, which allows a judge to be sanctioned for “willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice.” Judge Hensley seeks a declaratory judgment that her decision to recuse herself from officiating at same-sex weddings and her intention to continue recusing herself is not a “willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice.”

3. *Ultra Vires* Claims

76. Judge Hensley seeks the same declaratory relief described in paragraphs 69–75 against each of the Commissioners in their official capacity.

77. Judge Hensley is not seeking a writ of injunction against the Commissioners; she is requesting only declaratory relief on her *ultra vires* claims. *See Texas Natural Resource Conservation Commission v. IT-Davy*, 74 S.W.3d 849, 855 (Tex. 2002) (“Private parties may seek declaratory relief against state officials who allegedly act without legal or statutory authority.”).

CLASS CLAIMS FOR RELIEF

78. Judge Hensley also seeks class-wide declaratory relief on behalf of every justice of the peace in Texas. Judge Hensley brings these class claims for declaratory relief

under the Texas Religious Freedom Restoration Act, *see* Texas Civ. Prac. & Rem. Code § 110.005; the Texas Declaratory Judgment Act, *see* Tex. Civ. Prac. & Rem. Code §§ 37.003; and the *ultra vires* cause of action established in *City of El Paso v. Heinrich*, 284 S.W.3d 366, 368–69 (Tex. 2009). Judge Hensley is not seeking a writ of injunction against the Commissioners; she is requesting only declaratory relief on her class claims.

79. Judge Hensley seeks a class-wide declaratory judgment that the Texas Religious Freedom Restoration Act allows any justice of the peace to recuse himself or herself from officiating at same-sex weddings, if the commands of their religious faith forbid them to participate in same-sex marriage ceremonies.

80. Judge Hensley seeks a class-wide declaratory judgment that a justice of the peace does not violate Canon 4A of the Texas Code of Judicial Conduct by recusing himself or herself from officiating at same-sex weddings, or by publicly expressing disapproval of homosexual behavior.

81. Judge Hensley seeks a class-wide declaratory judgment that a justice of the peace does not violate Canon 4A of the Texas Code of Judicial Conduct by publicly supporting or affiliating with churches and charitable institutions that oppose homosexual behavior and same-sex marriage.

82. Judge Hensley seeks a class-wide declaratory judgment that the Commission’s interpretation of Canon 4A violates article I, section 8 of the Texas Constitution, and that article I, section 8 protects the right of justices of the peace to express opposition to homosexual behavior.

83. Judge Hensley seeks a class-wide declaratory judgment that a justice of the peace does not violate Canon 3B(6) of the Texas Code of Judicial Conduct by recusing himself or herself from officiating at same-sex weddings, because the performance of weddings is not a “judicial duty” within the meaning of Canon 3B(6).

84. Judge Hensley seeks a class-wide declaratory judgment that the act of recusing oneself from officiating at same-sex weddings does not qualify as “willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice” within the meaning of article V, section 1-a(6)A of the Texas Constitution.

85. Judge Hensley seeks a class-wide declaratory judgment that the Commission lacks authority to discipline a justice of the peace for refusing to officiate at a same-sex marriage ceremony when the Constitution and laws of Texas continue to define marriage as the union of one man and one woman. *See* Tex. Const. art. I, § 32 (“(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.”); Tex. Fam. Code § 6.204(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.”); *see also Pidgeon v. Turner*, 538 S.W.3d 73, 88 n.21 (Tex. 2017) (“[N]either the Supreme Court in *Obergefell* nor the Fifth Circuit in *De Leon* ‘struck down’ any Texas law. When a court declares a law unconstitutional, the law remains in place unless and until the body that enacted it repeals it”).

86. Judge Hensley seeks a class-wide declaratory judgment that the Commission lacks authority to discipline a justice of the peace for refusing to officiate at a same-sex marriage ceremony when the law of Texas specifically prohibits wedding officiants from “discriminating on the basis of race, religion, or national origin against an applicant who is otherwise competent to be married,” but does not prohibit discrimination on the basis of sex, sexual orientation, or gender identity. *See* Tex. Fam. Code § 2.205; *see also* Antonin Scalia and Bryan Garner, *Reading Law* 107 (2012) (“The expression of one thing implies the exclusion of others (*expressio unius est exclusio alterius*)”).


DEMAND FOR JUDGMENT

87. Judge Hensley respectfully asks that the Court:


- a. award the individual declaratory relief described in paragraph 66 and paragraphs 70–76;
- b. award damages to Judge Hensley in the amount of \$10,000;
- c. certify a class of all justices of the peace in the state of Texas;
- d. award the class-wide declaratory relief described in paragraphs 79–86;
- e. award costs and attorneys' fees; and
- f. award other relief that the Court may deem just, proper, or equitable.

Respectfully submitted.

KELLY J. SHACKELFORD
Texas Bar No. 18070950
HIRAM S. SASSER III
Texas Bar No. 24039157
HEATHER A. LACHENAUER
Texas Bar No. 24115133
JEREMIAH G. DYS
Texas Bar No. 24096415
First Liberty Institute
2001 West Plano Parkway, Suite 1600
Plano, Texas 75075
(972) 941-4444 (phone)
(972) 423-6162 (fax)



/s/ Jonathan F. Mitchell
JONATHAN F. MITCHELL
Texas Bar No. 24075463
Mitchell Law PLLC
111 Congress Avenue, Suite 400
Austin, Texas 78701
(512) 686-3940 (phone)
(512) 686-3941 (fax)



Dated: December 16, 2019

*Counsel for Plaintiff
and the Proposed Class*

Exhibit 1

State Commission on Judicial Conduct

Officers

David C. Hall, Chair
Ronald E. Bunch, Vice-Chair
Tramer J. Woytek, Secretary

Members

Demetrius K. Bivins
David M. Russell
David M. Patronella
Darrick L. McGill
Sujeeth B. Draksharam
Ruben G. Reyes
Lee Gabriel
Valerie Ertz
Frederick C. "Fred" Tate



Interim Executive Director
Jacqueline R. Habersham

November 14, 2019

VIA CERTIFIED AND REGULAR MAIL

Johnathan F. Mitchell
111 Congress Avenue, Suite 400
Austin, Texas 78701

Re: CJC No. 17-1572

Dear Mr. Mitchell:

During its regularly scheduled meeting on October 9-11, 2019, the State Commission on Judicial Conduct concluded its review of the complaint filed against your client in the above-referenced matter. Following the judge's appearance, and after considering the evidence before it, the Commission voted to issue the judge a **Public Warning**. Enclosed is a copy of the Sanction specifying the Commission's Findings and Conclusions.

Sanctions issued by the Commission are remedial in nature. They serve to promote the high ethical standards of the Texas judiciary and are issued with the intent of assisting all judges with their continued judicial service. In that service, we wish you well.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jacqueline R. Habersham". The signature is fluid and cursive, with a large initial "J" and "H".

Jacqueline R. Habersham
Interim Executive Director

JH/jm
Enclosures



**BEFORE THE STATE COMMISSION
ON JUDICIAL CONDUCT**

CJC No. 17-1572

PUBLIC WARNING

**HONORABLE DIANNE HENSLEY
JUSTICE OF THE PEACE, PRECINCT 1, PLACE 1
WACO, MCLENNAN COUNTY, TEXAS**

During its meeting on October 9-11, 2019, the State Commission on Judicial Conduct concluded a review of allegations against the Honorable Dianne Hensley, Justice of the Peace, Precinct 1, Place 1, Waco, McLennan County, Texas. Judge Hensley was advised by letter of the Commission's concerns and provided written responses. Judge Hensley appeared with counsel before the Commission on August 8, 2019, and gave testimony. After considering the evidence before it, the Commission enters the following findings and conclusions:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Dianne Hensley was Justice of the Peace for Precinct 1, Place 1, in Waco, McLennan County, Texas.
2. On June 24, 2017, the Waco Tribune newspaper published an article on their website entitled *No Courthouse Weddings in Waco for Same-sex Couples, 2 Years After Supreme Court Ruling* which reported that Justice of the Peace Dianne Hensley "would only do a wedding between a man and a woman."
3. From August 1, 2016, to the present, Judge Hensley has performed opposite-sex weddings for couples, but has declined to perform same-sex wedding ceremonies.
4. Beginning on about August 1, 2016, Judge Hensley and her court staff began giving all same-sex couples wishing to be married by Judge Hensley a document which stated "I'm sorry, but Judge Hensley has a sincerely held religious belief as a Christian, and will not be able to perform any same sex weddings." The document contained a list of local persons who would officiate a same-sex wedding.

5. Judge Hensley told the Waco-Tribune, the public and the Commission that her conscience and religion prohibited her from officiating same-sex weddings.
6. At her appearance before the Commission, Judge Hensley testified that she would recuse herself from a case in which a party doubted her impartiality on the basis that she publicly refuses to perform same-sex weddings.

RELEVANT STANDARD


Canon 4A(1) of the Texas Code of Judicial Conduct states "A judge shall conduct all of the judge's extra-judicial activities so that they do not cast reasonable doubt on the judge's capacity to act impartially as a judge...."

CONCLUSION

Based upon the record before it and the factual findings recited above, the Texas State Commission on Judicial Conduct has determined that the Honorable Judge Dianne Hensley, Justice of the Peace for Precinct 1, Place 1 in Waco, McLennan County, Texas, should be publicly warned for casting doubt on her capacity to act impartially to persons appearing before her as a judge due to the person's sexual orientation in violation of Canon 4A(1) of the Texas Code of Judicial Conduct.

The Commission has taken this action pursuant to the authority conferred it in Article V, §1-a of the Texas Constitution in a continuing effort to promote confidence in and high standards for the judiciary.

Issued this the 12th day of November, 2019.



David Hall
Chairman, State Commission on Judicial Conduct

Exhibit 2

"I'm sorry, but Judge Hensley has a sincerely held religious belief as a Christian, and will not be able to perform any same sex weddings."

We can refer you to Judge Pareya (254-826-3341), who is performing weddings. Also, it is our understanding that Central Texas Metropolitan Community Church and the Unitarian Universalist Fellowship of Waco perform the ceremonies, as well as independent officiants in Temple and Killeen (www.thumbtack.com/tx/waco/wedding-officiants/)



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Exhibit 3

DIANNE HENSLEY
JUSTICE OF THE PEACE, PCT. 1, PL. 1
MCLENNAN COUNTY, TEXAS



McLennan County Courthouse
501 Washington Ave., Room 104-D
Waco, Texas 76701

Telephone: (254) 757-5040
Fax: (254) 714-2899

June 20, 2018

Mr. N. Joseph Unruh
Commission Counsel
State Commission on Judicial Conduct
P.O. Box 12265
Austin, Texas 78711

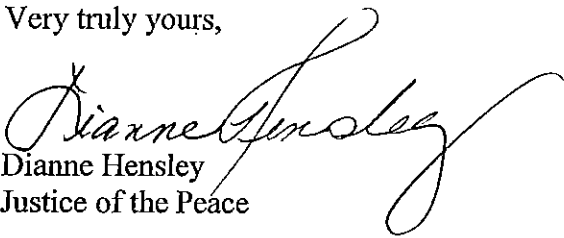
RE: CJC No. 17-1572: Letter of Inquiry

Dear Mr. Unruh:

Please find enclosed my response to your inquiry dated May 22, 2018.

Thank you for the opportunity to respond to your concerns.

Very truly yours,


Dianne Hensley
Justice of the Peace

Enclosure: Response and Attachments (21 pages)

QJ-1
CJC No. 17-1572
Letter of Inquiry: Judge Dianne Hensley

1. **Please state the dates and nature of your judicial service.**

I was sworn in as Justice of the Peace Pct. 1, Pl. 1 in McLennan County on January 1, 2015, and am still serving in my first term.

2. **Please describe in detail, from the time you assumed the bench to the present, your policy with regard to performing wedding ceremonies for same-sex couples. In your response, please indicate the total number of weddings you have performed since June of 2015, and how many of those weddings were performed for same-sex couples.**

Prior to June 2015, I performed eighty weddings while in office. There were four which had been previously scheduled between June 29 and July 24, 2015 that I performed. My office did not book any more weddings between June 26, 2015 and August 1, 2016.

I am a Christian and espouse to millennia old Christian doctrine, dedicating my life and actions to serving Jesus Christ and faithfully adhering to the Bible. This includes my faith's millennia old doctrine relating to marriage and human sexuality. Due to these deeply held Christian beliefs, I am unable to officiate a same-sex wedding. For this reason, I initially quit performing weddings following the *Obergefell* decision.

Following *Obergefell*, only one of the six Justices of the Peace in McLennan County continued performing weddings and he wasn't available all the time. As far as I am aware, none of the other judges in the county were performing weddings either. Perhaps because my office is located in the Courthouse across the street from the County Clerk's office where marriage licenses are issued, we received many phone calls and office visits in the next year from couples looking for someone to marry them. Many people calling or coming by the office were very frustrated and some literally in tears because they were unaffiliated with or didn't desire a church wedding and they couldn't find anyone to officiate.

After a while I became convicted that it was wrong to inconvenience ninety-nine percent of the population because I was unable to accommodate less than one percent. While my religious convictions preclude me from performing a same-sex wedding, I have no desire to be unkind or disrespectful to those seeking one. My office researched and compiled a reference sheet containing every officiant we could find for same-sex weddings in McLennan and surrounding counties. One of these officiants is located four blocks down from the courthouse on the same street. After considerable prayer and research, on August 1, 2016 I began performing weddings in the courthouse and referring those seeking a same-sex ceremony to the sources we had identified. Couples requesting a same-sex ceremony have generally been respectful of my religious views and appreciative of receiving the referral. A copy of the statement used by my staff and the list of known officiants is included with this response.

My staff and I treat everyone who inquires about weddings with dignity, fairness, and respect. My staff has referred opposite-sex couples and same-sex couples to other officiants when I am unavailable.

Since August 1, 2016, I have performed 328 wedding ceremonies at the courthouse, all in accordance with my faith's millennia old religious beliefs on marriage.

One caveat: In addition to the weddings performed through the office I have performed perhaps two weddings for extended family members, but I have no records on them.

3. **On June 24, 2017, the Waco Tribune published an article online titled "No courthouse weddings in Waco for same-sex couples, 2 years after Supreme Court ruling," which contains quotes attributed to you regarding the issue of performing same-sex marriages. Please confirm whether this article accurately and fairly represents your statements to the media on this issue. [Exhibit C-1.]**

I cannot verify the accuracy, completeness, or "fair[ness]" of the article's facts, narratives, or quotes, unrelated to me. Please see my answer to Question two (2) above for an accurate depiction of my religious views and my conduct relating to those views.

The article attributes false comments to me. Specifically, the article states that I told Ms. Saenz to sue me. This never occurred.

4. **Please provide a copy of any public statements you had made regarding your decision to only perform opposite-sex weddings (i.e. Facebook posts, letters to the editor, correspondence with members of the public, etc.)**

I have made no posts to Facebook, written no letters to the editor, and I don't recall and couldn't locate any written correspondence with the public concerning this issue except for the resource document we make available in our office for those looking for a same-sex wedding. [Copy enclosed]

I am aware of only three instances where I addressed this topic publicly:

- a. Specific quotes regarding my religious beliefs published in the Waco Tribute article on June 24, 2017;
- b. A KXXV television feature following publication of the Trib article in which a reporter used 10 seconds or less of footage of me answering her questions.
- c. On May 16, 2016, I was asked to do a program for the McLennan County Republican Women's PAC about the *Obergefell* decision. A copy of the PowerPoint slides from my presentation is enclosed.

5. **Please describe in detail your factual and legal reasons for refusing to perform same-sex marriages while still marrying heterosexual couples.**

I am a sincere follower of the Christian faith. Because I am a Christian, I espouse to millennia old Christian doctrine, dedicating my life and actions to serving Jesus Christ and faithfully adhering to the Bible. This includes my faith's millennia old doctrine relating to marriage and human sexuality. My scriptural understanding of Christ's teaching leads me to the inevitable conclusion that Christ does not sanction same-sex marriage, therefore neither can I. I cannot endorse or participate in such unions because of my deeply held faith.

On June 26, 2015, Governor Greg Abbott published a guidance letter to "All State Agency Heads" regarding "Preserving Religious Liberty for All Texans." On June 28, 2015, Attorney General Ken Paxton rendered Opinion No. KP-0025, providing advice and guidance on the "Rights of government officials involved with issuing same-sex marriage licenses and conducting same-sex wedding ceremonies." On June 28, 2015 Lieutenant Governor Dan Patrick published a statement regarding "Same-Sex Marriage Refusal." All three letters advise and protect government officials' religious liberty rights relating to the subject, relying on state and federal religious liberty laws. I adhere completely to the legal advice rendered in these letters, at all times operating in accordance with the law and their recommendations. The letters are attached to this Inquiry Response for your reference.

My staff and I treat everyone with dignity, fairness, and respect. Please note my correction to the phrase “refusing,” and all that it entails, in Question five (5). My staff and I operate with professionalism and politeness at all times, treating all recusals and referrals, for whatever reason, similarly. Please see my answer to Question two (2) above for an accurate depiction of my religious views and my conduct relating to those views.

- 6. Please discuss whether, in your opinion, by refusing to perform same-sex marriages while still marrying heterosexual couples, you failed to comply with the law, in violation of Canon 2A of the Texas Code of Judicial Conduct.**

Please refer to my answer to Question five (5) (including attachments) above regarding how my conduct fully accords with and adheres to current law and legal precedent.

My staff and I treat everyone with dignity, fairness, and respect. Please note my correction to the phrase “refusing,” and all that it entails, in Question six (6). My staff and I operate with professionalism and politeness at all times, treating all recusals and referrals, for whatever reason, similarly.

- 7. Please discuss whether, in your opinion, that by only providing marriage services to opposite-sex couples, you failed to perform your judicial duties without bias or prejudice in violation of Canons 3B(5) and 3B(6) of the Texas Code of Judicial Conduct?**

I fully perform my judicial duties in accordance with Canons 3B(5) and 3B(6) of the Texas Code of Judicial Conduct. Wedding ceremonies are not a mandated judicial duty under Texas law. Texas Family Code Section 2.202(a) authorizes specific individuals to perform marriage ceremonies. Texas law *permits* ministers, priests, rabbis, religious officers and judges to perform ceremonies, but does not *require* them to do so. As Section II “Justices of the Peace and Judges” of Attorney General Paxton’s Opinion No. KP-0025 sets forth, “justices of the peace and judges are joined on the list....by four other types of persons not employed by state or local government.” Further it is well established that, “judges and justices of the peace have no mandatory duty to conduct any wedding ceremony: ‘Although the Family Code authorizes justices of the peace and county judges, among others, to conduct a marriage ceremony, they are not required to exercise that authority....’” Tex. Att’y Gen. Op. No. KP-0025 (2015); Tex. Att’y Gen. Op. No. GA-145 (2004) at 6; *see also* Tex. Att’y Gen. Op. Nos. DM-197 (1996) at 1, JM-22 (1983) at 1, S-70 (1953) at 1. Thus, there is no obligation or requirement that I or any

Texas justice of the peace perform wedding ceremonies and thus, no judicial duty to do so exists.

8. Please discuss whether, in your opinion, your conduct in this matter casts public discredit upon the judiciary or administration of justice.

Please refer to my answer to Question five (5) (including attachments) above regarding how my conduct fully accords with and adheres to current law and legal precedent, including those relating to the judiciary or administration of justice.

I am unaware what, if any, impact my religious beliefs or invocation of a religious accommodation in the workplace has on the credibility of the judiciary or administration of justice, particularly in the manner Question eight (8) alleges. On the contrary, in my experience, the public expressed an immense amount of support for the religious accommodation. My office received two phone calls protesting my position and more than 50 calls offering appreciation and support.”

9. Please identify any current legal authority that would allow a judge to marry opposite-sex couples but not same-sex couples.

Please refer to my answer to Question five (5) (including attachments) above regarding how my conduct fully accords with and adheres to current law and legal precedent.

10. Please provide the Commission with any additional information and/or copies of documentation that you believe to be relevant to this matter. You may also include sworn statements or affidavits from fact witnesses in support of your response.

Attachments to follow:

- a. Court reference sheet with official statement and alternative wedding venues;
- b. Slides of PowerPoint presentation given to Republican Women;
- c. Governor Greg Abbott’s guidance letter to “All State Agency Heads” regarding “Preserving Religious Liberty for All Texans” (June 26, 2015);
- d. Attorney General Ken Paxton’s Opinion No. KP-0025 (June 28, 2015);
- e. Lieutenant Governor Dan Patrick’s published statement (June 28, 2015).

Dianne Hensley
(Judge's Signature)

June 20, 2018
(Date)

Dianne Hensley, J.P., Pct. 1, Pl. 1

(Printed Name)

QJ-1
CJC No. 17-1572
Verification

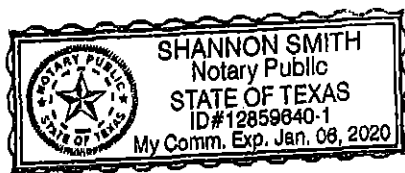
State of Texas §
County of McLennan §

BEFORE ME, the undersigned authority, on this day personally appeared DIANNE HENSLEY, who by me being first duly sworn, on her oath deposed and said that the above responses to the Commission's inquiries are based on personal knowledge, and are true and correct.

SUBSCRIBED AND SWORN TO BEFORE ME on this 20 day of June, 2018.

Shannon Smith

NOTARY PUBLIC, STATE OF TEXAS



"I'm sorry, but Judge Hensley has a sincerely held religious belief as a Christian, and will not be able to perform any same sex weddings."

We can refer you to Judge Pareya (254-826-3341), who is performing weddings. Also, it is our understanding that Central Texas Metropolitan Community Church and the Unitarian Universalist Fellowship of Waco perform the ceremonies, as well as independent officiants in Temple and Killeen (www.thumbtack.com/tx/waco/wedding-officiants/)



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Obergefell v. Hodges

My Personal Dilemma

On January 1, 2015, I swore an oath to uphold and defend the Constitution of the United States, and the Constitution of the State of Texas.

The United States Constitution in Article I, Sec. 8 defines the powers of the federal government, and it is silent on the issue of marriage. Further, the Tenth Amendment states that:

• *The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.*

The Texas Constitution states in Sec. 32:

- (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.

Salient Constitutional Provisions

- Article I, Sec. 1. All legislative Powers herein granted shall be vested in a Congress of the United States ...
- Article III, Sec. 1. The Judicial Power of the United States, shall be vested in one supreme Court ... The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior ...
- Article IV, Sec. 4. The United States shall guarantee to every State in this Union a Republican Form of Government ...

Salient Constitutional Provisions

- Article VI. ... and all executive and judicial Officers, both of the United States and of the several States shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.
- Texas Constitution, Sec. 4:
RELIGIOUS TESTS. No religious test shall ever be required as a qualification to any office, or public trust, in this State; nor shall any one be excluded from holding office on account of his religious sentiments, provided he acknowledge the existence of a Supreme Being.

Salient Constitutional Provisions

- 1st Amendment: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech . . . or the right of the people . . . to petition the Government for a redress of grievances.
- 8th Amendment: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

United States v. Windsor 2013

- In invalidating the federal Defense of Marriage Act, United States v. Windsor stated:

"The states, at the time of the adoption of the Constitution delegated no authority to the Government of the United States on the subject of marriage and divorce," and that "The whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States;"

* It is worth noting that this decision was decided by the same five justice block that decided Obergefell.

Obergefell v. Hodges 2015

On June 26, 2015, five justices of the United States Supreme Court completed a federal "judicial putsch" by issuing an opinion with no basis in the Constitution, the 14th Amendment, American law, or Western history, purporting to overturn Natural or traditional marriage and inventing a false "right" to same-sex "marriage."

Disgraceful Judicial Conduct

Justices Kagan and Bader-Ginsburg had an ethical and a legal duty to recuse themselves from the Obergefell decision because each had publicly performed a same-sex marriage prior to the decision, giving a clear impression of bias.

28 U.S.C. Sec. 455 (a) mandates that *"Any justice ... shall disqualify him/herself ... where his/her impartiality might reasonably be questioned."*

The majority opinion would have been a minority opinion had these two justices followed the law themselves.

Obergefell v. Hodges Dissents

Chief Justice John Roberts:

- *The majority's decision is an act of will, not legal judgment. The right it announces has no basis in the Constitution or this Court's precedent.*
- *Understand well what this dissent is about. . . It is instead about whether, in our democratic republic, that decision should rest with the people acting through their elected representatives, or with five lawyers who happen to hold commissions authorizing them to resolve disputes according to law. The Constitution leaves no doubt about the answer.*

Obergefell v. Hodges Dissents

Chief Justice John Roberts, con't.

- *Stripped of its shiny rhetorical gloss, the majority's argument is that the Due Process Clause gives some-sex couples a fundamental right to marry because it will be good for them and for society. . . . as a judge, I find the majority's position indefensible as a matter of constitutional law.*
- *In sum, the privacy cases provide no support for the majority's position, because petitioner's do not seek privacy. Quite the opposite, they seek public recognition . . .*

Obergefell v. Hodges Dissents

Justice Antonin Scalia

- *A system of government that makes the People subordinate to a committee of nine unelected layers does not deserve to be called a democracy.*
- *. . . to allow the policy question of same-sex marriage to be considered and resolved by a select, patrician, highly unrepresentative panel of nine is to violate a principle even more fundamental than taxation without representation: no social transformation without representation.*

Obergefell v. Hodges Dissents

Justice Antonin Scalia

- *But what really astounds is the hubris reflected in today's Judicial Putsch. The five Justices who compose today's majority are entirely comfortable concluding that every State violated the Constitution for all of the 135 years between the 14th Amendment's ratification and Massachusetts's permitting same-sex marriages in 2003.*
- *"fundamental rights" overlooked by every person alive at the time of ratification, and almost everyone since. . . . Lesser legal minds like John Marshall Harlan . . . Oliver Wendell Holmes . . . Louis Brandeis, . . . Hugo Black, Felix Frankfurter . . .*

Obergefell v. Hodges Dissents

Justice Clarence Thomas

- The majority's "better informed understanding of how constitutional imperatives define . . . liberty," . . . – better informed, we must assume, than that of the people who ratified the 14th Amendment – runs headlong into the reality that our Constitution is a 'collection' of 'Thou shalt nots,' not 'Thou shalt provides.' "
- Our Constitution – like the Declaration of Independence before it – was predicated on a simple truth: One's liberty, not to mention one's dignity, was something to be shielded from – not provided by – the State.

Obergefell v. Hodges Dissents

Justice Samuel Alito

- It is far beyond the outer reaches of this Court's authority to say that a State may not adhere to the understanding of marriage that has long prevailed, not just in this country and others with similar cultural roots, but also in a great variety of countries and cultures all around the globe.
- It will be used to vilify Americans who are unwilling to assent to the new orthodoxy. . . . I assume that those who cling to old beliefs will be able to whisper their thoughts in the recesses of their homes, but if they repeat those views in public, they will risk being labeled as bigots and treated as such by governments, employers, and schools.



GOVERNOR GREG ABBOTT

Date: June 26, 2015

To: All State Agency Heads

Re: Preserving Religious Liberty for all Texans

This Nation was founded by people who sought a place to worship God according to the dictates of conscience and free from government coercion. It is therefore no coincidence that the freedom of religion is the very first freedom guaranteed by the U.S. Constitution. As leaders of this State, we have an obligation to secure the right of all Texans to live their lives according to the principles of their religious faith. The Constitutions and laws of the United States and of this State afford robust protections for religious liberty:

- The First Amendment to the United States Constitution provides that the government “shall make no law . . . prohibiting the free exercise” of religion.
- Article I of the Texas Constitution provides that “[n]o human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion.”
- Chapter 110 of the Texas Civil Practice and Remedies Code, the Texas Religious Freedom Restoration Act, provides that the State, its agencies, its political subdivisions, and municipalities “may not substantially burden a person’s free exercise of religion” unless the agency can prove that the burden “is in furtherance of a compelling governmental interest” “and is the least restrictive means of furthering that interest.”

Texans of all faiths must be absolutely secure in the knowledge that their religious freedom is beyond the reach of government. Renewing and reinforcing that promise is all the more important in light of the Supreme Court’s decision in *Obergefell v. Hodges*. The government must never pressure a person to abandon or violate his or her sincerely held religious beliefs regarding a topic such as marriage. That sort of religious coercion will never be a “compelling governmental interest,” and it will never be “the least restrictive means of furthering that interest.”

Texas RFRA enshrines the foundational principle that religious liberty confined to a sanctuary is not liberty at all, and religious freedom limited to one’s home or thoughts is not freedom at all. The law protects religious liberty not only in houses of worship—but also in schools, in businesses, in the military, in public forums, and in the town square. These protections are afforded to all people, of all faiths. Yet in the wake of the Supreme Court’s decision, the law’s promise of religious liberty will be tested by some who seek to silence and marginalize those whose conscience will not allow them to participate in or endorse marriages that are incompatible with their religious beliefs.

As government officials, we have a constitutional duty to preserve, protect, and defend the religious liberty of every Texan.

With these obligations in mind, I expect all agencies under my direction to prioritize compliance with the First Amendment to the United States Constitution, Article I of the Texas Constitution, and the Texas Religious Freedom Restoration Act. All state agency heads should ensure that no

June 26, 2015

Page 2

one acting on behalf of their agency takes any adverse action against any person, as defined in Chapter 311 of the Texas Government Code, on account of the person's act or refusal to act that is substantially motivated by sincere religious belief. This order applies to any agency decision, including but not limited to granting or denying benefits, managing agency employees, entering or enforcing agency contracts, licensing and permitting decisions, or enforcing state laws and regulations.

Thank you for your dedication to the State of Texas.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Abbott", written in a cursive style.

Greg Abbott

Governor of Texas

GA:eed



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 28, 2015

The Honorable Dan Patrick
Lieutenant Governor of Texas
Post Office Box 12068
Austin, Texas 78711-2068

Opinion No. KP-0025

Re: Rights of government officials involved
with issuing same-sex marriage licenses and
conducting same-sex wedding ceremonies
(RQ-0031-KP)

Dear Governor Patrick:

On June 26, the United States Supreme Court held in *Obergefell v. Hodges* that there is now a constitutional right to same-sex marriage. No. 14-566 (2015). A federal district court for the Western District of Texas has now enjoined the State from enforcing Texas laws that define marriage as exclusively a union between one man and one woman. Before these events occurred, you asked whether—in the event the Texas definition of marriage is overturned—government officials such as employees of county clerks, justices of the peace, and judges may refuse to issue same-sex marriage licenses or conduct same-sex marriage ceremonies if doing so would violate their sincerely held religious beliefs.¹

In recognizing a constitutional right to same-sex marriage, the Supreme Court acknowledged the continuing vitality of the religious liberties people continue to possess. *Id.*, slip op. at 27 (“[I]t must be emphasized that religions, and those who adhere to religious doctrines, may continue to advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned.”). In recognizing a new constitutional right in 2015, the Supreme Court did not diminish, overrule, or call into question the rights of religious liberty that formed the first freedom in the Bill of Rights in 1791. This newly minted federal constitutional right to same-sex marriage can and should peaceably coexist with longstanding constitutional and statutory rights, including the rights to free exercise of religion and freedom of speech.

This opinion concludes:

- County clerks and their employees retain religious freedoms that may allow accommodation of their religious objections to issuing same-sex marriage licenses. The strength of any such claim depends on the particular facts of each case.

¹Letter from Honorable Dan Patrick, Lt. Gov., to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (June 25, 2015), <https://www.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs>.

- Justices of the peace and judges similarly retain religious freedoms, and may claim that the government cannot force them to conduct same-sex wedding ceremonies over their religious objections, when other authorized individuals have no objection, because it is not the least restrictive means of the government ensuring the ceremonies occur. The strength of any such claim depends on the particular facts of each case.

I. County Clerks and Their Employees

Marriage licenses in Texas are issued by county clerks, and one may obtain a marriage license from any county clerk regardless of where the applicant resides. *See* TEX. FAM. CODE ANN. § 2.001(a) (West 2006) (“A man and a woman desiring to enter into a ceremonial marriage must obtain a marriage license from the county clerk of any county of this state.”). The Family Code provides that the “county clerk shall . . . execute the clerk’s certificate on the application” if the application complies with the statutory requirements. *Id.* § 2.008(a). But the county clerk may delegate this duty to others. Under the Local Government Code, a deputy clerk “may perform all official acts that the county clerk may perform.” TEX. LOC. GOV’T CODE ANN. § 82.005 (West 2008). Thus, under state law, a county clerk may delegate duties to deputy clerks, and deputy clerks have the authority but not the mandatory duty to perform the acts of the county clerk.²

With this background in mind, the question is whether a clerk or a clerk’s employees may refuse to issue a same-sex marriage license if doing so would violate their sincerely held religious beliefs. Such a question necessarily involves a variety of rights. The Supreme Court has now declared a right under the Fourteenth Amendment for same-sex couples to be married on the same terms as accorded to couples of the opposite sex. County clerks and their employees possess constitutional and statutory rights protecting their freedom of religion.³ And employees possess rights under state and federal law to be free from employment discrimination on the basis of religion.⁴ The statutory rights protecting freedom of religion are known as the Religious Freedom

²County clerks that fail to comply with the marriage license statute are subject to a fine of up to \$500. TEX. FAM. CODE ANN. § 2.102 (West 2006).

³*See* U.S. CONST. amend. I (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .”); TEX. CONST. art. I, § 6 (“All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. . . . No human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion . . .”); 42 U.S.C. § 2000bb-1(b) (2012) (only allowing a government to substantially burden a person’s religious exercise if the burden is the least restrictive means of furthering a compelling governmental interest); TEX. CIV. PRAC. & REM. CODE ANN. § 110.003(b) (West 2011) (same).

⁴*See* 42 U.S.C. §§ 2000e-2(a), (m) (2012) (making it unlawful for an employer to discriminate against any individual with respect to his religion); TEX. LAB. CODE ANN. § 21.051 (West 2015) (same). Those laws exclude elected officials such as county clerks, justices of the peace, and judges from the definitions of “employee.” 42 U.S.C.

Restoration Acts and require the government to use the least restrictive means to further a compelling government interest when substantially burdening a person's free exercise of religion.⁵ Employment discrimination laws further provide that an employer must make a reasonable accommodation for an individual's religious beliefs or exercise so long as the accommodation does not impose an undue hardship on the employer.⁶

A county clerk has a statutory right to delegate a duty to a deputy clerk, including the issuance of same-sex marriage licenses that would violate the county clerk's sincerely held religious beliefs. Regarding deputy clerks and other employees, state and federal employment laws allow them to seek reasonable accommodation for a religious objection to issuing same-sex marriage licenses. And under the Religious Freedom Restoration Acts, deputy clerks and other employees may have a claim that forcing the employee to issue same-sex marriage licenses over their religious objections is not the government's least restrictive means of ensuring a marriage license is issued, particularly when available alternatives would not impose an undue burden on the individuals seeking a license. *See Slater v. Douglas Cnty.*, 743 F. Supp. 2d 1188, 1192–95 (D. Or. 2010) (refusing to grant summary judgment to a county that only offered to reassign an employee of a county clerk who refused on religious grounds to issue same-sex domestic partnership registrations rather than accommodating her request to not issue the registrations). Importantly, the strength of any claim under employment laws or the Religious Freedom Restoration Acts depends on the particular facts of each case.

Courts have balanced similar competing rights in other contexts, and I believe they would likely do so here.⁷ *See, e.g., Stormans Inc. v. Selecky*, 844 F. Supp. 2d 1172, 1188–93 (W.D. Wash. 2012) (holding that a state law mandating the issuance of drugs violated pharmacists' religious beliefs, and that refusing to issue the drugs and referring to another pharmacist was a sufficient practice); *Brady v. Dean*, 790 A.2d 428, 435 (Vt. 2001) (holding that a town clerk appointing an

§ 2000e-2(f) (2012); TEX. LAB. CODE ANN. § 21.002(7) (West 2015). But the constitutional protections and the Religious Freedom Restoration Acts have no such exemption.

⁵*See supra* note 3.

⁶42 U.S.C. § 2000e(j) (2012) ("The term 'religion' includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business."); TEX. LAB. CODE ANN. § 21.108 (West 2015) ("A provision in this chapter referring to discrimination because of religion or on the basis of religion applies to discrimination because of or on the basis of any aspect of religious observance, practice, or belief, unless an employer demonstrates that the employer is unable reasonably to accommodate the religious observance or practice of an employee or applicant without undue hardship to the conduct of the employer's business.").

⁷Clerks and deputy clerks alike must take an oath of office. TEX. LOC. GOV'T CODE ANN. §§ 82.001(d), .005(b) (West 2008). And the oath requires the official to swear to "preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God." TEX. CONST. art. XVI, § 1. This oath does not change the above analysis because these officials are swearing to defend the same laws that both protect the newly-created constitutional right to same-sex marriage as well as the right to religious freedom. It would be curious indeed for an oath that ends with "so help me God" to mandate that the oath-taker set aside those very beliefs.

assistant clerk to issue same-sex marriage licenses did not impose a substantial burden on the town clerk's religious beliefs).

Factual situations may arise in which the county clerk seeks to delegate the issuance of same-sex marriage licenses due to a religious objection, but every employee also has a religious objection to participating in same-sex-marriage licensure. In that scenario, were a clerk to issue traditional marriage licenses while refusing to issue same-sex marriage licenses, it is conceivable that an applicant for a same-sex marriage license may claim a violation of the constitution.

If instead, a county clerk chooses to issue no marriage licenses at all, it raises at least two questions. First, a clerk opting to issue no licenses at all may find himself or herself in tension with the requirement under state law that a clerk "shall" issue marriage licenses to conforming applications. TEX. FAM. CODE ANN. § 2.008(a) (West 2006). A court must balance this statutory duty against the clerk's constitutional rights as well as statutory rights under the Religious Freedom Restoration Acts. Second, a court must also weigh the constitutional right of the applicant to obtain a same-sex marriage license. Such a factually specific inquiry is beyond the scope of what this opinion can answer.

In short, county clerks and their employees retain religious freedoms that may provide for certain accommodations of their religious objections to issuing same-sex marriage licenses—or issuing licenses at all, but the strength of any particular accommodation claim depends upon the facts.

II. Justices of the Peace and Judges

Texas law authorizes the following persons to conduct a marriage ceremony:

- (1) a licensed or ordained Christian minister or priest;
- (2) a Jewish rabbi;
- (3) a person who is an officer of a religious organization and who is authorized by the organization to conduct a marriage ceremony;
- (4) a justice of the supreme court, judge of the court of criminal appeals, justice of the courts of appeals, judge of the district, county, and probate courts, judge of the county courts at law, judge of the courts of domestic relations, judge of the juvenile courts, retired justice or judge of those courts, justice of the peace, retired justice of the peace, judge of a municipal court, retired judge of a municipal court, or judge or magistrate of a federal court of this state; and
- (5) a retired judge or magistrate of a federal court of this state.

TEX. FAM. CODE ANN. § 2.202(a) (West Supp. 2014). These individuals are *permitted* to perform any marriage ceremony, but nothing in Texas law *requires* them to do so. The Family Code

provides that, “[o]n receiving an unexpired marriage license, an authorized person *may* conduct the marriage ceremony as provided by this subchapter.” *Id.* § 2.203(a) (emphasis added). The only statutory restriction on their authority is that they are “prohibited from discriminating on the basis of *race, religion, or national origin* against an applicant who is otherwise competent to be married.” *Id.* § 2.205(a) (West 2006) (emphasis added).

Two aspects of this legal arrangement bear discussing. First, justices of the peace and judges are joined on the list of those authorized to conduct marriage ceremonies by four other types of persons not employed by state or local government. Second, as previous Attorney General opinions have demonstrated, judges and justices of the peace have no mandatory duty to conduct any wedding ceremony: “Although the Family Code authorizes justices of the peace and county judges, among others, to conduct a marriage ceremony, they are not required to exercise that authority”⁸ Tex. Att’y Gen. Op. No. GA-145 (2004) at 6 (citation omitted); *see also* Tex. Att’y Gen. Op. Nos. DM-397 (1996) at 1, JM-22 (1983) at 1, S-70 (1953) at 1.⁹ So long as other authorized individuals are willing to conduct same-sex wedding ceremonies, these statutory provisions demonstrate the practical reality that a refusal by a religiously objecting justice of the peace or judge cannot prevent a same-sex couple from participating in a wedding ceremony contemplated by state law. Under the Religious Freedom Restoration Acts, justices of the peace and judges may claim that the government forcing them to conduct a same-sex wedding ceremony over their religious objection, when other authorized individuals have no objection, is not the least restrictive means of the government ensuring that the ceremonies occur, assuming that is compelling governmental interest. Again, the strength of any such claim depends on the particular facts.¹⁰

⁸Under this second fact, justices of the peace and judges would be statutorily permitted to not conduct any wedding ceremonies.

⁹ These opinions built on the Texas Supreme Court’s principle that an official may keep a fee they charge that is not part of their mandatory official duty of office. *See, e.g., Moore v. Sheppard*, 192 S.W.2d 559, 560 (Tex. 1946) (“The general principle prohibiting public officials from charging fees for the performance of their official duties does not prohibit them from charging for their services for acts that they are under no obligation, under the law, to perform.”).

¹⁰Justices of the peace and judges likewise take an oath of office. But as explained in footnote 7, *supra*, this does not necessarily obviate their religious freedom in this context.

S U M M A R Y

County clerks and their employees retain religious freedoms that may provide accommodation of their religious objections to issuing same-sex marriage licenses. Justices of the peace and judges also may claim that the government forcing them to conduct same-sex wedding ceremonies over their religious objections, particularly when other authorized individuals have no objection to conducting such ceremonies, is not the least restrictive means of furthering any compelling governmental interest in ensuring that such ceremonies occur. Importantly, the strength of any particular religious-accommodation claim depends on the particular facts of each case.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, slightly stylized font.

KEN PAXTON
Attorney General of Texas

CHARLES E. ROY
First Assistant Attorney General

BRANTLEY STARR
Deputy Attorney General for Legal Counsel

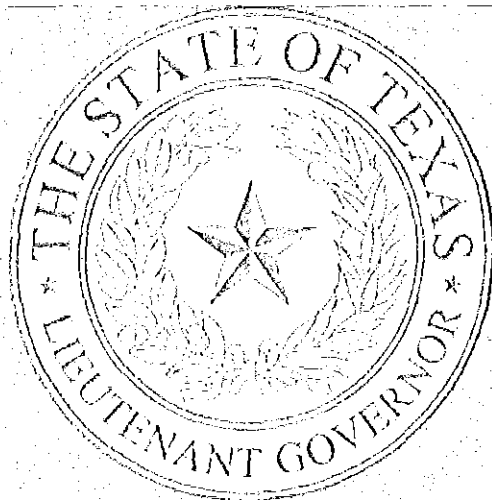
VIRGINIA K. HOELSCHER
Chair, Opinion Committee

Dianne Hensley

June 20, 2018

TCJC Inquiry Response

ATTACHMENT (E)



LIEUTENANT GOVERNOR OF TEXAS
DAN PATRICK

SIGN UP FOR UPDATES

First Name	Last Name	Email	Zip
SUBMIT			

LT. GOVERNOR PATRICK STATEMENT ON OPINION FROM TEXAS ATTORNEY GENERAL REGARDING SAME-SEX MARRIAGE REFUSAL

AUSTIN - Today, Texas Lieutenant Governor Dan Patrick made the following statement regarding the Texas Attorney General's opinion clarifying the First Amendment religious liberty rights of governmental officials involved in issuing same-sex marriage licenses and conducting same-sex wedding ceremonies:

"On Thursday I made a request to Attorney General Ken Paxton for a legal opinion on how local elected officials would be impacted if the Supreme Court ruled gay marriage the law of the land. Today, I commend Texas Attorney General Ken Paxton for his quick and comprehensive opinion on the very

important issue regarding protecting public employees' rights. As I had hoped when I requested this opinion, General Paxton has affirmed that county clerks, judges and Justices of the Peace do in fact retain religious freedom to object.

"No public employee, judge or Justice of the Peace should be forced to participate in activity contrary to the covenants of their sincerely held religious beliefs."

Categories: News (<https://www.ltgov.state.tx.us/category/news/>)

Office of the Lieutenant Governor

Exhibit 4

State Commission on Judicial Conduct

Officers

Catherine N. Wylie, Acting Chair
David C. Hall, Secretary

Members

Demetrius K. Bivins
David M. Russell
David M. Patronella
Tramer J. Woytek
Darrick L. McGill
Sujeeth B. Draksharam
Ruben G. Reyes
Ronald E. Bunch
Amy Suhl
Maricela Alvarado



Executive Director
Eric Vinson

January 25, 2019

PERSONAL AND CONFIDENTIAL

VIA USPS REGULAR MAIL

Honorable Dianne Hensley
Justice of the Peace, Pct. 1, Pl. 1
McLennan County
501 Washington Ave
Suite 104B
Waco, TX 76701

Re: CJC No. 17-1572

Dear Judge Hensley:

During its meeting on August 8-9, 2018, the State Commission on Judicial Conduct (the Commission) considered the above-referenced complaint filed against you. After considering your written responses, the Commission voted to issue you a **Tentative Public Warning**. A copy of the proposed sanction is enclosed for your review.

At this time, the Commission's decision is tentative. If you would like to accept the **Public Warning** in lieu of an appearance before the Commission, please notify us in writing no later than **5:00 p.m. on February 25, 2019**. You may also fax the notification to us at (512) 463-0511 or send it via email to eric.vinson@scjc.texas.gov. If you choose not to accept this sanction, your appearance will take place before the Commission during a regularly scheduled meeting at the Commission's offices located in the William P. Clements, Jr. Building, 300 W. 15th Street, Suite 415, Austin, Texas. In the event you choose to appear, you will be informed in writing of the specific day and time of the hearing.

In the event you choose to appear, be advised that following an informal hearing, the Commission may reaffirm its decision to issue the proposed **Public Warning** or take any other action authorized by Article 5, §1-a(8) of the Texas Constitution. Alternatively, the Commission may vote to dismiss the complaint altogether.

Please be further advised that should you fail to respond or fail to appear before the Commission at the designated time and place, the proposed **Public Warning** will become final.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Vinson", with a long, sweeping horizontal line extending to the right.

Eric Vinson
Executive Director

EV/ju
Enclosures

TENTATIVE



**BEFORE THE STATE COMMISSION
ON JUDICIAL CONDUCT**

CJC No. 17-1572

PUBLIC WARNING

**HONORABLE DIANNE HENSLEY
JUSTICE OF THE PEACE, PRECINCT 1, PLACE 1
WACO, MCLENNAN COUNTY, TEXAS**

During its meeting on December 5-7, 2018, the State Commission on Judicial Conduct concluded a review of allegations against the Honorable Dianne Hensley, Justice of the Peace, Precinct 1, Place 1, Waco, McLennan County, Texas. Judge Hensley was advised by letter of the Commission's concerns and provided written responses. After considering the evidence before it, the Commission entered the following Findings and Conclusions:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Dianne Hensley was Justice of the Peace for Precinct 1, Place 1, in Waco, McLennan County, Texas.
2. On June 24, 2017, the Waco Tribune published an article on their website entitled "*No courthouse weddings in Waco for same-sex couples, 2 years after Supreme Court ruling*," which reported that "[o]nly one Waco-based justice of the peace [Judge Hensley] has been doing any civil weddings since the high court decided Obergefell v. Hodges...and she said she will only do a wedding between a man and a woman." According to the article, Judge Hensley "initially chose not to do weddings at all after the Supreme Court decision...[b]ut [she] changed her mind in September [2016], and has done about 70 opposite-sex weddings since then, mostly at the courthouse during business hours."
3. Judge Hensley was quoted in the article as saying that as a "Bible-believing" Christian, her conscience prohibits her from doing same-sex weddings, and she thinks she is entitled to a "religious exemption." The judge acknowledged that on a couple of occasions, her office has told

same-sex couples that she was not available and gave them a list of locals who would officiate a same-sex wedding, including Precinct 3 Justice of the Peace David Pareya, who is located in West (approximately twenty miles north of Waco).

4. Judge Hensley explained that so long as Judge Pareya performs civil weddings in McLennan County, same-sex couples have “reasonable accommodations” that preserve their constitutional right to marry. She asserted that “people have the right to an accommodation for their religious faith,” and therefore she is “entitled to an accommodation just as much as anyone else.”
5. In her response to the letter of inquiry, Judge Hensley stated “I am a Christian and espouse to millennia old Christian doctrine, dedicating my life and actions to serving Jesus Christ and faithfully adhering to the Bible. This includes my faith’s millennia old doctrine relating to marriage and human sexuality. Due to these deeply held Christian beliefs, I am unable to officiate a same-sex wedding. For this reason, I initially quit performing weddings following the *Obergefell* decision.”²
6. The judge explained that she resumed officiating opposite-sex weddings on August 1, 2016¹ because she “became convicted [sic] that it was wrong to inconvenience ninety-nine percent of the population because I was unable to accommodate less than one percent.” Judge Hensley asserted that she has “no desire to be unkind or disrespectful” to those individuals seeking to have a same-sex marriage, and that her office has “researched and compiled a reference sheet containing every officiant we could find for same-sex weddings in McLennan and surrounding counties.”
7. Judge Hensley stated that she relied on Governor Abbott’s June 26, 2015, letter to “all state agency heads,” Attorney General Opinion KP-0025, and the June 28, 2015, Public Statement from Lt. Governor Dan Patrick for her position that she can openly refuse to perform same-sex marriages while still marrying heterosexual couples.

Relevant Standards and Authorities

1. Texas Family Code Section 2.202(a)(4) authorizes judges to perform a “marriage ceremony.”
2. Canon 3B(6) of the Texas Code of Judicial Conduct states, in pertinent part, that “A judge shall not, in the performance of judicial duties, by words or conduct manifest a bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status...”
3. ~~Canon 4A of the Texas Code of Judicial Conduct states “A judge shall conduct all of the judge’s~~ extra-judicial activities so that they do not: (1) cast reasonable doubt on the judge’s capacity to act impartially as a judge; or (2) interfere with the proper performance of judicial duties.”
4. Article V, Section 1-a(6)A of the Texas Constitution provides, in pertinent part, that a judge can be sanctioned for “willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice.”
5. On June 26, 2015, the U.S. Supreme Court ruled that the fundamental right to marry is guaranteed to same-sex couples by both the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution. *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015).

¹ Judge Hensley stated that she has performed 328 opposite-sex marriages since August 1, 2016.

CONCLUSIONS

At the outset, the Commission notes that this case is not strictly about same-sex marriage, nor does it involve the reasonableness of religious beliefs. The Commission has no interest in imposing a “religious test” on judges, and does not do so in this case. Rather, this case is about the Commission performing its constitutional duty to maintain the public’s faith in an independent, unbiased judiciary that conducts its judicial functions impartially, without reference to whether a particular law is popular or unpopular. The Commission recognizes that “[m]any who deem same-sex marriage to be wrong reach that conclusion based on decent and honorable religious or philosophical premises, and neither they nor their beliefs are disparaged here.” *Obergefell v. Hodges*, 135 S.Ct. at 2602.²

The Commission concludes that a judge who exercises her authority to conduct a marriage ceremony under Section 2.202(a)(4) of the Texas Family Code is performing a “judicial duty” for the purpose of Canon 3B(6). Accordingly, based on the facts of this case, the Canons of Judicial Conduct and the provisions of the Texas Constitution cited above, the Commission concludes that Judge Hensley’s refusal to perform same-sex marriages while still performing opposite-sex weddings, along with her public comments reflecting this disparate treatment of same-sex couples in the context of marriage manifest a bias or prejudice based on sexual orientation in violation of Canons 3B(6) and 4A. The Commission also finds that Judge Hensley’s conduct described above represents willful or persistent conduct that is clearly inconsistent with the proper performance of her duties and casts public discredit upon the judiciary and administration of justice.

For these reasons, the Commission concludes that Judge Hensley’s conduct, as described above, constituted a willful violation of Canons 3B(6) and 4A of the Texas Code of Judicial Conduct and Article V, Section 1-a(6)A of the Texas Constitution.

In condemnation of the conduct described above that violated Canons 3B(6) and 4A of the Texas Code of Judicial Conduct and Article V, Section 1-a(6)A of the Texas Constitution, recited above, it is the Commission’s decision to issue a **PUBLIC WARNING** to the Honorable Dianne Hensley, Justice of the Peace for Precinct 1, Place 1, in Waco, McLennan County, Texas.

Pursuant to the authority contained in Article V, §1-a(8) of the Texas Constitution, it is ordered that the actions described above be made the subject of a **PUBLIC WARNING** by the Commission.

The Commission has taken this action in a continuing effort to protect the public confidence in the judicial system and to assist the state’s judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Texas Code of Judicial Conduct.

Issued this the ____ day of _____, 2018.

Honorable Douglas S. Lang, Chair
State Commission on Judicial Conduct

² The Commission is unconcerned with Judge Hensley’s personal views on the issue of same-sex marriage. Like any citizen, Judge Hensley is free to hold whatever religious beliefs she chooses.

Exhibit 5

Cause No. _____

Dianne Hensley, on behalf of herself and
others similarly situated,

Plaintiff,

v.

**State Commission on Judicial
Conduct**, et al.,

Defendants

IN THE DISTRICT COURT

MCLENNAN COUNTY, TEXAS

____ JUDICIAL DISTRICT

AFFIDAVIT OF JONATHAN F. MITCHELL

Jonathan F. Mitchell appeared in person before me today and stated under oath:

1. My name is Jonathan F. Mitchell. I am over 18 years old and fully competent to make this affidavit.
2. I have personal knowledge of the facts stated in this affidavit, and all of these facts are true and correct.
3. I represent Judge Dianne Hensley in this litigation.
4. On February 19, 2019, I mailed a letter to each commissioner on the State Commission on Judicial Conduct, informing them that their investigation and threatened discipline of Judge Hensley substantially burdened her free exercise of religion, in accordance with section 110.006 of the Texas Civil Practice & Remedies Code.
5. A copy of the letters that I mailed to the members of the State Commission on Judicial Conduct is attached as Exhibit 6 to the petition. Each of these letters was mailed on February 19, 2019.

6. I sent these letters by certified mail, return receipt requested, in compliance with section 110.006 of the Texas Civil Practice & Remedies Code.

7. A picture of the envelopes containing the letters is attached as Exhibit 7 to the petition. I mailed the envelopes together as one package to the State Commission on Judicial Conduct at 300 West 15th Street, #415, Austin, Texas, 78701.

8. The certified mail receipts are attached as Exhibit 8 to the petition.

9. The return receipts from each of the three defendants are attached as Exhibit 9 to this petition. The return receipts indicate that the defendants received these letters on February 21, 2019.

This concludes my sworn statement.

Jonathan F. Mitchell
JONATHAN F. MITCHELL

Subscribed and sworn to me
this 16 day of December, 2019

Patrick Richard von Dohlen

NOTARY

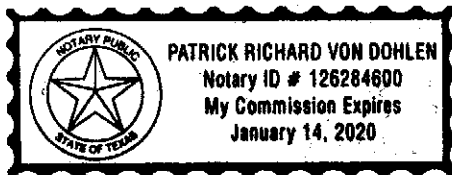


Exhibit 6

MITCHELL LAW

JONATHAN F. MITCHELL
Mitchell Law PLLC
106 East Sixth Street, Suite 900
Austin, Texas 78701
(512) 686-3940 TEL
(512) 686-3941 FAX
[REDACTED]

February 17, 2019

The Honorable Catherine N. Wylie
Chair, State Commission on Judicial Conduct
300 West 15th Street, # 415
Austin, Texas 78701

Re: Notice of substantial burden on the free exercise of religion

Dear Commissioner Wylie:

I represent Justice of the Peace Dianne Hensley. I write to inform you that the Commission's investigation of Judge Hensley, and its threatened discipline of Judge Hensley for refusing to perform same-sex weddings, substantially burdens her free exercise of religion. *See* Tex. Civ. Prac. & Rem. Code § 110.006(a)(1).

The Texas Religious Freedom Restoration Act protects a "refusal to act that is substantially motivated by sincere religious belief." Tex. Civ. Prac. & Rem. Code §§ 110.001(1). Judge Hensley's refusal to perform same-sex weddings is substantially motivated by her Christian faith and her belief in the Bible as the inerrant word of God. The Bible repeatedly and explicitly condemns homosexual behavior. *See, e.g.*, Romans 1:26–28; 1 Timothy 1:8–11; 1 Corinthians 6:9–11; Leviticus 18:22; Leviticus 20:13. The Bible also warns Christians not to lend their approval to those who practice homosexual behavior. *See, e.g.*, Romans 1:32. Because of these clear and unambiguous Biblical passages, Judge Hensley will not perform same-sex weddings. *See* Tex. Civ. Prac. & Rem. Code § 110.006(a)(2).

The Commission's investigation of Judge Hensley and its threatened penalties are imposing substantial burdens on Judge Hensley for her refusal to perform same-sex weddings in violation of her Christian faith. *See* Tex. Civ. Prac. & Rem. Code § 110.006(a)(2)–(3).

Sincerely,



JONATHAN F. MITCHELL
Mitchell Law PLLC

MITCHELL LAW

JONATHAN F. MITCHELL
Mitchell Law PLLC
106 East Sixth Street, Suite 900
Austin, Texas 78701
(512) 686-3940 TEL
(512) 686-3941 FAX
[REDACTED]

February 17, 2019

The Honorable David C. Hall
Vice Chair, State Commission on Judicial Conduct
300 West 15th Street, # 415
Austin, Texas 78701

Re: Notice of substantial burden on the free exercise of religion

Dear Commissioner Hall:

I represent Justice of the Peace Dianne Hensley. I write to inform you that the Commission's investigation of Judge Hensley, and its threatened discipline of Judge Hensley for refusing to perform same-sex weddings, substantially burdens her free exercise of religion. *See* Tex. Civ. Prac. & Rem. Code § 110.006(a)(1).

The Texas Religious Freedom Restoration Act protects a "refusal to act that is substantially motivated by sincere religious belief." Tex. Civ. Prac. & Rem. Code §§ 110.001(1). Judge Hensley's refusal to perform same-sex weddings is substantially motivated by her Christian faith and her belief in the Bible as the inerrant word of God. The Bible repeatedly and explicitly condemns homosexual behavior. *See, e.g.*, Romans 1:26–28; 1 Timothy 1:8–11; 1 Corinthians 6:9–11; Leviticus 18:22; Leviticus 20:13. The Bible also warns Christians not to lend their approval to those who practice homosexual behavior. *See, e.g.*, Romans 1:32. Because of these clear and unambiguous Biblical passages, Judge Hensley will not perform same-sex weddings. *See* Tex. Civ. Prac. & Rem. Code § 110.006(a)(2).

The Commission's investigation of Judge Hensley and its threatened penalties are imposing substantial burdens on Judge Hensley for her refusal to perform same-sex weddings in violation of her Christian faith. *See* Tex. Civ. Prac. & Rem. Code § 110.006(a)(2)–(3).

Sincerely,



JONATHAN F. MITCHELL
Mitchell Law PLLC

MITCHELL LAW

JONATHAN F. MITCHELL
Mitchell Law PLLC
106 East Sixth Street, Suite 900
Austin, Texas 78701
(512) 686-3940 TEL
(512) 686-3941 FAX
[REDACTED]

February 17, 2019

The Honorable Ronald E. Bunch
Secretary, State Commission on Judicial Conduct
300 West 15th Street, # 415
Austin, Texas 78701

Re: Notice of substantial burden on the free exercise of religion

Dear Commissioner Bunch:

I represent Justice of the Peace Dianne Hensley. I write to inform you that the Commission's investigation of Judge Hensley, and its threatened discipline of Judge Hensley for refusing to perform same-sex weddings, substantially burdens her free exercise of religion. *See* Tex. Civ. Prac. & Rem. Code § 110.006(a)(1).

The Texas Religious Freedom Restoration Act protects a "refusal to act that is substantially motivated by sincere religious belief." Tex. Civ. Prac. & Rem. Code §§ 110.001(1). Judge Hensley's refusal to perform same-sex weddings is substantially motivated by her Christian faith and her belief in the Bible as the inerrant word of God. The Bible repeatedly and explicitly condemns homosexual behavior. *See, e.g.*, Romans 1:26–28; 1 Timothy 1:8–11; 1 Corinthians 6:9–11; Leviticus 18:22; Leviticus 20:13. The Bible also warns Christians not to lend their approval to those who practice homosexual behavior. *See, e.g.*, Romans 1:32. Because of these clear and unambiguous Biblical passages, Judge Hensley will not perform same-sex weddings. *See* Tex. Civ. Prac. & Rem. Code § 110.006(a)(2).

The Commission's investigation of Judge Hensley and its threatened penalties are imposing substantial burdens on Judge Hensley for her refusal to perform same-sex weddings in violation of her Christian faith. *See* Tex. Civ. Prac. & Rem. Code § 110.006(a)(2)–(3).

Sincerely,



JONATHAN F. MITCHELL
Mitchell Law PLLC

MITCHELL LAW

JONATHAN F. MITCHELL
Mitchell Law PLLC
106 East Sixth Street, Suite 900
Austin, Texas 78701
(512) 686-3940 TEL
(512) 686-3941 FAX
[REDACTED]

February 17, 2019

The Honorable Maricela Alvarado
Member, State Commission on Judicial Conduct
300 West 15th Street, # 415
Austin, Texas 78701

Re: Notice of substantial burden on the free exercise of religion

Dear Commissioner Alvarado:

I represent Justice of the Peace Dianne Hensley. I write to inform you that the Commission's investigation of Judge Hensley, and its threatened discipline of Judge Hensley for refusing to perform same-sex weddings, substantially burdens her free exercise of religion. *See* Tex. Civ. Prac. & Rem. Code § 110.006(a)(1).

The Texas Religious Freedom Restoration Act protects a "refusal to act that is substantially motivated by sincere religious belief." Tex. Civ. Prac. & Rem. Code §§ 110.001(1). Judge Hensley's refusal to perform same-sex weddings is substantially motivated by her Christian faith and her belief in the Bible as the inerrant word of God. The Bible repeatedly and explicitly condemns homosexual behavior. *See, e.g.*, Romans 1:26–28; 1 Timothy 1:8–11; 1 Corinthians 6:9–11; Leviticus 18:22; Leviticus 20:13. The Bible also warns Christians not to lend their approval to those who practice homosexual behavior. *See, e.g.*, Romans 1:32. Because of these clear and unambiguous Biblical passages, Judge Hensley will not perform same-sex weddings. *See* Tex. Civ. Prac. & Rem. Code § 110.006(a)(2).

The Commission's investigation of Judge Hensley and its threatened penalties are imposing substantial burdens on Judge Hensley for her refusal to perform same-sex weddings in violation of her Christian faith. *See* Tex. Civ. Prac. & Rem. Code § 110.006(a)(2)–(3).

Sincerely,



JONATHAN F. MITCHELL
Mitchell Law PLLC

MITCHELL LAW

JONATHAN F. MITCHELL
Mitchell Law PLLC
106 East Sixth Street, Suite 900
Austin, Texas 78701
(512) 686-3940 TEL
(512) 686-3941 FAX
[REDACTED]

February 17, 2019

The Honorable Demetrius K. Bivins
Member, State Commission on Judicial Conduct
300 West 15th Street, # 415
Austin, Texas 78701

Re: Notice of substantial burden on the free exercise of religion

Dear Commissioner Bivins:

I represent Justice of the Peace Dianne Hensley. I write to inform you that the Commission's investigation of Judge Hensley, and its threatened discipline of Judge Hensley for refusing to perform same-sex weddings, substantially burdens her free exercise of religion. *See* Tex. Civ. Prac. & Rem. Code § 110.006(a)(1).

The Texas Religious Freedom Restoration Act protects a "refusal to act that is substantially motivated by sincere religious belief." Tex. Civ. Prac. & Rem. Code §§ 110.001(1). Judge Hensley's refusal to perform same-sex weddings is substantially motivated by her Christian faith and her belief in the Bible as the inerrant word of God. The Bible repeatedly and explicitly condemns homosexual behavior. *See, e.g.*, Romans 1:26–28; 1 Timothy 1:8–11; 1 Corinthians 6:9–11; Leviticus 18:22; Leviticus 20:13. The Bible also warns Christians not to lend their approval to those who practice homosexual behavior. *See, e.g.*, Romans 1:32. Because of these clear and unambiguous Biblical passages, Judge Hensley will not perform same-sex weddings. *See* Tex. Civ. Prac. & Rem. Code § 110.006(a)(2).

The Commission's investigation of Judge Hensley and its threatened penalties are imposing substantial burdens on Judge Hensley for her refusal to perform same-sex weddings in violation of her Christian faith. *See* Tex. Civ. Prac. & Rem. Code § 110.006(a)(2)–(3).

Sincerely,



JONATHAN F. MITCHELL
Mitchell Law PLLC

MITCHELL LAW

JONATHAN F. MITCHELL
Mitchell Law PLLC
106 East Sixth Street, Suite 900
Austin, Texas 78701
(512) 686-3940 TEL
(512) 686-3941 FAX
[REDACTED]

February 17, 2019

The Honorable Sujeeeth B. Draksharam
Member, State Commission on Judicial Conduct
300 West 15th Street, # 415
Austin, Texas 78701

Re: Notice of substantial burden on the free exercise of religion

Dear Commissioner Draksharam:

I represent Justice of the Peace Dianne Hensley. I write to inform you that the Commission's investigation of Judge Hensley, and its threatened discipline of Judge Hensley for refusing to perform same-sex weddings, substantially burdens her free exercise of religion. *See* Tex. Civ. Prac. & Rem. Code § 110.006(a)(1).

The Texas Religious Freedom Restoration Act protects a "refusal to act that is substantially motivated by sincere religious belief." Tex. Civ. Prac. & Rem. Code §§ 110.001(1). Judge Hensley's refusal to perform same-sex weddings is substantially motivated by her Christian faith and her belief in the Bible as the inerrant word of God. The Bible repeatedly and explicitly condemns homosexual behavior. *See, e.g.*, Romans 1:26–28; 1 Timothy 1:8–11; 1 Corinthians 6:9–11; Leviticus 18:22; Leviticus 20:13. The Bible also warns Christians not to lend their approval to those who practice homosexual behavior. *See, e.g.*, Romans 1:32. Because of these clear and unambiguous Biblical passages, Judge Hensley will not perform same-sex weddings. *See* Tex. Civ. Prac. & Rem. Code § 110.006(a)(2).

The Commission's investigation of Judge Hensley and its threatened penalties are imposing substantial burdens on Judge Hensley for her refusal to perform same-sex weddings in violation of her Christian faith. *See* Tex. Civ. Prac. & Rem. Code § 110.006(a)(2)–(3).

Sincerely,



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Mitchell Law PLLC

MITCHELL LAW

JONATHAN F. MITCHELL
Mitchell Law PLLC
106 East Sixth Street, Suite 900
Austin, Texas 78701
(512) 686-3940 TEL
(512) 686-3941 FAX
[REDACTED]

February 17, 2019

The Honorable Lee Gabriel
Member, State Commission on Judicial Conduct
300 West 15th Street, # 415
Austin, Texas 78701

Re: Notice of substantial burden on the free exercise of religion

Dear Commissioner Gabriel:

I represent Justice of the Peace Dianne Hensley. I write to inform you that the Commission's investigation of Judge Hensley, and its threatened discipline of Judge Hensley for refusing to perform same-sex weddings, substantially burdens her free exercise of religion. *See* Tex. Civ. Prac. & Rem. Code § 110.006(a)(1).

The Texas Religious Freedom Restoration Act protects a "refusal to act that is substantially motivated by sincere religious belief." Tex. Civ. Prac. & Rem. Code §§ 110.001(1). Judge Hensley's refusal to perform same-sex weddings is substantially motivated by her Christian faith and her belief in the Bible as the inerrant word of God. The Bible repeatedly and explicitly condemns homosexual behavior. *See, e.g.*, Romans 1:26–28; 1 Timothy 1:8–11; 1 Corinthians 6:9–11; Leviticus 18:22; Leviticus 20:13. The Bible also warns Christians not to lend their approval to those who practice homosexual behavior. *See, e.g.*, Romans 1:32. Because of these clear and unambiguous Biblical passages, Judge Hensley will not perform same-sex weddings. *See* Tex. Civ. Prac. & Rem. Code § 110.006(a)(2).

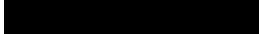
The Commission's investigation of Judge Hensley and its threatened penalties are imposing substantial burdens on Judge Hensley for her refusal to perform same-sex weddings in violation of her Christian faith. *See* Tex. Civ. Prac. & Rem. Code § 110.006(a)(2)–(3).

Sincerely,



JONATHAN F. MITCHELL
Mitchell Law PLLC

MITCHELL LAW

JONATHAN F. MITCHELL
Mitchell Law PLLC
106 East Sixth Street, Suite 900
Austin, Texas 78701
(512) 686-3940 TEL
(512) 686-3941 FAX


February 17, 2019

The Honorable Darrick L. McGill
Member, State Commission on Judicial Conduct
300 West 15th Street, # 415
Austin, Texas 78701

Re: Notice of substantial burden on the free exercise of religion

Dear Commissioner McGill:

I represent Justice of the Peace Dianne Hensley. I write to inform you that the Commission's investigation of Judge Hensley, and its threatened discipline of Judge Hensley for refusing to perform same-sex weddings, substantially burdens her free exercise of religion. *See* Tex. Civ. Prac. & Rem. Code § 110.006(a)(1).

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The Commission's investigation of Judge Hensley and its threatened penalties are imposing substantial burdens on Judge Hensley for her refusal to perform same-sex weddings in violation of her Christian faith. *See* Tex. Civ. Prac. & Rem. Code § 110.006(a)(2)–(3).

Sincerely,



JONATHAN F. MITCHELL
Mitchell Law PLLC

MITCHELL LAW

JONATHAN F. MITCHELL
Mitchell Law PLLC
106 East Sixth Street, Suite 900
Austin, Texas 78701
(512) 686-3940 TEL
(512) 686-3941 FAX
[REDACTED]

February 17, 2019

The Honorable David M. Patronella
Member, State Commission on Judicial Conduct
300 West 15th Street, # 415
Austin, Texas 78701

Re: Notice of substantial burden on the free exercise of religion

Dear Commissioner Patronella:

I represent Justice of the Peace Dianne Hensley. I write to inform you that the Commission's investigation of Judge Hensley, and its threatened discipline of Judge Hensley for refusing to perform same-sex weddings, substantially burdens her free exercise of religion. *See* Tex. Civ. Prac. & Rem. Code § 110.006(a)(1).

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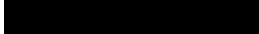
The Commission's investigation of Judge Hensley and its threatened penalties are imposing substantial burdens on Judge Hensley for her refusal to perform same-sex weddings in violation of her Christian faith. *See* Tex. Civ. Prac. & Rem. Code § 110.006(a)(2)–(3).

Sincerely,



JONATHAN F. MITCHELL
Mitchell Law PLLC

MITCHELL LAW

JONATHAN F. MITCHELL
Mitchell Law PLLC
106 East Sixth Street, Suite 900
Austin, Texas 78701
(512) 686-3940 TEL
(512) 686-3941 FAX


February 17, 2019

The Honorable Ruben G. Reyes
Member, State Commission on Judicial Conduct
300 West 15th Street, # 415
Austin, Texas 78701

Re: Notice of substantial burden on the free exercise of religion

Dear Commissioner Reyes:

I represent Justice of the Peace Dianne Hensley. I write to inform you that the Commission's investigation of Judge Hensley, and its threatened discipline of Judge Hensley for refusing to perform same-sex weddings, substantially burdens her free exercise of religion. *See* Tex. Civ. Prac. & Rem. Code § 110.006(a)(1).

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The Commission's investigation of Judge Hensley and its threatened penalties are imposing substantial burdens on Judge Hensley for her refusal to perform same-sex weddings in violation of her Christian faith. *See* Tex. Civ. Prac. & Rem. Code § 110.006(a)(2)–(3).

Sincerely,



JONATHAN F. MITCHELL
Mitchell Law PLLC

MITCHELL LAW

JONATHAN F. MITCHELL
Mitchell Law PLLC
106 East Sixth Street, Suite 900
Austin, Texas 78701
(512) 686-3940 TEL
(512) 686-3941 FAX
[REDACTED]

February 17, 2019

The Honorable David M. Russell
Member, State Commission on Judicial Conduct
300 West 15th Street, # 415
Austin, Texas 78701

Re: Notice of substantial burden on the free exercise of religion

Dear Commissioner Russell:

I represent Justice of the Peace Dianne Hensley. I write to inform you that the Commission's investigation of Judge Hensley, and its threatened discipline of Judge Hensley for refusing to perform same-sex weddings, substantially burdens her free exercise of religion. *See* Tex. Civ. Prac. & Rem. Code § 110.006(a)(1).

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The Commission's investigation of Judge Hensley and its threatened penalties are imposing substantial burdens on Judge Hensley for her refusal to perform same-sex weddings in violation of her Christian faith. *See* Tex. Civ. Prac. & Rem. Code § 110.006(a)(2)–(3).

Sincerely,



JONATHAN F. MITCHELL
Mitchell Law PLLC

MITCHELL LAW

JONATHAN F. MITCHELL
Mitchell Law PLLC
106 East Sixth Street, Suite 900
Austin, Texas 78701
(512) 686-3940 TEL
(512) 686-3941 FAX
[REDACTED]

February 17, 2019

The Honorable Amy Suhl
Member, State Commission on Judicial Conduct
300 West 15th Street, # 415
Austin, Texas 78701

Re: Notice of substantial burden on the free exercise of religion

Dear Commissioner Suhl:

I represent Justice of the Peace Dianne Hensley. I write to inform you that the Commission's investigation of Judge Hensley, and its threatened discipline of Judge Hensley for refusing to perform same-sex weddings, substantially burdens her free exercise of religion. *See* Tex. Civ. Prac. & Rem. Code § 110.006(a)(1).

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The Commission's investigation of Judge Hensley and its threatened penalties are imposing substantial burdens on Judge Hensley for her refusal to perform same-sex weddings in violation of her Christian faith. *See* Tex. Civ. Prac. & Rem. Code § 110.006(a)(2)–(3).

Sincerely,



JONATHAN F. MITCHELL
Mitchell Law PLLC

MITCHELL LAW

JONATHAN F. MITCHELL
Mitchell Law PLLC
106 East Sixth Street, Suite 900
Austin, Texas 78701
(512) 686-3940 TEL
(512) 686-3941 FAX
[REDACTED]

February 17, 2019

The Honorable Tramer J. Woytek
Member, State Commission on Judicial Conduct
300 West 15th Street, # 415
Austin, Texas 78701

Re: Notice of substantial burden on the free exercise of religion

Dear Commissioner Woytek:

I represent Justice of the Peace Dianne Hensley. I write to inform you that the Commission's investigation of Judge Hensley, and its threatened discipline of Judge Hensley for refusing to perform same-sex weddings, substantially burdens her free exercise of religion. *See* Tex. Civ. Prac. & Rem. Code § 110.006(a)(1).

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The Commission's investigation of Judge Hensley and its threatened penalties are imposing substantial burdens on Judge Hensley for her refusal to perform same-sex weddings in violation of her Christian faith. *See* Tex. Civ. Prac. & Rem. Code § 110.006(a)(2)–(3).

Sincerely,



JONATHAN F. MITCHELL
Mitchell Law PLLC

Exhibit 7

MITCHELL LAW
106 East Sixth Street
Suite 900
Austin, Texas 78701

The Honorable Ruben G. Reyes
Member, State Commission on Judicial Conduct
300 West 15th Street, # 415
Austin, Texas 78701

MITCHELL LAW
106 East Sixth Street
Suite 900
Austin, Texas 78701

The Honorable Ronald E. Bunch
Secretary, State Commission on Judicial Conduct
300 West 15th Street, # 415
Austin, Texas 78701

MITCHELL LAW
106 East Sixth Street
Suite 900
Austin, Texas 78701

The Honorable Maricela Alvarado
Member, State Commission on Judicial Conduct
300 West 15th Street, # 415
Austin, Texas 78701

MITCHELL LAW
106 East Sixth Street
Suite 900
Austin, Texas 78701

The Honorable David M. Russell
Member, State Commission on Judicial Conduct
300 West 15th Street, # 415
Austin, Texas 78701

MITCHELL LAW
106 East Sixth Street
Suite 900
Austin, Texas 78701

The Honorable Demetrius K. Bruns
Member, State Commission on Judicial Conduct
300 West 15th Street, # 415
Austin, Texas 78701

MITCHELL LAW
106 East Sixth Street
Suite 900
Austin, Texas 78701

The Honorable Lee Gabriel
Member, State Commission on Judicial Conduct
300 West 15th Street, # 415
Austin, Texas 78701

MITCHELL LAW
106 East Sixth Street
Suite 900
Austin, Texas 78701

The Honorable David C. Hall
Vice Chair, State Commission on Judicial Conduct
300 West 15th Street, # 415
Austin, Texas 78701

MITCHELL LAW
106 East Sixth Street
Suite 900
Austin, Texas 78701

The Honorable Catherine N. Wylie
Chair, State Commission on Judicial Conduct
300 West 15th Street, # 415
Austin, Texas 78701

MITCHELL LAW
106 East Sixth Street
Suite 900
Austin, Texas 78701

The Honorable Darrick L. McGill
Member, State Commission on Judicial Conduct
300 West 15th Street, # 415
Austin, Texas 78701

MITCHELL LAW
106 East Sixth Street
Suite 900
Austin, Texas 78701

The Honorable David M. Patronella
Member, State Commission on Judicial Conduct
300 West 15th Street, # 415
Austin, Texas 78701

MITCHELL LAW
106 East Sixth Street
Suite 900
Austin, Texas 78701

The Honorable Trainer J. Wojtek
Member, State Commission on Judicial Conduct
300 West 15th Street, # 415
Austin, Texas 78701

MITCHELL LAW
106 East Sixth Street
Suite 900
Austin, Texas 78701

The Honorable Sujeth B. Draksharam
Member, State Commission on Judicial Conduct
300 West 15th Street, # 415
Austin, Texas 78701

MITCHELL LAW
106 East Sixth Street
Suite 900
Austin, Texas 78701

The Honorable Amy Suhl
Member, State Commission on Judicial Conduct
300 West 15th Street, # 415
Austin, Texas 78701

Exhibit 8

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Office of State Commission on
Judicial Conduct
P.O. Box 12265
Austin, Texas 78711-2265



9590 9402 4580 8278 1259 03

2. Article Number (Transfer from service label)

9402 7102 0088 3036
8537 60

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- | | |
|--|---|
| <input type="checkbox"/> Adult Signature | <input type="checkbox"/> Priority Mail Express® |
| <input type="checkbox"/> Adult Signature Restricted Delivery | <input type="checkbox"/> Registered Mail™ |
| <input type="checkbox"/> Certified Mail® | <input type="checkbox"/> Registered Mail Restricted Delivery |
| <input type="checkbox"/> Certified Mail Restricted Delivery | <input type="checkbox"/> Return Receipt for Merchandise |
| <input type="checkbox"/> Collect on Delivery | <input type="checkbox"/> Signature Confirmation™ |
| <input type="checkbox"/> Collect on Delivery Restricted Delivery | <input type="checkbox"/> Signature Confirmation Restricted Delivery |
| <input type="checkbox"/> Insured Mail | |
| <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500) | |

Domestic Return Receipt

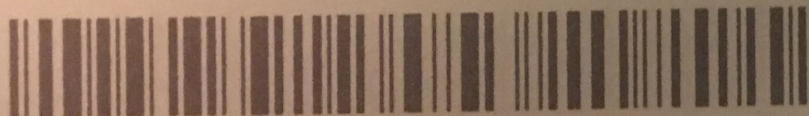
Exhibit 9

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Office of State Commission on
Judicial Conduct
P.O. Box 12265
Austin, Texas 78711-2265



9590 9402 4580 8278 1259 03

2. Article Number (Transfer from service label)

9402 7102 0088 3036
6557 68

COMPLETE THIS SECTION ON DELIVERY**A. Signature**

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)**C. Date of Delivery**

- D. Is delivery address different from item 1?** ☒ Yes
If YES, enter delivery address below: ☐ No

TX Comptroller Mail
FEB 21 2019

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Exhibit 10

AFFIDAVIT OF SHELLI MISHER

Shelli Misher appeared in person before me today and stated under oath:

1. My name is Shelli Misher. I am over 18 years old and fully competent to make this affidavit.
2. I have personal knowledge of the facts stated in this declaration, and all of these facts are true and complete.
3. I am an ordained minister, authorized to conduct weddings in the State of Texas.
4. My business is located at [REDACTED] Waco, Texas, the same city where Dianne Hensley serves as a Justice of the Peace.
5. I am located approximately three blocks away from the McLennan County Courthouse, where Judge Dianne Hensley presides.
6. In July 2016, Judge Dianne Hensley's office approached me regarding performing same-sex wedding ceremonies.
7. Because Judge Hensley is unable to perform same-sex marriage ceremonies on account of her religious beliefs, her staff sought me out and asked if I would accept referrals of any same-sex couple who is seeking to be married.
8. I assured Judge Dianne Hensley's staff that I will accept these referrals and will perform weddings for same-sex couples.
9. I am honored to serve in this role for Judge Hensley, which respects and accommodates her religious beliefs while simultaneously ensuring that same-sex couples are promptly able to be married within walking distance of the McLennan County Courthouse.

10. I have conducted many, probably dozens, of wedding referrals from Judge Hensley's office, both same-sex and opposite-sex couples.

11. In my view, the referral system that Judge Dianne Hensley's office and I have arranged is a convenient solution that accommodates everyone.

12. If Judge Hensley stopped performing marriages, then same-sex couples would no longer receive referrals to me and would have to find out on their own whether a particular justice of the peace is continuing to perform weddings in the wake of *Obergefell*. This outcome would impose a great inconvenience on same-sex couples, in addition to burdening the religious freedom of Judge Dianne Hensley.

This concludes my sworn statement. I swear under penalty of perjury that, to the best of my knowledge, the facts stated in this affidavit are true and complete.

Shelli Mishner
SHELLI MISHER

Subscribed and sworn to me
This 18th day of April 2019.

Vicki Merritt
NOTARY

