

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

Dianne Hensley,

Plaintiff,

v.

Gary L. Steel, in his individual capacity
and in his official capacity as Chair of the
State Commission on Judicial Conduct;
Ken Wise, in his individual capacity and
in his official capacity as Vice Chair of the
State Commission on Judicial Conduct;
Carey F. Walker, in his individual
capacity and in his official capacity as
Secretary of the State Commission on
Judicial Conduct; **Clifton Roberson**,
Kathy P. Ward, **Wayne Money**,
Andrew M. Kahan, **Tano E. Tijerina**,
Chace A. Craig, **Sylvia Borunda Firth**,
Derek M. Cohen, **Yinon Weiss**, and
April I. Aguirre, each in their individual
capacities and in their official capacities as
Members of the State Commission on
Judicial Conduct,

Defendants.

Case No. 6:25-cv-595

COMPLAINT

Plaintiff Dianne Hensley serves as a justice of the peace in McLennan County. She has held this office since January 1, 2015. As a justice of the peace, Judge Hensley is authorized by Texas law to officiate marriage ceremonies. *See* Texas Family Code § 2.202(a).

After the Supreme Court invented a constitutional right to homosexual marriage in *Obergefell v. Hodges*, 576 U.S. 644 (2015), Judge Hensley continued to perform

marriages for opposite-sex couples. But Judge Hensley was unwilling to officiate weddings of same-sex couples on account of her Christian faith, which teaches that homosexuality is a sin and that marriage exists only between one man and one woman. Judge Hensley was also unwilling to perform homosexual marriages because the law of Texas continues to define marriage exclusively as the union of one man and one woman, and Texas has refused to amend its marriage laws in response to the majority opinion in *Obergefell*. See Tex. Const. art. I, § 32 (“(a) Marriage in this state shall consist only of the union of one man and one woman.”); 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.”); see also *Texas v. United States*, 945 F.3d 355, 396 (5th Cir. 2019) (“The federal courts have no authority to erase a duly enacted law from the statute books” (citation and internal quotation marks omitted)). So Judge Hensley decided to recuse herself from officiating at same-sex weddings—which remain illegal under the laws of Texas—and politely refer same-sex couples to other officiants in McLennan County who are willing to perform these ceremonies.

When the State Commission on Judicial Conduct learned of Judge Hensley’s practices, it opened an investigation. The Commission’s investigation culminated in a “public warning” that declared Judge Hensley in violation of 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” Exhibit 1. Judge Hensley stopped performing weddings entirely in response to the Commission’s investigation and threats. She also sued the Commission and its members in state court, claiming that the Commission’s actions violate her rights under the Texas Religious Freedom Restoration Act. See *Hensley v. State Commission on Judicial Conduct*, 692 S.W.3d 184 (Tex. 2024). The state-court litigation remains ongoing.

On October 24, 2025, the Supreme Court of Texas unanimously adopted a comment to Canon 4 of the Texas Code of Judicial Conduct that says:

It is not a violation of these canons for a judge to publicly refrain from performing a wedding ceremony based upon a sincerely held religious belief.

Supreme Court of Texas, Misc. Docket No. 25-9082 (attached as Exhibit 6). This comment disavows the Commission’s interpretation of Canon 4A and leaves it without any neutral and generally applicable state law that it can use against Judge Hensley over her refusal to perform same-sex marriages for sincere religious reasons.

The commissioners, however, are refusing to acquiesce to the new comment to Canon 4. Instead, the commissioners have taken the astounding position that Canon 4A(1) *continues to prohibit* Judge Hensley from performing marriages for opposite-sex couples while recusing herself from same-sex weddings on account of her Christian faith. According to the commissioners, the new comment to Canon 4 merely allows judges with religious objections to homosexuality to publicly refrain from performing *all* marriages, and provides no protection to judges who opt out of performing same-sex marriages while continuing to officiate weddings for opposite-sex couples.¹ So Judge Hensley is facing the same threats of disciplinary action that she faced before the new comment to Canon 4, and she is unable to resume performing weddings for opposite-sex couples without exposing herself to investigation and retaliation from the commissioners.

1. See Exhibit 7 at 2–3 n.1 (“The comment only gives a judge the authority to “opt out” of officiating due to a sincere religious belief, but does not say that a judge can, at the same time, welcome to her chambers heterosexual couples for whom she willingly offers to conduct marriage ceremonies.”); *id.* at 30 (“[T]he comment only states that judges may decide not to marry people based on a religious objection—it does not state they may also choose to marry other people if that decision results in apparent discrimination that could ‘cast reasonable doubt on the judge’s capacity to act impartially as a judge[.]’” (quoting Texas Code of Judicial Conduct, Canon 4, cmt.)); see also Exhibit 8.

The commissioners' obstinance violates Judge Hensley's federal constitutional rights under the Free Exercise Clause, and Judge Hensley sues for damages as well as declaratory and injunctive relief. *See* 42 U.S.C. § 1983; *Ex parte Young*, 209 U.S. 123 (1908). The commissioners' continued threats toward Judge Hensley are not grounded in a neutral law of general applicability, as the new comment to Canon 4A expressly permits the behavior that Judge Hensley wishes to engage in. So the holding of *Oregon v. Smith*, 494 U.S. 872 (1990), is inapplicable, and the commissioners must demonstrate that the burdens that they are imposing on Judge Hensley's free exercise of religion qualify as the least restrictive means of advancing a compelling state interest. *See Sherbert v. Verner*, 374 U.S. 398 (1963). The commissioners cannot make this showing, because the state of Texas cannot have a "compelling" interest in suppressing behaviors that its laws and judicial canons expressly permit.

The commissioners are also violating Judge Hensley's rights under the First Amendment's Speech Clause. Officiating a wedding ceremony is speech, and the commissioners are preventing Judge Hensley from engaging in this speech unless she agrees to perform homosexual marriages in violation of her Christian faith and in violation of Texas law.

The Court should award appropriate relief and compel the commissioners to pay damages for the lost income that Judge Hensley continues to sustain on account of their unconstitutional actions.

JURISDICTION AND VENUE

1. The Court has subject-matter jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1343.

2. Venue is proper because a substantial part of the events giving rise to the claims occurred in the Waco division of the Western District of Texas. *See* 28 U.S.C. § 1391(b)(2).

3. The federal Declaratory Judgment Act (28 U.S.C. § 2201), 42 U.S.C. § 1983, and *Ex parte Young*, 209 U.S. 123 (1908), supply the causes of action for the relief that Judge Hensley is seeking in this litigation.

PARTIES

4. Plaintiff Dianne Hensley resides in McLennan County.

5. Defendant Gary L. Steel 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 Steel is sued in his individual capacity (for damages) and in his official capacity (for prospective relief).

6. Defendant Ken Wise 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 Wise is sued in his individual capacity (for damages) and in his official capacity (for prospective relief).

7. Defendant Carey F. Walker 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 Walker is sued in his individual capacity (for damages) and in his official capacity (for prospective relief).

8. Defendant Clifton Roberson 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. Commissioner Roberson is sued in his individual capacity (for damages) and in his official capacity (for prospective relief).

9. Defendant Kathy P. Ward 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. Commissioner Ward is sued in her individual capacity (for damages) and in her official capacity (for prospective relief).

10. Defendant Wayne Money 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. Commissioner Money is sued in his individual capacity (for damages) and in his official capacity (for prospective relief).

11. Defendant Andrew M. Kahan 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. Commissioner Kahan is sued in his individual capacity (for damages) and in his official capacity (for prospective relief).

12. Defendant Tano E. Tijerina 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. Commissioner Tijerina is sued in his individual capacity (for damages) and in his official capacity (for prospective relief).

13. Defendant Chace A. Craig 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. Commissioner Craig is sued in his individual capacity (for damages) and in his official capacity (for prospective relief).

14. Defendant Sylvia Borunda Firth 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. Commissioner Firth is sued in her individual capacity (for damages) and in her official capacity (for prospective relief).

15. Defendant Derek M. Cohen 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. Commissioner Cohen is sued in his individual capacity (for damages) and in his official capacity (for prospective relief).

16. Defendant Yinon Weiss 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. Commissioner Weiss is sued in his individual capacity (for damages) and in his official capacity (for prospective relief).

17. Defendant April I. Aguirre 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. Commissioner Aguirre is sued in her individual capacity (for damages) and in her official capacity (for prospective relief).

FACTS

18. Plaintiff Dianne Hensley serves as a justice of the peace in McLennan County, Texas. She has held this office since January 1, 2015.

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

20. 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). But it allows judges and other wedding officiants to discriminate on the basis of sex and sexual orientation when deciding which weddings they will perform. Judge Hensley obeys section 2.205(a) and has never discriminated against any person or couple seeking to be married on the basis of race, religion, or national origin.

21. Before the Supreme Court's ruling in *Obergefell v. Hodges*, 576 U.S. 644 (2015), Judge Hensley officiated approximately 80 weddings as a justice of the peace.

22. 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.

23. 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*.

24. Rather than categorically refusing to officiate weddings, and wanting to provide a reasonable accommodation for everyone, 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.

25. 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 operated a walk-in wedding chapel three blocks away and on the same street as the courthouse where Judge Hensley's offices are located.

26. Ms. Misher agreed to accept referrals from Judge Hensley's office of any same-sex couple seeking to be married. *See* Exhibit 5.

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

28. Judge Hensley 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.

29. If a same-sex couple asked Judge Hensley's office about her availability to officiate weddings, Judge Hensley instructed her staff 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 were 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.

30. Judge Hensley's referral system benefitted both same-sex and opposite-sex couples when compared to her earlier practice of refusing to officiate weddings for anyone. It benefitted 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 benefitted 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*.

31. 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 Judge Hensley or her staff about it.

THE COMMISSION'S PROCEEDINGS

32. 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. The Commission sent Judge Hensley a letter of inquiry and

demanded that she respond to written interrogatories about her referral system within 30 days.

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

34. 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.*

35. 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.

36. 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 24–30.

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

38. 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.*

39. 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.*

40. 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.*

41. 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.

42. 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.

43. 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).

44. 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.

45. 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.

46. 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.

47. On December 17, 2019, Judge Hensley sued the Commission and its members in state court, alleging that the Commission’s interpretation of Canon 4A(1) violated her rights under the Texas Religious Freedom Restoration Act.

48. A Travis County district court dismissed Judge Hensley’s claims on jurisdictional grounds, but the Supreme Court of Texas reversed and remanded the case to

the district court. *See Hensley v. State Commission on Judicial Conduct*, 692 S.W.3d 184 (Tex. 2024).

49. On October 24, 2025, after the Supreme Court of Texas had ruled that Judge Hensley’s claims could proceed, it adopted a comment to Canon 4 of the Texas Code of Judicial Conduct to make clear that the judicial canons allow judges to recuse themselves from officiating homosexual marriage ceremonies on account of their sincerely held religious beliefs:

It is not a violation of these canons for a judge to publicly refrain from performing a wedding ceremony based upon a sincerely held religious belief.

Supreme Court of Texas, Misc. Docket No. 25-9082 (attached as Exhibit 6). This comment disavows and repudiates the Commission’s previous interpretation of Canon 4A, and it leaves the Commission without any state-law basis to act against Judge Hensley (or any other judge) who refuses to perform same-sex weddings for religious reasons.

50. Despite this new comment to Canon 4, the Commission is insisting that Judge Hensley may not resume performing weddings for opposite-sex couples unless she also officiates marriages for homosexual couples. According to the Commission, the new comment merely allows judges with religious objections to homosexuality to refrain from performing *all* marriages, but it does not allow them to selectively opt out of performing marriages for same-sex couples:

The comment only gives a judge the authority to “opt out” of officiating due to a sincere religious belief, but does not say that a judge can, at the same time, welcome to her chambers heterosexual couples for whom she willingly offers to conduct marriage ceremonies.

Exhibit 6 at 2–3 n.1; *see also id.* at 30 (“[T]he comment only states that judges may decide not to marry people based on a religious objection—it does not state they may also choose to marry other people if that decision results in apparent discrimination

that could ‘cast reasonable doubt on the judge’s capacity to act impartially as a judge[.]’”).

51. Because of the Commission’s stance, Judge Hensley cannot resume performing weddings for opposite-sex couples in Texas because she continues to face threats of retaliation and discipline from the Commission if she opts out of officiating homosexual marriages on account of her Christian faith.

FACTS RELATED TO STANDING

52. Judge Hensley has lost more than \$60,000.00 per year in supplemental income since she stopped performing marriages in 2019 in response to the Commission’s threats and investigations. This past injury gives her standing to sue the commissioners for damages under 42 U.S.C. § 1983. It is fairly traceable to the commissioners’ actions, and it will be redressed with an award of money damages.

53. Judge Hensley is losing future supplemental income because the Commission continues to insist that Judge Hensley must choose between performing weddings for both opposite- and same-sex couples, despite her religious objections to homosexuality and same-sex marriage, or cease performing weddings entirely. These present-day and future injuries give her standing to sue the commissioners for declaratory and injunctive relief under 42 U.S.C. § 1983. These injuries are fairly traceable to the commissioners’ actions, and they will be redressed with prospective relief.

Claim 1: Nothing In *Obergefell* Or In The U.S. Constitution Requires Judge Hensley To Officiate At Same-Sex Marriage Ceremonies, Even If She Chooses To Officiate At Opposite-Sex Weddings

54. It is not clear whether the commissioners believe that *Obergefell* or the Fourteenth Amendment *requires* Judge Hensley to officiate at same-sex marriage ceremonies once she decides to resume performing opposite-sex weddings.

55. Nevertheless, Judge Hensley must first obtain a declaratory judgment that nothing in *Obergefell*—and nothing in the U.S. Constitution—requires her to officiate at same-sex marriage ceremonies before she can seek declaratory and injunctive relief on her First Amendment claims.

56. Judge Hensley acknowledges that she must respect and follow *Obergefell*'s interpretation of the Fourteenth Amendment when deciding cases or controversies. Article III of the Constitution empowers the Supreme Court of the United States to decide “cases” and “controversies,” and Judge Hensley believes that state courts and inferior federal courts should follow the Supreme Court’s interpretations of the Constitution when deciding “cases” or “controversies” even if they disagree with the Supreme Court’s pronouncements. *See, e.g., State Oil Co. v. Khan*, 522 U.S. 3, 20 (1997) (“[I]t is this Court’s prerogative alone to overrule one of its precedents.”).

57. But when Judge Hensley officiates at wedding ceremonies, she is not resolving cases or controversies, and she has no obligation to subordinate the State’s marriage laws to a judicial opinion about what the Constitution means. *Obergefell* no more requires Judge Hensley to perform same-sex weddings than it requires members of the clergy do so. *See* Tex. Family Code § 2.202(a) (authorizing both clergy and judges to conduct marriage ceremonies).

58. The Court should therefore enter a declaratory judgment that nothing in *Obergefell* or the U.S. Constitution requires state-licensed officiants—either clergy or judges—to perform same-sex marriage ceremonies, even if the officiant chooses to perform opposite-sex weddings.

Claim 2: The Commissioners Have Violated And Are Violating Judge Hensley’s Constitutional Rights Under The Free Exercise Clause

59. Texas law expressly allows judges and other wedding officiants to refuse to perform homosexual weddings on account of their sincere religious beliefs.

60. The state legislature specifically addressed the issue of wedding-officiant discrimination in section 2.205(a) of the Texas Family Code and declined to extend the statute's anti-discrimination protections to same-sex couples:

A person authorized to conduct a marriage ceremony . . . is prohibited 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) (emphasis added). This statute preserves the right of wedding officiants to discriminate on the basis of “sex” and “sexual orientation” when deciding which marriages they will perform.

61. The Supreme Court of Texas has also repudiated the Commission's interpretations of Canon 4A(1) and added a comment to Canon 4 that prohibits the Commission from using *any* of the judicial canons to discipline judges who refuse to perform same-sex weddings for sincere religion reasons:

It is not a violation of these canons for a judge to publicly refrain from performing a wedding ceremony based upon a sincerely held religious belief.

Supreme Court of Texas, Misc. Docket No. 25-9082 (attached as Exhibit 6).

62. Because there is no law or judicial canon that prohibits Judge Hensley from recusing herself from performing same-sex weddings on account of her Christian faith, the commissioners cannot show that their actions against Judge Hensley are rooted in a neutral, generally applicable law. *See Oregon v. Smith*, 494 U.S. 872 (1990).

63. And because *Smith* is inapplicable, the commissioners must demonstrate that the burdens that they are imposing on Judge Hensley's free exercise of religion qualify as the least restrictive means of advancing a compelling state interest. *See Sherbert v. Verner*, 374 U.S. 398 (1963).

64. The commissioners cannot make this showing. The State of Texas cannot have a “compelling state interest” in punishing judges who refuse to perform same-

sex marriages for sincere religious reasons when its laws and its judicial canons expressly allow judges to do this.

65. The Court should therefore order the commissioners to pay damages to Judge Hensley for violating her constitutional rights under the Free Exercise Clause, and it should permanently enjoin them from threatening or disciplining Judge Hensley over her refusal to perform homosexual weddings.

Claim 3: The Commissioners Have Violated And Are Violating Judge Hensley's Constitutional Rights Under The Speech Clause

66. Judges have First Amendment rights to free speech and expressive conduct. *See Republican Party of Minnesota v. White*, 536 U.S. 765 (2002).

67. Officiating a wedding ceremony is speech, and the commissioners have violated and continue to violate Judge Hensley's constitutional free-speech rights by threatening her with investigation and discipline if she performs marriages for opposite-sex couples while refusing to officiate at homosexual-marriage ceremonies that remain illegal under the laws of Texas.

68. The Court should therefore order the commissioners to pay damages to Judge Hensley for violating her constitutional rights under the Speech Clause, and it should permanently enjoin them from threatening or disciplining Judge Hensley over her refusal to perform homosexual weddings while continuing to perform marriages for opposite-sex couples.

Claim No. 4: The Courts Should Overrule *Obergefell* And Declare That Homosexual Marriage Is Not A Constitutional Right

69. The Commission's bullying of Judge Hensley and its menacing behavior toward other Christian judges is the direct result of the Supreme Court's pronouncement in *Obergefell* that homosexual marriage is a constitutional right, and that anyone who opposes homosexual marriage is therefore an enemy of the Constitution. This has emboldened activists and politicians to embark on a campaign of intimidation

against individuals and institutions who dare to express the belief that marriage is between one man and one woman—even when the expressions of this belief are supposed to be protected by the Speech Clause and the Free Exercise Clause. The cities of San Antonio and Buffalo have banned Chick-fil-A from operating in their airports because it gave money to Christian organizations that oppose same-sex marriage, including the Salvation Army and the Fellowship of Christian Athletes. A presidential candidate called for revoking the tax-exempt status of every church in the United States that opposes same-sex marriage. *See* Patrick Svitek, *Beto O'Rourke Says Religious Institutions Should Lose Tax-Exempt Status If They Oppose Gay Marriage*, Texas Tribune (Oct. 11, 2019), available at <https://bit.ly/32ohaxe> (last visited on December 19, 2025). And at oral argument in *Obergefell v. Hodges*, 576 U.S. 644 (2015), the Solicitor General of the United States acknowledged that religious institutions that refuse to recognize same-sex marriage may be jeopardizing their tax-exempt status. *See* Oral Argument Transcript, *Obergefell v. Hodges*, No. 14-556, at 36–38 (U.S. Apr. 28, 2015).

70. The Supreme Court has given credibility to these attacks on religious freedom by inventing a constitutional right to homosexual marriage, which is enabling and encouraging activists to paint Christian individuals and institutions that oppose same-sex marriage as un-American and morally equivalent to racists.

71. Yet there is nothing in the language of the Constitution that even remotely suggests that homosexual marriage is a constitutional right, and the *Obergefell* opinion failed to identify any provision of constitutional text that establishes this supposed constitutional right to homosexual marriage.

72. Instead, *Obergefell* announced that judges may recognize and enforce “fundamental rights” that cannot be found anywhere in the Constitution’s text, so long as the judge applies “reasoned judgment” when deciding what those atextual “fundamental rights” should be. *See Obergefell*, 576 U.S. at 664.

73. The Supreme Court’s subsequent ruling in *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215 (2022), repudiates the “reasoned judgment” test for determining “fundamental rights” and prohibits judges from recognizing “fundamental rights” that are unmentioned in constitutional text unless those rights are “deeply rooted in this Nation’s history and tradition.” *Id.* at 231.

74. *Dobbs* did not purport to overrule *Obergefell*, but its rationale is incompatible with the idea that homosexual marriage is a “fundamental right.” The court-invented right to homosexual marriage—like the court-invented right to abortion—is not “deeply rooted in this Nation’s history and tradition,” so *Obergefell* had no constitutional justification for imposing same-sex marriage on all 50 states.

75. *Obergefell*’s claim that a court may recognize and impose “fundamental rights” that have no basis in constitutional text or historical practice—and that rest on nothing more than a judge’s purported exercise of “reasoned judgment”—reflects a lawless and unconstitutional understanding of judicial power. It allows judges to create and impose new constitutional rights based solely on their personal beliefs, so long as they claim to be exercising “reasoned judgment” when doing so. *See, e.g., Obergefell*, 576 U.S. at 703 (Roberts, C.J., dissenting) (“[T]oday’s decision rests on nothing more than the majority’s own conviction that same-sex couples should be allowed to marry”).

76. The Constitution makes no allowance for the Supreme Court to invent constitutional rights that have no grounding in constitutional text or historical practice, and *Obergefell* violates the Tenth Amendment and the Republican Form of Government Clause by subordinating state laws to the policy preferences of unelected judges. The members of the *Obergefell* majority may have believed very strongly that same-sex marriage should be allowed in all 50 states as a matter of policy, but that is not a basis on which a court may enjoin the enforcement of a duly enacted statute.

77. The *Obergefell* decision also flouted the precedent of the Supreme Court. It disregarded *Washington v. Glucksberg*, 521 U.S. 702 (1997), by recognizing a “fundamental right” to same-sex marriage, despite the fact that a right to same-sex marriage is not “deeply rooted in this Nation’s history and tradition.” *Glucksberg*, 521 U.S. at 721 (1997). *Obergefell* also overruled *Baker v. Nelson*, 409 U.S. 810 (1972), which had held that the idea of a constitutional right to same-sex marriage was so frivolous as to not even present a federal question. *See Obergefell v. Hodges*, 576 U.S. at 675 (“*Baker v. Nelson* must be and now is overruled”).

78. The Supreme Court’s membership has changed since *Obergefell*. Justice Kennedy, the author of *Obergefell*, has been replaced by Justice Kavanaugh, and Justice Ginsburg, who joined the majority in *Obergefell*, has been replaced by Justice Barrett.

79. So it is far from clear that five members of the current Supreme Court will endorse *Obergefell*, and *Dobbs* has already repudiated *Obergefell*’s “reasoned judgment” test for identifying “fundamental rights.” And it is hard to believe how any member of the Supreme Court could credibly defend a decision to adhere to *Obergefell* on *stare decisis* grounds when *Obergefell* so flagrantly disregarded *stare decisis* by overruling *Baker v. Nelson* and refusing to follow *Glucksberg*’s test for identifying “fundamental rights.”

80. Judge Hensley therefore seeks a declaratory judgment that: (a) There is no constitutional right to same-sex marriage; (b) The federal judiciary has no authority to recognize or invent “fundamental” constitutional rights based on a “reasoned judgment” test; and (c) The Supreme Court’s ruling and opinion in *Obergefell* violate the Tenth Amendment and the Republican Form of Government Clause by subordinating state law to the policy preferences of unelected judges.

81. The Supreme Court has instructed the lower courts to follow its precedents until the justices themselves overrule the disputed decision. *See State Oil Co. v. Khan*, 522 U.S. 3, 20 (1997) (“[I]t is this Court’s prerogative alone to overrule one of its

precedents.”). Judge Hensley therefore wishes to preserve this claim for an eventual petition (or cross-petition) for certiorari in the Supreme Court.

DEMAND FOR JUDGMENT

82. Judge Hensley respectfully requests that the Court:

- a. declare that the commissioners have violated and are violating Judge Hensley’s constitutional rights under the Free Exercise Clause and the Speech Clause;
- b. enjoin the commissioners in their official capacities from investigating or disciplining Judge Hensley over her refusal to officiate homosexual marriage ceremonies, even if she resumes performing weddings for opposite-sex couples;
- c. award Judge Hensley damages under 42 U.S.C. § 1983 against the commissioners in their individual capacities for the income she lost when she stopped performing weddings in response to the commissioners’ investigations and threats; and
- d. award Judge Hensley court costs and reasonable attorneys’ fees under 42 U.S.C. § 1988(b).
- e. award all other relief that the Court may deem just, proper, or equitable.

Respectfully submitted.

/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)
jonathan@mitchell.law

Dated: December 19, 2025

Counsel for Plaintiff

Exhibit 1

State Commission on Judicial Conduct

Officers

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

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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", written over a large, stylized initial "J".

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

Dianne Hensley
TCJC Inquiry Response

June 20, 2018
ATTACHMENT (A)

"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

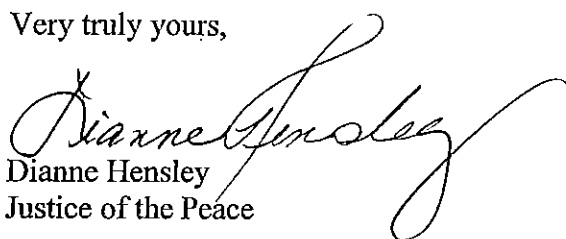
RE: CJC No. 17-1572: Letter of Inquiry

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)

Dianne Hensley
TCJC Inquiry Response

June 20, 2018

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.

Dianne Hensley
TCJC Inquiry Response

June 20, 2018

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.

Dianne Hensley
TCJC Inquiry Response

June 20, 2018

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.

Dianne Hensley
TCJC Inquiry Response

June 20, 2018

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

Dianne Hensley
TCJC Inquiry Response

June 20, 2018

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



Dianne Hensley
TCJC Inquiry Response

June 20, 2018
ATTACHMENT (A)

"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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Dianne Hensley
TCJC Inquiry Response

June 20, 2018
ATTACHMENT (B)

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.

Dianne Hensley
TCJC Inquiry Response

June 20, 2018
ATTACHMENT (B)

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.

Dianne Hensley
TCJC Inquiry Response

June 20, 2018
ATTACHMENT (B)

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 . . .*

Dianne Hensley
TCJC Inquiry Response

June 20, 2018
ATTACHMENT (B)

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.

Dianne Hensley
TCJC Inquiry Response

June 20, 2018
ATTACHMENT (C)



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

Dianne Hensley
TCJC Inquiry Response



June 20, 2018
ATTACHMENT (D)

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, flowing style.

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

Lt. Governor Patrick Statement on Opinion from Texas Attorne...

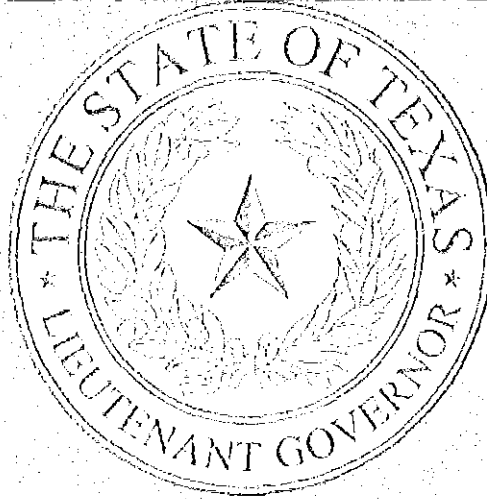
<https://www.ltgov.state.tx.us/2015/06/28/lt-governor-patrick-sta...>

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

Lt. Governor Patrick Statement on Opinion from Texas Attorne...

<https://www.ltgov.state.tx.us/2015/06/28/lt-governor-patrick-sta...>

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

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 801 Washington Avenue, Ste. 402, 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

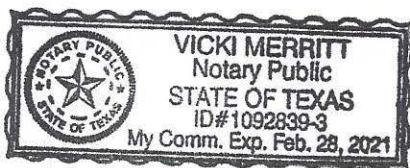


Exhibit 6

Supreme Court of Texas


Misc. Docket No. 25-9082

Order Adopting Comment to Canon 4 of the Texas Code of Judicial Conduct

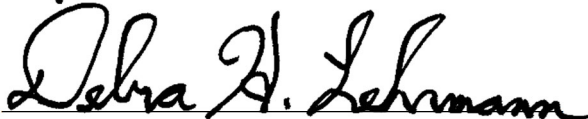
ORDERED that:

1. The Court adopts the following comment to Canon 4 of the Texas Code of Judicial Conduct, effective immediately.
2. The Clerk is directed to:
 - a. file a copy of this Order with the Secretary of State;
 - b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - c. send a copy of this Order to the Governor, the Lieutenant Governor, and each elected member of the Legislature; and
 - d. submit a copy of this Order for publication in the *Texas Register*.


Date: October 24, 2025.



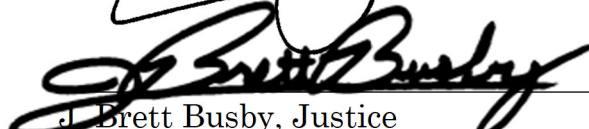
James D. Blacklock, Chief Justice



Debra H. Lehmann, Justice



John P. Devine, Justice




J. Brett Busby, Justice



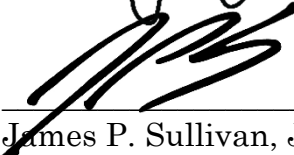
Jane N. Bland, Justice



Rebeca A. Huddle, Justice



Evan A. Young, Justice



James P. Sullivan, Justice

TEXAS CODE OF JUDICIAL CONDUCT

Canon 4: Conducting the Judge's Extra-Judicial Activities to Minimize the Risk of Conflict with Judicial Obligations

COMMENT

It is not a violation of these canons for a judge to publicly refrain from performing a wedding ceremony based upon a sincerely held religious belief.

Exhibit 7

CAUSE NO. D-1-GN-20-003926

Dianne Hensley, on behalf of herself and others similarly situated,	§	IN THE DISTRICT COURT OF
	§	
	§	
Plaintiff,	§	
	§	TRAVIS COUNTY, TEXAS
v.	§	
	§	
State Commission on Judicial Conduct, et al.,	§	459 TH JUDICIAL DISTRICT
	§	
Defendant.	§	

**DEFENDANT STATE COMMISSION ON JUDICIAL CONDUCT'S
RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Defendants the State Commission on Judicial Conduct; Gary L. Steel, in his official capacity as Chair of the State Commission on Judicial Conduct; Ken Wise, in his official capacity as Vice-Chair of the state Commission on Judicial Conduct; Carey F. Walker, in his official capacity as Secretary of the State Commission on Judicial Conduct; and Clifton Roberson, Kathy P. Ward, Wayne Money, Andrew M. Kahan, Tano E. Tijerina, Chace A. Craig, Sylvia Borunda Firth, Derek M. Cohen, Yinon Weiss, and April I. Aguirre, in their official capacities as Members of the State Commission on Judicial Conduct (collectively “Defendants”) now file this Response (the “Response” or “Resp.”) to Plaintiff Dianne Hensley’s Motion for Summary Judgment (the “Motion” or “Mot.”). Plaintiff’s Motion should be denied in its entirety for the following reasons.

I. PROCEDURAL HISTORY

Plaintiff has sued the Commission and its members and officers for violating the Texas Religious Freedom Restoration Act (“TRFRA”) and her right to freedom of speech under Article I, Section 8 of the Texas Constitution. *See Plaintiff v. State Comm’n on Judicial Conduct*, 692 S.W.3d 184, 189-90 (Tex. 2024) (describing procedural history of case). The trial court dismissed Plaintiff’s claims for want of jurisdiction, and the Austin Court of Appeals affirmed. *Id.* (citing

Plaintiff v. State Comm’n on Judicial Conduct, 683 S.W.3d 152 (Tex. App.—Austin 2022), *rev’d*, 692 S.W.3d 184 (Tex. 2024)). Upon review, the Texas Supreme Court held that, “apart from one declaratory request against the Commission, [Plaintiff’s] suit is not barred by her decision not to appeal the Commission’s Public Warning or by sovereign immunity.” *Id.* at 190. The Supreme Court concluded “we affirm the part of the court of appeals’ judgment dismissing the one declaratory request for lack of jurisdiction, reverse the remainder of the judgment, and remand to the court of appeals to address the remaining issues on appeal.” *Id.* On remand, the Austin Court of Appeals affirmed the trial court’s order granting the Commission’s plea to the jurisdiction as to Plaintiff’s Uniform Declaratory Judgments Act (“UDJA”) claim and her *ultra vires* claim against the Commission’s officers and members. *Hensley v. State Comm’n on Judicial Conduct*, 717 S.W.3d 106, 117 (Tex. App.—Austin 2025, no pet.). The court reversed the trial court’s orders granting the Commission’s plea to the jurisdiction as to the TRFRA claim and the Commission’s plea of estoppel. The appeals court remanded the cause to this Court “for further proceedings consistent with this opinion.” *Id.*

After remand, Plaintiff amended her pleadings on July 30, 2025. Plaintiff’s new live petition (her Third Amended Petition) did not remove her *ultra vires* claims, despite the unappealed judgment of the Austin Court of Appeals. On October 24, 2025, the Supreme Court of Texas adopted a comment to Canon 4. However, because “[t]he Texas Constitution prohibits ‘retroactive law[s],’” the comment does not impact this litigation.¹ *Adame v. 3M Co.*, 585 S.W.3d 127, 148 (Tex. App.-Houston [1st Dist.] 2019, no pet.); Tex. Const. art. I, § 16.

¹ Plaintiff claims the recently added comment to Canon 4 “amends the judicial canons.” Mot. at 14. However, that is demonstrably untrue—rather than adopting an *amendment* to Canon 4, the Supreme Court of Texas provided only a *comment*. Even if the comment applied to this case, it would not shed light onto how this Court should decide. The comment only gives a judge the authority to “opt out” of officiating due to a sincere religious belief, but does not say

On November 13, 2025, the Commission filed a motion for partial summary judgment as to Plaintiff's *ultra vires* claims, and against her claims against all commissioners in their official capacities as nominal defendants.

II. DISPUTED FACTS

Plaintiff incorrectly identifies many issues as undisputed which are very much in dispute, and on which Plaintiff bears the burden at summary judgment and at trial.² Plaintiff is not excused from proving, to the Court's satisfaction, all of the following:

- (1) To the extent relevant, that Plaintiff's office did not book any weddings between June 26, 2015 and August 1, 2016.³
- (2) That Plaintiff resumed performing marriage ceremonies for opposite-sex couples in August of 2016.⁴
- (3) That Plaintiff compiled a list of alternative wedding officiants for same-sex weddings or that she began "politely referring" same-sex couples to other officiants.⁵
- (4) That Shelli Misher is on Plaintiff's alleged referral list or that Ms. Misher is located 3 blocks away.⁶
- (5) That Misher agreed to provide a discounted rate to couples that Plaintiff referred.⁷

that a judge can, at the same time, welcome to her chambers heterosexual couples for whom she willingly offers to conduct marriage ceremonies.

² Plaintiff's Motion for Summary Judgment at 1.

³ Ex. 1, Def's Amended Responses to RFA No. 6.

⁴ Ex. 1, Def's Amended Responses to RFA No. 7.

⁵ Ex. 1, Def's Amended Responses to RFA No. 8.

⁶ Ex. 1, Def's Amended Responses to RFA No. 9.

⁷ Ex. 1, Def's Amended Responses to RFA No. 10.

(6) That Plaintiff instructed her staff to provide same-sex couples who asked her to officiate their wedding the document that is on page 3 of the MSJ or that she instructed her staff to hand them Misher's business card.⁸

(7) That no other judges or justices of the peace in Waco are willing to officiate any weddings.⁹

(8) That no same-sex couple has ever complained to Judge Plaintiff or her staff.¹⁰

(9) That the Commission's actions have cost Plaintiff over \$60,000 in lost income.

Defendants have not conceded, and do not concede, any of Plaintiff's claims on pages 8 through 10 of her Motion, which discuss the way in which Plaintiff calculated her loss of income; any of Plaintiff's claims on pages 10 through 11 of her Motion that discuss Plaintiff's out-of-pocket expenses; or any of Plaintiff's claims on pages 11 through 12 of her Motion that discuss facts related to pre-suit notice.¹¹

Plaintiff claims Defendants concede that officiating a same-sex wedding violated Plaintiff's sincere religious beliefs.¹² This is false—in Defendants' prior discovery answers Defendants admitted it for the purposes of the original appellate issues, and in Defendants' amended discovery answers they have denied it.¹³

For the reasons that follow, there is a genuine question of material fact to be tried to a jury on all of these facts, at least to the extent they are relevant to any issue the Court must decide.

⁸ Ex. 1, Def's Amended Responses to RFA No. 12.

⁹ Ex. 1, Def's Amended Responses to RFA No. 14.

¹⁰ Ex. 1, Def's Amended Responses to RFA No. 13.

¹¹ Defendants believe they are barred by law of the case from contesting the adequacy of notice to the Commission in these proceedings, but do not concede it formally in order to retain any right they may have to reargue the issue, if permissible, to the Supreme Court of Texas in the even this case ends up there again.

¹² Plaintiff's Motion for Summary Judgment at 18.

¹³ Ex. 1, Def's Amended Responses to RFA No. 5.

III. OBJECTIONS TO SUMMARY JUDGMENT EVIDENCE

Several exhibits referenced or attached in Plaintiff's Motion contain defects that render portions or all of the exhibit insufficient summary judgment evidence under Texas Law. Therefore, the below exhibits (or portions of exhibits) should not be used as summary judgment evidence.

A. Exhibits 1 and 2 contain statements that cannot be considered for summary judgment because they are not grounded in the affiant's personal knowledge.

"A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness had personal knowledge of the matter." TEX. R. EVID. 602. An affiant's belief, even if strongly held, does not constitute competent evidence because a mere "*belief* about the facts is legally insufficient." *Kerlin v. Arias*, 274 S.W.3d 666, 668 (Tex. 2008) (emphasis in original). A statement within an affidavit that shows no basis for personal knowledge is insufficient summary judgment evidence. *Id.* "Testimony based solely on conjecture and speculation is incompetent and cannot support a judgment." *Ortiz v. Glusman*, 334 S.W.3d 812, 815 (Tex. App.—El Paso 2011, pet. denied).

Here, Plaintiff's Exhibit 2 includes statements that plainly exceed the affiants' personal knowledge. Shelli Misher's Affidavit offers opinions on matters that could not have observed firsthand and includes an improper legal conclusion.¹⁴ Such conjecture is legally incompetent and cannot support summary judgment. *See* TEX. R. EVID. 602. Evidentiary exclusions apply to summary-judgment proceedings as they would at trial. *Fort Brown Villas III Condo. Ass'n, Inc. v. Gillenwater*, 285 S.W.3d 879, 882 (Tex. 2009). Accordingly, Paragraph 12 of the Misher Affidavit should not be considered, due to not being based on personal knowledge.

¹⁴ Mot. Ex. 2, Misher Aff. ¶ 12 (speculates that same-sex couples "would have to find out on their own whether a particular justice of the peace is continuing to perform weddings," and that it would "impose a great inconvenience" on them, "in addition to burdening the religious freedom of [Plaintiff].").

As explained in more detail below, Plaintiff's Declaration fails to adequately authenticate the records offered to prove up Plaintiff's damages (records—Exhibits 14-16—which were not included in Plaintiff's Motion and do not appear to be in the summary judgment record). Plaintiff's Declaration purports to testify to information disclosed by and derived from these records, but because Plaintiff testifies (as explained below) that the records were created by others, she does not have personal knowledge of their accuracy. Therefore all of the testimony in Plaintiff's declaration related to damages should not be considered as outside the scope of her personal knowledge. *See* TEX. R. EVID. 602.

B. Exhibits 1 and 2 contain statements that cannot be considered for summary judgment because they contain inadmissible hearsay, and/or conclusory or irrelevant evidence.

Affidavits offered in support of summary judgment must contain facts that would be admissible in evidence; hearsay and conclusory statements are generally inadmissible and cannot support summary judgment. Tex. R. Evid. 801.; *Stovall & Associates, P.C. v. Hibbs Fin. Ctr., Ltd.*, 409 S.W.3d 790, 796 (Tex. App.—Dallas 2013, no pet.) “Bare, baseless opinions do not create fact questions,” and when an affidavit contains opinion testimony, it “must be based on demonstrable facts and a reasoned basis.” *In re Lipsky*, 460 S.W.3d 579, 592 (Tex. 2015). A statement that provides only a conclusion without supporting facts is considered conclusory and is legally insufficient for summary judgment evidence. *Edwards v. Fed. Nat’l Mortgage Ass’n*, 545 S.W.3d 169, 178 (Tex. App.—El Paso 2017, pet. denied).

Plaintiff's Declaration contains multiple statements that fail this standard. Paragraph 18 asserts that Plaintiff's referral method was “superior to a categorical refusal to perform weddings” and “benefitted” same-sex couples by directing them to someone who would not be “scowling

throughout the ceremony.”¹⁵ These assertions are wholly conclusory because Plaintiff offers no underlying facts demonstrating how the referral system provided any actual benefit that could not be obtained by means other than what Plaintiff was offering. It is also not clear how the “benefit” of this approach is relevant to anything that must be decided by this Court—whether or not Plaintiff’s public refusal to marry gay couples while marrying straight couples could, in some way, coupled with other conduct for which she was not warned, have some incidental benefits for some gay couples is irrelevant to any question relating to the appearance of impartiality.

Similarly, Paragraph 19 states: “Same-sex couples received greater access to a low-cost wedding in McLennan County as a result of my referral system.”¹⁶ This statement is unsupported by evidence and rests entirely on Plaintiff’s belief that her previously chosen solution—refusing all weddings—would have been worse. Although Plaintiff may genuinely believe that to be true, such belief alone is not sufficient to constitute competent summary judgment evidence.

Plaintiff’s Declaration also contains inadmissible hearsay in Paragraphs 16, 32, and 33. Paragraph 16 references a statement Plaintiff claims Ms. Misher made about continuing to perform weddings, yet provides no foundation establishing its admissibility.¹⁷ Paragraphs 32 and 33 recount arguments made by Plaintiff’s counsel during prior proceedings.¹⁸ These statements are offered for the truth of the matter asserted and are not based on Plaintiff’s personal knowledge, rendering them objectionable under Texas law. TEX. R. EVID. 801. Accordingly, Paragraphs 16, 18, 19, 32, and 33 of Plaintiff’s Declaration should not be considered as improper summary judgment evidence.

¹⁵ Plaintiff Decl. ¶ 18 (attached to Plaintiff’s Motion for Summary Judgment as Ex. 1); Plaintiff’s Motion for Summary Judgment at 25.

¹⁶ Plaintiff Decl. ¶ 19 (attached to Plaintiff’s Motion for Summary Judgment as Ex. 1).

¹⁷ Plaintiff Decl. ¶ 16 (attached to Plaintiff’s Motion for Summary Judgment as Ex. 1).

¹⁸ Plaintiff Decl. ¶ 32 and 33 (attached to Plaintiff’s Motion for Summary Judgment as Ex. 1).

C. Exhibit 12 is not competent summary judgment evidence because it is not the current version of Defendants’ first discovery answers.

Exhibit 12, which contains Defendants’ first set of answers to Plaintiff’s first set of discovery, has been amended and supplanted by an amended set of answers, which have been revised in light of what has been disclosed in discovery. These amended answers, served long before the deadline for the close of discovery on December 12, are attached to this Response as Exhibit 1.

D. Exhibit 13 is not competent summary judgment evidence because it is not authenticated, referenced, or incorporated in the motion or any supporting documents.

“Discovery admissions on file constitute competent summary judgment evidence only if they are referred to or incorporated in the summary judgment motion *and* they are used against the party who filed them.” *Methodist Hosps. of Dallas v. Mid-Century Ins. Co. of Tex.*, 195 S.W.3d 844, 846 (Tex. App.—Dallas 2006, no pet.) (emphasis in original). Discovery material may only be used as summary judgment evidence if the party clearly relies on it in its motion or response. *Mathis v. RKL Design/Build*, 189 S.W.3d 839, 842 (Tex.App.—Houston [1st Dist.] 2006, no pet.) (response listing exhibits and identifying deposition excerpts by page number served as statement of intent). When attaching copies of or appendixes containing unfiled discovery, the party must include in the motion or response specific references to the portions of the unfiled discovery relied on. *See, e.g., Barraza v. Eureka Co.*, 25 S.W.3d 225, 228–29 (Tex.App.—El Paso 2000, pet. denied) (attaching portions of unfiled discovery and making specific reference to some of it in SJ response was sufficient)

Exhibit 13, Plaintiff’s Responses to Defendants’ Interrogatories, is not cited anywhere in the motion or supporting documents. These interrogatory answers also would not be “used against the party who filed them.” Because they are not relied upon and Plaintiff has not otherwise met

the requirements for their use under Tex. R. Civ. P. 166a(d), the interrogatory answers in Exhibit 13 constitute incompetent summary judgment evidence and should not be considered.

E. References to Exhibits 14, 15, and 16 are improper and must be stricken.

An affidavit¹⁹ offered in support of summary judgment must be based on personal knowledge, set forth facts admissible in evidence, and affirmatively show that the affiant is competent to testify to the matters stated. TEX. R. CIV. P. 166a(f). Further, all documents referenced in an affidavit “shall be attached thereto.” *Id.* Summary-judgment evidence must generally be on file at the time of the hearing to be considered by the court. *See* TEX. R. CIV. P. 166a(c); *Lance v. Robinson*, 543 S.W.3d 723, 732 (Tex. 2018). Statements made in an affidavit attached to a motion for summary judgment that reference material which is absent from the record cannot be considered. *See Chamie v. Mem’l Hermann Health Sys.*, 561 S.W.3d 253, 256 (Tex. App.—Houston [14th Dist.] 2018, no pet.) (affirming the trial court’s refusal to consider exhibits that were purportedly attached to a response but did not appear in the record).

Here, Exhibits 14, 15, and 16—purportedly containing records of marriages performed,²⁰ a spreadsheet of lost income,²¹ and a spreadsheet of out-of-pocket expenses²²—are neither attached to the motion nor on file with the court. Paragraphs 37 through 53 of Plaintiff’s Declaration (Exhibit 1) assert lost income and expenses, and while many do not explicitly cite to the exhibits, the context makes clear that the information derives from these missing documents. Plaintiff failed to attach any other exhibits to provide evidence for these assertions. Accordingly, all references to Exhibits 14, 15, and 16 constitute improper summary judgment evidence and cannot be considered.

¹⁹ As used herein, the term “affidavit” includes both sworn declarations and unsworn declarations that comply with Tex. Civ. Prac. & Rem. Code § 132.001, which authorizes such declarations as a substitute for an affidavit.

²⁰ Mot., Ex. 1, Hensley Decl. ¶ 39.

²¹ Mot., Ex. 1, Hensley Decl. ¶ 40.

²² Mot., Ex. 1, Hensley Decl. ¶ 52 and 53; Plaintiff’s Motion for Summary Judgment at 10–11.

Even had Exhibits 14, 15, and 16 been attached, Plaintiff's declaration would be insufficient to authenticate them. Plaintiff does not state that she created these exhibits, nor does she state that she supervised their creation. With respect to Exhibit 14, Plaintiff affirmatively states that her staff created these records, not her.²³ She does not testify that she supervised the creation of these records, or explain how she knows they are accurate. Plaintiff offers no other basis for authenticating the unattached Exhibit 14 than her testimony, and Rule of Evidence 901(b)(1) ordinarily requires such a witness to have knowledge. *See* TEX. R. EVID. 901(b)(1), *see also* TEX. R. EVID. 602 (witness ordinarily may only testify based on personal knowledge). For the same reason—lack of personal knowledge—Exhibits 15 and 16 fail as well. Plaintiff states only that they are spreadsheets that “truthfully and accurately display” the breakdown of certain incurred expenses, as well as receipts.²⁴ Plaintiff does not say that she knows the receipts in Exhibit 16 are true and correct copies, nor does she explain how she would know that if she did. Plaintiff's testimony would be insufficient to support *any* of these exhibits had they been attached, and this is an independent reason that they should not be considered.

IV. SUMMARY JUDGMENT STANDARD

Summary judgement is proper only where the movant shows there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); *See Nixon v. Mr. Prop. Mgmt. Co., Inc.*, 690 S.W.2d 546, 548 (Tex. 1985); *Logsdon v. Miller*, No. 03-01-00575-CV, 2002 WL 437284, at *2 (Tex. App.—Austin Mar. 21, 2002, pet. denied). A fact is “material” when it affects the outcome of the lawsuit under the governing law. *Horie v. Law Offices of Art Dula*, 560 S.W.3d 425, 434 (Tex. App.—Houston [14th Dist.] 2018, no pet.). Thus,

²³ Mot., Ex. 1, Hensley Decl. ¶ 39.

²⁴ Mot., Ex. 1, Hensley Decl. ¶¶ 40 and 52.

courts rely upon the substantive law in determining what facts are material. *Zapata v. The Children's Clinic*, 997 S.W.2d 745, 747 (Tex. App.—Corpus Christi–Edinburg 1999, pet. denied). A fact is “genuine” if “a reasonable jury could find the fact in favor of the non-moving party.” *Id.*

“In deciding whether there is a disputed material fact issue precluding summary judgment, evidence favorable to the non-movant will be taken as true.” *Nixon*, 690 S.W.2d at 548–49. “Every reasonable inference from the evidence must be indulged in favor of the non-movants and any doubts resolved in their favor.” *Montgomery v. Kennedy*, 669 S.W.2d 309, 311 (Tex. 1984).

V. ARGUMENT

A. Plaintiff is not entitled to summary judgment on her TRFRA claims.

Plaintiff has failed to prove that she is entitled to judgment as a matter of law under TRFRA because there are genuine issues of material fact that preclude summary judgment. Specifically, disputes of material fact exist as to the following elements of the TRFRA claim: (1) that Plaintiff’s conduct (for which she was warned) was substantially motivated by sincere religious beliefs, and (2) that Plaintiff’s religious expression was substantially burdened by Defendants’ actions. Additionally, fact issues preclude judgment in Plaintiff’s favor on Defendants’ affirmative defense of compelling governmental interest.

1. Whether Plaintiff’s alleged “free exercise of religion” was substantially motivated by sincere religious belief is a fact issue that precludes summary judgment.

Defendants have not stipulated to Plaintiff’s claim that her refusal to marry same-sex couples while marrying straight couples is motivated by a sincere religious belief. Instead, Defendants have specifically denied this.²⁵ In examining a religious exercise claim, the Court’s task is to ascertain “whether the plaintiffs’ asserted religious belief *reflects an honest conviction*.”

²⁵ Ex. 1, Def’s Amended Responses to RFA No. 5.

Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682, 686 (2014) (emphasis added) (citation omitted). Plaintiff admits the Court must evaluate the sincerity of a religious objection. Mot. at 19.

Whether Plaintiff’s refusal is substantially motivated by a sincere belief is a material fact because under the plain language of the TRFRA, the Commission could not have burdened Plaintiff’s free exercise of religion if her belief was not sincere, or the act or refusal to act was not motivated by that sincere belief. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 110.001. TRFRA provides that “a government agency may not substantially burden a person’s free exercise of religion.” TEX. CIV. PRAC. & REM. CODE ANN. § 110.003. The TRFRA defines “free exercise of religion” as “an act or refusal to act that is *substantially motivated by sincere* religious belief.” TEX. CIV. PRAC. & REM. CODE ANN. § 110.001 (emphasis added).

Plaintiff’s alleged “sincere belief” is this: “I sincerely believe that officiating a same-sex marriage ceremony would make me complicit in behavior that is condemned by the Bible and millenia [sic] of Christian teaching.”²⁶ She alleges this is what “substantially motivated” her decision to resume marrying opposite sex couples, but refuse to marry same-sex couples. When a court applies TRFRA, “the focus of [the] initial prong is on plaintiff’s free exercise of religion; that is, whether plaintiff’s sincere religious beliefs motivate his conduct.” *Merced v. Kasson*, 577 F.3d 578, 588 (5th Cir. 2009); *see also Barr v. City of Sinton*, 295 S.W.3d 287, 301 (Tex. 2009). Therefore, the determination of Plaintiff’s sincerity is a fact material to the TRFRA claim.

Whether Plaintiff’s sincerity is in genuine dispute because there is sufficient evidence to demonstrate that a reasonable jury could find that Plaintiff’s articulated belief did not motivate her actions. Plaintiff appears to argue that it is not up the Court to evaluate the reasonableness of the belief, *see* Mot. at 19, but that is not what Defendants are asking the Court to permit the factfinder

²⁶ Plaintiff Decl. ¶ 55 (attached to Plaintiff’s Motion for Summary Judgment as Ex. 1).

to do. The question is not whether Plaintiff has reasonable or unreasonable views—it is whether the evidence tells a consistent story about what those views are, and whether they are religiously based or not. There is strong evidence that suggest that Plaintiff’s actions were motivated by legal, political, and empirical considerations independent of her religious beliefs.

Even in Plaintiff’s own pleadings, her reasons for refusing to marry same-sex couples while marrying opposite-sex couples are not wholly religious:

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 be-tween 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.²⁷

Whether or not what is asserted in paragraph 29 is correct, paragraph 30 is a set of reasons for Plaintiff’s actions that have nothing to do with her religion, and paragraph 31 makes clear that these nonreligious reasons were among those that led her not to officiate weddings after *Obergefell*.

The discovery record is replete with evidence of political, ideological, and legal reasons for Plaintiff’s disapproval of homosexuality and opposition to homosexual marriage independent of her religion. In her deposition, Plaintiff admitted that the views she espoused regarding

²⁷ Ex. 2, Plaintiff’s Third Amended Petition.

homosexual marriage when she testified in front of the Texas State Legislature in 2005 are still presently a summary of her views.²⁸ Those reasons were almost entirely nonreligious, and among them was an alleged substantially higher risk of STDs “in the homosexual community.”²⁹ Plaintiff stated that such increased risk of STDs is true for “anybody that [] has multiple partners,” impliedly equating same-sex partners seeking marriage with people who are promiscuous (even though, by seeking marriage, such partners are actually seeking to formalize their monogamy).³⁰ Plaintiff affirmed in deposition that, as she previously testified to the Texas Legislature, she believes that same-sex marriage is a threat to the welfare of children and families and that these propositions, whether or not they are true, are empirical, and not spiritual.³¹

In response to a request for production for all documents related to Plaintiff’s research regarding her decision to resume performing opposite-sex weddings, Plaintiff produced almost exclusively non-religious documents. For instance, Plaintiff produced a motion in the Supreme Court of Alabama that contained Plaintiff’s own highlights.³² The first highlighted sentence of the document states “This Court should see *Obergefell* for what it is: A case in contradiction to all natural law and the foundation of civilized society.”³³ Plaintiff highlighted the document extensively when it referenced a law journal article on the separation of powers.³⁴

²⁸ Ex. 3, Hensley Dep. 15:16–19.

²⁹ Ex. 3, Hensley Dep. 16:6–11.

³⁰ Ex. 3, Hensley Dep. 16:6–11.

³¹ Ex. 3, Hensley Dep. 16:16–22.

³² Ex. 4, Plaintiff’s Responses to RFP at Hensley0197; Ex. 3, Hensley Dep. 85:5–8.

³³ Ex. 4, Plaintiff’s Responses to RFP at Hensley0200.

³⁴ Ex. 4, Plaintiff’s Responses to RFP at Hensley0204.

Id. at 716. Eastman notes that the Court's "recent unenumerated rights jurisprudence exacerbates the judicial supremacy problem." Id. at 736. His conclusion is eerily predictive of today:

"The right solution, of course, is for the courts to turn back to a jurisprudence grounded in the natural law principles of the Declaration of Independence - Justice Clarence Thomas has at times embarked upon just such a task. But absent a recourse to such principles, the Courts should not be surprised if legislators, executives and even the people themselves give less and less credence to their dictates. A 'Rule of Law' that is, itself, lawless is not the kind of 'law' that generates (or deserves) respect. In other words, we can expect many more Judge Roy Moores unless and until the Holmesian heresy is finally defeated and the 'least dangerous branch' taken down from its pedestal and restored to its co-equal station in the government, exercising judgment and not will."

Plaintiff also highlighted the subsection "Marriage is a State Issue" and the subsequent sentence: "As recent as two years ago, the United States Supreme Court recognized that it did not have the authority to interfere with the domestic institution of marriage because it was historically known to be governed within the providence of each state."³⁵

Plaintiff's research production also included an opinion from the Supreme Court of Alabama.³⁶ Plaintiff highlighted and placed a large arrow next to "To yield a cheerful acquiescence in, and support to every power constitutionally exercised by the federal government, is the sworn duty of every state officer; **but it is equally his duty to interpose a resistance, to the extent of his power, to every assumption of power on the part of the general government, which is not expressly granted or necessarily implied in the federal constitution.**" (emphasis in original).³⁷

³⁵ Ex. 4, Plaintiff's Responses to RFP at Hensley0210.

³⁶ Ex. 4, Plaintiff's Responses to RFP at Hensley0242.

³⁷ Ex. 4, Plaintiff's Responses to RFP at Hensley0267.

Plaintiff's own highlighting of these portions of these materials she states she consulted in her research in deciding whether to undertake the actions for which she was ultimately warned, gives strong evidence of the political, legal, and ideological reasons she had to "interpose a resistance" against a perceived overstep by the Supreme Court of the United States by publicly marrying opposite-sex couples while refusing to do so for same-sex couples. Plaintiff might deny the influence of these materials she produced, and which she highlighted, at trial, but a factfinder is entitled to disbelieve her; a factfinder could reasonably believe what she highlighted *then* rather than what she is saying *now*. See *Davis v. State*, No. 03-07-00085-CR, 2007 WL 1853361, at *2 (Tex. App.—Austin June 28, 2007, pet. ref'd) ("the trier of fact is the exclusive judge of the facts, the credibility of the witnesses, and the weight to be given to the witnesses' testimony").

This evidence directly calls into question whether Plaintiff's refusal to marry same-sex couples is substantially motivated by a sincere religious belief or instead motivated by these other reasons, including political, legal, and non-religious ideological views. This is especially true, given that Plaintiff's testimony *also* strongly suggests that her religious views *do not* powerfully animate her decisions about who to marry. Plaintiff testified as follows at deposition:

Q. Why does your religious faith forbid you to officiate a same-sex marriage ceremony as a judge?

A. Because we're told not to lend our approval to people engaging in a list of sins.

Q. Do you marry previously divorced people?

A. It's possible, I don't ask people.

Q. If someone told you before the marriage that they had previously been divorced, would you marry them?

A. Yes.

Q. Is remarriage after divorce for reasons other than sexual immorality a sin?

A. Yes.³⁸

Even if Plaintiff is truly sincere in her view that gay marriage is sinful, she apparently also believes that remarriage after divorce is sinful, and yet she will remarry divorced people. A reasonable jury could decide that the difference between Plaintiff marrying divorced people, and not marrying same-sex people, is political and ideological, and *not* religious—and that her motivation is therefore not one protected by TRFRA. *Hill v. Allstate Fire & Cas. Ins. Co.*, 652 S.W.3d 516, 519 (Tex. App.—Houston [14th Dist.] 2022, no pet.) (“reasonable and fair-minded jurors could differ in their conclusions in light of all of the summary-judgment evidence.”).

For these reasons, whether the conduct for which Plaintiff was warned was motivated by a sincere religious belief is a genuine issue of material fact that precludes summary judgment. The finder of fact is entitled to decide whether Plaintiff has proved by a preponderance of the evidence that her religious views substantially motivated her conduct.

2. Not performing weddings at all is not a “substantial burden” as contemplated by TRFRA or any available jurisprudence.

Because Defendants did not tell Plaintiff she must marry same-sex couples—indeed, Plaintiff does not even allege that they have—Plaintiff must argue that the *burden* that has been imposed on her is that she cannot marry opposite-sex couples if she refuses to marry same-sex couples—and that she must thereby forfeit the money she could have made doing so. But Plaintiff’s authority does not stand for this proposition—the “denial of benefits” or “conditioning of benefits” cases cited by Plaintiff relate to monetary benefits directly provided by the government. *See*

³⁸ Ex. 3, Hensley Dep., 31:18–32:4 (note: the deposition transcript reads “sexual immortality” but context makes clear that the reference was to “sexual immorality.”).

Thomas v. Review Bd. of Indiana Employment Sec. Div., 450 U.S. 707, 717, 101 S. Ct. 1425, 1432, 67 L. Ed. 2d 624 (1981) (unemployment compensation); *Sherbert v. Verner*, 374 U.S. 398, 404, 83 S. Ct. 1790, 1794, 10 L. Ed. 2d 965 (1963) (same); *see also Khimich v. Oregon Health & Sci. Univ.*, No. 3:23-CV-01239-YY, 2024 WL 6045447, at *4 (D. Or. June 3, 2024), *report and recommendation adopted*, No. 3:23-CV-01239-YY, 2024 WL 4275698 (D. Or. Sept. 24, 2024) (in a qualified immunity case, distinguishing these benefit cases because no allegation was made of denial of government benefits).

Plaintiff’s right to marry is exclusively based on her position as a judge.³⁹ The statute that provides that judges may marry creates no right to obtain any amount of money for discharging that responsibility. *See* TEX. FAM. CODE. ANN. § 2.202. Plaintiff herself does not always charge for this service.⁴⁰ The money Plaintiff decides to charge for a wedding is not, therefore, a “benefit[] due” under any law. *See Thomas*, 450 U.S. at 719-20. Plaintiff has a *power* granted by dint of her governmental position—the power to marry. She is being limited, if at all, only in how she may use her discretion in exercise of that power. Plaintiff is not entitled by law to any amount of payment for her exercise of that power. *See* TEX. FAM. CODE. ANN. § 2.202. Therefore she is not being denied a benefit when she is instructed to use that power, if at all, in a nondiscriminatory manner.

3. Plaintiff has not provided competent evidence of her burden in any case.

As required by the TRFRA, Plaintiff must establish that the Commission “substantially burden[ed]” her free exercise of religion. TEX. CIV. PRAC. & REM. CODE ANN. § 110.003. Plaintiff claims that the Commission has cost her more than \$60,000 in lost income and \$1,706.86 of out-

³⁹ Ex. 3, Hensley Dep. 28:1–16.

⁴⁰ Ex. 3, Hensley Dep. 68:10–11; Mot., Ex. 1, Hensley Decl. ¶ 41.

of-pocket expenses and such costs “establish a substantial burden as a matter of law.” Mot. at 21. As already noted, they do not, because she was not entitled to a dime of that money in the first place, and therefor she has not been denied anything. However, even if these amounts could be considered a denied benefit, these alleged damages are genuinely disputed material facts that preclude summary judgment.

Plaintiff’s alleged costs are a material fact because under the plain language of the TRFRA, Plaintiff must demonstrate the existence of a substantial burden (and, if seeking to recover it, pecuniary loss)—and these costs, according to Plaintiff’s own motion, are what establishes such a burden. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 110.003; Mot. at 21. Additionally, the costs are a material fact because determining the damages is a fact inquiry that affects the outcome of the case. The existence of the costs is a genuine dispute because Plaintiff has failed to produce *any* admissible evidence that demonstrates their existence. Plaintiff’s Motion only cites to her own Declaration and Exhibits 14-16 to support her claim, but as stated in the Objections to Summary Judgment Evidence section above, references to these Exhibits are improper and must be stricken because Exhibits 14-16 are not in the summary judgment record, and Plaintiff’s declaration would not have adequately authenticated them for admission even if they were.

Because any evidence that could have supported Plaintiff’s claim for damages or that the Commission “substantially burdened” her religious exercise must be excluded, a reasonable jury could find that Plaintiff failed to establish such substantial burden. For these reasons, the existence of the costs that Plaintiff says establish a “substantial burden” is a genuine issue of material fact that precludes summary judgment.

Even if ¶¶ 37-51 of Plaintiff’s Declaration were admissible (and for the reasons already given, they are not), the alleged damages are too speculative and remain a disputed material fact

that precludes summary judgment. “A party cannot recover damages that are based on speculation or conjecture.” *Swank v. Cunningham*, 258 S.W.3d 647, 667 (Tex. App.—Eastland, 2008). While recovery for lost profits does not require an exact calculation, “the injured party must do more than show that they suffered some lost profits.” *Holt Atherton Industries, Inc. v. Heine*, 835 S.W.2d 80, 84 (Tex. 1992). Instead, a party can only recover lost profits damages when “both the fact and amount of damages is proved with reasonable certainty.” *Horizon Health Corporation v. Acadia Healthcare Company, Inc.*, 520 S.W.3d 848, 860 (Tex. 2017). The reasonable certainty requirement “serves to align the law with *reality* by limiting a recovery of damages to what the claimant might have expected to realize *in the real world* had his rights not been violated.” *Lake v. Cravens*, 488 S.W.3d 867, 902 (Tex. App.—Fort Worth 2016, no pet.)(citation omitted, emphasis in original). This is a fact intensive inquiry and at “a minimum, opinions or estimates of lost profits must be based on objective facts, figures, or data from which the amount of lost profits can be ascertained.” *Heine*, 835 S.W.2d at 84.

Here, Plaintiff claims that she would have earned at least \$10,000 in income from performing marriages if she had not stopped officiating. Mot. at 10. To get to this number, Plaintiff admitted that she merely did an average of the amount of money she made in previous years and projected what the amount would have been in 2020, 2021, and 2022.⁴¹ But during the period she testifies about (even assuming she has sufficient knowledge, given that the numbers appear to be based on records that she does not attach, and did not herself keep, and taking her word for it) the number of weddings per year varied dramatically, from 72 in 2016 to 170 in 2017 to 104 in 2018 to 64 during part of 2019.⁴² This shows, if anything, that even in ordinary circumstances, the

⁴¹ Ex. 3, Hensley Dep. 70:18–71:1.

⁴² Mot., Ex. 1, Hensley Decl. ¶¶ 43–46.

number of weddings she will do varies dramatically. Moreover, she increased her fee during that timeframe, and she does not consider or account for whether she would have done so again (or decreased her fee) had she been conducting weddings after this point.⁴³

If marriage numbers can vary that dramatically when things when circumstances are ordinary, any projection as to how much Plaintiff would have made during the years she has refrained from marrying people would already be highly speculative. But it is especially speculative given that she did not take into account any mitigating reasons—like COVID-19—for why the number of marriages she would have performed in 2020, 2021, or 2022 would have been less than the number she performed in years prior.⁴⁴ Because “[a]nticipated profits cannot be recovered where they are dependent upon uncertain and changing conditions, such as market fluctuations, or the chances of business, or where there is no evidence from which they may be intelligently estimated,” Plaintiff’s failure to incorporate these factors renders her projection unreasonably speculative. *Horizon Health Corp.*, 520 S.W.3d at 860 (citation omitted).

Plaintiff also claimed in her Declaration that her office received approximately 100 marriage requests per year in the “first year or two” she stopped performing weddings, but she provides no evidence or record of these calls.⁴⁵ Defendants requested all documents which might evidence Plaintiff’s damages, so the fact that no documents recording these “requests” were produced strongly suggests that none exist.⁴⁶ Plaintiff’s calculation cannot reasonably be projected based off of “objective facts, figures, or data” and therefore precludes summary judgment. *Heine*, 835 S.W.2d at 84.

⁴³ Mot., Ex. 1, Hensley Decl. ¶¶ 43-46.

⁴⁴ Ex. 3, Hensley Dep. 70:18–71:8.

⁴⁵ Plaintiff Decl. ¶ 47 (attached to Plaintiff’s Motion for Summary Judgment as Ex. 1).

⁴⁶ Ex. 4, Plaintiff’s Responses to RFP, RFP 9.

4. The relevant authority and evidence demonstrates that the Canons, and the Commission’s enforcement actions with respect to them, were supported by a compelling governmental interest, and were the least restrictive means of achieving that interest.

Even where a substantial burden *has* been placed on a TRFRA claimant’s religious expression, a TRFRA claim still fails where that burden is justified by a compelling governmental interest which is being achieved in the least restrictive way. *See* TEX. CIV. PRAC. & REM. CODE ANN., § 110.003. Here, both prongs are met, or there is at least a question of material fact as to both prongs.

- i. The apparent and actual impartiality of the judiciary is a compelling governmental interest.

Courts have consistently held that the apparent and actual impartiality of the judiciary is a compelling governmental interest that is strong enough to withstand strict scrutiny.

The judiciary’s authority therefore depends in large measure on the public’s willingness to respect and follow its decisions. As Justice Frankfurter once put it for the Court, “justice must satisfy the appearance of justice.” It follows that public perception of judicial integrity is a state interest of the highest order.

Williams-Yulee v. Florida Bar, 575 U.S. 433, 445–46, 135 S. Ct. 1656, 1666, 191 L. Ed. 2d 570 (2015) (cleaned up) (further holding that the state’s judicial canon survives strict scrutiny because it “advances the State’s compelling interest in preserving public confidence in the integrity of the judiciary, and it does so through means narrowly tailored to avoid unnecessarily abridging speech”); *In re Kemp*, 894 F.3d 900, 908 (8th Cir. 2018) (dismissing a judge’s state RFRA claim because “Arkansas has compelling interests in the impartiality of the judiciary and in public perception of an impartial judiciary”); *French v. Jones*, 876 F.3d 1228, 1237 (9th Cir. 2017), cert. denied, 138 S. Ct. 1598, 200 L. Ed. 2d 778 (2018) (holding that “an interest in both actual and perceived judicial impartiality” is a “genuine and compelling” interest); *Platt v. Bd. of*

Commissioners on Grievances & Discipline of Ohio Supreme Ct., 894 F.3d 235, 254 (6th Cir. 2018) (holding that “maintaining judges actual independence and impartiality, and maintaining the public's trust in the judiciary’s independence and impartiality” are “compelling” interests).

- ii. Defendants’ construction of the Canons was the narrowest way to achieve that compelling interest.

Once it is established that apparent judicial impartiality is a compelling state interest, there are only two straightforward questions to answer: (1) do Plaintiff’s actions impair her apparent impartiality, and (2) is enforcement by the Commission of the judicial canons prohibiting conduct impairing the appearance of judicial impartiality the narrowest means for repairing the breach. Canons 4A and 3B(6) (which was mentioned in the Tentative Public Warning but not referenced in the final) (collectively the “Canons”) serve the interest of preventing the appearance of impartiality. By their terms it would be exceptionally hard for them not to.

Canon 4A provides, in relevant part: “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.” *See* Tex. Code. Judicial Conduct, Canon 4A.

Canon 3B(6) provides, in relevant part: “A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability age, sexual orientation...”

Plaintiff does not appear to argue that these Canons do not serve the compelling interest of protecting judicial impartiality—instead she argues that her conduct does not violate these canons. Defendants’ public warning—the only actual sanction Plaintiff ever received, though it has since been withdrawn—only references Canon 4A, and so Defendants here solely argue that Plaintiff’s conduct violates Canon 4A.

Defendants will break this argument up, as Plaintiff's treatment of it is confusing, and repeatedly strays from the relevant questions.

First, it is important to accurately describe *what* Plaintiff was actually warned about. Plaintiff has chosen to exercise, in a discriminatory and partial way, a power she possesses only by virtue of the fact that she is a judge.⁴⁷ To argue that this conduct does *not* cast doubt on her ability to judge anyone who comes before her impartially, Plaintiff is forced mischaracterize what she was actually warned about, suggesting or implying that she was warned for abstract expressions of disapproval of homosexuality or same-sex marriage. *See* Mot. at 22-23. The Tentative Public Warning and Public Warning speak for themselves, but they make the truth very clear: Plaintiff was not subjected to any discipline for her beliefs, or for any abstract expressions of opinion regarding the morality of homosexual relationships or marriage.⁴⁸ The Tentative Public Warning makes clear she was being warned for her “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...”⁴⁹ That is to say, the Tentative Public Warning only takes issue with Judge Hensley's discrimination, and her public announcement of her discriminatory practice. Indeed, the Tentative Public Warning specifically makes clear that the Commission is *not* warning her for “deem[ing] same-sex marriage to be wrong...”⁵⁰ The Commission specifically states that it “is unconcerned with Judge Hensley's personal views on the issue of same-sex marriage[,]” and further states that “[l]ike any citizen, Judge Hensley is free to hold whatever religious beliefs she chooses.”⁵¹

⁴⁷ Ex. 3, Hensley Dep. 51:10–14.

⁴⁸ *See* Mot., Exs. 11-2 and 11-3.

⁴⁹ Mot., Ex. 11-2 at 3 (emphasis added).

⁵⁰ Mot., Ex. 11-2 at 3 (quoting *Obergefell*).

⁵¹ Mot., Ex. 11-2 at 3, n. 2.

The Public Warning is similarly limited, if not even narrower, warning Plaintiff *solely* for her discriminatory practice and her publicization of that practice.⁵² Plaintiff *knows* that the Commission’s warnings were limited to these grounds, and admitted at deposition that she is aware of no reason, other than the reasons given by the Commission, for the warnings she received.⁵³ Therefore, Plaintiff’s digression in her Motion into comparisons with abstract disapproval of adultery, or “polygamy, prostitution, pederasty, and pedophilia,” *see* Mot. at 22, is not only offensive in its implied equation of consensual same-sex monogamous unions with these things, it is also completely irrelevant. Plaintiff was warned, as she admits in her own testimony, for her concrete discriminatory conduct, and for her statements that she would engage in that specific conduct, namely: the refusal to use her statutory power, which she has solely because she is a judge, to marry same-sex couples while she continued to marry opposite-sex couples.⁵⁴

Second, it is obvious that Plaintiff’s conduct *does* call her impartiality into question. Plaintiff need not admit any actual bias or prejudice in order for this conduct to cast doubt on her ability to discharge her judicial duties impartially. It is enough that a reasonable person could doubt her impartiality on the basis of the conduct. *Williams-Yulee*, 575 U.S. at 446 (“[P]ublic perception of judicial integrity is a state interest of the highest order.”). And a reasonable person could. Judge Hensley has not attempted to secure a religious accreditation that would allow her to marry people as a minister—she conducts her ceremonies exclusively as a judge, and conducts the ceremonies almost exclusively in her courtroom.⁵⁵ The conduct for which Plaintiff was disciplined is therefore her refusal to exercise, on an impartial basis, a power she admits she possesses solely because she

⁵² *See* Mot., Ex. 11-10 at 3-4.

⁵³ *See* Ex. 3, Hensley Dep., 51:21-52:16, 55:16-56:13.

⁵⁴ Ex. 3, Hensley Dep. 51:10-14.

⁵⁵ Ex. 5, Plaintiff’s Responses to RFA Nos. 1-6; Ex. 3, Hensley Dep. 28:1-16.

is a judge.⁵⁶ A reasonable person would have every reason to conclude that Plaintiff would be similarly partial in her discharge of her other judicial powers, and no mischaracterization of Plaintiff's conduct by Plaintiff's attorneys will remedy this problem.

The decision of the Wyoming Supreme Court in *In re Neely*, on strikingly similar facts, is strongly persuasive. In *Neely*, a judge was sanctioned for precisely what Plaintiff was previously disciplined for here: refusing to marry same-sex couples while continuing to marry opposite-sex couples:

Comment 2 to Rule 2.3 states in part: “A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.” Judge Neely's refusal to perform same sex marriages exhibits bias and prejudice toward homosexuals. Judge Neely asserts in her affidavit that she has no bias or prejudice against homosexuals. We examine the record in a light most favorable to Judge Neely and accept that averment, but our inquiry is whether her conduct may reasonably be perceived as prejudiced or biased. *Judge Neely's refusal to conduct marriages on the basis of the couple's sexual orientation can reasonably be perceived to be biased.*

In re Neely, 2017 WY 25, ¶ 70, 390 P.3d 728, 751 (Wyo. 2017) (cleaned up, emphasis added).⁵⁷

Indeed, courts have found that enforcement of judicial canons against speech is appropriate, and passes the “compelling interest” and “narrow tailoring” tests, in situations less egregious than this one. *In re Kemp*, a state trial judge who had a religious objection to the death penalty wrote a blog post expressing his views. *In re Kemp*, 894 F.3d 900, 903–4 (8th Cir. 2018). In the blog, he did not say that he wouldn't apply the death penalty if the law required it—he simply expressed his religious views about its immortality. *Id.* at 904 (excerpting the blog post).

⁵⁶ *Id.*

⁵⁷ Although in *Neely* the judge was on specifically responsible for marriages, the Wyoming Supreme Court's construction of the comment in the quote above is directly on point: does refusing to perform same-sex marriages while performing other marriages exhibit bias? It obviously does.

The Arkansas Attorney General filed a petition for writ of mandamus with the Arkansas Supreme Court, stating a violation of the Arkansas Code of Judicial Conduct because “he cannot avoid the appearance of unfairness and his impartiality might reasonably be questioned.” *Id.* at 904. The Arkansas Supreme Court agreed, removing the judge from all cases that involved the death penalty and referring the judge to the state’s Judicial Commission to determine if he had violated the Code of Judicial Conduct. *Id.* at 904–5. The judge then sued, alleging First Amendment retaliation on the basis of religious exercise and violation of the Arkansas RFRA. *Id.* at 905. The 8th Circuit dismissed his claims, holding that “even assuming that [the Arkansas Supreme Court’s order] substantially burdens Judge Griffen’s exercise of religion, the claim fails” because “Arkansas has compelling interests in the impartiality of the judiciary and in public perception of an impartial judiciary.” *Id.* at 908.

Here, Plaintiff has not only said she disapproves of gay marriage, she has said she will condition her exercise of a statutory power she has because she is a judge on the basis of that disapproval—that is an even clearer demonstration of bias than the blog post by the judge in the *Kemp* case. And the facts of this case, while distinct from *Neely* in some respects, are not distinguishable from *Neely*’s conclusion that refusal to marry gay couples could reasonably be perceived as biased.⁵⁸ Plaintiff’s conduct is nakedly discriminatory, and it therefore suggests a penchant for discrimination.

⁵⁸ Plaintiff makes an ancillary argument that there can be no governmental interest in protecting gay people from discrimination by marriage officiants where a statute specifically dealing with marriage officiants and discrimination does not proscribe discrimination against gay couples. *See* Mot. at 24 (referring to Section 2.205 of the Texas Family Code). But whether Plaintiff has violated Section 2.205 of the Family Code is irrelevant to (1) the State’s interest in preventing the appearance of bias on the bench, and (2) whether she has engaged in conduct which could call her impartiality into questions. Again, Plaintiff must change the subject to avoid the obvious conclusion: her discriminatory conduct gives people a reason to believe she would discriminate.

It is telling that Plaintiff's argument would not need to change *at all* for her to argue that she should not be required to marry interracial couples while still marrying same-race couples due a religious objection—Plaintiff could say “disapproval of sex between people of different races doesn't suggest partiality with respect to race,” but she would still be faced with the fact that she is denying interracial couples a marriage she is granting to same-race couples. When confronted with this obvious analogy at deposition, Plaintiff had *no answer whatsoever*.⁵⁹ Plaintiff finds such discrimination a “reprehensible position[,]”⁶⁰ as do Defendants—yet Plaintiff is asking this Court to bless a reading of the Canons that would permit precisely this discrimination by anyone who expressed a sufficiently sincere religious opposition to interracial marriage.

Third, Plaintiff's irrelevant ancillary arguments do not even interact with this compelling governmental interest analysis, much less explain how Plaintiff would prevail under it.

Plaintiff tries to suggest that public complaints are necessary for a compelling state interest to be served by enforcing nondiscriminatory exercise of the judicial power to marry, *see* Mot. at 25–26, but Plaintiff offers no authority for the proposition that naked partiality and discrimination may only be constitutionally addressed if it is complained about. Additionally, Plaintiff admitted at deposition to having personally received at least one complaint.⁶¹ Plaintiff also admits she gets many communications about her position, many of them negative.⁶² So Plaintiff's contention that there have been “no complaints” is both irrelevant *and* false.

Plaintiff also argues that it won't help same-sex couples if she stops marrying people altogether. *Id.* at 26. Again, this seems to suggest that the Commission's interest has to be in

⁵⁹ Ex. 3, Hensley Dep., 88:12–22.

⁶⁰ Ex. 3, Hensley Dep., 88:12–22 (calling it a “reprehensible position.”)

⁶¹ Ex. 3, Hensley Dep., 46:11–25 (not remembering all of the specifics, but remembering the interaction).

⁶² Ex. 3, Hensley Dep., 72:1–24.

maximizing marriage availability, when the compelling interest here is in the apparent impartiality of the judiciary, so the point is irrelevant. And even if it was true, nothing about ending her discriminatory practice would prevent Plaintiff from continuing to refer same-sex *and* opposite-sex couples to officiants who could meet their needs. Plaintiff seems to think that the problem the Commission had was with her referral procedure. It was not. It was with her refusal to treat same-sex and opposite-sex couples the same. And if Plaintiff were to treat same-sex and opposite-sex couples equally—by marrying neither or both—she would cease to demonstrate partiality. Moreover, as Plaintiff straightforwardly admitted, if she prevails in this case, and if every judge felt as she did, there would be *no secular options in Texas* for same-sex couples.⁶³

Finally, Plaintiff’s argument about the Supreme Court of Texas’s recent comments to the Code of Judicial Conduct is not relevant either. Although Defendants have not yet located a Texas case on the subject, the available authority suggests that the adoption of state codes of judicial conduct is a *legislative*, rather than *judicial* action by a state supreme court. *Am. Civil Liberties Union v. The Florida Bar*, 999 F.2d 1486, 1491 (11th Cir. 1993) (“In addition, the Supreme Court of Florida, in promulgating the Rules Regulating the Florida Bar and the Code of Judicial Conduct, was acting in its legislative capacity.”); *Tweedy v. Oklahoma Bar Ass’n*, 1981 OK 12, ¶ 4, 624 P.2d 1049, 1052 (“All of these rules are promulgated by this court in the exercise of a legislative function as the bar’s regulator.”) (referring to a set of rules including the Oklahoma Code of Judicial Conduct). Acting in a legislative capacity, the Supreme Court of Texas cannot change the Rules of Judicial Conduct retroactively, whether by comment or construction *or* by amendment. *See Fed. Crude Oil Co. v. Yount-Lee Oil Co.*, 52 S.W.2d 56, 63 (1932) (“[T]he expression of an opinion by one Legislature in construing the act of a former Legislature is not conclusive upon the

⁶³ Ex. 3, Hensley Dep., 94:1-10.

courts as it is their province to arrive at the intention of the particular legislature which enacted each of these laws.”); *Rowan Oil Co. v. Texas Employment Commission*, 263 S.W.2d 140, 144 (Tex. 1953) (“[T]he Act cannot release any contributions which accrued ... before its passage and neither does one session of the Legislature have the power to construe the Acts or declare the intent of a past session.”). The Supreme Court of Texas’s new comment to Canon 4 *does* affect its construction going forward, but it can have *no* effect on construction of the Canon retroactively—and thus, as it applies to this case.

In any case, the comment only states that judges may decide not to marry people based on a religious objection—it does not state they may also choose to marry other people if that decision results in apparent discrimination that could “cast reasonable doubt on the judge’s capacity to act impartially as a judge[.]” *See* Texas Code of Judicial Conduct, Canon 4, cmt.

B. Plaintiff’s freestanding declaratory judgment claim is foreclosed by law of the case and by sovereign immunity.

Plaintiff’s final argument badly misconstrues the decision in the Court of Appeals, which explicitly foreclosed *all* of Plaintiff’s *ultra vires* claims seeking declaratory relief as redundant of her TRFRA claims. *Hensley v. State Comm’n on Judicial Conduct*, 717 S.W.3d 106, 115 (Tex. App.—Austin 2025, no pet.) (“Because Hensley can, and has, pursued the relief she seeks through the TRFRA, any remedies she could obtain through her *ultra vires* claim against the Commission’s officers and members would be redundant. We therefore conclude that the trial court did not err in granting Hensley’s plea to the jurisdiction on her *ultra vires* claim.”)⁶⁴.

⁶⁴ Defendants incorporate all of the arguments in their Motion for Partial Summary Judgment, filed Nov. 13, 2025, to the extent applicable—this issue overlaps with that motion and Defendants propose that they be treated together at the hearing.

Plaintiff essentially attempts to argue that she has a freestanding claim for declaratory construction of the Canons and the Texas Constitution against various Commissioners in their official capacities *outside of* her TRFRA claim, but independent of the *ultra vires* claims the Court of Appeals found to be redundant of her TRFRA claim. Nothing in the text of the Court of Appeals’ opinion suggests *any* surviving *ultra vires* claim. *See Hensley*, 717 S.W.3d at 115. Plaintiff seems to be trying to make a separate claim out of a gap—that the Court of Appeals doesn’t separately mention the construction declarations in dismissing the *ultra vires* claims, but even if that gap existed (and it doesn’t) Plaintiff’s *ultra vires* request remains redundant.

If this is anything, it is a pleading problem Plaintiff created for herself—if she failed to request all the declaratory relief she wanted under TRFRA, even though TRFRA offers her the right to seek appropriate declaratory relief, that doesn’t make her separate request for declaratory judgment under an *ultra vires* theory for construction of the legal texts underlying the Commission’s decision any less redundant than the Court of Appeals already found it was. Whether a declaratory judgment claim based on an *ultra vires* theory is a redundant of another claim is a question of what relief *could* be sought under that other claim. *See Tex. State Bd. of Veterinary Med. Examiners v. Giggleman*, 408 S.W.3d 696, 708 (Tex. App.—Austin 2013, no pet.) (claim redundant where it could have been brought under other statute, especially where only available sovereign immunity waiver was under that other statute). Plaintiff cannot explain why she *could not* have sought this specific declaratory relief in her TRFRA claim given that what she ultimately is complaining of is the application of the Canons by the Commission. Her *ultra vires* declaratory judgment remedy remains irrelevant.

In any case, for the reasons already given, Plaintiff *has* violated Canon 4A, and Defendants construed Canon 4A correctly—the Supreme Court of Texas’s new comment to Canon 4 does not

address whether judges in Plaintiff's position may refuse to marry same-sex couples *while still marrying opposite-sex couples*, and the comment cannot apply retroactively.

VI. CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court deny Plaintiff's Motion for Summary Judgment in its entirety.

Respectfully submitted,

By: /s/ John P. Atkins
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COUNSEL FOR DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been served on counsel for all parties of record on this the 28th day of November, 2025.

/s/ John P. Atkins

John P. Atkins

Exhibit 1

Defendant State Commission on Judicial
Conduct's Amended Objections and Responses
to Plaintiff's First Set of Written Discovery

CAUSE NO. D-1-GN-20-003926

Dianne Hensley, on behalf of herself and others similarly situated,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
State Commission on Judicial Conduct, et al.,	§	
	§	
Defendants.	§	459 TH JUDICIAL DISTRICT

**DEFENDANT STATE COMMISSION ON JUDICIAL CONDUCT’S
AMENDED OBJECTIONS AND RESPONSES
TO PLAINTIFF’S FIRST SET OF WRITTEN DISCOVERY**

The Defendant State Commission on Judicial Conduct objects and responds as follows to Plaintiff’s First Set of Written Discovery:

OBJECTIONS AND RESPONSES TO INSTRUCTIONS

Defendants incorporate their Objections and Responses to Plaintiff’s instructions which are included in Defendants’ answers to Plaintiff’s second discovery requests (served September 24, 2025).

OBJECTIONS AND RESPONSES TO DEFINITIONS

Defendants incorporate their Objections and Responses to Plaintiff’s definitions which are included in Defendants’ answers to Plaintiff’s second discovery requests (served September 24, 2025).

AMENDED ANSWERS TO REQUESTS FOR ADMISSION

Request for Admission No. 1: Plaintiff Dianne Hensley serves as a Justice of the Peace in McLennan County, Texas.

RESPONSE: Admitted.

Request for Admission No. 2: Plaintiff Dianne Hensley has served as a Justice of the Peace in McLennan County, Texas, since January 1, 2015.

RESPONSE: Admitted.

Request for Admission No. 3: As a Justice of the Peace, Judge Hensley is authorized but not required to officiate at weddings.

RESPONSE: Admitted that Section 2.202 of the Texas Family Code authorizes a justice of the peace to conduct a marriage ceremony and that she is not required by that statute to do so. If and to the extent Plaintiff intends anything else by her Request, such is denied.

Request for Admission No. 4: Plaintiff Dianne Hensley is a Christian.

RESPONSE: After a reasonably diligent investigation, Defendants lack sufficient information to admit or deny, and therefore deny.

Request for Admission No. 5: Plaintiff Dianne Hensley holds sincere religious beliefs as a Christian that prevent her from officiating a same-sex marriage ceremony.

RESPONSE: Denied.

Request for Admission No. 6: Shortly after the Supreme Court's decision in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), Judge Hensley stopped performing marriage ceremonies entirely.

RESPONSE: After a reasonably diligent investigation, Defendants lack sufficient information to admit or deny, and therefore deny.

Request for Admission No. 7: Judge Hensley resumed performing marriage ceremonies for opposite-sex couples in August of 2016.

RESPONSE: After a reasonably diligent investigation, Defendants lack sufficient information to admit or deny, and therefore deny.

Request for Admission No. 8: Plaintiff Dianne Hensley compiled 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.

RESPONSE: After a reasonably diligent investigation, Defendants lack sufficient information to admit or deny, and therefore deny.

Request for Admission No. 9: One of the officiants on Judge Hensley's referral list is Shelli Misher, who operates a walk-in wedding chapel located just a short walk (three blocks) from Judge Hensley's courtroom.

RESPONSE: After a reasonably diligent investigation, Defendants lack sufficient information to admit or deny, and therefore deny.

Request for Admission No. 10: Although Ms. Misher normally charges more than Judge Hensley, Ms. Misher has nonetheless agreed to provide a discounted rate that matches Judge Hensley's rate to any couple that arrives with a referral from Judge Hensley's chambers.

RESPONSE: After a reasonably diligent investigation, Defendants lack sufficient information to admit or deny, and therefore deny.

Request for Admission No. 11: 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.

RESPONSE: After a reasonably diligent investigation, Defendants lack sufficient information to admit or deny, and therefore deny.

Request for Admission No. 12: 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.

RESPONSE: After a reasonably diligent investigation, Defendants lack sufficient information to admit or deny, and therefore deny.

Request for Admission No. 13: No same-sex couple that sought a wedding from Judge Hensley has ever complained to the State Commission on Judicial Conduct about Judge Hensley's referral system.

RESPONSE: After a reasonably diligent investigation, Defendants lack sufficient information to admit or deny, and therefore deny.

Request for Admission No. 14: No other judge or justice of the peace in Waco other than Judge Hensley—is currently performing marriage ceremonies for members of the general public.

RESPONSE: After a reasonably diligent investigation, Defendants lack sufficient information to admit or deny, and therefore deny.

Request for Admission No. 15: Judge Hensley’s referral system benefits same-sex couples when compared to her earlier practice of refusing to officiate weddings for anyone, because it provides same-sex couples with referrals to every known officiant in McLennan County that is willing to officiate same-sex weddings.

RESPONSE: Denied.

Request for Admission No. 16: Judge Hensley’s referral system benefits opposite-sex couples when compared to her earlier practice of refusing to officiate weddings for anyone, because it allows opposite-sex couples to obtain a justice-of-the-peace wedding when no other judges or justices of the peace in Waco are willing to officiate any weddings after *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

RESPONSE: Denied.

Request for Admission No. 17: The Constitution and the 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.”).

RESPONSE: Denied.

Request for Admission No. 18: Texas has not amended its Constitution or its marriage laws in response to the Supreme Court’s decision in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

RESPONSE: Denied.

Request for Admission No. 19: The Supreme Court of Texas stated in *Pidgeon v. Turner*, 538 S.W.3d 73 (Tex. 2017), that the federal judiciary has no authority to veto, erase, “strike down,” or formally revoke a state statute, even when the federal judiciary has declared the statute unconstitutional or enjoined its enforcement. *See id.* at 88 n.21 (“We note that neither 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, even though the government may no longer constitutionally enforce it. Thus, the Texas and Houston DOMAs remain in place as they were before *Obergefell* and *De Leon*, which is why *Pidgeon* is able to bring this claim.”).

RESPONSE: Objection, as this is not a question in any way relevant to fact discovery. Without waiving this objection, denied that this is an accurate statement of the Supreme Court of Texas’s position on what happens to a law when it is struck down by a Court of last resort. *See In re Lester*, 602 S.W.3d 469, 473 (Tex. 2020) (“Here, as a matter of historical fact, Lester’s conduct

was not a crime at the time it was committed because the Court of Criminal Appeals had already declared the online-solicitation statute unconstitutional. Lester is therefore actually innocent in the same way that someone taking a stroll in the park is actually innocent of the crime of walking on a sidewalk. No such crime exists.”) *see also id.* at 483 (Blacklock, J., dissenting, construing the Court’s decision in *In re Lester* as overruling *sub silentio* the Court’s footnote in *Pidgeon* cited in the RFA above).

Request for Admission No. 20: The Attorney General of the United States proclaimed in 1937 that that the federal judiciary has no authority to veto, erase, “strike down,” or formally revoke a state statute, even when the federal judiciary has declared the statute unconstitutional or enjoined its enforcement. *See* Homer Cummings, *Status of the District of Columbia Minimum Wage Law*, 39 Op. Att’y Gen. 22, 22-23 (1937) (“[T]he courts have no power to repeal or abolish a statute, and that notwithstanding a decision holding it unconstitutional a statute continues to remain on the statute books”).

RESPONSE: Objection, as this is not a question in any way relevant to fact discovery. The request is irrelevant. Without waiving these objections, the Commission denies that the statement described above is an accurate or binding description of the law, even if accurately transcribed.

Request for Admission No. 21: Judge Hensley argued before the Commission on Judicial Conduct that the Texas Religious Freedom Restoration Act protects 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.

RESPONSE: Defendants have produced an audio recording of Judge Hensley’s words to the Commission, and these speak for themselves. Defendants admit that the produced audio recording is an accurate reflection of what Judge Hensley and her counsel said to the Commission.

Request for Admission No. 22: The Commission’s Public Warning of November 12, 2019, does not acknowledge or address the Texas Religious Freedom Restoration Act, and it does not respond to the arguments that Judge Hensley made in reliance on that statute.

RESPONSE: Admitted that the Public Warning does not cite or mention the Texas Religious Freedom Restoration Act, otherwise denied.

Request for Admission No. 23: The Commission’s investigation and punishment of Judge Hensley for acting in accordance with the commands of her Christian faith substantially burden Judge Hensley’s free exercise of religion.

RESPONSE: Denied.

Request for Admission No. 24: The Commission’s threat to impose further discipline on Judge Hensley if she persists in recusing herself from officiating at same-sex weddings substantially burdens Judge Hensley’s free exercise of religion.

RESPONSE: Defendants object to the use of the term “recuse” because a refusal to provide services for reasons unrelated to avoiding actual or apparent partiality or an actual or apparent conflict of interest is not, in any ordinary sense, a recusal. Defendants also object to the premise concerning “threat to impose further discipline.” Without waiving the objection, denied.

Request for Admission No. 25: 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*.

RESPONSE: Defendants object to the use of the term “recuse” because a refusal to provide services for reasons unrelated to avoiding actual or apparent partiality or an actual or apparent conflict of interest is not, in any ordinary sense, a recusal. Construing this request as asking about Plaintiff’s decision to stop officiating weddings entirely, Defendants lack sufficient information to admit or deny, and therefore denies.

Request for Admission No. 26: It is the position of the Commission on Judicial Conduct that the performance of weddings is not a “judicial duty” within the meaning of Canon 3B(6).

RESPONSE: Defendants object to this Request on the basis of relevance. Whether Canon 3B(6) applies to marriages is a legal question (1) unnecessary to the disposition of this case and (2) not susceptible to productive examination in fact discovery. Without waiving these objections, the Commission has no position on this question, and so answers “denied.”

Request for Admission No. 27: It is the position of the Commission on Judicial Conduct that the performance of weddings is a “judicial duty” within the meaning of Canon 3B(6).

RESPONSE: Defendants object to this Request on the basis of relevance. Whether Canon 3B(6) applies to marriages is a legal question (1) unnecessary to the disposition of this case and (2) not susceptible to productive examination in fact discovery. Without waiving these objections, the Commission has no position on this question, and so answers “denied.”

Request for Admission No. 28: It is the position of the Commission on Judicial Conduct that a judge who publicly expresses disapproval of homosexual behavior is casting reasonable doubt on his capacity to act impartially as a judge.

RESPONSE: Defendants object to the request as irrelevant and misleading to the extent it attempts to suggest that the Commission’s warnings were issued based on mere expressions of disapproval of homosexuality by Plaintiff. Without waiving these objections, denied, as the Commission does not have generic “positions” on ill-defined and abstract hypotheticals.

Request for Admission No. 29: It is the position of the Commission on Judicial Conduct that a judge who publicly expresses disapproval of same-sex marriage is casting reasonable doubt on his capacity to act impartially as a judge.

RESPONSE: Defendants object to the request as irrelevant and misleading to the extent it attempts to suggest that the Commission’s warnings were issued based on mere expressions of disapproval of homosexuality by Plaintiff. Without waiving these objections, denied, as the Commission does not have generic “positions” on ill-defined and abstract hypotheticals.

Request for Admission No. 30: It is the position of the Commission on Judicial Conduct that a judge who refuses to perform incestuous marriages, while performing marriages for non-incestuous couples, is casting reasonable doubt on his capacity to act impartially as a judge.

RESPONSE: Defendants object to the request as irrelevant. Without waiving this objection, denied, as the Commission does not have generic “positions” on ill-defined and abstract hypotheticals.

Request for Admission No. 31: It is the position of the Commission on Judicial Conduct that a judge who refuses to perform polygamous marriages, while performing marriages for non-polygamous couples, is casting reasonable doubt on his capacity to act impartially as a judge.

RESPONSE: Defendants object to the request as irrelevant. Without waiving this objection, denied, as the Commission does not have generic “positions” on ill-defined and abstract hypotheticals.

Request for Admission No. 32: It is the position of the Commission on Judicial Conduct that a judge who openly belongs to a church that condemns homosexual conduct—such as the Roman Catholic Church, the Southern Baptist Convention, or the Church of Jesus Christ Latter-Day Saints—is casting reasonable doubt on his capacity to act impartially as a judge.

RESPONSE: Defendants object to the request as irrelevant and misleading to the extent it attempts to suggest that the Commission’s warnings were issued based Plaintiff’s religious affiliation. Without waiving these objections, denied.

Request for Admission No. 33: It is the position of the Commission on Judicial Conduct that a judge who publicly expresses disapproval of adultery is casting reasonable doubt on his capacity to act impartially as a judge.

RESPONSE: Defendants object to the request as irrelevant and misleading to the extent it attempts to suggest that the Commission’s warnings were issued based on mere expressions of disapproval of homosexuality by Plaintiff. Without waiving these objections, denied, as the Commission does not have generic “positions” on ill-defined and abstract hypotheticals.

Request for Admission No. 34: It is the position of the Commission on Judicial Conduct that a judge who publicly expresses disapproval of pre-marital sex is casting reasonable doubt on his capacity to act impartially as a judge.

RESPONSE: Defendants object to the request as irrelevant and misleading to the extent it attempts to suggest that the Commission’s warnings were issued based on mere expressions of disapproval of homosexuality by Plaintiff. Without waiving these objections, denied, as the Commission does not have generic “positions” on ill-defined and abstract hypotheticals.

Request for Admission No. 35: It is the position of the Commission on Judicial Conduct that a judge who publicly expresses disapproval of polygamy is casting reasonable doubt on his capacity to act impartially as a judge.

RESPONSE: Defendants object to the request as irrelevant and misleading to the extent it attempts to suggest that the Commission’s warnings were issued based on mere expressions of disapproval of homosexuality by Plaintiff. Without waiving these objections, denied, as the Commission does not have generic “positions” on ill-defined and abstract hypotheticals.

Request for Admission No. 36: It is the position of the Commission on Judicial Conduct that a judge who publicly expresses disapproval of prostitution is casting reasonable doubt on his capacity to act impartially as a judge.

RESPONSE: Defendants object to the request as irrelevant and misleading to the extent it attempts to suggest that the Commission’s warnings were issued based on mere expressions of disapproval of homosexuality by Plaintiff. Without waiving these objections, denied, as the Commission does not have generic “positions” on ill-defined and abstract hypotheticals.

Request for Admission No. 37: It is the position of the Commission on Judicial Conduct that a judge who publicly expresses disapproval of pederasty is casting reasonable doubt on his capacity to act impartially as a judge.

RESPONSE: Defendants object to the request as irrelevant and misleading to the extent it attempts to suggest that the Commission’s warnings were issued based on mere expressions of disapproval of homosexuality by Plaintiff. Without waiving these objections, denied, as the Commission does not have generic “positions” on ill-defined and abstract hypotheticals.

Request for Admission No. 38: It is the position of the Commission on Judicial Conduct that a judge who publicly expresses disapproval of pedophilia is casting reasonable doubt on his capacity to act impartially as a judge.

RESPONSE: Defendants object to the request as irrelevant and misleading to the extent it attempts to suggest that the Commission’s warnings were issued based on mere expressions of disapproval of homosexuality by Plaintiff. Without waiving these objections, denied, as the Commission does not have generic “positions” on ill-defined and abstract hypotheticals.

Request for Admission No. 39: It is the position of the Commission on Judicial Conduct that a judge who publicly expresses disapproval of bestiality is casting reasonable doubt on his capacity to act impartially as a judge.

RESPONSE: Defendants object to the request as irrelevant and misleading to the extent it attempts to suggest that the Commission’s warnings were issued based on mere expressions of

disapproval of homosexuality by Plaintiff. Without waiving these objections, denied, as the Commission does not have generic “positions” on ill-defined and abstract hypotheticals.

Request for Admission No. 40: It is the position of the Commission on Judicial Conduct that a judge who publicly expresses disapproval of murder is casting reasonable doubt on his capacity to act impartially as a judge.

RESPONSE: Defendants object to the request as irrelevant and misleading to the extent it attempts to suggest that the Commission’s warnings were issued based on mere expressions of disapproval of homosexuality by Plaintiff. Without waiving these objections, denied, as the Commission does not have generic “positions” on ill-defined and abstract hypotheticals.

Request for Admission No. 41: It is the position of the Commission on Judicial Conduct that a judge who publicly expresses disapproval of rape is casting reasonable doubt on his capacity to act impartially as a judge.

RESPONSE: Defendants object to the request as irrelevant and misleading to the extent it attempts to suggest that the Commission’s warnings were issued based on mere expressions of disapproval of homosexuality by Plaintiff. Without waiving these objections, denied, as the Commission does not have generic “positions” on ill-defined and abstract hypotheticals.

Request for Admission No. 42: It is the position of the Commission on Judicial Conduct that a judge who publicly expresses disapproval of a person’s behavior is casting reasonable doubt on his capacity to act impartially toward any litigant who engages in that behavior.

RESPONSE: Defendants object to the request as irrelevant and misleading to the extent it attempts to suggest that the Commission’s warnings were issued based on mere expressions of disapproval of homosexuality by Plaintiff. Without waiving these objections, denied, as the Commission does not have generic “positions” on ill-defined and abstract hypotheticals.

Request for Admission No. 43: It is the position of the Commission on Judicial Conduct that a judge who publicly expresses disapproval of homosexual behavior is not casting reasonable doubt on his capacity to act impartially as a judge.

RESPONSE: Defendants object to the request as irrelevant and misleading to the extent it attempts to suggest that the Commission’s warnings were issued based on mere expressions of disapproval of homosexuality by Plaintiff. Without waiving these objections, denied, as the Commission does not have generic “positions” on ill-defined and abstract hypotheticals.

Request for Admission No. 44: It is the position of the Commission on Judicial Conduct that a judge who publicly expresses disapproval of same-sex marriage is not casting reasonable doubt on his capacity to act impartially as a judge.

RESPONSE: Defendants object to the request as irrelevant and misleading to the extent it attempts to suggest that the Commission’s warnings were issued based on mere expressions of disapproval of homosexuality by Plaintiff. Without waiving these objections, denied, as the Commission does not have generic “positions” on ill-defined and abstract hypotheticals.

Request for Admission No. 45: It is the position of the Commission on Judicial Conduct that a judge who refuses to perform incestuous marriages, while performing marriages for non-incestuous couples, is not casting reasonable doubt on his capacity to act impartially as a judge.

RESPONSE: Defendants object to the request as irrelevant. Without waiving this objection, denied, as the Commission does not have generic “positions” on ill-defined and abstract hypotheticals.

Request for Admission No. 46: It is the position of the Commission on Judicial Conduct that a judge who refuses to perform polygamous marriages, while performing marriages for non-polygamous couples, is not casting reasonable doubt on his capacity to act impartially as a judge.

RESPONSE: Defendants object to the request as irrelevant. Without waiving this objection, denied, as the Commission does not have generic “positions” on ill-defined and abstract hypotheticals.

Request for Admission No. 47: It is the position of the Commission on Judicial Conduct that a judge who openly belongs to a church that condemns homosexual conduct—such as the Roman Catholic Church, the Southern Baptist Convention, or the Church of Jesus Christ Latter-Day Saints—is not casting reasonable doubt on his capacity to act impartially as a judge.

RESPONSE: Defendants object to the request as irrelevant and misleading to the extent it attempts to suggest that the Commission’s warnings were issued based Plaintiff’s religious affiliation. Without waiving these objections, denied.

Request for Admission No. 48: It is the position of the Commission on Judicial Conduct that a judge who publicly expresses disapproval of adultery is not casting reasonable doubt on his capacity to act impartially as a judge.

RESPONSE: Defendants object to the request as irrelevant and misleading to the extent it attempts to suggest that the Commission’s warnings were issued based on mere expressions of disapproval of homosexuality by Plaintiff. Without waiving these objections, denied, as the Commission does not have generic “positions” on ill-defined and abstract hypotheticals.

Request for Admission No. 49: It is the position of the Commission on Judicial Conduct that a judge who publicly expresses disapproval of pre-marital sex is not casting reasonable doubt on his capacity to act impartially as a judge.

RESPONSE: Defendants object to the request as irrelevant and misleading to the extent it attempts to suggest that the Commission’s warnings were issued based on mere expressions of disapproval of homosexuality by Plaintiff. Without waiving these objections, denied, as the Commission does not have generic “positions” on ill-defined and abstract hypotheticals.

Request for Admission No. 50: It is the position of the Commission on Judicial Conduct that a judge who publicly expresses disapproval of polygamy is not casting reasonable doubt on his capacity to act impartially as a judge.

RESPONSE: Defendants object to the request as irrelevant and misleading to the extent it attempts to suggest that the Commission’s warnings were issued based on mere expressions of disapproval of homosexuality by Plaintiff. Without waiving these objections, denied, as the Commission does not have generic “positions” on ill-defined and abstract hypotheticals.

Request for Admission No. 51: It is the position of the Commission on Judicial Conduct that a judge who publicly expresses disapproval of prostitution is not casting reasonable doubt on his capacity to act impartially as a judge.

RESPONSE: Defendants object to the request as irrelevant and misleading to the extent it attempts to suggest that the Commission’s warnings were issued based on mere expressions of disapproval of homosexuality by Plaintiff. Without waiving these objections, denied, as the Commission does not have generic “positions” on ill-defined and abstract hypotheticals.

Request for Admission No. 52: It is the position of the Commission on Judicial Conduct that a judge who publicly expresses disapproval of pederasty is not casting reasonable doubt on his capacity to act impartially as a judge.

RESPONSE: Defendants object to the request as irrelevant and misleading to the extent it attempts to suggest that the Commission’s warnings were issued based on mere expressions of disapproval of homosexuality by Plaintiff. Without waiving these objections, denied, as the Commission does not have generic “positions” on ill-defined and abstract hypotheticals.

Request for Admission No. 53: It is the position of the Commission on Judicial Conduct that a judge who publicly expresses disapproval of pedophilia is not casting reasonable doubt on his capacity to act impartially as a judge.

RESPONSE: Defendants object to the request as irrelevant and misleading to the extent it attempts to suggest that the Commission’s warnings were issued based on mere expressions of

disapproval of homosexuality by Plaintiff. Without waiving these objections, denied, as the Commission does not have generic “positions” on ill-defined and abstract hypotheticals.

Request for Admission No. 54: It is the position of the Commission on Judicial Conduct that a judge who publicly expresses disapproval of bestiality is not casting reasonable doubt on his capacity to act impartially as a judge.

RESPONSE: Defendants object to the request as irrelevant and misleading to the extent it attempts to suggest that the Commission’s warnings were issued based on mere expressions of disapproval of homosexuality by Plaintiff. Without waiving these objections, denied, as the Commission does not have generic “positions” on ill-defined and abstract hypotheticals.

Request for Admission No. 55: It is the position of the Commission on Judicial Conduct that a judge who publicly expresses disapproval of murder is not casting reasonable doubt on his capacity to act impartially as a judge.

RESPONSE: Defendants object to the request as irrelevant and misleading to the extent it attempts to suggest that the Commission’s warnings were issued based on mere expressions of disapproval of homosexuality by Plaintiff. Without waiving these objections, denied, as the Commission does not have generic “positions” on ill-defined and abstract hypotheticals.

Request for Admission No. 56: It is the position of the Commission on Judicial Conduct that a judge who publicly expresses disapproval of rape is not casting reasonable doubt on his capacity to act impartially as a judge.

RESPONSE: Defendants object to the request as irrelevant and misleading to the extent it attempts to suggest that the Commission’s warnings were issued based on mere expressions of disapproval of homosexuality by Plaintiff. Without waiving these objections, denied, as the Commission does not have generic “positions” on ill-defined and abstract hypotheticals.

Request for Admission No. 57: It is the position of the Commission on Judicial Conduct that a judge who publicly expresses disapproval of a person’s behavior is not casting reasonable doubt on his capacity to act impartially toward any litigant who engages in that behavior.

RESPONSE: Defendants object to the request as irrelevant and misleading to the extent it attempts to suggest that the Commission’s warnings were issued based on mere expressions of disapproval of homosexuality by Plaintiff. Without waiving these objections, denied, as the Commission does not have generic “positions” on ill-defined and abstract hypotheticals.

REQUESTS FOR PRODUCTION

Request for Production No. 1: A reproduction of each record constituting a communication you have had with any person or entity about Judge Hensley, the Commission’s investigation and disciplinary proceedings regarding Judge Hensley, the issue of same-sex marriage, the issue of religious freedom, the Texas Religious Freedom Restoration Act, or whether judges or justices of the peace should be permitted to recuse themselves from officiating at same-sex marriage ceremonies.

RESPONSE:

As written, and assuming the application of Plaintiff’s definitions of “you” and “the Commission” to which Defendants have objected, this request is overbroad, seeks information

outside of Defendants' control, seeks irrelevant information, invades the attorney-client and work product privileges, and would impose a disproportionate burden to answer. Defendants therefore object and will answer only the portion of this request that is not objectionable.

Overbreadth. The request is overbroad because it is not limited in time, not limited in topic to questions relevant to the facts at issue in this case, not limited to individuals who worked for the Commission at all or (if they did) at a relevant time, and expressly encompasses communications with entities that have no obvious relevance to the facts of this case.¹ The request, as phrased, does not describe with reasonable particularity what is being sought, or reasonably limit what is being sought to ensure it is relevant and proportional. Defendants are only searching for and will only produce material as limited by the constructions of this request adopted and described in their relevance objection to this request, below.

Information outside the Commission's control. Because it seeks the personal communications of former officers, commissioners, agents, or "purport[ed]" agents, the request encompasses the personal records of individuals from whom the Commission has no present lawful ability to compel production. Defendants cannot produce responsive information they do not control, and they object to any attempt to place that burden on them.

¹ Under original definitions and as-written, every message any person who ever worked for the Commission in any capacity, or ever claimed they did (the definition of "you" includes individuals who only purport to represent the Commission whether or not they have any actual authority), has ever sent or received that referred to any of three broad, politically significant topics would be responsive. This would include things like personal emails touching on the subject of "religious freedom," every wedding invitation or RSVP answer regarding a same-sex wedding, but also Facebook messages and Twitter posts from employees of the Commission who left their employment before any investigation of Judge Hensley began (indeed, before *Obergefell* was decided), regardless of whether those messages or posts were made during the time those individuals worked at the Commission. It would encompass political blast emails that went into junk mail filters or archives but were sent to some email address affiliated with someone who was once affiliated with (or claimed to be affiliated with) the Commission.

Attorney-client and work product privileges. As written, the request would encompass all requests for legal advice associated with any of these extremely broad topics by any person who has ever been affiliated with or claimed to be affiliated with the Commission. As is the ordinary practice for matters in litigation, Defendants will construe this request as not seeking all of Defendants' communications with their counsel in this case, though a straightforward reading of the request, with the definitions Plaintiff has given, would include such communications. Even with this limiting construction, however, the request still encompasses attorney-client and work product privileged information relating to pre-litigation matters and matters outside of this litigation, as well as communications relating directly to this litigation. Defendants are withholding these documents and communications on the basis of the attorney-client and work product privileges.

Relevance. Communications broadly relating to “the issue of same-sex marriage,” “the issue of religious freedom,” or “the Texas Religious Freedom Restoration Act” **but not related to** “Judge Hensley,” “the Commission's investigation and disciplinary proceedings regarding Judge Hensley,” or “whether judges or justices of the peace should be permitted [to refuse to marry same-sex couples while marrying opposite-sex couples]” are wholly irrelevant. As are communications from before May of 2018 (when Plaintiff alleges the investigation began). Any communications by or to officers, Commissioners, or agents who were not involved with the Commission at any relevant time are also irrelevant. Defendants are limiting their searches for responsive information to those matters related to Plaintiff, the investigation, and the specific judicial ethics question at issue here, to the time frame of after May 2018, and to communicants who worked with the commission at any relevant time. Defendants are therefore withholding (and not producing) any material such a search would not turn up.

Additionally, the individual Defendants in this case are solely sued in their official capacities, so personal communications of same are irrelevant. Therefore, Defendants will narrow this request to be less objectionable by imposing on it the counter-definitions of “you” and “the Commission” they have offered above. This will narrow the request so that it does not include:

- (1) Irrelevant personal communications (communications not made or received in a person's capacity as a Commissioner, officer, or agent of the Commission, which Defendants may have no authority to demand from current and former personnel in any case);
- (2) Communications to or by Commissioners, officers, or agents who were not Commissioners, officers, or agents at any time relevant to Plaintiff's case;
- (3) Communications to or by individuals who were never affiliated with the Commission, but merely “purported” to be.

Defendants are only searching for, and therefore will only produce, communications responsive to this Request as limited above, and as construed through the above definition.

Disproportionate burden. In Defendants' view, this Request, as written, is so obviously overbroad that it is disproportionate on its face. Defendants refer Plaintiff to the Declaration of Jacqueline Habersham, attached to Defendants answers to Plaintiff's second discovery requests. Given the relatively small amount of money at stake in the litigation, and the complete irrelevance of any of the objected-to responsive material to any issue in dispute between the parties, the scale weighs heavily against requiring compliance with the Request as originally written.

Defendants have conducted a reasonably diligent search limited by their objections and have produced all documents responsive to this request.

Request for Production No. 2: A reproduction of each record constituting a communication you have had with any entity that supports homosexual rights or any person affiliated with such an entity. These entities include, but are not limited to, Equality Texas, Lambda Legal, the Human Rights Campaign, or any entity with the word “Gay,” “Pride,” “LGBT,” “LGBTQ,” or “Queer” as part of its name.

RESPONSE:

As written, and assuming the application of Plaintiff’s definitions of “you” and “the Commission” to which Defendants have objected, this request is overbroad, vague and ambiguous, seeks information outside of Defendants' control, seeks irrelevant information, and would impose a disproportionate burden to answer. Defendants therefore object and will answer only the portion of this request that is not objectionable.

Overbreadth. The request is overbroad because it is not limited in time, not limited in topic to questions relevant to the facts at issue in this case, not limited to individuals who worked for the Commission at all or (if they did) at a relevant time, not limited to “official capacity” communications, and expressly encompasses communications with entities that have no obvious relevance to the facts of this case. It is not limited to a list of groups but includes "any entity that supports homosexual rights or any person affiliated with such an entity," and it contains no limit as to the topic of the communication itself, so communications wholly unrelated to same-sex marriage from a group that has homosexual rights as one of its many political interests would be included. It is not clear how Defendants are supposed to know whether a certain group "supports homosexual rights" if the communications it receives do not explicitly so state, nor is it clear how Defendants are supposed to determine whether a person who sent a communication is "affiliated" with such a group, but the lack of limitation dramatically increases the scope of the request, the

burden of compliance, and the irrelevancy of the responsive information. Defendants are only searching for and will only produce material as limited by the constructions of this request adopted and described in their relevance objection to this request, below.

Vagueness. Defendants do not know what "supports homosexual rights" means in this context. Many Texas businesses have policies offering spousal benefits to same-sex couples—are these entities that "support homosexual rights"? Defendants do not know all of the political positions of every entity they are contacted by. Defendants also do not know what it means for a person to be "affiliated" with such an entity, or how Defendants are supposed to know if someone has such an affiliation unless they explicitly so state. This vagueness means that the broadest possible reading is the only way to be sure the answer complies, but such a reading is overbroad (even more than the Request already is), would result in the collection of a great deal of irrelevant material, and would further result in a burden disproportionate to the needs of the case. Defendants will therefore only provide responsive communications to or from third parties which are also responsive to Request for Production No. 1 (as limited by Defendants' objections), as this will eliminate any vagueness issues and ensure that Plaintiff receives relevant communications. Defendants will neither search for nor produce any other communications in response to this request.

Information outside the Commission's control. Because it seeks the personal communications of former officers, commissioners, agents, or “purport[ed]” agents, the request encompasses the personal records of individuals from whom the Commission has no present lawful ability to compel production. Defendants cannot produce responsive information they do not control, and they object to any attempt to place that burden on them.

Relevance. Communications described in Request for Production No. 2, but which are not responsive to Request for Production No. 1 (as narrowed by Defendants' objections) are wholly irrelevant. Defendants will not search for, and therefore will withhold and not produce, any responsive communications not also responsive to Request for Production No. 1. Moreover, Defendants impose the same narrowing of the definition of "you," defining the relevant time period, limiting the request to relevant Commission agents, and limiting the subject matter to facts relevant to this case, and will not conduct a search or produce responsive documents beyond this narrowed range as any such documents will necessarily be irrelevant.

Disproportionate burden. In Defendants' view, this Request, as written, is so obviously overbroad that it is disproportionate on its face. Defendants refer Plaintiff to the Declaration of Jacqueline Habersham, attached to Defendants answers to Plaintiff's second discovery requests. Given the relatively small amount of money at stake in the litigation, and the complete irrelevance of any of the objected-to responsive material to any issue in dispute between the parties, the scale weighs heavily against requiring compliance with the Request as originally written.

Defendants have conducted a reasonably diligent search limited by their objections and have located no responsive documents.

Request for Production No. 3: A reproduction of each record constituting a communication between or among the Commission's personnel (including all Commissioners, officers, employees, staff, volunteers, or anyone else acting on the Commission's behalf) referring to Judge Hensley, the Commission's investigation and disciplinary proceedings regarding Judge Hensley, the issue of same-sex marriage, the issue of religious freedom, the Texas Religious Freedom

Restoration Act, or whether judges or justices of the peace should be permitted to recuse themselves from officiating at same-sex marriage ceremonies.

RESPONSE:

As written, and assuming the application of Plaintiff's definitions of "the Commission" to which Defendants have objected, this request is overbroad, seeks information outside of Defendants' control, seeks irrelevant information, invades the attorney-client and work product privileges, and would impose a disproportionate burden to answer. Defendants therefore object and will answer only the portion of this request that is not objectionable.

Overbreadth. The request is overbroad because it is not limited in time, not limited in topic to questions relevant to the facts at issue in this case, not limited to individuals who worked for the Commission at all or (if they did) at a relevant time, and not limited to "official capacity" communications. Under original definitions and as-written, it includes every message any person who ever worked for the Commission in any capacity (doubly, since they are included both within the definition of "Commission" and separately as "personnel" in the Request itself), or ever claimed they did (the definition of "the Commission" includes individuals who only purport to represent the Commission whether or not they have any actual authority) has ever sent to or received from any other person who ever worked for the Commission (or purported to) relating to several important political topics, whether or not the communication was exclusively personal and sent through personal channels, regardless of when the communication was sent or received relative to the facts of this case. Because Defendants construe Request for Production No. 1 as encompassing internal communications related to the topics listed in that Request, no non-overbroad, non-objectionable material in this Request is not covered by Request for Production No. 1.

Information outside the Commission’s control. Because it seeks the personal communications of former officers, commissioners, agents, or “purport[ed]” agents, the request encompasses the personal records of individuals from whom the Commission has no present lawful ability to compel production. Defendants cannot produce responsive information they do not control, and they object to any attempt to place that burden on them.

Attorney-client and work product privileges. As written, the request would encompass all requests for legal advice associated with any of these extremely broad topics by any person who has ever been affiliated with or claimed to be affiliated with the Commission. As is the ordinary practice for matters in litigation, Defendants will construe this request as not seeking all of Defendants' communications with their counsel in this case, though a straightforward reading of the request, with the definitions Plaintiff has given, would include such communications. Even with this limiting construction, however, the request still encompasses attorney-client and work product privileged information relating to pre-litigation matters and matters outside of this litigation, as well as communications relating directly to this litigation. Defendants are withholding these documents and communications on the basis of the attorney-client and work product privileges.

Relevance. Communications broadly relating to “the issue of same-sex marriage,” “the issue of religious freedom,” or “the Texas Religious Freedom Restoration Act” **but not related to** “Judge Hensley,” “the Commission's investigation and disciplinary proceedings regarding Judge Hensley,” “the Commission's decision to rescind the Public Warning that it previously issued to Judge Hensley,” or “whether judges or justices of the peace should be permitted [to refuse to marry same-sex couples while marrying opposite-sex couples]” are wholly irrelevant to any of these questions. As are communications from before May of 2018 (when Plaintiff alleges the

investigation began). Any communications by or to officers, Commissioners, or agents who were not involved with the Commission at any relevant time are also irrelevant. Defendants will not search for or produce any arguably responsive material described above.

Additionally, the individual Defendants in this case are solely sued in their official capacities, so personal communications relating to same are irrelevant. Therefore, Defendants will narrow this request to be less objectionable by imposing on it the counter-definition of “the Commission” they have offered above. This will narrow the request so that it does not include:

- (1) Irrelevant personal communications (communications not made or received in a person's capacity as a Commissioner, officer, or agent of the Commission, which Defendants may have no authority to demand from current and former personnel in any case);
- (2) Communications to or by Commissioners, officers, or agents who were not Commissioners, officers, or agents at any time relevant to Plaintiff's case;
- (3) Communications to or by individuals who were never affiliated with the Commission, but merely "purported" to be.

Disproportionate burden. In Defendants' view, this Request, as written, is so obviously overbroad that it is disproportionate on its face. Defendants refer Plaintiff to the Declaration of Jacqueline Habersham, attached to Defendants answers to Plaintiff's second discovery requests. Given the relatively small amount of money at stake in the litigation, and the complete irrelevance of any of the objected-to responsive material to any issue in dispute between the parties, the scale weighs heavily against requiring compliance with the Request as originally written.

Defendants have conducted a reasonably diligent search limited by their objections and have located no documents responsive to this request that were not previously produced as responsive to Request for Production No. 1.

Request for Production No. 4: A reproduction of each record that relates to the Commission's meetings and deliberations regarding Judge Hensley.

RESPONSE:

As written, and assuming the application of Plaintiff's definitions of "the Commission" to which Defendants have objected, this request is overbroad, seeks irrelevant information, invades the attorney-client and work product privileges, and would impose a disproportionate burden to answer. Defendants therefore object and will answer only the portion of this request that is not objectionable.

Overbreadth. The request is overbroad because it is not limited in time and not limited in topic to questions relevant to the facts at issue in this case. The request, as phrased, does not describe with reasonable particularity what is being sought, or reasonably limit what is being sought to ensure it is relevant and proportional. Defendants are only searching for and will only produce material as limited by the constructions of this request adopted and described in their relevance objection to this request, below.

Attorney-client and work product privileges. As written, the request would encompass all requests for legal advice associated with any of these extremely broad topics by any person who has ever been affiliated with or claimed to be affiliated with the Commission. As is the ordinary practice for matters in litigation, Defendants will construe this request as not seeking all of Defendants' communications with their counsel in this case, though a straightforward reading

of the request, with the definitions Plaintiff has given, would include such communications. Even with this limiting construction, however, the request still encompasses attorney-client and work product privileged information relating to pre-litigation matters and matters outside of this litigation, as well as communications relating directly to this litigation. Defendants are withholding these documents and communications on the basis of the attorney-client and work product privileges.

Relevance. Communications from before May of 2018 (when Plaintiff alleges the investigation began) are wholly irrelevant. Defendants will not search for or produce any responsive material prior to May of 2018.

Disproportionate burden. In Defendants' view, this Request, as written, is so obviously overbroad that it is disproportionate on its face. Defendants refer Plaintiff to the Declaration of Jacqueline Habersham, attached to Defendants answers to Plaintiff's second discovery requests. Given the relatively small amount of money at stake in the litigation, and the complete irrelevance of any of the objected-to responsive material to any issue in dispute between the parties, the scale weighs heavily against requiring compliance with the Request as originally written.

Defendants have conducted a reasonably diligent search limited by their objections and have produced all documents responsive to this request.

Request for Production No. 5: A reproduction of each record that evinces the views of any individual Commissioner on whether Judge Hensley should be disciplined for her decision to recuse herself from same-sex marriage ceremonies.

RESPONSE:

Defendant objects on the basis of relevancy and overbreadth. Discovery inquiries concerning internal communications or mental processes or “views” are not relevant to the issues alleged by Plaintiff, nor are they reasonably calculated to lead to the discovery of admissible evidence. Motive and subjective intent are not elements of any cause of action pleaded by Plaintiff. Moreover, any such communications relating to a matter before the Commission are strictly protected against disclosure by constitutional and statutory provisions governing confidentiality.

Defendant further objects because the Commission takes action as an entity, and thus any individual “views” are not relevant to any of the causes of action pleaded by Plaintiff.

INTERROGATORIES

Interrogatory No. 1: Please identify each individual or entity that complained to the State Commission on Judicial Conduct about Judge Hensley’s practice of recusing herself from officiating same-sex marriage ceremonies. If no such individual or entity exists, then please state so in your answer.

ANSWER: Defendants object to the use of the term “recuse” because a refusal to provide services for reasons unrelated to avoiding actual or apparent partiality or an actual or apparent conflict of interest is not, in any ordinary sense, a recusal. Without waiving this objection, Defendants answer “none.”

Dated: November 21, 2025

Respectfully submitted,

By: /s/ John P. Atkins
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COUNSEL FOR DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been served on counsel for all parties of record on this the 21st day of November, 2025.

/s/ John P. Atkins
John P. Atkins

Exhibit 2

Plaintiff's Third Amended Petition

Cause No. D-1-GN-20-003926

Dianne Hensley,

Plaintiff,

v.

State Commission on Judicial Conduct; Gary L. Steel, in his official capacity as Chair of the State Commission on Judicial Conduct; **Ken Wise**, in his official capacity as Vice Chair of the State Commission on Judicial Conduct; **Carey F. Walker**, in his official capacity as Secretary of the State Commission on Judicial Conduct; **Clifton Roberson, Kathy P. Ward, Wayne Money, Andrew M. Kahan, Tano E. Tijerina, Chace A. Craig, Sylvia Borunda Firth, Derek M. Cohen, Yinon Weiss, and April I. Aguirre**, each in their official capacities as Members of the State Commission on Judicial Conduct,

Defendants

IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

459th JUDICIAL DISTRICT

PLAINTIFF'S THIRD AMENDED 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 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 of these officiants operated 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 received a discounted rate to comport with Judge Hensley's rate.

Judge Hensley's referral solution 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 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 despite the Commission's warning. She therefore seeks a declaratory judgment that her referral system complies with Texas law, and an injunction that prevents the Commission and its members 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 Gary L. Steel 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 Steel is sued in his official capacity.

5. Defendant Ken Wise 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 Wise is sued in his official capacity.

6. Defendant Carey F. Walker 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 Walker is sued in his official capacity.

7. Defendant Clifton Roberson 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. Commissioner Roberson is sued in his official capacity.

8. Defendant Kathy P. Ward 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. Commissioner Ward is sued in her official capacity.

9. Defendant Wayne Money 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. Commissioner Money is sued in his official capacity.

10. Defendant Andrew M. Kahan 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. Commissioner Kahan is sued in his official capacity.

11. Defendant Tano E. Tijerina 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. Commissioner Tijerina is sued in his official capacity.

12. Defendant Chace A. Craig 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. Commissioner Craig is sued in his official capacity.

13. Defendant Sylvia Borunda Firth 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. Commissioner Firth is sued in her official capacity.

14. Defendant Derek M. Cohen 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. Commissioner Cohen is sued in his official capacity.

15. Defendant Yinon Weiss 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. Commissioner Weiss is sued in his official capacity.

16. Defendant April I. Aguirre 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. Commissioner Aguirre is sued in her 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. Judge Hensley seeks relief that can be granted by courts of law or equity.

18. The Court has jurisdiction over Judge Hensley's requests for damages and declaratory and injunctive 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 Judge Hensley’s request for declaratory and injunctive 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 Travis 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*, 576 U.S. 644 (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 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 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 charged \$125 for her services, which is \$25 more than the \$100 that Judge Hensley charges for a justice-of-the-peace wedding, Ms. Misher generously agreed to provide a \$25 discount to any couple that Judge Hensley refers to her, so that no extra costs were imposed on couples that Judge Hensley refers to her business.

37. 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.

38. If a same-sex couple asked Judge Hensley's office about her availability to officiate weddings, Judge Hensley instructed her staff 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 were 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.

39. 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*.

40. 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 Judge Hensley or her staff about it.

THE COMMISSION'S PROCEEDINGS

41. 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.

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

43. 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.*

44. 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.

45. 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 33–39.

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

47. 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.*

48. 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.*

49. 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.*

50. 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.

51. 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.

52. 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).

53. 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.

54. 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.

55. 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.

CLAIMS FOR RELIEF

56. 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* Tex. 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). Judge Hensley is not bringing any claims for declaratory relief against the Commission itself apart from her claims for declaratory relief under Texas Religious Freedom Restoration Act. *See* Tex. Civ. Prac. & Rem. Code § 110.005(1) (authorizing declaratory relief); *id.* at § 110.008 (waiving sovereign immunity for such claims).

1. Violation of the Texas Religious Freedom Restoration Act

57. 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.

58. 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* Tex. 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.

59. 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.

60. 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.

61. 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, 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.

62. 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* Tex. Civ. Prac. & Rem. Code § 110.005.

63. 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* Tex. Civ. Prac. & Rem. Code § 110.005(a)(3), (b), (d).

64. 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* Tex. Civ. Prac. & Rem. Code § 110.005(a)(1). She is also entitled to an injunction that will prevent the Commission and its members from investigating or sanctioning judges or justices of the peace who recuse themselves from officiating at same-sex weddings on account of their sincere religious beliefs.

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

66. 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. The Supreme Court of Texas has held that Judge Hensley's notice was "clearly sufficient" under the Texas Religious Freedom Restoration Act. *See Hensley v. State Commission on Judicial Conduct*, 692 S.W.3d 184, 199 (Tex. 2024).

2. Texas Declaratory Judgment Act

67. 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.

68. 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. Judge Hensley seeks this declaratory relief only against the individual commissioners, and not the Commission itself.

69. 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. Judge Hensley seeks this declaratory relief only against the individual commissioners, and not the Commission itself.

70. 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. Judge Hensley seeks this declaratory relief only against the individual commissioners, and not the Commission itself.

71. 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. Northglen Ass’n*, 141 S.W.3d 158, 169 (Tex. 2004) (“[W]e are obligated to avoid constitutional problems if possible.”).

72. 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. Judge Hensley seeks this declaratory relief only against the individual commissioners, and not the Commission itself.

73. 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.” Judge Hensley seeks this declaratory relief only against the individual commissioners, and not the Commission itself.

3. *Ultra Vires* Claims

74. Judge Hensley seeks the same declaratory relief described in paragraphs 67–73 against each of the Commissioners in their official capacity.

75. Judge Hensley is also seeking an injunction that will prevent the Commissioners from investigating or sanctioning judges or justices of the peace who recuse themselves from officiating at same-sex weddings on account of their sincere religious beliefs. Judge Hensley asserts these claims for declaratory and injunctive relief under the *ultra vires* doctrine recognized in *City of El Paso v. Heinrich*, 284 S.W.3d 366 (Tex. 2009).

DEMAND FOR JUDGMENT

76. Judge Hensley respectfully asks that the Court:

- a. award the declaratory and injunctive relief described in paragraph 64 and paragraphs 67–75;
- b. award damages to Judge Hensley in the amount of \$10,000;

- c. award costs and attorneys' fees; and
- d. award other relief that the Court may deem just, proper, or equitable.

Respectfully submitted.

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Dated: July 30, 2025

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CERTIFICATE OF SERVICE

I certify that on July 30, 2025, I served this document through the electronic-filing manager upon:

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Exhibit 3

Excerpts from Deposition of Dianne Hensley

1 NO. D-1-GN-20-003926

2
3 DIANNE HENSLEY, ON BEHALF* IN THE DISTRICT COURT
OF HERSELF AND OTHERS *

4 SIMILARLY SITUATED *

5 VS. * 459TH JUDICIAL DISTRICT

6 STATE COMMISSION ON *
JUDICIAL CONDUCT, ET AL * TRAVIS COUNTY, TEXAS

7
8
9
10
11 -----
ORAL AND VIDEOTAPED DEPOSITION OF
DIANNE HENSLEY
12 OCTOBER 23, 2025
13 -----

14
15
16
17 ORAL AND VIDEOTAPED DEPOSITION OF DIANNE HENSLEY,
18 produced as a witness at the instance of the Defendants,
19 and duly sworn, was taken in the above-styled and
20 numbered cause on the 23rd day of October, 2025, from
21 10:06 a.m. to 2:02 p.m., before Gail Spurgeon, Certified
22 Court Reporter in and for the State of Texas, reported
23 by machine shorthand, at the offices of First Liberty
24 Institute, 2001 W. Plano Parkway, Suite 1600, Plano,
25 Texas, pursuant to the Texas Rules of Civil Procedure.

Page 1

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ALSO PRESENT:

Lisa Holms

Miranda Glover, Videographer

INDEX

	PAGE
Appearances.....	2
Changes and Signature.....	110
Reporter's Certificate.....	112

DIANNE HENSLEY

EXAMINATION BY MR. ATKINS.....	5
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EXHIBITS

EXHIBITS	DESCRIPTION	PAGE
Exhibit 1	Video..... (Retained by Counsel)	14
Exhibit 2	Plaintiff Dianne Hensley's Answers to First Set of Requests for Admissions from Defendants	24
Exhibit 3	V.T.C.A. Family Code 2.202..... Persons Authorized to Conduct Ceremony	27
Exhibit 4	Plaintiff's Third Amended Petition.....	30
Exhibit 5	6/25/17 Waco Tribune-Herald Article.....	43
Exhibit 6	1/25/19 Letter.....	49
Exhibit 7	CJC No. 17- 572..... Public Warning	54
Exhibit 8	Notice of Deposition.....	56
Exhibit 9	Texas Code of Judicial Conduct.....	57
Exhibit 10	Plaintiff Dianne Hensley's Responses to First Set of Requests for Production of Documents	59
Exhibit 11	V.T.C.A. Family Code 2.203..... Ceremony	64

1	Exhibit 12	10/22/23 Dallas Morning News Article.....	95
2	Exhibit 13	Plaintiff Dianne Hensley's Answers to First Set of Interrogatories	103

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1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: On the record for the
3 video deposition of Dianne Hensley. Today is
4 October 23rd, 2025, and the time is 10:08 a.m. Will
5 counsel state their appearances.

6 MR. ATKINS: John Atkins and Kendall Kaske
7 from Thompson Coburn, LLP for the defendants.

8 MR. MITCHELL: Jonathan Mitchell from
9 Mitchell Law, PLLC for the plaintiff. I'm joined by my
10 co-counsel, Hiram Sasser, Holly Randall.

11 DIANNE HENSLEY,
12 having been first duly sworn, testified as follows:

13 EXAMINATION

14 BY MR. ATKINS:

15 Q. Judge Hensley, this is surely the first time
16 I've deposed a judge --

17 A. Okay.

18 Q. -- in my life. My name is John Atkins. I'm,
19 obviously, counsel for the defendants in this case.

20 Have you ever been deposed before?

21 A. Yes.

22 Q. How many times?

23 A. Twice.

24 Q. Under what circumstances?

25 A. The most recent, I did a death inquest about

1 A. Yes, I would say that is.

2 Q. So I see there's a person over on the left side
3 in blue. Does that appear to be you?

4 A. Yes.

5 Q. Okay. I'm going to go ahead and play this, and
6 then we're just going to talk a little bit about it.
7 It's only -- it's only three minutes long. There were a
8 lot of people testifying.

9 (Video plays.)

10 Q. (BY MR. ATKINS) Judge Hensley, was that you
11 testifying?

12 A. Yes.

13 Q. Do you remember giving that testimony?

14 A. No.

15 Q. There is some things that you said in that
16 testimony that I want to go over with you. First, is
17 that generally a summary of your feelings in the present
18 day about homosexual marriage?

19 A. Yes.

20 Q. And so some of -- some of the reasons that you
21 gave there include the idea that many cultures and
22 religions have prohibitions against homosexuality,
23 correct?

24 A. Sure.

25 Q. And your view that there are -- can you talk a

1 little bit about the -- your expression that there are
2 risks or I think you mention STDs associated with
3 homosexual relationships?

4 MR. MITCHELL: Objection, form.

5 Q. (BY MR. ATKINS) You can answer.

6 A. I will. I'm not as well versed as I was when I
7 worked in McCAP, but the research that I did showed a
8 substantially higher risk of STDs. It's true for
9 anybody that it is -- has multiple partners, but the
10 research at the time I was researching, it showed it
11 much higher in the homosexual community.

12 Q. And whether or not that's -- whether or not
13 that's true, that's a question of empirical fact, right,
14 whether --

15 A. I would think.

16 Q. And you mentioned the welfare of children, it's
17 important for the welfare of children. Do you still
18 believe that?

19 A. Yes.

20 Q. And the welfare of families. Do you still
21 believe the homosexual marriage is a threat to families?

22 A. Yes.

23 Q. You mentioned during that testimony that you
24 had done up to that point 15 years of research on what
25 was healthy for a family. Do you remember what any of

1 Q. So you aren't a person authorized to conduct a
2 marriage ceremony under the Section 2.202(a)(1), (2), or
3 (3), correct?

4 A. No. Yes -- yes, it's correct. I am not.

5 Q. But you are authorized to conduct a marriage
6 ceremony under Family Code Section 2.202(a)(4), correct?

7 A. Yes.

8 Q. And that's because you are a current judge,
9 right?

10 A. Yes.

11 Q. Have you ever officiated or conducted a
12 marriage ceremony in any capacity other than that one?

13 A. No.

14 Q. And do you ever intend to officiate a wedding
15 ceremony in any capacity other than that one?

16 A. No.

17 Q. Is there any group other than same sex couples
18 that you have ever publicly expressed an unwillingness
19 to marry?

20 A. I don't believe so.

21 Q. After the Obergefell decision was handed down,
22 did you stop conducting weddings altogether?

23 A. Yes.

24 MR. MITCHELL: Objection, form.

25 Q. (BY MR. ATKINS) I think what your counsel is

1 before they were filed?

2 A. I'm sure I reviewed anything I was sent. I
3 can't say that I have clear memory.

4 Q. So let's move to what's marked as Page 7 of 20
5 of Exhibit 4. And there's a paragraph marked 28. And
6 correct me if I'm wrong, but this -- this paragraph is
7 what we were just talking about, right, that after the
8 Obergefell ruling, you've officiated a few additional
9 weddings, but only those that had previously been
10 scheduled; is that correct?

11 A. Yes.

12 Q. And it -- the factual content there in
13 paragraph 28; is that true?

14 A. Yes.

15 Q. The next paragraph, paragraph 29, says, "Judge
16 Hensley's Christian and her religious faith forbids her
17 to officiate of any same-sex marriage ceremony."

18 Why does your religious faith forbid you to
19 officiate a same-sex marriage ceremony as a judge?

20 A. Because we're told not to lend our approval to
21 people engaging in a list of sins.

22 Q. Do you marry previously divorced people?

23 A. It's possible. I don't ask people.

24 Q. If someone told you before the marriage that
25 they had previously been divorced, would you marry them?

1 A. Yes.

2 Q. Is remarriage after divorce for reasons other
3 than sexual immortality a sin?

4 A. Yes.

5 Q. The next paragraph, paragraph 30, states some
6 provisions or lists some provisions of Texas -- the
7 Texas Constitution and Texas law and gives those as
8 additional reasons why you oppose and do not wish to
9 solemnize same-sex marriages; is that correct?

10 MR. MITCHELL: Objection, form.

11 Q. (BY MR. ATKINS) I'm sorry. Please read
12 Paragraph 30 to yourself and let me know when you're
13 done.

14 A. What was your question?

15 Q. I just wanted you to read it and then let me
16 know when you're done so I can ask you about it.

17 A. Okay. I'm done.

18 Q. Great. Are the reasons given in Paragraph 30
19 that the Texas Constitution has a definition of marriage
20 that says it's between one man and one woman, that the
21 Texas Family Code specifies that a same-sex civil union
22 policy and is void, are these additional reasons why you
23 do not solemnize same-sex marriages?

24 A. I think they support the position. I wouldn't
25 say that I relied on them as reasons.

1 Q. Are they relevant to your decision-making?

2 A. Yes.

3 Q. And, in fact, Paragraph 31 states after the
4 previous two paragraphs that for these reasons, you
5 initially quit officiating weddings entirely; is that
6 correct?

7 A. Yes.

8 Q. And is Paragraph 31 correct in saying that?

9 A. Yes.

10 Q. Were there other reasons besides those in
11 Paragraphs 29 and 30 that you decided not to officiate
12 same-sex weddings while resuming officiating
13 opposite-sex weddings?

14 A. I don't know if you call them reasons or just
15 support, but yes.

16 Q. What -- what were those reasons?

17 A. I feel like that the US Constitution supports
18 it and the Texas RFRA law supports my position.

19 Q. Any other reasons specific just to refusing to
20 solemnize same-sex marriages?

21 A. I felt like in the Obergefell decision Kennedy
22 spoke to that the -- Obergefell does not abrogate
23 people's right to differ and to act on their conscious.

24 Q. Can you go back in your little pile there to --
25 I believe it was Exhibit 3 was the printout from the

1 couples have reasonable accommodations to preserve their
2 constitutional rights as long as justice -- or as long
3 as Judge Pareya was performing civil weddings?

4 MR. MITCHELL: Objection, form.

5 A. Yes.

6 Q. (BY MR. ATKINS) There's a quote at the end of
7 the first page, "They have also ruled that people have
8 the right to an accommodation for their religious faith
9 she said, so I'm entitled to accommodations just as much
10 as anyone else."

11 Do you remember saying that?

12 A. No.

13 Q. Do you have a reason to dispute that you did
14 say it?

15 A. No.

16 Q. Do you expect that you probably did say it?

17 A. Perhaps.

18 Q. Okay. Do you think it's true?

19 A. Yes.

20 Q. What did you -- sorry. What did you mean by
21 "they have also ruled," if you remember? Who is "they"?

22 A. I'm sure I was referencing a court, but I don't
23 have any specific recall of this.

24 Q. On the next page, I'm going to go to the first
25 line that starts with quotation marks. Let me know when

1 fairly heard.

2 Q. (BY MR. ATKINS) And it's really important, I
3 think you'd agree, that we all are confident that our
4 judiciary acts impartially, right?

5 A. Yes.

6 Q. What conduct of yours does the Judicial
7 Commission indicate violated Canon 4(A) and the
8 conclusions to this tentative public warning?

9 A. I'm sorry, could you ask the question again?

10 Q. What conduct of yours does the Commission state
11 forms the basis for its belief that you violated Canon
12 4(A) and the conclusions to this tentative public
13 warning?

14 A. I assume by declining to do a same-sex wedding.

15 Q. Does the Commission anywhere here on the last
16 page of the tentative public warning indicate whether
17 it's concerned with your personal, moral, or religious
18 views?

19 MR. MITCHELL: Objection, form.

20 A. Could you ask again?

21 Q. (BY MR. ATKINS) Let me be a little clearer.
22 There's a footnote at the end of the first paragraph,
23 footnote 2. Can you please read the text of footnote 2,
24 the text which is at the bottom of Page 3?

25 A. "The Commission is unconcerned with Judge

1 Hensley's personal views on the issue of same-sex
2 marriage. Like any citizen, Judge Hensley is free to
3 hold whatever religious belief she chooses."

4 Q. Do you have any reason to believe that that is
5 not the Commission's position?

6 A. No.

7 Q. Do you have any knowledge or belief that the
8 Commission has reasons other than the reasons given in
9 this tentative public warning and the letter that it is
10 -- that it's attached to for issuing this tentative
11 public warning?

12 A. I don't have any knowledge.

13 Q. Do you have any subjective belief that they
14 have reasons other than these that they gave in this
15 letter in this tentative public warning?

16 A. I haven't thought about them, I'm sorry.

17 Q. Did there come a time after the tentative
18 public warning was issued that you gave testimony to the
19 Judicial Commission?

20 A. Yes.

21 Q. Do you have a sense when that happened?

22 A. August 8th, 2019.

23 Q. That's very well done.

24 A. That's my son's -- the day after my son's
25 birthday.

1 but...

2 Q. It would have been issued in November of 2019,
3 so by the end of 2019 you had seen it and reviewed this?

4 A. Yes.

5 Q. If you wouldn't mind going to Page 2 of
6 Exhibit 7. And the public warning, Exhibit 7, the
7 Judicial Commission gives Canon 4(A) as the relevant
8 standard; is that correct?

9 A. Yes.

10 Q. And that canon, which we've talked about
11 before, is that a judge shall conduct all of the judge's
12 extrajudicial activities so that they do not cast
13 reasonable doubt on the judge's capacity to act
14 impartially as a judge, correct?

15 A. Yes.

16 Q. In the conclusion, does it make clear or does
17 the public warning itself elsewhere make it clear what
18 conduct of yours specifically the Judicial Commission
19 found to violate Canon 4(A)?

20 A. I would assume it would be Finding of Fact
21 No. 4, but...

22 Q. Is it finding of -- Findings of Fact 3 and 4
23 there, that you were performing opposite-sex weddings,
24 declining to perform same-sex weddings, and then the
25 procedure you were using after that?

1 A. Yes.

2 Q. And are you aware of any other reasons that the
3 State Commission on Judicial Conduct would have for
4 issuing this public warning?

5 A. No.

6 Q. Are you aware or do you believe that the State
7 Judicial Commission or anyone on it -- State Commission
8 on Judicial Conduct or anyone on it had any subjective
9 motivations other than the ones set out in this public
10 warning?

11 A. I'm not going to speculate on their motives.

12 Q. Because you don't know?

13 A. Right. I don't know.

14 Q. Does it -- do you believe that your case and
15 your arguments in this case rely on the idea that the
16 State Judicial Commission had any motives other than the
17 ones that they stated in the tentative public warning
18 and the public warning?

19 MR. MITCHELL: Objection, form.

20 A. No.

21 MR. ATKINS: Just for bookkeeping sake,
22 let's get the next deposition in as an exhibit.

23 (Exhibit No. 8 introduced.)

24 Q. (BY MR. ATKINS) I'm passing you what probably
25 should have been marked Exhibit 1 but will be Exhibit 8.

1 Q. Okay. And 436 represents -- Hensley 436 in
2 Exhibit 10, this represents sort of a summary of your
3 earnings as a result of conducting marriages during the
4 years specified in the table, correct?

5 A. Yes.

6 Q. And so if I went back and I looked at all of
7 the records in the previous section, 6 through 28, the
8 numbers I add up to would be roughly this unless you
9 made a math mistake?

10 A. There would be several that are marked military
11 0.

12 Q. But if I added up all of the ones where some
13 amount of money --

14 A. They --

15 Q. Sorry.

16 A. Hopefully it will total this.

17 Q. Look, I understand. I have made Excel mistakes
18 many times in my life. I'm not worried about that.

19 Okay. The 437, though, is a -- relates
20 instead to expenses?

21 A. Yes.

22 Q. Related specifically to this lawsuit, correct?

23 A. Yes.

24 Q. So this is --

25 MR. ATKINS: Did you have an objection?

1 weren't doing that anymore?

2 A. No.

3 Q. Did you consider -- in calculating your damages
4 based on your prior history with doing marriages, did
5 you consider the effects that anything other than your
6 inability to do or desire to, I suppose, not further be
7 warned by the Judicial Commission, did you consider --
8 sorry, let me go back and completely --

9 A. Start again?

10 Q. -- restart the question. I got lost in my own
11 question. It happens sometimes.

12 Other than the fact that you were no longer
13 doing marriages after -- I assume after receiving the
14 investigation letter from the Commission, is that when
15 you stopped again?

16 A. I would have to look at the log to tell you for
17 sure. Do you want me to do that?

18 Q. For whatever reason that you stopped doing
19 that, other than the fact that you stopped, did you
20 consider any effects or any other reasons why you might
21 have a higher or lower number of marriages that were
22 likely to occur in 2020, 2021, 2022, the years for which
23 you claim damages?

24 A. Oh.

25 MR. MITCHELL: Objection, form.

1 A. No.

2 Q. (BY MR. ATKINS) Would it be fair to say you
3 essentially did an average and then projected?

4 A. Yes.

5 MR. MITCHELL: Objection, form.

6 Q. (BY MR. ATKINS) You didn't account for, for
7 instance, COVID or anything like that?

8 A. No.

9 Q. Okay. You didn't hire an economist to do some
10 kind of analysis of the frequency with which people were
11 getting married at different times over the course of
12 the next few years?

13 A. (Witness shakes head from side to side.)

14 Q. Okay. Just checking. In response to Request
15 5 -- I'm sorry -- Request 6. This is the request:
16 "Produce all communications you've received" -- and this
17 is Page 2, Hensley 0002 in Exhibit 10. "Produce all
18 communications you received from any person other than
19 your attorney or any defendant or agent, representative
20 or member of same in their relevant capacity related or
21 referring to your decision to resume performing
22 opposite-sex weddings while refusing to perform same-sex
23 weddings on August 1, 2016." And the answer is an
24 objection on the grounds of burden and expense
25 outweighing the likely benefit amount in controversy.

1 Do I take it from this objection that
2 you've received many communications on this basis?

3 A. Yes.

4 Q. What kinds of communications have you received?

5 A. Telephone calls, emails, a few letters and
6 cards.

7 Q. Tell me about the telephone calls.

8 A. I don't get most of them, actually. I think
9 the last one I talked to may be the young lady you
10 referenced earlier.

11 Q. Ms. Saenz?

12 A. Saenz, yes.

13 Q. What in general do people say to you in these
14 phone calls or that's reported to you by the people who
15 take them?

16 A. It's clear from their conversation whether they
17 agree or disagree with my stance.

18 Q. Some are supportive and some are not?

19 A. Yes.

20 Q. Okay. Have you received emails or letters or
21 anything like that?

22 A. Yes.

23 Q. Okay. Same kind of thing?

24 A. Yes.

25 Q. Okay. Have you had any communications with

1 A. I was just checking in data at this point.

2 Q. On Page Hensley 0203, there's another sequence
3 of highlighting. I want to ask you about them each
4 individually as we go through so as not to accidentally
5 get you to admit to more than you actually did. But is
6 it likely that any highlighting I see in these research
7 materials is yours?

8 A. Yes.

9 Q. Okay. In Hensley 0203, it looks like you have
10 highlighted another quote. I'm not going to have you
11 read this one, but read it to yourself quickly and let
12 me know when you're done.

13 A. I'm done.

14 Q. Okay. Do you agree with -- with this quote
15 apparently from Lincoln's first inaugural?

16 A. Yes.

17 Q. Okay. In your view, does anything about that
18 quote apply to the Obergefell decision?

19 A. I would think so.

20 Q. And there's then on Hensley 0204 -- there's a
21 section break and an argument begins that the separation
22 of powers prohibits the Obergefell decision.

23 Do you see that?

24 A. Yes.

25 Q. There's a reference to a law journal article by

1 Are you aware of any other Supreme Court
2 precedence for intervening in the question of who can be
3 married and who can't?

4 A. No.

5 Q. Okay. If a person, a justice of the peace,
6 were to have a religious objection to interracial
7 marriage, do you believe that they should have a
8 religious exemption from performing interracial
9 marriages?

10 MR. MITCHELL: Objection, form.

11 A. I'm sorry, restate -- could you restate?

12 Q. (BY MR. ATKINS) If a person, a justice of the
13 peace, a position like yours, were to have a religious
14 objection to the morality of interracial marriage, do
15 you believe it would be appropriate for that person to
16 be allowed a religious objection so as not to have to
17 perform religious marriage -- or interracial marriages
18 while still being permitted to perform other marriages?

19 MR. MITCHELL: Objection, form.

20 A. I haven't given it any thought. I find that a
21 reprehensible position. I don't have an opinion at this
22 point.

23 Q. (BY MR. ATKINS) Do you view it as a different
24 circumstance than yours?

25 A. Yes.

1 Q. And I presume that in your -- that in a perfect
2 world you wish everyone shared your moral values?

3 A. Yes.

4 Q. And your religious values?

5 A. Yes.

6 Q. If every justice of the peace shared your
7 views, would there be any judges who were marrying
8 same-sex couples in this state?

9 MR. MITCHELL: Objection, form.

10 A. No.

11 Q. (BY MR. ATKINS) I think that's -- there is one
12 document at the end of Exhibit 10 here. Starting on
13 Hensley 0248 again in Exhibit 10, do you recognize what
14 is printed here starting at Hensley 0248?

15 A. Yes.

16 Q. What is it?

17 A. It is the Religious Freedom section of the
18 Civil Practice and Remedy Code, title 5.

19 Q. And is that more or less the statutory body
20 comprising the Texas Religious Freedom Restoration Act?

21 A. I believe so.

22 Q. All right. So looking at Hensley 0429,
23 Subsection A of Section 110.003, Religious Freedom
24 Protected. And the language there is, "A government
25 agency may not substantially burden a person's free

1 doing what you're doing, correct, marrying opposite-sex
2 couples but not same-sex couples?

3 A. I can't speak to what they would do.

4 Q. Okay. On Page 7 of this document, there's a
5 verification. Do you remember reviewing and verifying
6 this document?

7 A. Yes, I think so.

8 Q. So other than the answers that you've given to
9 my questions about your reasons for your decisions today
10 and the answers given in this document and the answers
11 given in your allegations made in your petition, are
12 there any other reasons that you have for why you have
13 decided to begin again marrying -- or why you decided in
14 August of 2016 to begin again marrying opposite-sex
15 couples but not same-sex wedding couples? Is this the
16 complete list?

17 A. I think so.

18 MR. ATKINS: Okay. Pass the witness.

19 MR. MITCHELL: We'll reserve any redirect
20 for trial.

21 THE VIDEOGRAPHER: We're off the record at
22 2:02.

23 (Proceedings concluded at 2:02 p.m.)
24
25

CHANGES AND SIGNATURE

DIANNE HENSLEY

10 / 23 / 2025

PAGE LINE

CHANGE

REASON

Job No. TX7667401

Page 110

SIGNATURE BY WITNESS

I, DIANNE HENSLEY, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

DIANNE HENSLEY

THE STATE OF _____)

COUNTY OF _____)

Before me, _____, on this day personally appeared DIANNE HENSLEY, known to me (or proved to me under oath or through _____ (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 2025.

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

Page 111

1 NO. D-1-GN-20-003926

2
3 DIANNE HENSLEY, ON BEHALF* IN THE DISTRICT COURT
OF HERSELF AND OTHERS *

4 SIMILARLY SITUATED *
*

5 VS. * 459TH JUDICIAL DISTRICT
*

6 STATE COMMISSION ON *
JUDICIAL CONDUCT, ET AL * TRAVIS COUNTY, TEXAS

7
8
9 REPORTER'S CERTIFICATION
DEPOSITION OF DIANNE HENSLEY
OCTOBER 23, 2025

10
11 I, Gail Spurgeon, Certified Shorthand Reporter
in and for the State of Texas, hereby certify to the
12 following:

13 That the witness, DIANNE HENSLEY, was duly
sworn by the officer and that the transcript of the oral
14 deposition is a true record of the testimony given by
the witness;

15
16 That the deposition transcript was submitted
on _____, to the witness or to the attorney
for the witness for examination, signature and return to
17 me by _____;

18 That the amount of time used by each party at
the deposition is as follows:

19
20 JOHN P. ATKINS - 3:07
21
22
23
24
25

1 That pursuant to information given to the
2 deposition officer at the time said testimony was taken,
3 the following includes counsel for all parties of
4 record:

5 JONATHAN F. MITCHELL
6 Mitchell Law
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Suite 400
Austin TX 78701
jonathan@mitchell.law
APPEARING FOR THE PLAINTIFFS

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8 HIRAM SASSER
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10 Suite 1600
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11 hsasser@firstliberty.org
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12 APPEARING FOR THE PLAINTIFFS

13
14 JOHN P. ATKINS
KENDALL KASKE
15 Thompson Coburn
2100 Ross Avenue
16 Suite 3200
Dallas TX 75201
17 jatkins@thompsoncoburn.com
kkaske@thompsoncoburn.com
18 APPEARING FOR THE DEFENDANTS

1 I further certify that I am neither counsel
2 for, related to, nor employed by any of the parties or
3 attorneys in the action in which this proceeding was
4 taken, and further that I am not financially or
5 otherwise interested in the outcome of the action.

6 Further certification requirements pursuant to
7 Rule 203 of TRCP will be certified to after they have
8 occurred.

9 Certified to by me this 3rd day of
10 November, 2025.

11 

12 GAIL SPURGEON

13 Texas CSR 1718

14 Expires 11/30/2026

15 Firm No. 571

16 Veritext Legal Solutions

17 300 Throckmorton Street

18 Suite 1600

19 Fort Worth, Texas 76102

20 817.336.3042

FURTHER CERTIFICATION UNDER RULE 203

TEXAS RULES OF CIVIL PROCEDURE

The original deposition was/was not returned to the deposition officer on _____;

If returned, the attached Changes and Signature page contains any changes and the reasons therefor;

If returned, the original deposition was delivered to JOHN P. ATKINS, Custodial Attorney;

That \$ _____ is the deposition officer's charges to DEFENDANTS, for preparing the original deposition transcript and any copies of exhibits;

That the deposition was delivered in accordance with Rule 203.3, and that a copy of this certificate was served on all parties shown herein on and filed with the Clerk.

Certified to by me this _____ day of _____.

Firm No. 571
Veritext Legal Solutions
300 Throckmorton Street
Suite 1600
Fort Worth, Texas 76102
817.336.3042

November 3, 2025

Hensley, Dianne Et Al v State Comm/ On Judicial Conduct, Et Al
DEPOSITION OF: Dianne Hensley (# 7667401)

The above-referenced witness transcript is
available for read and sign.

Within the applicable timeframe, the witness
should read the testimony to verify its accuracy. If
there are any changes, the witness should note those
on the attached Errata Sheet.

The witness should sign and notarize the
attached Errata pages and return to Veritext at
errata-tx@veritext.com.

According to applicable rules or agreements, if
the witness fails to do so within the time allotted,
a certified copy of the transcript may be used as if
signed.

Yours,

Veritext Legal Solutions

Page 116

Exhibit 4

Plaintiff's Responses to Requests for Production

Cause No. D-1-GN-20-003926

Dianne Hensley,

Plaintiff,

v.

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

Defendants.

IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

459th JUDICIAL DISTRICT

**Plaintiff Dianne Hensley's Responses To First Set Of Requests For
Production Of Documents**

REQUEST FOR PRODUCTION NO. 1: Produce true and correct, authentic copies of all versions of Your "referral list" as described in Your Petition which You used or made available to people seeking marriages between August 1, 2016 and the present.

RESPONSE: Responsive documents are produced at Hensley0001.

REQUEST FOR PRODUCTION NO. 2: Produce any documents recording, reflecting, constituting or relating to any requests by any same sex couples to be married by You, including any responses by You or by court personnel from June 26, 2015 to the present.

RESPONSE: No such documents are within Judge Hensley's possession, custody, or control.

REQUEST FOR PRODUCTION NO. 3: Produce all documents reflecting or recording amounts sought and/or received by You as payment for officiating weddings between August 1, 2016 and the Present.

RESPONSE: Responsive documents are produced at Hensley0002-0024.

REQUEST FOR PRODUCTION NO. 4: Produce all communications You have received from Defendant the State Commission on Judicial Conduct (or any agent,

representative, employee, or member of same in the relevant capacity) from August 1, 2016 to the present.

RESPONSE: Responsive documents are produced at Hensley0025–0035.

REQUEST FOR PRODUCTION NO. 5: Produce all communications You have sent to Defendant the State Commission on Judicial Conduct (or any agent, representative, employee, or member of same in the relevant capacity) from August 1, 2016 to the present.

RESPONSE: Responsive documents are produced at Hensley0036–0062.

REQUEST FOR PRODUCTION NO. 6: Produce all communications You have received from any person other than your attorney or any Defendant (or agent, representative, or member of same in the relevant capacity) related or referring to your decision to resume performing opposite-sex weddings (while refusing to perform same-sex weddings) on August 1, 2016.

RESPONSE: Judge Hensley objects to this request on the ground that the burden or expense of producing the requested communications outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties’ resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues. *See* Tex. R. Civ. P. 192.4(b).

REQUEST FOR PRODUCTION NO. 7: Produce all communications You have sent to any person other than your attorney or any Defendant (or agent, representative, or member of same in the relevant capacity) related or referring to your decision to resume performing opposite-sex weddings (while refusing to perform same-sex weddings) on August 1, 2016.

RESPONSE: No such documents are within Judge Hensley’s possession, custody, or control.

REQUEST FOR PRODUCTION NO. 8: Produce all documents you read, reviewed, or otherwise considered in the course of your “research” related to your decision to resume performing opposite-sex weddings (while refusing to perform same-sex weddings) on August 1, 2016, as you stated in your Investigation Answers.

RESPONSE: Responsive documents are produced at Hensley0063–0431.

REQUEST FOR PRODUCTION NO. 9: Produce all documents you contend evidence any damages suffered by You for which you are seeking recovery in this case.

RESPONSE: Responsive documents are produced at Hensley0002–0024 and Hensley0432–0439.

REQUEST FOR PRODUCTION NO. 10: Produce all engagement letters or other memoranda of agreement between you and your attorneys in this case which provide the terms by which your attorneys will be compensated for their work in connection with this case.

RESPONSE: Objection. Judge Hensley is not entitled to attorneys' fees until she prevails on the merits of her Texas RFRA claim, and she will not seek attorneys' fees until that time. This request is premature, and it is not relevant to the subject matter of the pending action at this time.

REQUEST FOR PRODUCTION NO. 11: Produce records reflecting all amounts You have paid to Your attorneys in this case in connection with this case.

RESPONSE: Objection. Judge Hensley is not entitled to attorneys' fees until she prevails on the merits of her Texas RFRA claim, and she will not seek attorneys' fees until that time. This request is premature, and it is not relevant to the subject matter of the pending action at this time.

Dated: September 27, 2025

Respectfully submitted.

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Counsel for Plaintiff

CERTIFICATE OF SERVICE

I certify that on September 27, 2025, I served this document by e-mail and the electronic filing manager upon:

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/s/ Jonathan F. Mitchell
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Counsel for Plaintiff

E-Filed
07/07/2015 @ 04:55:33 PM
Honorable Julia Jordan Weller
Clerk Of The Court

IN THE SUPREME COURT OF ALABAMA

Ex Parte STATE OF ALABAMA,)	
ex rel. ALABAMA POLICY)	
INSTITUTE, ALABAMA CITIZENS)	
ACTION PROGRAM, and)	
JOHN E. ENSLEN, in his)	CASE NO. 1140460
official capacity as Judge of)	
Probate for Elmore County,)	
)	
Petitioner,)	
)	
v.)	
)	
ALAN L. KING, in his official)	
capacity as Judge of Probate)	
for Jefferson County, Alabama,)	
et al.,)	
)	
Respondents.)	

**MOTION OF RESPONDENT PROBATE JUDGE
NICK WILLIAMS TO CONTINUE IN FORCE AND
EFFECT THIS COURT'S EXISTING ORDERS**

COMES NOW Respondent Probate Judge Nick Williams and for response to this Court's Order of June 29, 2015, inviting "motions or briefs addressing the effect of the Supreme Court's decision in Obergefell on this Court's existing orders" states as follows:

decision.³ With thoughtful reflection, our nation looks back on it with shame.

What is the difference today? Like it or not, at least, for Dred Scott, thousands of years of historical understanding about the races, stations of persons and slavery gave underpinning to the decision. Here, with Obergefell, where is even the thinnest thread of historical support? As the dissenters in Obergefell clearly established, such underpinning does not exist. So why then with a better historic foundation for Dred Scott was it rejected as a violation of the natural law of man while the decision in Obergefell, with no underlying historic support, is supposed to equal modern day enlightenment?

This Court should see Obergefell for what it is: A case in contradistinction to all natural law and the foundation of civilized society. They had it right once before. Consider the following observation of the true nature of marriage, which the United States Supreme Court ruled in 1885:

"For, certainly, no legislation can be supposed more wholesome and necessary in the founding of a

³ See API/ACAP brief at 27-28, discussing Ableman v. Booth, 11 Wis. 498 (1859).

government and the necessary separation of powers - and illuminates the path for why the decision in Obergefell blurs the separation of the three co-equal branches of government.

II. Separation of Powers Prohibits the Obergefell Five Action

In his previous filing, Judge Williams invited this Court to discern and recognize the glaring fallacy of taking Marbury v. Madison to its logical extreme - a result which strips meaning from the separation of powers and undermines the core principles of Federalism. In his article, John C. Eastman recognizes that "the controversy over judicial review is as current as recent headlines."

John C. Eastman, Judicial Review of Unenumerated Rights" does Marbury's Holding Apply in a Post-Warren Court World?, 28 HARV. J.L. & PUB. POL'Y, 713, 725 (Summer 2005). Eastman asks the following question which should be answered by this Court's response to Obergefell:

"When a Court's resolution of an issue before it is concededly grounded in neither constitutional text nor the original principles and practice of those who drafted it, can the claim of judicial supremacy that has been attributed to Chief Justice Marshall still be made without fundamentally altering the very nature of our republican form of government?"

Id. at 716. Eastman notes that the Court's "recent unenumerated rights jurisprudence exacerbates the judicial supremacy problem." Id. at 736. His conclusion is eerily predictive of today:

"The right solution, of course, is for the courts to turn back to a jurisprudence grounded in the natural law principles of the Declaration of Independence - Justice Clarence Thomas has at times embarked upon just such a task. But absent a recourse to such principles, the Courts should not be surprised if legislators, executives and even the people themselves give less and less credence to their dictates. A 'Rule of Law' that is, itself, lawless is not the kind of 'law' that generates (or deserves) respect. In other words, we can expect many more Judge Roy Moores unless and until the Holmesian heresy is finally defeated and the 'least dangerous branch' taken down from its pedestal and restored to its co-equal station in the government, exercising judgment and not will."

Id. at 740. The minority in Obergefell have each articulated the above, yet with each's own critical eye of the majority's opinion.

One has to ask, can the Supreme Court ever act unconstitutionally? The other two branches of government certainly can. The States certainly can. Eastman is not alone in concluding that "the judiciary would not be just as susceptible to tyranny as other branches; indeed, the very independence of the courts might well make them more

Does this Court mean that? Is there equal constitutional restraint on every branch of government? Is the reserved power of the State passé? A thing of the past? This Court must explicitly skirt the rationale of Sadler v. Langham if it pleases to follow Obergefell, as urged by the Petitioners.

III. Marriage is a State Issue

Marriage is not mentioned in the Constitution. But, the Ninth, Tenth, and Eleventh Amendments certainly reserve and preserve the rights of unenumerated and non-granted powers to the States. As recent as two years ago, the United States Supreme Court recognized that it did not have the authority to interfere with the domestic institution of marriage because it was historically known to be governed within the providence of each state.⁷ See United States v.

⁷ Interestingly, if the right now recognized by Obergefell is so federally "fundamental," why did the United States Supreme Court dismiss the appeal from the Minnesota Court in Baker v. Nelson, 409 U.S. 810 (1972), "for want of a substantial federal question"? A due process and equal protection challenge was made to Minnesota's statutory definition of marriage as solely limited to the tradition of one man and one woman. Its Supreme Court had rejected a challenge by two homosexual men who had been denied a license to "marry." Baker is also important because it came to the Supreme Court on mandatory appeal rather than on a discretionary writ of certiorari. Id.

E-Filed
07/06/2015 @ 05:09:28 PM
Honorable Julia Jordan Weller
Clerk Of The Court

IN THE SUPREME COURT OF ALABAMA

Ex parte STATE of ALABAMA ex rel.
ALABAMA POLICY INSTITUTE,
ALABAMA CITIZENS ACTION PROGRAM,
and JOHN E. ENSLEN, in his
official capacity as Judge of
Probate for Elmore County,

CASE NO. 1140460

Petitioner,

v.

ALAN L. KING, in his official
capacity as Judge of Probate for
Jefferson County, Alabama, et al.,

Respondents.

RELATORS ALABAMA POLICY
INSTITUTE AND
ALABAMA CITIZENS ACTION
PROGRAM'S BRIEF
ADDRESSING THE EFFECT OF
OBERGEFELL ON THIS
COURT'S EXISTING ORDERS

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great principles and rights which it was intended to declare, secure and perpetuate, I cannot shrink from the discharge of the duty now devolved upon me. I know well its consequences, and appreciate fully the criticism to which I may be subjected. But I believe most sincerely and solemnly that the last hope of free, representative and responsible government rests upon the state sovereignties and fidelity of state officers to their double allegiance, to the state and federal government; and so believing, I cannot hesitate in performing a clear, an indispensable duty. Seeking and enjoying the quiet and calm, so peculiar to the position in which I am placed, I desire to mingle no farther in the political discussions of the times, than the clear suggestions of official obligation require. But he who takes a solemn oath to support the constitution of the United States, as well as the state . . . is bound by a double tie to the nation and his state. Our system of government is two fold, and so is our allegiance. . . . To yield a cheerful acquiescence in, and support to every power constitutionally exercised by the federal government, is the sworn duty of every state officer; but it is equally his duty to interpose a resistance, to the extent of his power, to every assumption of power on the part of the general government, which is not expressly granted or necessarily implied in the federal constitution.

Id. at 22-23 (emphasis added).

Thus, Justice Smith reasoned, resistance to overreaching federal power both flows from and is felicitous to a solemn oath to uphold the U.S. Constitution, not contrary to it.

Exhibit 5

Plaintiff's Responses to Requests for Admissions

Cause No. D-1-GN-20-003926

Dianne Hensley,

Plaintiff,

v.

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

Defendants.

IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

459th JUDICIAL DISTRICT

**Plaintiff Dianne Hensley's Answers To First Set Of Requests For
Admissions From Defendants**

REQUEST FOR ADMISSION NO. 1: Admit that You are not “a licensed or ordained Christian minister or priest” as that phrase is used in Section 2.202(a)(1) of the Texas Family Code.

RESPONSE: Admitted.

REQUEST FOR ADMISSION NO. 2: Admit that You are not “a Jewish rabbi” as that phrase is used in Section 2.202(a)(2) of the Texas Family Code.

RESPONSE: Admitted.

REQUEST FOR ADMISSION NO. 3: Admit that You are not “a person who is an officer of a religious organization and who is authorized by the organization to conduct a marriage ceremony” as that phrase used in Section 2.202(a)(3) of the Texas Family Code.

RESPONSE: Admitted.

REQUEST FOR ADMISSION NO. 4: Admit that You are “a current ... state judge” as that phrase is used in Section 2.202(a)(4) of the Texas Family Code.

RESPONSE: Admitted.

REQUEST FOR ADMISSION NO. 5: Admit that You have only ever officiated weddings in Texas pursuant to your authorization under Section 2.202(a)(4) of the Texas Family Code.

RESPONSE: Admitted.

REQUEST FOR ADMISSION NO. 6: Admit that to the extent you intend to officiate weddings in Texas in the future, You intend to do so pursuant to your authorization under Section 2.202(a)(4) of the Texas Family Code.

RESPONSE: Admitted.

REQUEST FOR ADMISSION NO. 7: Admit that other than same-sex couples, You have not publicly expressed any unwillingness to marry any categories of Texan otherwise legally qualified to be married.

RESPONSE: Admitted.

REQUEST FOR ADMISSION NO. 8: Admit that the Commission, in its Tentative Public Warning, specifically referenced your authorization to officiate weddings under Section 2.202(a)(4) of the Texas Family Code.

RESPONSE: Admitted in part; denied in part. Judge Hensley admits that the Tentative Public Warning includes a statement that says: “Texas Family Code Section 2.202(a)(4) authorizes judges to perform a “marriage ceremony.” Judge Hensley also admits that the Tentative Public Warning includes a statement that says: “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).” The request for admission is denied in all other respects.

REQUEST FOR ADMISSION NO. 9: Admit that the Commission has not, in its Tentative Public Warning or its Public Warning, referenced any authority to officiate weddings other than that conferred by Section 2.202(a)(4) of the Texas Family Code.

RESPONSE: Admitted.

REQUEST FOR ADMISSION NO. 10: Admit that the Tentative Public Warning contains no sanction or proposed sanction for mere expression of disapproval of homosexuality.

RESPONSE: Judge Hensley admits only that the Tentative Public Warning contains the language appearing in the document attached as Exhibit 4 to her third amended petition, and that document speaks for itself. Judge Hensley is without sufficient information to determine whether her mere expression of disapproval of homosexuality was by itself sufficient to trigger the Tentative Public Warning that the Commission issued, and therefore can neither admit nor deny this request for admission.

REQUEST FOR ADMISSION NO. 11: Admit that the Tentative Public Warning contains no sanction or proposed sanction for mere disagreement with the decision in *Obergefell v. Hodges*, 576 U.S. 644 (2015).

RESPONSE: Judge Hensley admits only that the Tentative Public Warning contains the language appearing in the document attached as Exhibit 4 to her third amended petition, and that document speaks for itself. Judge Hensley is without sufficient information to determine whether her disagreement with *Obergefell v. Hodges*, 576 U.S. 644 (2015), was by itself sufficient to trigger the Tentative Public Warning that the Commission issued, and therefore can neither admit nor deny this request for admission.

REQUEST FOR ADMISSION NO. 12: Admit that the Tentative Public Warning contains no sanction or proposed sanction for mere expression of a religious belief that homosexuality is immoral.

RESPONSE: Judge Hensley admits only that the Tentative Public Warning contains the language appearing in the document attached as Exhibit 4 to her third amended petition, and that document speaks for itself. Judge Hensley is without sufficient information to determine whether her mere expression of a religious belief that homosexuality is immoral was by itself sufficient to trigger the Tentative Public Warning that the Commission issued, and therefore can neither admit nor deny this request for admission.

REQUEST FOR ADMISSION NO. 13: Admit that the Tentative Public Warning contains no sanction or proposed sanction for mere expression of a religious belief that same-sex marriage is invalid.

RESPONSE: Judge Hensley admits only that the Tentative Public Warning contains the language appearing in the document attached as Exhibit 4 to her third amended

petition, and that document speaks for itself. Judge Hensley is without sufficient information to determine whether her mere expression of a religious belief that same-sex marriage is invalid was by itself sufficient to trigger the Tentative Public Warning that the Commission issued, and therefore can neither admit nor deny this request for admission.

REQUEST FOR ADMISSION NO. 14: Admit that the Public Warning contains no sanction for mere expression of disapproval of homosexuality.

RESPONSE: Judge Hensley admits only that the Public Warning contains the language appearing in the document attached as Exhibit 1 to her third amended petition, and that document speaks for itself. Judge Hensley is without sufficient information to determine whether her mere expression of disapproval of homosexuality was by itself sufficient to trigger the Public Warning that the Commission issued, and therefore can neither admit nor deny this request for admission.

REQUEST FOR ADMISSION NO. 15: Admit that the Public Warning contains no sanction for mere disagreement with the decision in *Obergefell v. Hodges*, 576 U.S. 644 (2015).

RESPONSE: Judge Hensley admits only that the Public Warning contains the language appearing in the document attached as Exhibit 1 to her third amended petition, and that document speaks for itself. Judge Hensley is without sufficient information to determine whether her disagreement with *Obergefell v. Hodges*, 576 U.S. 644 (2015), was by itself sufficient to trigger the Public Warning that the Commission issued, and therefore can neither admit nor deny this request for admission.

REQUEST FOR ADMISSION NO. 16: Admit that the Public Warning contains no sanction for mere expression of a religious belief that homosexuality is immoral.

RESPONSE: Judge Hensley admits only that the Public Warning contains the language appearing in the document attached as Exhibit 1 to her third amended petition, and that document speaks for itself. Judge Hensley is without sufficient information to determine whether her mere expression of a religious belief that homosexuality is immoral was by itself sufficient to trigger the Public Warning that the Commission issued, and therefore can neither admit nor deny this request for admission.

REQUEST FOR ADMISSION NO. 17: Admit that the Public Warning contains no sanction for mere expression of a religious belief that same-sex marriages are invalid.

RESPONSE: Judge Hensley admits only that the Public Warning contains the language appearing in the document attached as Exhibit 1 to her third amended petition, and that document speaks for itself. Judge Hensley is without sufficient information to determine whether her mere expression of a religious belief that same-sex marriages are invalid was by itself sufficient to trigger the Public Warning that the Commission issued, and therefore can neither admit nor deny this request for admission.

REQUEST FOR ADMISSION NO. 18: Admit that Defendant Gary L. Steel was not a member of the Commission during any investigation of You by the Commission prior to the issuance of the Public Warning.

RESPONSE: Judge Hensley admits that Defendant Gary L. Steel was not a member of the Commission during the investigation prior to the issuance of the Public Warning. Judge Hensley brought an ultra vires claim for declaratory and injunctive relief against Mr. Steel's predecessor in his official capacity, and Mr. Steel has been properly and automatically substituted as a defendant under Tex. R. App. P. 7.2(a).

REQUEST FOR ADMISSION NO. 19: Admit that Defendant Gary L. Steel was not a member of the Commission when the Tentative Public Warning was issued.

RESPONSE: Judge Hensley admits that Defendant Gary L. Steel was not a member of the Commission when the Tentative Public Warning was issued. Judge Hensley brought an ultra vires claim for declaratory and injunctive relief against Mr. Steel's predecessor in his official capacity, and Mr. Steel has been properly and automatically substituted as a defendant under Tex. R. App. P. 7.2(a).

REQUEST FOR ADMISSION NO. 20: Admit that Defendant Gary L. Steel was not a member of the Commission when the Public Warning was issued.

RESPONSE: Judge Hensley admits that Defendant Gary L. Steel was not a member of the Commission when the Public Warning was issued. Judge Hensley brought an ultra vires claim for declaratory and injunctive relief against Mr. Steel's predecessor in his official capacity, and Mr. Steel has been properly and automatically substituted as a defendant under Tex. R. App. P. 7.2(a).

REQUEST FOR ADMISSION NO. 21: Admit that Defendant Ken Wise was not a member of the Commission during any investigation of You by the Commission prior to the issuance of the Public Warning.

RESPONSE: Judge Hensley admits that Defendant Ken Wise was not a member of the Commission during the investigation prior to the issuance of the Public Warning. Judge Hensley brought an ultra vires claim for declaratory and injunctive relief against Mr. Wise's predecessor in his official capacity, and Mr. Wise has been properly and automatically substituted as a defendant under Tex. R. App. P. 7.2(a).

REQUEST FOR ADMISSION NO. 22: Admit that Defendant Ken Wise was not a member of the Commission when the Tentative Public Warning was issued.

RESPONSE: Judge Hensley admits that Defendant Ken Wise was not a member of the Commission when the Tentative Public Warning was issued. Judge Hensley brought an ultra vires claim for declaratory and injunctive relief against Mr. Wise's predecessor in his official capacity, and Mr. Wise has been properly and automatically substituted as a defendant under Tex. R. App. P. 7.2(a).

REQUEST FOR ADMISSION NO. 23: Admit that Defendant Ken Wise was not a member of the Commission when the Public Warning was issued.

RESPONSE: Judge Hensley admits that Defendant Ken Wise was not a member of the Commission when the Public Warning was issued. Judge Hensley brought an ultra vires claim for declaratory and injunctive relief against Mr. Wise's predecessor in his official capacity, and Mr. Wise has been properly and automatically substituted as a defendant under Tex. R. App. P. 7.2(a).

REQUEST FOR ADMISSION NO. 24: Admit that Defendant Carey F. Walker was not a member of the Commission during any investigation of You by the Commission prior to the issuance of the Public Warning.

RESPONSE: Judge Hensley admits that Defendant Carey F. Walker was not a member of the Commission during the investigation prior to the issuance of the Public Warning. Judge Hensley brought an ultra vires claim for declaratory and injunctive relief against Mr. Walker's predecessor in his official capacity, and Mr. Walker has been properly and automatically substituted as a defendant under Tex. R. App. P. 7.2(a).

REQUEST FOR ADMISSION NO. 25: Admit that Defendant Carey F. Walker was not a member of the Commission when the Tentative Public Warning was issued.

RESPONSE: Judge Hensley admits that Defendant Carey F. Walker was not a member of the Commission when the Tentative Public Warning was issued. Judge Hensley brought an ultra vires claim for declaratory and injunctive relief against Mr. Walker's

predecessor in his official capacity, and Mr. Walker has been properly and automatically substituted as a defendant under Tex. R. App. P. 7.2(a).

REQUEST FOR ADMISSION NO. 26: Admit that Defendant Carey F. Walker was not a member of the Commission when the Public Warning was issued.

RESPONSE: Judge Hensley admits that Defendant Carey F. Walker was not a member of the Commission when the Public Warning was issued. Judge Hensley brought an ultra vires claim for declaratory and injunctive relief against Mr. Walker's predecessor in his official capacity, and Mr. Walker has been properly and automatically substituted as a defendant under Tex. R. App. P. 7.2(a).

REQUEST FOR ADMISSION NO. 27: Admit that Defendant Clifton Roberson was not a member of the Commission during any investigation of You by the Commission prior to the issuance of the Public Warning.

RESPONSE: Judge Hensley admits that Defendant Clifton Roberson was not a member of the Commission during the investigation prior to the issuance of the Public Warning. Judge Hensley brought an ultra vires claim for declaratory and injunctive relief against Mr. Roberson's predecessor in his official capacity, and Mr. Roberson has been properly and automatically substituted as a defendant under Tex. R. App. P. 7.2(a).

REQUEST FOR ADMISSION NO. 28: Admit that Defendant Clifton Roberson was not a member of the Commission when the Tentative Public Warning was issued.

RESPONSE: Judge Hensley admits that Defendant Clifton Roberson was not a member of the Commission when the Tentative Public Warning was issued. Judge Hensley brought an ultra vires claim for declaratory and injunctive relief against Mr. Roberson's predecessor in his official capacity, and Mr. Roberson has been properly and automatically substituted as a defendant under Tex. R. App. P. 7.2(a).

REQUEST FOR ADMISSION NO. 29: Admit that Defendant Clifton Roberson was not a member of the Commission when the Public Warning was issued.

RESPONSE: Judge Hensley admits that Defendant Clifton Roberson was not a member of the Commission when the Public Warning was issued. Judge Hensley brought an ultra vires claim for declaratory and injunctive relief against Mr. Roberson's predecessor in his official capacity, and Mr. Roberson has been properly and automatically substituted as a defendant under Tex. R. App. P. 7.2(a).

REQUEST FOR ADMISSION NO. 30: Admit that Defendant Kathy P. Ward was not a member of the Commission during any investigation of You by the Commission prior to the issuance of the Public Warning.

RESPONSE: Judge Hensley admits that Defendant Kathy P. Ward was not a member of the Commission during the investigation prior to the issuance of the Public Warning. Judge Hensley brought an ultra vires claim for declaratory and injunctive relief against Ms. Ward's predecessor in his official capacity, and Ms. Ward has been properly and automatically substituted as a defendant under Tex. R. App. P. 7.2(a).

REQUEST FOR ADMISSION NO. 31: Admit that Defendant Kathy P. Ward was not a member of the Commission when the Tentative Public Warning was issued.

RESPONSE: Judge Hensley admits that Defendant Kathy P. Ward was not a member of the Commission when the Tentative Public Warning was issued. Judge Hensley brought an ultra vires claim for declaratory and injunctive relief against Ms. Ward's predecessor in his official capacity, and Ms. Ward has been properly and automatically substituted as a defendant under Tex. R. App. P. 7.2(a).

REQUEST FOR ADMISSION NO. 32: Admit that Defendant Kathy P. Ward was not a member of the Commission when the Public Warning was issued.

RESPONSE: Judge Hensley admits that Defendant Kathy P. Ward was not a member of the Commission when the Public Warning was issued. Judge Hensley brought an ultra vires claim for declaratory and injunctive relief against Ms. Ward's predecessor in his official capacity, and Ms. Ward has been properly and automatically substituted as a defendant under Tex. R. App. P. 7.2(a).

REQUEST FOR ADMISSION NO. 33: Admit that Defendant Wayne Money was not a member of the Commission during any investigation of You by the Commission prior to the issuance of the Public Warning.

RESPONSE: Judge Hensley admits that Defendant Wayne Money was not a member of the Commission during the investigation prior to the issuance of the Public Warning. Judge Hensley brought an ultra vires claim for declaratory and injunctive relief against Mr. Money's predecessor in his official capacity, and Mr. Money has been properly and automatically substituted as a defendant under Tex. R. App. P. 7.2(a).

REQUEST FOR ADMISSION NO. 34: Admit that Defendant Wayne Money was not a member of the Commission when the Tentative Public Warning was issued.

RESPONSE: Judge Hensley admits that Defendant Wayne Money was not a member of the Commission when the Tentative Public Warning was issued. Judge Hensley brought an ultra vires claim for declaratory and injunctive relief against Mr. Money's predecessor in his official capacity, and Mr. Money has been properly and automatically substituted as a defendant under Tex. R. App. P. 7.2(a).

REQUEST FOR ADMISSION NO. 35: Admit that Defendant Wayne Money was not a member of the Commission when the Public Warning was issued.

RESPONSE: Judge Hensley admits that Defendant Wayne Money was not a member of the Commission when the Public Warning was issued. Judge Hensley brought an ultra vires claim for declaratory and injunctive relief against Mr. Money's predecessor in his official capacity, and Mr. Money has been properly and automatically substituted as a defendant under Tex. R. App. P. 7.2(a).

REQUEST FOR ADMISSION NO. 36: Admit that Defendant Andrew M. Cahan was not a member of the Commission during any investigation of You by the Commission prior to the issuance of the Public Warning.

RESPONSE: Judge Hensley admits that Defendant Andrew M. Cahan was not a member of the Commission during the investigation prior to the issuance of the Public Warning. Judge Hensley brought an ultra vires claim for declaratory and injunctive relief against Mr. Cahan's predecessor in his official capacity, and Mr. Cahan has been properly and automatically substituted as a defendant under Tex. R. App. P. 7.2(a).

REQUEST FOR ADMISSION NO. 37: Admit that Defendant Andrew M. Cahan was not a member of the Commission when the Tentative Public Warning was issued.

RESPONSE: Judge Hensley admits that Defendant Andrew M. Cahan was not a member of the Commission when the Tentative Public Warning was issued. Judge Hensley brought an ultra vires claim for declaratory and injunctive relief against Mr. Cahan's predecessor in his official capacity, and Mr. Cahan has been properly and automatically substituted as a defendant under Tex. R. App. P. 7.2(a).

REQUEST FOR ADMISSION NO. 38: Admit that Defendant Andrew M. Cahan was not a member of the Commission when the Public Warning was issued.

RESPONSE: Judge Hensley admits that Defendant Andrew M. Cahan was not a member of the Commission when the Public Warning was issued. Judge Hensley brought an ultra vires claim for declaratory and injunctive relief against Mr. Cahan's predecessor in his official capacity, and Mr. Cahan has been properly and automatically substituted as a defendant under Tex. R. App. P. 7.2(a).

REQUEST FOR ADMISSION NO. 39: Admit that Defendant Tano E. Tijerina was not a member of the Commission during any investigation of You by the Commission prior to the issuance of the Public Warning.

RESPONSE: Judge Hensley admits that Defendant Tano E. Tijerina was not a member of the Commission during the investigation prior to the issuance of the Public Warning. Judge Hensley brought an ultra vires claim for declaratory and injunctive relief against Mr. Tijerina's predecessor in his official capacity, and Mr. Tijerina has been properly and automatically substituted as a defendant under Tex. R. App. P. 7.2(a).

REQUEST FOR ADMISSION NO. 40: Admit that Defendant Tano E. Tijerina was not a member of the Commission when the Tentative Public Warning was issued.

RESPONSE: Judge Hensley admits that Defendant Tano E. Tijerina was not a member of the Commission when the Tentative Public Warning was issued. Judge Hensley brought an ultra vires claim for declaratory and injunctive relief against Mr. Tijerina's predecessor in his official capacity, and Mr. Tijerina has been properly and automatically substituted as a defendant under Tex. R. App. P. 7.2(a).

REQUEST FOR ADMISSION NO. 41: Admit that Defendant Tano E. Tijerina was not a member of the Commission when the Public Warning was issued.

RESPONSE: Judge Hensley admits that Defendant Tano E. Tijerina was not a member of the Commission when the Public Warning was issued. Judge Hensley brought an ultra vires claim for declaratory and injunctive relief against Mr. Tijerina's predecessor in his official capacity, and Mr. Tijerina has been properly and automatically substituted as a defendant under Tex. R. App. P. 7.2(a).

REQUEST FOR ADMISSION NO. 42: Admit that Defendant Chace A. Craig was not a member of the Commission during any investigation of You by the Commission prior to the issuance of the Public Warning.

RESPONSE: Judge Hensley admits that Defendant Chace A. Craig was not a member of the Commission during the investigation prior to the issuance of the Public Warning. Judge Hensley brought an ultra vires claim for declaratory and injunctive relief against Mr. Craig's predecessor in his official capacity, and Mr. Craig has been properly and automatically substituted as a defendant under Tex. R. App. P. 7.2(a).

REQUEST FOR ADMISSION NO. 43: Admit that Defendant Chace A. Craig was not a member of the Commission when the Tentative Public Warning was issued.

RESPONSE: Judge Hensley admits that Defendant Chace A. Craig was not a member of the Commission when the Tentative Public Warning was issued. Judge Hensley brought an ultra vires claim for declaratory and injunctive relief against Mr. Craig's predecessor in his official capacity, and Mr. Craig has been properly and automatically substituted as a defendant under Tex. R. App. P. 7.2(a).

REQUEST FOR ADMISSION NO. 44: Admit that Defendant Chace A. Craig was not a member of the Commission when the Public Warning was issued.

RESPONSE: Judge Hensley admits that Defendant Chace A. Craig was not a member of the Commission when the Public Warning was issued. Judge Hensley brought an ultra vires claim for declaratory and injunctive relief against Mr. Craig's predecessor in his official capacity, and Mr. Craig has been properly and automatically substituted as a defendant under Tex. R. App. P. 7.2(a).

REQUEST FOR ADMISSION NO. 45: Admit that Defendant Sylvia Borunda Firth was not a member of the Commission during any investigation of You by the Commission prior to the issuance of the Public Warning.

RESPONSE: Judge Hensley admits that Defendant Sylvia Borunda Firth was not a member of the Commission during the investigation prior to the issuance of the Public Warning. Judge Hensley brought an ultra vires claim for declaratory and injunctive relief against Ms. Firth's predecessor in his official capacity, and Ms. Firth has been properly and automatically substituted as a defendant under Tex. R. App. P. 7.2(a).

REQUEST FOR ADMISSION NO. 46: Admit that Defendant Sylvia Borunda Firth was not a member of the Commission when the Tentative Public Warning was issued.

RESPONSE: Judge Hensley admits that Defendant Sylvia Borunda Firth was not a member of the Commission when the Tentative Public Warning was issued. Judge

Hensley brought an ultra vires claim for declaratory and injunctive relief against Ms. Firth's predecessor in his official capacity, and Ms. Firth has been properly and automatically substituted as a defendant under Tex. R. App. P. 7.2(a).

REQUEST FOR ADMISSION NO. 47: Admit that Defendant Sylvia Borunda Firth was not a member of the Commission when the Public Warning was issued.

RESPONSE: Judge Hensley admits that Defendant Sylvia Borunda Firth was not a member of the Commission when the Public Warning was issued. Judge Hensley brought an ultra vires claim for declaratory and injunctive relief against Ms. Firth's predecessor in his official capacity, and Ms. Firth has been properly and automatically substituted as a defendant under Tex. R. App. P. 7.2(a).

REQUEST FOR ADMISSION NO. 48: Admit that Defendant Derek M. Cohen was not a member of the Commission during any investigation of You by the Commission prior to the issuance of the Public Warning.

RESPONSE: Judge Hensley admits that Defendant Derek M. Cohen was not a member of the Commission during the investigation prior to the issuance of the Public Warning. Judge Hensley brought an ultra vires claim for declaratory and injunctive relief against Mr. Cohen's predecessor in his official capacity, and Mr. Cohen has been properly and automatically substituted as a defendant under Tex. R. App. P. 7.2(a).

REQUEST FOR ADMISSION NO. 49: Admit that Defendant Derek M. Cohen was not a member of the Commission when the Tentative Public Warning was issued.

RESPONSE: Judge Hensley admits that Defendant Derek M. Cohen was not a member of the Commission when the Tentative Public Warning was issued. Judge Hensley brought an ultra vires claim for declaratory and injunctive relief against Mr. Cohen's predecessor in his official capacity, and Mr. Cohen has been properly and automatically substituted as a defendant under Tex. R. App. P. 7.2(a).

REQUEST FOR ADMISSION NO. 50: Admit that Defendant Derek M. Cohen was not a member of the Commission when the Public Warning was issued.

RESPONSE: Judge Hensley admits that Defendant Derek M. Cohen was not a member of the Commission when the Public Warning was issued. Judge Hensley brought an ultra vires claim for declaratory and injunctive relief against Mr. Cohen's

predecessor in his official capacity, and Mr. Cohen has been properly and automatically substituted as a defendant under Tex. R. App. P. 7.2(a).

REQUEST FOR ADMISSION NO. 51: Admit that Defendant Yinon Weiss was not a member of the Commission during any investigation of You by the Commission prior to the issuance of the Public Warning.

RESPONSE: Judge Hensley admits that Defendant Yinon Weiss was not a member of the Commission during the investigation prior to the issuance of the Public Warning. Judge Hensley brought an ultra vires claim for declaratory and injunctive relief against Mr. Weiss's predecessor in his official capacity, and Mr. Weiss has been properly and automatically substituted as a defendant under Tex. R. App. P. 7.2(a).

REQUEST FOR ADMISSION NO. 52: Admit that Defendant Yinon Weiss was not a member of the Commission when the Tentative Public Warning was issued.

RESPONSE: Judge Hensley admits that Defendant Yinon Weiss was not a member of the Commission when the Tentative Public Warning was issued. Judge Hensley brought an ultra vires claim for declaratory and injunctive relief against Mr. Weiss's predecessor in his official capacity, and Mr. Weiss has been properly and automatically substituted as a defendant under Tex. R. App. P. 7.2(a).

REQUEST FOR ADMISSION NO. 53: Admit that Defendant Yinon Weiss was not a member of the Commission when the Public Warning was issued.

RESPONSE: Judge Hensley admits that Defendant Yinon Weiss was not a member of the Commission when the Public Warning was issued. Judge Hensley brought an ultra vires claim for declaratory and injunctive relief against Mr. Weiss's predecessor in his official capacity, and Mr. Weiss has been properly and automatically substituted as a defendant under Tex. R. App. P. 7.2(a).

REQUEST FOR ADMISSION NO. 54: Admit that Defendant April I. Aguirre was not a member of the Commission during any investigation of You by the Commission prior to the issuance of the Public Warning.

RESPONSE: Judge Hensley admits that Defendant April I. Aguirre was not a member of the Commission during the investigation prior to the issuance of the Public Warning. Judge Hensley brought an ultra vires claim for declaratory and injunctive relief against Ms. Aguirre's predecessor in his official capacity, and Ms. Aguirre has

been properly and automatically substituted as a defendant under Tex. R. App. P. 7.2(a).

REQUEST FOR ADMISSION NO. 55: Admit that Defendant April I. Aguirre was not a member of the Commission when the Tentative Public Warning was issued.

RESPONSE: Judge Hensley admits that Defendant April I. Aguirre was not a member of the Commission when the Tentative Public Warning was issued. Judge Hensley brought an ultra vires claim for declaratory and injunctive relief against Ms. Aguirre's predecessor in his official capacity, and Ms. Aguirre has been properly and automatically substituted as a defendant under Tex. R. App. P. 7.2(a).

REQUEST FOR ADMISSION NO. 56: Admit that Defendant April I. Aguirre was not a member of the Commission when the Public Warning was issued.

RESPONSE: Judge Hensley admits that Defendant April I. Aguirre was not a member of the Commission when the Public Warning was issued. Judge Hensley brought an ultra vires claim for declaratory and injunctive relief against Ms. Aguirre's predecessor in his official capacity, and Ms. Aguirre has been properly and automatically substituted as a defendant under Tex. R. App. P. 7.2(a).

Respectfully submitted.

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Dated: September 27, 2025

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I certify that on September 27, 2025, I served this document by e-mail and the electronic filing manager upon:

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JONATHAN F. MITCHELL
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John Atkins on behalf of John Atkins

Bar No. 24097326

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Envelope ID: 108528802

Filing Code Description: RESPONSE

Filing Description: DEFENDANT STATE COMMISSION ON JUDICIAL CONDUCT'S RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Status as of 11/30/2025 10:43 AM CST

Associated Case Party: STATE COMMISSION ON JUDICIAL CONDUCT

Name	BarNumber	Email	TimestampSubmitted	Status
David Schleicher	17753780	efiling@gov.law	11/28/2025 6:15:28 PM	SENT
John Atkins		jatkins@thompsoncoburn.com	11/28/2025 6:15:28 PM	SENT
Laurie DeBardleben		ldebardeleben@thompsoncoburn.com	11/28/2025 6:15:28 PM	SENT
Roxanna Lock		rlock@thompsoncoburn.com	11/28/2025 6:15:28 PM	SENT
Kendall Kaske		kkendall@thompsoncoburn.com	11/28/2025 6:15:28 PM	ERROR
Hannah Fischer		hfischer@thompsoncoburn.com	11/28/2025 6:15:28 PM	SENT
Linda Carranza		lcarranza@thompsoncoburn.com	11/28/2025 6:15:28 PM	SENT
Douglas S.Lang		dlang@thompsoncoburn.com	11/28/2025 6:15:28 PM	SENT

Associated Case Party: DIANNE HENSLEY

Name	BarNumber	Email	TimestampSubmitted	Status
Kelly Shackelford	18070950	kshackelford@firstliberty.org	11/28/2025 6:15:28 PM	SENT
Jeremiah Dys	24096415	jdys@firstliberty.org	11/28/2025 6:15:28 PM	SENT
Michael Berry	24085835	mberrylegal@gmail.com	11/28/2025 6:15:28 PM	SENT
Hiram Sasser	24039157	hsasser@firstliberty.org	11/28/2025 6:15:28 PM	SENT
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Jonathan F.Mitchell		jonathan@mitchell.law	11/28/2025 6:15:28 PM	SENT
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H. Dustin Fillmore		dusty@fillmorefirm.com	11/28/2025 6:15:28 PM	SENT
Lauren Duncan		lauren@fillmorefirm.com	11/28/2025 6:15:28 PM	ERROR

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John Atkins on behalf of John Atkins

Bar No. 24097326

jatkins@thompsoncoburn.com

Envelope ID: 108528802

Filing Code Description: RESPONSE

Filing Description: DEFENDANT STATE COMMISSION ON JUDICIAL CONDUCT'S RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Status as of 11/30/2025 10:43 AM CST

Associated Case Party: DIANNE HENSLEY

Lauren Duncan		lauren@fillmorefirm.com	11/28/2025 6:15:28 PM	ERROR
Holly Randall		hrandall@firstliberty.org	11/28/2025 6:15:28 PM	SENT

Exhibit 8



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25-0288
12/19/2025 8:39 AM
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December 19, 2025

Blake A. Hawthorne
Clerk of the Court
Supreme Court of Texas
201 West 14th Street, Room 104
Austin, Texas 78701

Re: *Umphress v. Hall*, No. 25-0288

Dear Mr. Hawthorne:

This letter is filed with the Court in order to respond to Mr. Mitchell's letter of December 17, 2025, regarding the above styled matter (Letter).

The Letter is an obvious, improper reargument of Umphress's case and an attempt to add to the record with briefs from the *Hensley* trial court proceeding.¹ However, lest the Court presume the Commission agrees with the positions stated in the Letter, the Commission must respond.

Umphress incorrectly contends the plain, yet limited language chosen by this Court for the comment to Canon 4A means far more than the plain language of the comment.

The comment says only this: "It is not a violation of these canons for a judge to publicly refrain from performing a wedding ceremony based upon a sincerely held religious belief." Letter at 1. However, Umphress argues the comment means much more: "This comment unequivocally prohibits the Commission from invoking Canon 4A (or any other canon) against judges who opt out of performing same-sex weddings on account of their sincere religious beliefs—even if those judges continue to officiate marriages for opposite-sex couples." *Id.*

Umphress's selective interpretation would have this Court rule that the limited language of the comment should be interpreted as tracking precisely the language Certified Question; that is: "[] Canon 4A(1) of the Texas Code of Judicial Conduct

¹ Letter at 2, 3.

does not prohibit judges from publicly refusing, for moral or religious reasons, to perform same-sex weddings while continuing to perform opposite-sex weddings []." ² That position flies in the face of credibility and the rules of statutory interpretation. It is disingenuous and remarkably presumptuous.

As this Court well knows by virtue of its prior decisions, a comment to a rule or statute is simply used to inform the construction and application of the rules or statutes. ³ A comment does not license the reader, or a party to litigation, to expand the meaning of the rule or the comment beyond its plain language. ⁴ The Commission respectfully suggest that had the Court intended the comment to mean more than its plain language, the Court would have stated the comment differently.

Additionally, Umphress's letter implies that it is a surprise that the Commission takes the position that the certified question should be answered in the affirmative, *i.e.*, that a judge violates Canon 4A when she refuses, "for moral or religious reasons, to perform same-sex weddings while continuing to perform opposite-sex weddings[]." Letter at 1. The plain fact is, it cannot be a surprise that the Commission has candidly asserted in the *Hensley* trial court litigation that "[T]he comment only states that judges may decide not to marry people based on a religious objection—it does not state they may also choose to marry other people if that decision results in apparent discrimination that could 'cast reasonable doubt on the judge's capacity to act impartially as a judge[.]'" Letter at 2.

In fact, the Commission's Response Brief filed in this case, has made this position clear: "The message is unmistakable that Umphress and Hensley will perform their judicial functions, *i.e.*, duties, for one class of people, but not another. That conduct fits squarely in the classic definition of discrimination."⁵

² Umphress contends, "This comment unequivocally prohibits the Commission from invoking Canon 4A (or any other canon) against judges who opt out of performing same-sex weddings on account of their sincere religious beliefs—even if those judges continue to officiate marriages for opposite-sex couples." Letter at 1.

³ "While comments to our rules are not dispositive, they 'are intended to inform the construction and application' of the rules. *Final Approval of Revisions to the Texas Rules of Civil Procedure*, 977-978 S.W.2d (Tex. Cases) xxxiii (Tex. Nov. 9, 1998); *see also* Tex. R. Evid. 509 cmt. ('This comment is intended to inform the construction and application of this rule.'). We have previously relied on similar comments to inform our analysis" *In re City of Dickinson*, 568 S.W.3d 642, 647 (Tex. 2019).

⁴ "[I]t is cardinal law in Texas that a court construes a statute, 'first, by looking to the plain and common meaning of the statute's words.'" *Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 865 (Tex. 1999) (quoting *Liberty Mut. Ins. Co. v. Garrison Contractors, Inc.*, 966 S.W.2d 482, 484 (Tex. 1998)).

⁵ Commission Response Brief at 29, n. 48 states in part, "[W]hile those religious and philosophical objections are protected, it is a general rule that such objections do not allow business owners and other actors in the economy and in society to deny protected persons equal access to goods and services under a neutral and generally applicable public accommodations law." (*Obergefell v. Hodges*, 576 U.S. 644, 135 S.Ct. 2584, 192 L.Ed.2d 609 (2015)).

Moreover, Umphress once again makes the outlandish and unsupported statement that “[] the commissioners have taken the astounding position that the new comment to Canon 4 allows *them to continue threatening and disciplining judges such as Mr. Umphress* who officiate marriages for opposite-sex couples while opting out of same- sex weddings on account of their Christian faith.”⁶ That statement is false and beyond the pale.

The Commission advised this Court in its Response Brief that virtually identical statements by Umphress asserting there have been “threats” of discipline made to judges are untrue. The Response Brief states clearly, “Umphress alleges he has received ‘threats’ from the Commission that sanctions will be imposed. That statement is unsupported by any evidence in the record and is untrue.”⁷ The comments in this letter are likewise untrue. Nevertheless, it is apparent Umphress believes making such false statements is somehow persuasive. It is not.

The Letter of December 17, 2025 should be seen for what it is: an effort to intrude on the record and final briefing with more of the same arguments. The Commission’s position has always been, and it is now, that Canon 4A(1) of the Texas Code of Judicial Conduct prohibits judges from publicly refusing, for moral or religious reasons, to perform same-sex weddings while continuing to perform opposite-sex weddings.

The plain facts are that Judge Umphress and Justice of the Peace Hensley incorrectly claim they can publicly discriminate against same sex couples while welcoming heterosexual couples to their courts for wedding ceremonies. The basis for that position is that they, personally, do not think they are discriminating against gays. They claim their conduct is merely benign disapproval of the gay lifestyle.⁸

They miss the point. It is not their personal views about whether they have violated Canon 4A and have failed to conduct themselves so “they do not cast reasonable doubt on the judge’s capacity to act impartially as a judge[.]”⁹ Rather, as the United States Supreme Court has explained, it “*is not the reality of bias or prejudice but its appearance.*” *Liteky v. United States*, 510 U.S. 540, 548 (1994) (emphasis added). “This inquiry is an objective one, made from the perspective of a *reasonable observer* who is informed of all the surrounding facts and circumstances.”¹⁰

⁶ Letter at 2. (Emphasis added).

⁷ Response Brief at 9.

⁸ Appellant’s Opening Brief at 22; Commission Response Brief at 19-23.

⁹ Response Brief at 2.

¹⁰ *Id.*, See also, *Microsoft Corp. v. United States*, 530 U.S. 1301, 1302 (2000) (emphasis added).

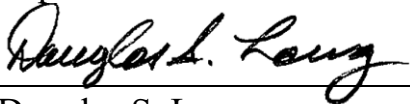
This Court must affirm the plain language of the requirement of Canon 4A(1) of the Texas Code of Judicial Conduct that states “A judge shall conduct all of the judge’s extra-judicial activities so that they do not cast reasonable doubt on the judge’s capacity to act impartially as a judge” Texas cannot be the only state that holds to the contrary. As the Supreme Court of Wyoming has held when addressing rules similar to Canon 4A, “all [of these rules] address different facets of the fundamental requirement that judges maintain public confidence in the judiciary by impartially applying the law.”¹¹

Were this Court to interpret Canon 4A(1) as argued by Umphress, and apparently Hensley, judges would be entitled to interpret the concept of judicial impartiality based only on their personal view, *i.e.*, “I can be fair.”¹² That is not what Canon 4 says. It cannot be the rule in Texas. That must not become the rule in Texas.

The Commission respectfully requests that this Court consider its response to the Letter and dismiss the efforts made in the Letter to get in one last shot.

Very truly yours,

Thompson Coburn LLP

By 
 Douglas S. Lang
 Senior Counsel

cc: All counsel (via Texas e-file)

¹¹ See *In re Neely*, 390 P.3d 728, 737 (Wyo. 2017).

¹² See Response Brief at 9, “Umphress’s claim, and presumably Hensley’s claim, is that they each have a ‘right’ to conduct wedding ceremonies for heterosexual couples and to publicly refuse to conduct ceremonies for same-sex couples. App. Br. at 2, 9. Also, he claims the Commission ‘is presupposing’ his actions and those of Hensley ‘evinces bias, prejudice bias, prejudice, or hatred toward people who engage in homosexual behavior ...’ App. Br. 18.”

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Hall

Status as of 12/19/2025 8:44 AM CST

Associated Case Party: DavidC.Hall

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Dianne Hensley

(b) County of Residence of First Listed Plaintiff McLennan

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Jonathan F. Mitchell, Mitchell Law PLLC
111 Congress Avenue, Suite 400, Austin, Texas 78701
(512) 686-3940**DEFENDANTS**

Gary L. Steel, Ken Wise, Carey F. Walker, Clifton Roberson, Kathy P. Ward, Wayne Money, Andrew M. Kahan, Tano E. Tijerina, Chace A. Craig, Sylvia Borunda Firth, Derek M. Cohen, Yinon Weiss, and April I. Aguirre

County of Residence of First Listed Defendant _____

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 2201, 42 U.S.C. § 1983

Brief description of cause:

First Amendment challenge to State Commission's discipline of judges who refuse to perform same-sex marriages

VII. REQUESTED IN COMPLAINT:☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

December 19, 2025

SIGNATURE OF ATTORNEY OF RECORD

Jonathan F. Mitchell

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RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____