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.,	§	459TH 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]

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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.

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[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.

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[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 affidavit[19] 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 expenses[22]—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.

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[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]

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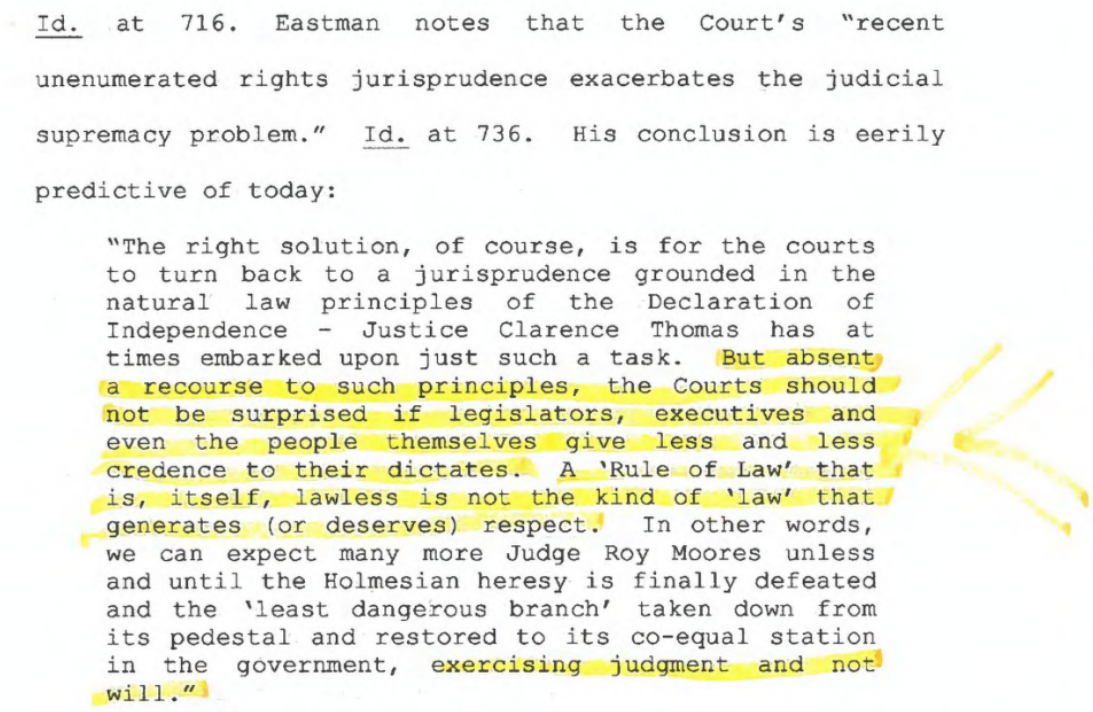
[28] Ex. 3, Hensley Dep. 15:16–19.
[29] Ex. 3, Hensley Dep. 16:6–11.
[30] Ex. 3, Hensley Dep. 16:6–11.
[31] Ex. 3, Hensley Dep. 16:16–22.
[32] Ex. 4, Plaintiff's Responses to RFP at Hensley0197; Ex. 3, Hensley Dep. 85:5–8.
[33] Ex. 4, Plaintiff's Responses to RFP at Hensley0200.
[34] Ex. 4, Plaintiff's 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]

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[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.

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[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]

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[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

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[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).

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[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

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[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*
Douglas S. Lang
State Bar No. 11895500
John P. Atkins
State Bar No. 24097326
THOMPSON COBURN LLP
2100 Ross Ave., Ste. 3200
Dallas, TX 75201
(972) 629-7100 Phone
(972) 629-7171 Fax
dlang@thompsoncoburn.com
jatkins@thompsoncoburn.com

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.	§	459TH 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 Reponses 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 Reponses 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.

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[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*

Douglas S. Lang
State Bar No. 11895500
John P. Atkins
State Bar No. 24097326
THOMPSON COBURN LLP
2100 Ross Ave., Ste. 3200
Dallas, TX 75201
(972) 629-7100 Phone
(972) 629-7171 Fax
dlang@thompsoncoburn.com
jatkins@thompsoncoburn.com

David R. Schleicher
State Bar No. 17753780
SCHLEICHER LAW FIRM, PLLC
510 Austin Ave., Ste. 110
Waco, TX 76701
(254) 776-3939 Phone
(254) 776-4001 Fax
david@gov.law

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 Chrisitan 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(l) 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 Restoratation 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.

/s/ Jonathan F. Mitchell

KELLY J. SHACKELFORD
Texas Bar No. 18070950
HIRAM S. SASSER III
Texas Bar No. 24039157
JEREMY DYS
Texas Bar No. 24096415
First Liberty Institute
2001 West Plano Parkway, Suite 1600
Plano, Texas 75075
(972) 941-4444 (phone)
(972) 423-6162 (fax)
kshackelford@firstliberty.org
hsasser@firstliberty.org
jdys@firstliberty.org

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: July 30, 2025

Counsel for Plaintiff

CERTIFICATE OF SERVICE

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

Douglas S. Lang
Thompson Coburn LLP
2100 Ross Avenue, Suite 3200
Dallas, Texas 75201
(972) 629-7100 (phone)
(972) 629-7171 (fax)
dlang@thompsoncoburn.com

Roland K. Johnson
Harris Finley & Bogle, P.C.
777 Main Street, Suite 1800
Fort Worth, Texas 76102
(817) 870-8765 (phone)
(817) 333-1199 (fax)
rolandjohnson@hfblaw.com

David Schleicher
Schleicher Law Firm, PLLC
1227 North Valley Mills Drive, Suite 208
Waco, Texas 76712
(254) 776-3939 (phone)
(254) 776-4001 (fax)
david@gov.law

Ross G. Reyes
Littler Mendelson, PC
2001 Ross Avenue, Suite 1500, LB 116
Dallas, Texas
(214) 880-8138 (phone)
rgreyes@littler.com

Counsel for Defendants

/s/ Jonathan F. Mitchell
Jonathan F. Mitchell
Counsel for Plaintiff

Exhibit 3

Excerpts from Deposition of Dianne Hensley

NO. D-1-GN-20-003926

DIANNE HENSLEY, ON BEHALF OF HERSELF AND OTHERS SIMILARLY SITUATED	*	IN THE DISTRICT COURT
VS.	*	459TH JUDICIAL DISTRICT
STATE COMMISSION ON JUDICIAL CONDUCT, ET AL	*	TRAVIS COUNTY, TEXAS

ORAL AND VIDEOTAPED DEPOSITION OF
DIANNE HENSLEY
OCTOBER 23, 2025

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

A P P E A R A N C E S

JONATHAN F. MITCHELL
Mitchell Law
111 Congress Avenue
Suite 400
Austin TX 78701
jonathan@mitchell.law
APPEARING FOR THE PLAINTIFFS

HIRAM SASSER
HOLLY RANDALL
First Liberty Institute
2001 W. Plano Parkway
Suite 1600
Plano TX 75075
hsasser@firstliberty.org
hrandall@firstliberty.org
APPEARING FOR THE PLAINTIFFS

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

ALSO PRESENT:
Lisa Holms
Miranda Glover, Videographer

INDEX

EXHIBITS

P R O C E E D I N G S

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

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

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

DIANNE HENSLEY,

having been first duly sworn, testified as follows:

EXAMINATION

BY MR. ATKINS:

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

A. Okay.

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

Have you ever been deposed before?

A. Yes.

Q. How many times?

A. Twice.

Q. Under what circumstances?

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

A. Yes, I would say that is.

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

A. Yes.

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

(Video plays.)

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

A. Yes.

Q. Do you remember giving that testimony?

A. No.

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

A. Yes.

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

A. Sure.

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

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

MR. MITCHELL: Objection, form.

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

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

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

A. I would think.

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

A. Yes.

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

A. Yes.

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

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

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

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

A. Yes.

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

A. Yes.

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

A. No.

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

A. No.

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

A. I don't believe so.

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

A. Yes.

MR. MITCHELL: Objection, form.

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

before they were filed?

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

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

A. Yes.

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

A. Yes.

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

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 immortality a sin?

A. Yes.

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

MR. MITCHELL: Objection, form.

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

A. What was your question?

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

A. Okay. I'm done.

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

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

Q. Are they relevant to your decision-making?
A. Yes.
Q. And, in fact, Paragraph 31 states after the previous two paragraphs that for these reasons, you initially quit officiating weddings entirely; is that correct?
A. Yes.
Q. And is Paragraph 31 correct in saying that?
A. Yes.
Q. Were there other reasons besides those in Paragraphs 29 and 30 that you decided not to officiate same-sex weddings while resuming officiating opposite-sex weddings?
A. I don't know if you call them reasons or just support, but yes.
Q. What -- what were those reasons?
A. I feel like that the US Constitution supports it and the Texas RFRA law supports my position.
Q. Any other reasons specific just to refusing to solemnize same-sex marriages?
A. I felt like in the Obergefell decision Kennedy spoke to that the -- Obergefell does not abrogate people's right to differ and to act on their conscious.
Q. Can you go back in your little pile there to -- I believe it was Exhibit 3 was the printout from the

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

MR. MITCHELL: Objection, form.

A. Yes.

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

Do you remember saying that?

A. No.

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

A. No.

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

A. Perhaps.

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

A. Yes.

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

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

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

fairly heard.

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

A. Yes.

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

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

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

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

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

MR. MITCHELL: Objection, form.

A. Could you ask again?

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

A. "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 belief she chooses."

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

A. No.

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

A. I don't have any knowledge.

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

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

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

A. Yes.

Q. Do you have a sense when that happened?

A. August 8th, 2019.

Q. That's very well done.

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

but...

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

A. Yes.

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

A. Yes.

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

A. Yes.

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

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

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

A. Yes.

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

A. No.

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

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

Q. Because you don't know?

A. Right. I don't know.

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

MR. MITCHELL: Objection, form.

A. No.

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

(Exhibit No. 8 introduced.)

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

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

A. Yes.

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

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

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

A. They --

Q. Sorry.

A. Hopefully it will total this.

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

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

A. Yes.

Q. Related specifically to this lawsuit, correct?

A. Yes.

Q. So this is --

MR. ATKINS: Did you have an objection?

weren't doing that anymore?

A. No.

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

A. Start again?

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

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

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

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

A. Oh.

MR. MITCHELL: Objection, form.

A. No.

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

A. Yes.

MR. MITCHELL: Objection, form.

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

A. No.

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

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

Q. Okay. Just checking. In response to Request 5 -- I'm sorry -- Request 6. This is the request: "Produce all communications you've received" -- and this is Page 2, Hensley 0002 in Exhibit 10. "Produce all communications you received from any person other than your attorney or any defendant or agent, representative or member of same in their 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." And the answer is an objection on the grounds of burden and expense outweighing the likely benefit amount in controversy.

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

A. Yes.

Q. What kinds of communications have you received?

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

Q. Tell me about the telephone calls.

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

Q. Ms. Saenz?

A. Saenz, yes.

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

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

Q. Some are supportive and some are not?

A. Yes.

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

A. Yes.

Q. Okay. Same kind of thing?

A. Yes.

Q. Okay. Have you had any communications with

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

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

A. Yes.

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

A. I'm done.

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

A. Yes.

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

A. I would think so.

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

Do you see that?

A. Yes.

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

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

A. No.

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

MR. MITCHELL: Objection, form.

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

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

MR. MITCHELL: Objection, form.

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

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

A. Yes.

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

A. Yes.

Q. And your religious values?

A. Yes.

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

MR. MITCHELL: Objection, form.

A. No.

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

A. Yes.

Q. What is it?

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

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

A. I believe so.

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

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

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

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

A. Yes, I think so.

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

A. I think so.

MR. ATKINS: Okay. Pass the witness.

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

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

(Proceedings concluded at 2:02 p.m.)

CHANGES AND SIGNATURE

DIANNE HENSLEY 10/23/2025

PAGE	LINE	CHANGE	REASON

Job No. TX7667401

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

NO. D-1-GN-20-003926

DIANNE HENSLEY, ON BEHALF OF HERSELF AND OTHERS SIMILARLY SITUATED	*	IN THE DISTRICT COURT
VS.	*	459TH JUDICIAL DISTRICT
STATE COMMISSION ON JUDICIAL CONDUCT, ET AL	*	TRAVIS COUNTY, TEXAS

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

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

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

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

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

JOHN P. ATKINS - 3:07

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

JONATHAN F. MITCHELL
Mitchell Law
111 Congress Avenue
Suite 400
Austin TX 78701
jonathan@mitchell.law
APPEARING FOR THE PLAINTIFFS

HIRAM SASSER
HOLLY RANDALL
First Liberty Institute
2001 W. Plano Parkway
Suite 1600
Plano TX 75075
hsasser@firstliberty.org
hrandall@firstliberty.org
APPEARING FOR THE PLAINTIFFS

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

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

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

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

GAIL SPURGEON
Texas CSR 1718
Expires 11/30/2026
Firm No. 571
Veritext Legal Solutions
300 Throckmorton Street
Suite 1600
Fort Worth, Texas 76102
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

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.

/s/ Jonathan F. Mitchell

Kelly J. Shackelford
Texas Bar No. 18070950
Hiram S. Sasser III
Texas Bar No. 24039157
Jeremiah G. Dys
Texas Bar No. 24096415
First Liberty Institute
2001 West Plano Parkway, Suite 1600
Plano, Texas 75075
(972) 941-4444 (phone)
(972) 423-6162 (fax)
kshackelford@firstliberty.org
hsasser@firstliberty.org
jdys@firstliberty.org

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

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:

DOUGLAS S. LANG
JOHN P. ATKINS
Thompson Coburn LLP
2100 Ross Avenue, Suite 3200
Dallas, Texas 75201
(972) 629-7100 (phone)
(972) 629-7171 (fax)
dlang@thompsoncoburn.com
jatkins@thompsoncoburn.com

DAVID R. SCHLEICHER
Schleicher Law Firm, PLLC
510 Austin Avenue, Suite 110
Waco, Texas 76701
(254) 776-3939 (phone)
(254) 776-4001 (fax)
david@gov.law

Counsel for Defendants

/s/ Jonathan F. Mitchell
JONATHAN F. MITCHELL
Counsel for Plaintiff

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.	)	

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.

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,

Petitioner,

v.

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

Respondents.

_____/

CASE NO. 1140460

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

Mathew D. Staver†
Fla. Bar No. 0701092
mstaver@LC.org
court@LC.org
Horatio G. Mihet†
Fla. Bar No. 0026581
hmihet@LC.org
Roger K. Gannam†
Fla. Bar No. 240450
rgannam@LC.org
LIBERTY COUNSEL
P.O. BOX 540774
Orlando, FL 32854-0774
(800)671-1776
(407)875-0770 FAX
†Admitted *pro hac vice*

A. Eric Johnston (ASB-2574-H38A)
eric@aericjohnston.com
Suite 107
1200 Corporate Drive
Birmingham, AL 35242
(205)408-8893
(205)408-8894 FAX

Samuel J. McLure (MCL-056)
sam@theadoptionfirm.com
The Adoption Law Firm
PO Box 2396
Montgomery, AL 36102
(334)612-3406

Attorneys for Relators
Alabama Policy Institute and
Alabama Citizens Action Program

> 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.

/s/ Jonathan F. Mitchell

Kelly J. Shackelford
Texas Bar No. 18070950
Hiram S. Sasser III
Texas Bar No. 24039157
Jeremiah G. Dys
Texas Bar No. 24096415
First Liberty Institute
2001 West Plano Parkway, Suite 1600
Plano, Texas 75075
(972) 941-4444 (phone)
(972) 423-6162 (fax)
kshackelford@firstliberty.org
hsasser@firstliberty.org
jdys@firstliberty.org

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: 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:

DOUGLAS S. LANG
JOHN P. ATKINS
Thompson Coburn LLP
2100 Ross Avenue, Suite 3200
Dallas, Texas 75201
(972) 629-7100 (phone)
(972) 629-7171 (fax)
dlang@thompsoncoburn.com
jatkins@thompsoncoburn.com

DAVID R. SCHLEICHER
Schleicher Law Firm, PLLC
510 Austin Avenue, Suite 110
Waco, Texas 76701
(254) 776-3939 (phone)
(254) 776-4001 (fax)
david@gov.law

Counsel for Defendants

/s/ Jonathan F. Mitchell
JONATHAN F. MITCHELL
Counsel for Plaintiff

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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 COMMISION 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 DeBardeleben		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
Justin Butterfield		jbutterfield@firstliberty.org	11/28/2025 6:15:28 PM	SENT
Jonathan F.Mitchell		jonathan@mitchell.law	11/28/2025 6:15:28 PM	SENT
Charles W.Fillmore		chad@fillmorefirm.com	11/28/2025 6:15:28 PM	SENT
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 COMMISION 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