

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

DEBORAH LELIAERT and
PAULA WOOLWORTH, a married
couple,

Plaintiffs,

versus

CASE NO. 1:15-cv-00506

BRIAN D. RAGLAND, FREDERICK E.
ROWE, JR., DOUG DANZEISER,
CYDNEY DONNELL, YOLANDA
GRIEGO, and I. CRAIG HESTER, in
their official capacities as members of
the Board of Trustees for the Employee
Retirement System of Texas, a Texas
governmental public trust fund, and
PORTER WILSON, in his official
capacity as the Executive Director of the
Employee Retirement System of Texas, a
Texas governmental public trust fund,

Defendants.

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

This action seeks injunctive and declaratory relief against the members of the Board of Trustees of the Employee Retirement System of Texas and the Executive Director of the Employee Retirement System of Texas, all in their official capacities only, with regard to the denial of equal employment benefits to Deborah Leliaert and her spouse Paula Woolworth (collectively "Plaintiffs") because of Plaintiffs' sex and sexual orientation, in violation of Plaintiffs' constitutional rights.

I. JURISDICTION AND VENUE

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

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

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because the Defendants are sued in their official capacities vis-à-vis the Employees Retirement System of Texas, which has its principal place of business at 200 East 18th Street, Austin, Texas 78701 in Travis County. Further, a substantial portion of the events giving rise to Plaintiffs' claims occurred in this district.

II. THE PARTIES

4. Plaintiffs DEBORAH LELIAERT (“Deborah”) and PAULA WOOLWORTH (“Paula”) are a married couple who reside in the City of Shady Shores, Denton County, Texas. Deborah has been employed for more than 24 years with the University of North Texas (the “University”), where she currently holds the position of Vice President for University Relations and Planning. Deborah and Paula were legally married in Kenwood, California, on October 4, 2008.

5. Defendants BRIAN D. RAGLAND, FREDERICK E. ROWE, JR., DOUG DANZEISER, CYDNEY DONNELL, YOLANDA GRIEGO, and I. CRAIG HESTER are sued in their official capacities as members of the Board of Trustees

for the EMPLOYEE RETIREMENT SYSTEM OF TEXAS (the “ERS”), a Texas governmental public trust fund created pursuant to article XVI, section 67, of the Texas Constitution. ERS is established and maintained under the laws of the State of Texas. The Board of Trustees formulates the basic and general policies, rules, and regulations of the ERS consistent with the purposes, policies, principles, and standards stated in statutes administered by the board.

6. Defendant PORTER WILSON is sued in his official capacity as the Executive Director of the ERS. Under his leadership, the ERS administers programs that provide retirement, deferred compensation, and flexible benefits for state employees and retirees.

7. This Complaint challenges the constitutionality of Section 6.204 of the Texas Family Code (“Texas DOMA Statute”)¹ and Article I, Section 32 of the Texas Constitution (“Texas Marriage Amendment”)² as applied to the ERS. Thus,

¹ RECOGNITION OF SAME-SEX MARRIAGE OR CIVIL UNION

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

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

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

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

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

² MARRIAGE

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

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

pursuant to Fed. R. Civ. P. 5.1, Plaintiffs will file and serve notice of constitutional question on the Attorney General of the State of Texas, by certified mail at 300 W. 15th Street, Austin, Texas 78701.

III. FACTUAL BACKGROUND

8. In 1996, Congress passed the so-called Defense of Marriage Act (“Federal DOMA”), 28 U. S. C. § 1738C. Among other things, the Federal DOMA singled out a class of same-sex couples who had legally married in a state or other jurisdiction and imposed a disability on the class by refusing to acknowledge their marriages based on the sex and sexual orientation of the members of the couples. The federal government’s refusal to recognize those marriages, pursuant to the Federal DOMA, disqualified those who have legally wed a same-sex partner from a variety of federal benefits.

9. A number of states, including Texas, passed similar statutes and constitutional amendments that mimicked the non-recognition effect of the Federal DOMA. The Texas DOMA Statute (enacted in 2003) and the Texas Marriage Amendment (passed in 2005) both mirror the design, purpose, and effect of the Federal DOMA in that one of the purposes of both the Texas DOMA Statute and the Texas Marriage Amendment is to identify a subset of state-sanctioned marriages and, by denying those marriages any recognition under Texas law, to make those marriages, and the same-sex couples who have entered them, unequal to all other marriages and to different-sex couples who have married.

10. In *Windsor v. United States*, 133 S. Ct. 2675, (2013), the United States Supreme Court struck down the part of the Federal DOMA that denied federal recognition to the marriages legally entered by same-sex couples. The Supreme Court concluded that the Federal DOMA consigned same-sex couples' relationships to a second-tier status and, in doing so, demeaned those couples, humiliated their children, deprived these families of equal dignity, and caused them countless tangible harms, all in violation of basic due process and equal protection principles.

11. Consistent with the reasoning of *Windsor*, the United States District Court for the Western District of Texas (San Antonio Division) on February 26, 2014 struck down as unconstitutional the Texas DOMA Statute and Texas Marriage Amendment. *DeLeon v. Perry*, 975 F. Supp. 2d 632 (W.D. Tex. 2014), *argued*, No. 14-50196 (5th Cir. Jan. 9, 2015).

Deborah Leliaert and Paula Woolworth

12. Deborah Leliaert and Paula Woolworth are in a loving, committed partnership, in which they co-own and share equally all of their possessions and other resources.

13. Deborah and Paula met in church on November 11, 2001—Veteran's Day—when two friends “conspired” to connect them. On their first real date, which Deborah's mother strongly encouraged, they stayed up all night talking. They discovered that they were both from big families with strong values, and that they live by many of the same core principles—hard work, honesty, love of family,

support for education, respect for diverse viewpoints, regard for the environment, and service to others.

14. They have enjoyed learning together about the cultures of other countries, even differences in the communities of states that comprise our nation. But, they never travel without the expensive legal documents they had drawn up to clearly define and protect their relationship and copies of the licenses that document their legal union, in order to safeguard one another should something happen to one of them.

15. Paula and Deborah were legally married on October 4, 2008, in Kenwood, California, surrounded by family and friends. Paula's mother lovingly presided as the official witness to their marriage, being the only surviving parent of either one of them left to stand up for the two of them.

16. Notwithstanding their joy in marrying, Paula and Deborah were saddened that their home State of Texas would not afford them the dignity of recognizing their marriage—even though they are active, contributing residents of the State—because of the State's laws banning recognition of marriages between same-sex couples legally entered outside of Texas.

17. Helping others has always been an important focus of Paula's life. In 2011, Paula retired from her work as a senior executive in the risk management and managed health care industry. She also had worked for 15 years for a Fortune 500 company and in her early career was employed in the health care industry as an administrator and a licensed occupational therapist.

18. Paula retired from corporate work and devoted her time to volunteer service as an elected official in the Town of Shady Shores; to becoming a member of two volunteer boards—one serving low income children in need of education-centered day care and one serving abused, abandoned animals; and to being a member of the Chancellor's Club Advisory Board at the University of Kansas.

19. Paula's retirement and volunteer service left her without a health insurance plan. To insure Paula, Plaintiffs have had to subscribe to a high-deductible insurance plan that is second-class compared to a better, more reasonably priced plan offered to spouses by Deborah's employer. Deborah and Paula are spending money for insurance they could be setting aside for retirement or donating in service to others.

20. Both Paula and Deborah were first-generation college students. Though their educational paths were very different, both worked their way through college, and both share a deep commitment to the generation-changing effect of higher education.

21. Deborah's work experiences have been diverse, including service as a case worker for the state of Florida, a small business manager and owner, a non-profit public relations director, and vice presidencies of two financial service firms. Ultimately, it was the transformative power of higher education that drew Deborah to 24 years of service at the University of North Texas, where she currently holds the position of Vice President for University Relations and Planning.

22. As an employee of a public, state-supported university, however, Deborah isn't afforded the family health insurance benefits enjoyed by her married heterosexual colleagues, even though Paula is Deborah's spouse.

23. At the time of Paula's retirement, Deborah was informed by the University's human resources department that Paula was ineligible for spousal health insurance coverage because she is a same-sex spouse. Deborah attempted to enroll Paula in 2014 during open enrollment after a U.S. District Court struck down the State's discriminatory marriage bans. The enrollment request was denied by the ERS because the "Spouse and Participant cannot have the same gender."

24. The Employee Retirement System of Texas, charged with providing health, retirement and other competitive, reasonably priced benefits for state employees and their dependents, has denied Deborah's attempts to insure Paula under Deborah's ERS plan. At the same time, the University is prohibited by law from providing Deborah an alternative pathway of access to spousal health insurance coverage that would cover Paula.

25. Being denied recognition of their marriage has created negative emotional and financial impacts on Deborah and Paula. Deborah finds it distressing, hurtful, and unfair that the state she works for treats her like a second-class citizen. She instead wants to be treated equally to other state employees who enjoy the benefits of state-supported family health coverage.

IV. CONSTITUTIONAL FACTS RELATING TO WHY CLASSIFICATIONS BASED ON SEXUAL ORIENTATION SHOULD BE SUBJECTED TO HIGHTENED JUDICIAL SCRUTINY

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

27. Based on the traditional considerations that determine the appropriate level of scrutiny for equal protection claims, classifications based upon sexual orientation warrant heightened scrutiny by the courts.

28. Lesbian and gay individuals have suffered a long and significant history of purposeful discrimination in a wide variety of settings. Federal, state, and local governments have all played a significant role in this history, including for years deeming lesbians and gay men unfit for positions in public employment and barring them from governmental jobs based on their sexual orientation. The federal government and many states and localities began aggressive campaigns to purge lesbian and gay employees from government service since at least the 1940s.

29. Sexual orientation is immutable in the sense that it is fundamental to one's identity, fixed at an early age, and highly resistant to change. Efforts to change an individual's sexual orientation are generally futile and potentially dangerous to an individual's well-being. Lesbian and gay individuals should neither be required to abandon their sexual identity to access fundamental rights nor to hide their identities to avoid discrimination.

30. Lesbians and gay men historically have lacked political power. Although they have achieved some advances against discrimination, these gains

have been consistently met with strong political and public backlash, and lesbians and gay men continue in many parts of the country to be denied any express remedy for the widespread discrimination they face in private employment, housing, and public accommodation and to be subject to express discrimination by the government regarding their relationships and parental rights. Still today, lesbians and gay men lack the consistent ability to attract the favorable attention of lawmakers.

31. Homosexuality, in and of itself, implies no impairment to judgment, stability, reliability, or general social or vocational capabilities. A person's sexual orientation bears no relation to a person's ability or capacity to contribute to society. Whether premised on pernicious stereotypes or simple moral disapproval, laws classifying based on sexual orientation rest on factors that generally provide no sensible or legitimate ground for differential treatment.

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

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

33. The Fourteenth Amendment to the United States Constitution, enforceable pursuant to 42 U.S.C. § 1983, provides that no state shall "deprive any person of life, liberty, or property, without due process of law." The Due Process Clause has a substantive component that provides heightened protection against

government interference with fundamental rights and liberty interests.

34. Although Texas does not permit same-sex couples to marry in the State, same-sex couples currently are able to marry in 36 other states and the District of Columbia as well as 19 countries outside the United States.

35. It is the longstanding and strong public policy of the State, codified in TEXAS FAMILY CODE § 1.101,³ that marriages legally performed in other jurisdictions are presumed valid in Texas.

36. Yet, by adopting the Texas Marriage Amendment and Texas DOMA Statue, Texas has created a special exception with regard to married same-sex couples that denies them this recognition as a class by both constitutional and statutory mandate.

37. Under Texas law, the ERS, as the benefits agency acting for the University, is required to treat lesbians and gay Texas residents who work for public employers such as the University and who legally married a same-sex spouse outside of Texas as if they are single for the purpose of employment compensation.

38. The United States Supreme Court has established that existing marital, family, and intimate relationships are areas in which the government generally should not intrude without substantial justification.

³ EVERY MARRIAGE PRESUMED VALID. In order to promote the public health and welfare and to provide the necessary records, this code specifies detailed rules to be followed in establishing the marriage relationship. However, in order to provide stability for those entering into the marriage relationship in good faith and to provide for an orderly determination of parentage and security for the children of the relationship, it is the policy of this state to preserve and uphold each marriage against claims of invalidity unless a strong reason exists for holding the marriage void or voidable. Therefore, every marriage entered into in this state is presumed to be valid unless expressly made void by Chapter 6 or unless expressly made voidable by Chapter 6 and annulled as provided by that chapter.

39. The longstanding general rule in every state has historically been that a marriage that has legal force where it was celebrated also has legal force throughout the country. Indeed, the idea of being married in one state and unmarried in another is one of the most perplexing and distressing complications in the field of domestic relations.

40. The right to marry and remain married is properly recognized as one that is a fundamental liberty interest appropriately protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution. A State's failure to respect this interest violates married couples' constitutional rights to liberty, dignity, autonomy, family integrity, association, and due process.

41. Public employees do not lose their constitutional rights when they accept public employment positions. While those rights may be balanced against the requirements the government has in its role as an employer (as opposed to as sovereign), the Due Process Clause is implicated when the government makes decisions in the employment context that interfere with an employee's exercise of a fundamental right, including the right to marry and remain married. Public employers, and agencies acting on their behalf, cannot take personnel actions or provide different pay scales that would violate the Constitution.

42. In the context of the ERS's inability to provide equal compensation to all married employees of the University, as well as of other public employers in Texas, the marriage recognition ban contained in the Texas DOMA Statute and the

Texas Marriage Amendment violates this fundamental right without any sufficient legitimate justification.

43. At all times pertinent to the denial of benefits to the Plaintiffs, Defendants, in their official capacities with respect to the ERS, were persons acting under color of State law.

44. Defendants' conduct in denying benefits to otherwise-eligible married public employees, such as Deborah, with a same-sex spouse, such as Paula, violates the Due Process Clause of the U.S. Constitution. Plaintiffs are entitled to a declaratory judgment so holding.

45. Defendants also should be preliminarily and permanently enjoined from relying on or enforcing the Texas Marriage Amendment and the Texas DOMA Statute to deny legally-married lesbian or gay employees spousal benefits for a same-sex spouse as part of their compensation on the same basis as is provided to their non-gay, legally married co-workers.

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

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

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

48. Public employees do not lose their constitutional rights when they accept public employment positions. While those rights may be balanced against the requirements the government has in its role as an employer (as opposed to as sovereign), the Equal Protection Clause is implicated when the government makes class-based decisions in the employment context, treating distinct groups of individuals categorically differently. Public employers, and agencies acting on their behalf, cannot take personnel actions or provide different pay scales that would violate the Constitution.

49. With respect to the workplace, Deborah and her spouse Paula are similarly situated in every relevant respect to Deborah's non-gay co-workers with different-sex spouses who are allowed to obtain spousal coverage, including healthcare insurance, as part of their employment compensation.

50. Deborah's employment is no less demanding, and her service to the public no less valuable, than that of her non-gay co-workers with the same jobs who, unlike her, are permitted access to spousal coverage as part of their compensation.

51. Same-sex couples make the same commitment to one another as different-sex couples. Like different-sex couples, same-sex couples fall in love, build their lives together, plan their futures together, and hope to grow old together. Like different-sex couples, same-sex couples support one another emotionally and financially and take care of one another physically when faced with injury or illness. Spousal benefits and healthcare coverage provided by the ERS on behalf of the University is an important component contributing to the security and happiness of

Texas public employees married to different-sex spouses and would be an equally important component for Texas public employees married to same-sex spouses.

52. By singling out and denying lesbian and gay employees who are legally married in another jurisdiction access to spousal benefits, Defendants, each acting under the color of state law, discriminate against Plaintiffs because of their sex and sexual orientation. Defendants are depriving and, absent the grant of relief by this Court, will continue to deprive Plaintiffs of rights secured by the Fourteenth Amendment to the United States Constitution in violation of 42 U.S.C. § 1983.

53. A public employer's actions, including the conduct of governmental agencies acting on the employer's behalf, that treat a class of employees disparately based solely on the employees' sex or sexual orientation are inherently suspect and must be analyzed under some form of heightened judicial scrutiny. Such governmental conduct will be presumed to violate equal protection unless the government can demonstrate that the classification is necessary to meet a compelling government interest or, at a minimum, is substantially related to an important government objective. The classification used by the ERS, as well as the resulting discriminatory conduct, can be defended only by its actual governmental purpose, not a different rationalization invented after the fact.

54. By incorporating the non-recognition requirements of the Texas DOMA Statute and the Texas Marriage Amendment to determine which public employees are deemed to have a "legal spouse," Defendants create a discriminatory employment compensation system that violates the federal Constitution's equal

protection guarantee under any heightened scrutiny standard because the Defendants' conduct neither advances substantially any important interest as a public employer nor is necessary to further a compelling interest as a public employer in an adequately tailored fashion.

55. Even without application of heightened scrutiny analysis, Defendants' conduct still fails the Constitution's equal protection guarantee under the most deferential level of scrutiny because it bears no rational relationship to any legitimate interest of the University acting as a public employer.

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

57. Furthermore, the provisions of the Texas Marriage Amendment and the Texas DOMA Statute that prevent ERS's recognition of the marriages same-sex couples have legally entered into in other jurisdictions discriminates as a class against Plaintiffs and other married Texas public employees with a same-sex spouse with respect to the exercise of their right to marry and to remain married—properly recognized as one that is a fundamental liberty interest appropriately protected by the Due Process Clause of the Fourteenth Amendment—as well as their liberty interests in dignity, autonomy, and family integrity and association.

Differential treatment of a class of public employees with respect to the exercise of their constitutionally-protected fundamental rights and liberty interests subjects Defendants' conduct to strict judicial scrutiny, which Defendants' conduct cannot withstand.

58. Defendants' refusal to recognize the legal marriages of same-sex couples for the purpose of employment compensation denies same-sex couples equal dignity and respect and deprives their families of a critical safety net of rights and responsibilities. Defendants' actions brand lesbians and gay men, as well as their children, as second-class citizens through a message of government-imposed stigma. It fosters private bias and discrimination by instructing all persons with whom same-sex couples interact, including their own children, that their relationships are less worthy than others. Defendants' actions reflect the State's moral disapproval and antipathy toward lesbians and gay men.

59. At all times pertinent to the denial of benefits to the Plaintiffs, Defendants, in their official capacities with respect to the ERS, were persons acting under color of State law.

60. Defendants' conduct violates the Equal Protection Clause of the United States Constitution. Plaintiffs are entitled to a declaratory judgment so holding.

61. Defendants should be preliminarily and permanently enjoined from relying on or enforcing the Texas Marriage Amendment and the Texas DOMA Statute to deny legally-married lesbian or gay employees spousal benefits for a

same-sex spouse as part of their compensation on the same basis as is provided to their non-gay legally married co-workers.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court enter judgment:

- A) Issuing a preliminary injunction pursuant to Federal Rule of Civil Procedure 65 enjoining Defendants, and their successors in interest, from denying spousal benefits for same-sex spouses of lesbian and gay State employees until such time as the Court can make a final determination on the merits;
- B) Declaring, pursuant to Federal Rule of Civil Procedure 57, that Defendants' conduct violates Plaintiffs' equal protection and due process rights under the United States Constitution;
- C) Declaring the provisions of the Texas Marriage Amendment and the Texas DOMA Statute *unconstitutional* insofar as they prohibit the ERS, the University, and other governmental employers in the State of Texas from recognizing the legal marriages of same-sex couples performed in other jurisdictions for the purpose of qualifying their employees for spousal benefits;
- D) Issuing a permanent injunction enjoining Defendants, and their successors in interest, from relying on or enforcing the Texas Marriage Amendment and the Texas DOMA Statute to deny spousal benefits for same-sex spouses of lesbian and gay employees otherwise eligible for those benefits;
- E) Awarding statutory costs pursuant to 28 U.S.C. § 1920;
- F) Granting reasonable attorneys' fees pursuant to 42 U.S.C. § 1988; and
- G) Granting such other and further relief to which Plaintiffs are entitled.

Dated: June 11, 2015

Respectfully submitted,

LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.

By: s/ Paul D. Castillo

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* *Pro Hac Vice* motion
submitted separately

CERTIFICATE OF SERVICE

This is the Original Complaint. Plaintiffs' Counsel will request waiver of service of each individual defendant pursuant to Fed. R. Civ. P. 4(d). Additionally, Plaintiffs' Counsel will serve a Notice of Constitutional Question on the Attorney General of the State of Texas in accordance with Fed. R. Civ. P. 5.1(a)(2).

By: s/ Paul D. Castillo

Paul D. Castillo