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

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

Plaintiffs,

versus

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

THE CITY OF HOUSTON, a Texas municipality;

JACK PIDGEON; and

LARRY HICKS,

Defendants.

CASE NO. 4:17-cv-02448

EXPEDITED HEARING REQUESTED

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION, SUPPORTING AUTHORITY, AND REQUEST FOR AN EXPEDITED HEARING

Plaintiffs move the Court to enter a preliminary injunction preserving the status quo and enjoining Defendant City of Houston (the "City") from (a) discontinuing employment benefits currently provided to same-sex spouses of City employees, or (b) seeking reimbursement of benefits previously paid for coverage of same-sex spouses of City employees, until such time as a final judgment is entered in this case. Plaintiffs further move the Court to enjoin any other Defendant from interfering with continuation of such benefits until a final judgment is entered in the case.

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I. NATURE AND STAGE OF PROCEEDINGS

Plaintiffs are City employees and their same-sex spouses whose employee health and other benefits, and equal dignity guaranteed under the U.S. Constitution, are under attack. This enforcement action seeks, once and for all, to secure the rights of City employees and their same-sex spouses to spousal employment benefits on the same basis that those benefits are offered to every other married City employee. For years, the City has been embroiled in a legal dispute in Texas state courts (the "*Pidgeon* Case") with two taxpayers, Jack Pidgeon and Larry Pidgeon (collectively, the "Taxpayers"). The Taxpayers seek to deprive married City employees who have same-sex spouses of spousal employment benefits that the City has offered since November 2013, after *United States v. Windsor*, 133 S. Ct. 1675 (2013), struck down federal denial of recognition to marriages of same-sex couples. The Taxpayers contend that by providing those benefits, the City violates two Texas laws (the "Texas Marriage Bans")[1] that, among other things, prohibit Texas and its political subdivisions from recognizing marriages between same-sex spouses. As explained below, the Texas Marriage Bans are unconstitutional and unenforceable. Although Plaintiffs have received from the time they were first available the spousal benefits challenged by the Taxpayers, Plaintiffs were never parties to the Pidgeon Case and are not today.

By the fall of 2015, the United States Supreme Court and every U.S. Circuit Court of Appeals to have considered the issue, including the Fifth Circuit, had

[1] *See* TEX. FAM. CODE § 6.204 and TEX. CONST. Art. I, § 32.

declared laws like the Texas Marriage Bans prohibiting full recognition of same-sex couples' marriages unconstitutional because such laws violate the liberty and equality guarantees of the Fourteenth Amendment. Although these federal decisions should have sounded the death knell for the *Pidgeon* Case, the case continued to wind through the Texas court system until, on June 30, 2016, the Texas Supreme Court breathed new life into the Taxpayer's crusade against recognition of marriages of City employees to same-sex spouses. In a unanimous decision, the Texas Supreme Court indicated it will remand the case for new proceedings. Incredibly and erroneously, the Texas Supreme Court instructed the trial court that the constitutionality of the Texas Marriage Bans remains an open question in Texas. *Pidgeon v. Turner*, --- S.W.3d ---, 2017 WL 2829350, at *10-12 (Tex. June 30, 2017). The Taxpayers have already drafted and attempted to file in the trial court papers seeking to enjoin the City of Houston from continuing to provide employee spousal benefits for same-sex married couples and to require the City to claw back benefits previously provided to employees and spouses like the Plaintiffs (Attachment "A"). Although the filing was premature, the trial court will have jurisdiction to take up the motion once the Texas Supreme Court's mandate issues on or after August 17. Given that the trial judge has twice before granted this relief, a third injunction seems virtually certain once the mandate issues.

Plaintiffs filed this suit on August 10, 2017, and now move for preliminary injunctive relief against Defendants pending final judgment by this Court.

II. ISSUE PRESENTED AND STANDARD OF REVIEW

This suit presents a simple question of federal law—one that has been answered recently and clearly:

> May a political subdivision of Texas, such as the City, rely on the Texas Marriage Bans to deprive married City employees and their same-sex spouses equal access to spousal benefits that are otherwise available to every other City employee married to a different-sex spouse?

The answer is no.

A plaintiff requesting a preliminary injunction must establish the following four factors: (1) a substantial likelihood of success on the merits; (2) a substantial threat that failure to grant the injunction will result in irreparable injury; (3) the threatened injury outweighs any damage that the injunction may cause the opposing party; and (4) the injunction will not disserve the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Valley v. Rapides Parish Sch. Bd.*, 118 F.3d 1047, 1050 (5th Cir. 1997).

III. BACKGROUND

The following facts are established by the Plaintiffs' Declarations, filed contemporaneously with this motion.

A. Plaintiffs Noel Freeman and Brad Pritchett[2]

Plaintiff Noel Freeman is a Division Manager for the Public Works and Engineering Department of the City of Houston. He has been employed by the City for nearly thirteen years. On August 1, 2010, Noel married Brad Pritchett in

[2] Declaration of Noel Freeman, Attachment "B."

Washington, D.C., where same-sex couples can legally marry. At that point, they had already been in a committed relationship for eight years.

Noel enrolled Brad for spousal benefits, including healthcare coverage, in 2013, within about 45 minutes of learning about the change in the City of Houston's eligibility policy. Up to that time, for the entire twelve years they had been together, Brad had not had healthcare coverage—a fact that had always loomed over them like a dark cloud. Upon enrolling for spousal benefits, which included healthcare coverage, Brad made appointments to update his eyeglasses' prescription and to identify and treat various ailments, such as disorientation and vertigo, as well as little to no hearing in his right ear.

Although Brad is employed, he had healthcare benefits through his employer beginning only in 2015. Brad now receives medical and dental health insurance through his employer. Brad remains enrolled for vision care benefits with the City of Houston. Aside from spousal healthcare coverage, because the City currently recognizes their marriage, Noel and Brad continue to benefit from access to Family Medical Leave and the Employee Assistance Programs. Also of great importance to them is knowing that, should Brad lose his job, he would once again have access to spousal and medical benefits through the City.

B. Plaintiffs Yadira Estrada and Jennifer Flores[3]

Plaintiff Yadira Estrada is a police sergeant for the City of Houston. She has been employed by the City for more than nine years. On July 23, 2013, Yadira

[3] Declaration of Yadira Estrada, Attachment "C."

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

Yadira enrolled Jennifer in 2013 for spousal benefits, including healthcare coverage, about a week after learning about the change in the City of Houston's eligibility policy. Jennifer's employer did not provide healthcare benefits at that time. While Jennifer is still employed, and her employer does now provide healthcare coverage, her employer's benefits plan is far more expensive and offers fewer options than the City's spousal benefits plan. Yadira and Jennifer share a primary care physician, and Jennifer's physical therapy treatments are provided through Kelsey-Seybold Clinic, which is not an option under her employer's plan. Nor does Jennifer's employer offer coverage for vision and dental care, as the City does.

Jennifer relies upon her health insurance coverage via the City of Houston for continued prescriptions, medical care, physical therapy for a knee injury, and access to behavioral/mental health care services and providers. As the spouse of a police officer, Jennifer is eligible for added protections if Yadira is injured or dies in the line of duty. As someone who has pledged her service to the City of Houston, it is important to Yadira to know that Jennifer would be treated with the same dignity and respect as any other spouse of a fellow police officer.

Yadira and Jennifer are considering starting a family soon, and continuous healthcare coverage is all the more important to them.

C. Plaintiffs Ron Reeser and Vince Olivier[4]

Ron Reeser is a Central Network Administrator for the City of Houston. He has been employed by the City for approximately twelve years. Ron married Vince Olivier on August 18, 2008, in Vancouver, British Columbia, where same-sex couples can legally marry. They had been in a committed relationship together for more than two years at the time they married.

In 2013, Ron enrolled Vince for spousal benefits, including healthcare coverage, within one month of learning about the change in the City of Houston's eligibility policy. Due to the advanced age of Vince's parents, Ron wanted to ensure access to the City's family bereavement leave if that became necessary. Both Vince's parents have since passed away; because of the benefits, Ron was able to take three days when each parent passed.

The spousal health insurance available to Vince through the City is more financially advantageous with better coverage and better rates than he could obtain elsewhere—a benefit that saves Ron and Vince hundreds of dollars per month. Vince has high blood pressure and takes medications covered by the City's benefits plan.

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

[4] Declaration of Ronald Reeser, Attachment "D."

D. The *Pidgeon* Case[5]

Since November of 2013, the Taxpayers have tenaciously pursued the City of Houston and its Mayor to stop the City from providing equal spousal benefits to the same-sex spouses of lesbian, gay, and bisexual employees. The Taxpayers assert that Plaintiffs' relationships are "immoral and sinful," Attachment A, ¶ 11, and for years have been crusading in the Texas state courts using the Texas Marriage Bans as their sword to force the City to stop providing benefits to same-sex spouses of city employees. A state trial court in Harris County twice granted the taxpayers' a temporary injunction against the City. The first injunction expired. The second was vacated after the Texas Marriage Bans on which the Taxpayers' relied were held unconstitutional by the Fifth Circuit Court of Appeals.

The Taxpayers did not relent and pressed the Texas Supreme Court to breathe new life into their cause, which the Court did on June 30, 2017. With their lawsuit set to resume at the state trial court on or soon after August 17, 2017, the trial court is all but certain to issue a third injunction against the City. Not only will Plaintiffs stand to lose their spousal benefits without any notice to them, the Taxpayers' latest request also requires the City to claw back the benefits previously provided to the City employees and their same-sex spouses. The Plaintiffs will suffer irreparable harm from the Taxpayers' efforts to force the City to infringe on its employees' constitutional rights.

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[5] The extensive history of litigation between and among the parties is detailed in the Original Complaint [Dkt. No. 1**,** ¶¶ 38-53**].**

IV. ARGUMENT AND AUTHORITY

A. Summary of Argument

The U.S. Constitution prohibits the federal government and the states from placing "same-sex couples in an unstable position of being in a second-tier marriage." *Windsor*, 133 S. Ct. at 2694; *accord Obergefell v. Hodges*, 135 S. Ct. 2584 (2015). As the Supreme Court held only two terms ago, same-sex and different-sex spouses must receive equal access to all "aspects of marital status," aspects that the Court recognized include spousal employment benefits[6] such as "workers compensation benefits [and] health insurance." *Id.* at 2601. In simplest terms, states must treat same-sex and different-sex spouses equally under the law. The central principle of *Obergefell* and *Windsor* is clear: A marriage between a same-sex couple, with all the attendant protections and benefits, is legitimate, worthy, and—above all—*equal*. In reliance on *Obergefell*, the Fifth Circuit declared the Texas Marriage Bans unconstitutional, and permanently enjoined State officials from enforcing those laws. *De Leon v. Abbott*, 791 F.3d 619 (5th Cir. 2015).

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[6] *Obergefell* clearly involved government employee benefits. *Obergefell* comprised six consolidated cases from Michigan, Ohio, Kentucky, and Tennessee, four of which were brought by married same-sex couples seeking to have their marriages recognized where they lived or worked, in part to access state protections, responsibilities, and benefits. Valeria Tanco and Sophy Jesty, the lead plaintiffs in the Tennessee litigation, sought coverage under the family health plan offered by their State employer (the university) to married different-sex couples, but denied to them. *See Tanco v. Haslam*, 7 F. Supp. 3d 759, 764 (M.D. Tenn. 2014), *rev'd DeBoer v. Snyder*, 772 F.3d 388 (6th Cir.), *rev'd Obergefell v. Hodges*, 135 S. Ct. 2584 (2015); *see also* Br. for Pet. Valeria Tanco, et al., at 5, *Tanco v. Haslam*, 135 S. Ct. 2584 (Feb. 27, 2015), (No. 14-562). After *Obergefell*, they now can access the very employee benefits that the Taxpayers would force the City to deny Houston's employees.

The Texas Supreme Court, however, chose to disregard constitutional rulings by both the United States Supreme Court and Fifth Circuit, and reinstated the *Pidgeon* Case, with instructions that the constitutionality of the Texas Marriage Bans remains an open question for the state trial court to decide. *Pidgeon v. Turner*, 2017 WL 2829350, at *10-12. The Texas Supreme Court ruling is particularly remarkable given that the United States Supreme Court, only days before, had *summarily reversed* a ruling from Arkansas's highest court that was similarly dismissive of the *Obergefell* decision.

> As this Court explained in *Obergefell v. Hodges*, 576 U.S. __ (2015), the Constitution entitles same-sex couples to civil marriage "on the same terms and conditions as opposite-sex couples."

Pavan v. Smith, 137 S. Ct. 2075 (2017) (*per curiam*) (quoting *Obergefell*, 135 S. Ct. at 2605. Lost on the Texas Supreme Court was the added significance of *Pavan*: *Obergefell* has already definitively held that laws such as the Texas Marriage Bans are unconstitutional. *See Gonzales v. Thomas*, 547, U.S. 183 (2006) (summary reversal, a remedy the U.S. Supreme Court is the appropriate remedy only when the law is clear and the error below is obvious) (*per curiam*).

Absent immediate intervention by this Court to protect Plaintiffs' fundamental right to equal dignity in all aspects of marriage, the Defendants are virtually certain to lose the security and protection of valuable benefits they have relied upon for nearly four years.

B. Plaintiffs' likelihood of success on the merits should be certain under recent, clearly applicable federal precedent striking down the Texas Marriage Bans and laws from other states like them.

1. The Texas Marriage Bans are unconstitutional under *Obergefell*'s holding that the Due Process Clause requires that same-sex couples have the same access to the institution of marriage, including the "governmental rights, benefits, and responsibilities" that accompany it.

The *Obergefell* Court held that the Due Process Clause protects the fundamental right to marry, and that this right "appl[ies] with equal force to same-sex couples." *Id.* at 2599. The Court expressly held that this fundamental right encompasses not only legal status but also marriage benefits.

The Court explained that "marriage is a keystone of our social order" because states have chosen to make it "the basis for an expanding list of governmental rights, benefits, and responsibilities." 135 S. Ct. at 2601. The Court reasoned that through marital benefits—including the employment benefits directly at issue here, and many others purportedly barred by Family Code Section 6.204(c)—society "pledge[s] to support the couple, offering symbolic recognition *and material benefit* to protect and nourish the union," increasing stability to both married couples and, as a result, society. *Id.* (emphasis added). And denying same-sex couples access to marriage deprives them of this "constellation of benefits that the States have linked to marriage," "lock[s] [gays and lesbians] out of a central institution of the Nation's society," "consign[s] [them] to an instability many opposite-sex couples would deem intolerable in their own lives," and "material[ly] burdens" them. *Id.* at 2601–02. The Court's analysis, in other words, makes clear that a state or other governmental

entity would violate due process by denying married same-sex couples the same "governmental rights, benefits, and responsibilities" as provided to different-sex married couples.[7]

The Court's holding that the fundamental right to marriage encompasses marriage benefits is reflected throughout the Court's analysis. For example, the Court explained that marriage is fundamental because it "safeguards children and families." *Id.* at 2600. And the Court specifically identified marital benefits as one example of these "material" safeguards; children can receive benefits like health insurance and survivor's benefits, for example, from either of their parents. *Id.*

Thus, *Obergefell*'s reasoning and direct holdings squarely preclude any attempt by the City or the Taxpayers to bifurcate marriage from its associated benefits. As the Supreme Court explained, its holding that "same-sex couples may exercise the fundamental right to marry" includes access to the benefits and responsibilities that come with marriage. *Id.* at 2605.

2. The Texas Marriage Bans violate the Equal Protection Clause under *Obergefell*'s holding that rejected States' attempt to differentiate between same-sex and different-sex couples with regard to distribution of marital benefits.

Obergefell's equal protection holding, like its due process holding, compels the conclusion that same-sex couples cannot be deprived of marriage benefits, including

[7] *Obergefell* is entirely consistent with other due process cases affirming the right to marry. *See, e.g.*, *Turner v. Safley*, 482 U.S. 78, 95–97 (1987) (appealing in part to the "attributes of marriage" including "receipt of government benefits . . . property rights . . . and other, less tangible benefits" when invalidating prison marriage ban).

employment benefits expressly linked to marital status. Indeed, the Court squarely ruled that one of the principal constitutional defects in the states' attempt to deprive same-sex couples of the right to marriage was that "same-sex couples are denied all the benefits afforded to opposite-sex couples." 135 S. Ct. at 2604. While the Court acknowledged that states could decide whether to extend benefits to married couples at all, *see id.* at 2601 ("[T]he States are in general free to vary the benefits they confer on all married couples. . . ."), it made clear that once a state decides to extend benefits to any married couples, it must treat same-sex couples with "equal dignity in the eyes of the law" and grant them equal benefits. *Id.* at 2608.

Obergefell also held that the marriage bans "abridge central precepts of equality" because denying marriage and its attendant benefits "works a grave and continuing harm" on same-sex couples that "disrespect[s] and subordinate[s] them." *Id.* at 2604. The Taxpayers' attempt to reinstate a regime of disrespect and force the City to discriminate against its employees and their same-sex spouses is contrary to both the Equal Protection and Due Process Clauses. *Id.*

The same result follows from the Supreme Court's prior decision in *Windsor*. There, the Court invalidated on equal protection grounds the federal Defense of Marriage Act ("DOMA"), which withheld all federal benefits from validly married same-sex couples. The Court was particularly troubled by the fact that DOMA "reject[ed] the long-established precept that the incidents, benefits, and obligations of marriage are uniform for all married couples within each State, though they may

vary . . . from one State to the next." *Id.* at 2692. The "creat[ion of] two contradictory marriage regimes within the same State" impermissibly "place[d] same-sex couples in an unstable position of being in a second-tier marriage" and "wr[o]te[] inequality into the entire United States Code." *Id.* at 2694. Any action by the City to preclude same-sex couples from receiving marriage benefits to which different-sex couples are entitled would have the same effect and is unconstitutional for the same reason.

3. The Texas Marriage Bans are a nullity because *Obergefell* binds this and every other court under fundamental principles of retroactivity.

The requested injunction would properly prohibit the City from clawing back pre-*Obergefell* benefits because the Supreme Court's decision is fully retroactive. The settled principles of retroactivity follow directly from *Harper v. Virginia Department of Taxation*, 509 U.S. 86 (1993). "[A] decision 'extending the benefit of the judgment' to the winning party 'is to be applied to other litigants whose cases were not final at the time of the [first] decision.'" *Id.* at 96–97 (quoting *James B. Beam Distilling Co. v. Georgia*, 501 U.S. 529, 544 (1991) (White, J., concurring)); *accord Danforth v. Minnesota*, 552 U.S. 264, 271 (2008); *see also Ranolls v. Dewling*, 223 F. Supp. 3d 613, 622 (E.D. Tex. 2016) (applying *Obergefell* retroactively under Texas's informal marriage laws to surviving spouse's wrongful death claim). These principles of retroactivity apply here.

Prior to *Obergefell*, Plaintiffs had not litigated to finality their right to receive benefits from the City; nor had they obtained a final declaration that the City and the Taxpayers may not rely on the Texas Marriage Bans to force repayment of benefits employees and their spouses received. Because *Harper* makes clear that

U.S. Supreme Court precedent applies "retroactively" to all cases in which final judgment has not been entered—this one included[8]—the Texas Marriage Bans cannot serve as authority to recover benefits paid to City employees and their same-sex spouses prior to *Obergefell*.

Reynoldsville Casket Co. v. Hyde, 514 U.S. 749 (1995), is instructive. There, the Supreme Court had invalidated a particular Ohio tolling statute, but Ohio's highest state court continued to let litigants use it because of their reliance on the provision prior to its invalidation. The U.S. Supreme Court held that this violated the Supremacy Clause. *Id.* at 753–54. As Justice Scalia explained in his concurrence, "what a court does with regard to an unconstitutional law is simply to ignore it. It decides the case disregarding the unconstitutional law, because a law repugnant to the Constitution is void, and is as no law." *Id.* at 760 (internal citation, quotation marks, and alterations omitted).

Neither federal courts nor Texas state courts are free to apply the Texas Marriage Bans to any set of facts that predate *Obergefell* as justification to recover City spousal benefits provided prior to *Obergefell*.

C. The City employees and their same-sex spouses will suffer irreparable harm absent an injunction.

Injunctive relieve is necessary to maintain the status quo and protect

[8] The Taxpayers' separate dispute with the City also is not final, and obviously was not final when *Obergefell* was decided. Therefore *Obergefell* bars Defendants from relying on the Texas Marriage Bans as authority to force the City to ban spousal benefits for lesbian, gay, and bisexual employees or to require the City to recoup benefits paid prior to *Obergefell*.

Plaintiffs from irreparable injury. The Fifth Circuit recognizes that irreparable harm is established where the injury facing the plaintiff, absent preliminary relief, cannot be compensable with money damages. *Janvey v. Alguire*, 647 F.3d 585, 600 (5th Cir. 2011) (noting that the "mere fact that economic damages may be available does not always mean that a remedy at law is 'adequate'").

Several circuits have held that termination of health insurance benefits constitutes an irreparable harm for purposes of a preliminary injunction. *See, e.g., United Steel Workers of Am. v. Textron, Inc.*, 836 F.2d 6, 8-9 (1st Cir. 1987) (loss of insurance benefits to retired workers constitutes irreparable harm); *Commc'n Workers of Am. v. NYNEX Corp.*, 898 F.2d 887, 891 (2d Cir. 1990) (threat of terminating the medical benefits of striking workers constituted irreparable harm); *Whelan v. Colgan*, 602 F.2d 1060, 1062 (2d Cir. 1979) ("[T]he threatened termination of benefits such as medical coverage for workers and their families obviously raised the specter of irreparable injury."); *M.R. v. Dreyfus*, 697 F.3d 706, 732 (9th Cir. 2012) ("We have several times held that beneficiaries of public assistance may demonstrate a risk of irreparable injury by showing that enforcement of a proposed rule may deny them needed medical care.") (quotations omitted); *Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am. v. Exide Corp.*, 688 F. Supp. 174, 187 (E.D. Pa. 1988), *aff'd mem.*, 857 F.2d 1464 (3d Cir. 1988) (holding that the possibility that a worker would be denied access to medical care as a result of having no insurance constitutes irreparable harm); *see also* KIRSTIN STOLL-DEBELL, ET AL., INJUNCTIVE RELIEF: TEMPORARY RESTRAINING

ORDERS & PRELIMINARY INJUNCTIONS 106, n.14 (2009) (collecting cases).

Consistent with these cases, the Fifth Circuit has recently made clear that denying plaintiffs the right "to obtain medical care from the Medicaid provider of their choice" constitutes irreparable harm for purposes of a preliminary injunction. *Planned Parenthood of Gulf Coast, Inc. v. Gee*, No. 15-30987, 2017 WL 2805637, at *17–18 (5th Cir. June 29, 2017). There, the district court found that the State of Louisiana's termination of Planned Parenthood facilities' Medicaid provider agreements would cause the plaintiffs irreparable harm, because the plaintiffs were unaware of an alternative that would provide the "same kind and quality of care," and also because it would inhibit their ability to obtain care from a qualified provider of their choice. *Id.* at *17. The Fifth Circuit rejected the argument that the inconvenience caused "by being forced to seek medical care elsewhere is not significant enough to support a finding of irreparable harm." *Id.* "Because the Individual Plaintiffs would otherwise be denied both access to a much needed medical provider and the legal right to the qualified provider of their choice, we agree that they would almost certainly suffer irreparable harm in the absence of a preliminary injunction." *Id.* at *18. The threatened termination of health insurance benefits here also constitutes irreparable harm.

Beyond the loss of benefits itself, Plaintiffs have established with virtual certainty that the unconstitutional Texas Marriage Bans cannot support the Taxpayers' attempt to force the City to withhold spousal benefits from the Plaintiffs. Renewed enforcement of the Texas Marriage Bans would infringe on

Plaintiffs' due process and equal protection rights under the Fourteenth Amendment to the United States Constitution. "It has repeatedly been recognized by the federal courts at all levels that violation of constitutional rights constitutes irreparable harm as a matter of law." *Cohen v. Coahoma Cnty., Miss.*, 805 F. Supp. 398, 406 (N.D. Miss. 1992) (gathering cases). An injury is irreparable if money damages cannot compensate for the harm. *Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 332 (5th Cir. 1981). No amount of money can compensate Plaintiffs for the harm caused by the denial of their constitutional rights. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) (noting that loss of constitutional "freedoms for even minimal periods of time, unquestionably constitutes irreparable injury"); *Deerfield*, 661 F.2d at 338 (noting impairment of the constitutional right to privacy mandates a finding of irreparable harm).

D. Injury to Plaintiffs outweighs any harm from the requested injunction.

For the Court to issue a preliminary injunction enjoining Defendants from enforcing the Texas Marriage Bans, Plaintiffs must establish that their threatened injuries outweigh any damage that the injunction may cause to the Defendants. *See Winter*, 555 U.S. at 20; *Valley*, 118 F.3d at 1050. The equities greatly favor an injunction, as there is no harm from issuing a preliminary injunction that prevents the enforcement of an unconstitutional statute. *See Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002). A preliminary injunction is necessary to prevent Plaintiffs from suffering likely renewal of state-sanctioned discrimination at the hands of the Defendants in just a matter of weeks, if not days. Absent relief

from this Court, that injury will include, among other harms, the stigma of having their marriages deemed—at best—second class, the depravation of fundamental rights protected by the Constitution, and the withdrawal of tangible protections and benefits, some of which will be entirely unavailable, others of which may become unavailable or be available only at uncertain and increased burden to the City Employees and their Spouses.

On the other hand, the harm to Defendants is negligible. The City has provided access to spousal benefits for same-sex spouses of married City employees continuously since November 2013. An injunction not only would maintain the status quo that has existed for nearly four years, but also would benefit the City by providing a binding declaration of rights under established federal law, and thus protecting the City from further wasteful litigation. One purpose of a preliminary injunction is to preserve the relative positions of the parties until a trial on the merits can be held. *Univ. of Tex. v. Camenisch*, 451 U.S. 391, 395 (1981). The Taxpayers would be afforded the opportunity to make their case on the merits, while the status quo is preserved. The requested injunction would serve that purpose here.

E. Granting the requested injunction is inherently in the public interest.

It is in the public interest that the Court prevent the Texas Marriage Bans, which have already been held to infringe on same-sex spouses' federal constitutional rights, from being resurrected and used to strip City employees of important protections they have earned for their spouses. "[T]he public interest is promoted by

the robust enforcement of constitutional rights." *Am. Freedom Def. Initiative v. Suburban Mobility for Reg. Transp.*, 698 F.3d 885, 896 (6th Cir. 2012). Therefore, a preliminary injunction preventing the enforcement of an unconstitutional law serves, rather than contradicts, the public interest. *Ingebretsen v. Jackson Pub. Sch. Dist.*, 88 F.3d 274, 280 (5th Cir. 1996).

V. THE COURT SHOULD WAIVE THE REQUIREMENT THAT PLAINTIFFS GIVE SECURITY FOR THE PRELIMINARY INJUNCTION.

The Court should not require security of the Plaintiffs under Federal Rule of Civil Procedure 65(c). Whether to require security is a matter within the trial court's discretion. *Corrigan Dispatch Co. v. Casa Guzman*, 569 F.2d 300, 303 (5th Cir. 1978); *see also City of Atlanta v. Metropolitan Atlanta Rapid Transit Auth.*, 636 F.2d 1084, 1094 (5th Cir. Unit B Feb. 1981). In the alternative, any security requirement should be nominal.

VI. MOTION CONFERENCE CERTIFICATION AND REQUEST FOR EXPEDITED HEARING

Pursuant to LR 7.1 D, Kenneth Upton, counsel for Plaintiffs, notified counsel for Defendants of this suit, provided a courtesy copy of the Complaint, and inquired whether they will opposed a Preliminary Injunction. We did not agree about the disposition of this motion.

Plaintiffs request an expedited hearing on this motion within the next seven (7) days because on or after August 17, 2017, the Taxpayers will seek immediate relief against the City once the state mandate issues.

VII. CONCLUSION AND RELIEF REQUESTED

Both federal courts and state courts alike are obliged to follow *Obergefell*. "As Justice Story explained 200 years ago, if state courts were permitted to disregard this Court's rulings on federal law, 'the laws, the treaties, and the constitution of the United States would be different in different states, and might, perhaps, never have precisely the same construction, obligation, or efficacy, in any two states. The public mischiefs that would attend such a state of things would be truly deplorable.'" *James v. City of Boise, Idaho*, 136 S. Ct. 685, 686 (2016) (per curiam) (quoting *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 348 (1816)).

While it is unfortunate that the Texas Supreme Court failed to apply clear federal law, Plaintiffs need not endure harm from a state court proceeding to which they are not parties. Plaintiffs' rights are established as a matter of federal constitutional law and are subject to enforcement in the federal courts.

For the foregoing reasons, this Court should enter a preliminary injunction preserving the status quo by:

- Enjoining Defendant City of Houston (the "City") from discontinuing employment benefits currently provided to same-sex spouses of City employees,
- Enjoining Defendant City of Houston (the "City") from seeking reimbursement of benefits previously paid for coverage of same-sex spouses of City employees, and
- Enjoining all Defendants from interfering with continuation of such benefits until a final judgment is entered in the case.

Dated: August 10, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

On August 10, 2017, I electronically submitted the foregoing document to the clerk of court for the U.S. District Court, Southern District of Texas, using the electronic case filing system of the Court.

I hereby certify service will be effected on the following Defendants, who have not yet entered an appearance, pursuant to Federal Rule of Civil Procedure 4(e) & 4(j)(2):

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I further certify a copy of the foregoing document was served on the following attorneys by email:

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