OFFICE OF THE CHIEF DISCIPLINARY COUNSEL
STATE BAR OF TEXAS
GRIEVANCE FORM

ONLINE FILING AVAILABLE AT http://cdc.texasbar.com.

I. GENERAL INFORMATION

Before you fill out this paperwork, there may be a faster way to resolve the issue you are currently having with an attorney.

If you are considering filing a grievance against a Texas attorney for any of the following reasons:

~ You are concerned about the progress of your case.
~ Communication with your attorney is difficult.
~ Your case is over or you have fired your attorney and you need documents from your file or your former attorney.

You may want to consider contacting the Client-Attorney Assistance Program (CAAP) at 1-800-932-1900.

CAAP was established by the State Bar of Texas to help people resolve these kinds of issues with attorneys quickly, without the filing of a formal grievance.

CAAP can resolve many problems without a grievance being filed by providing information, by suggesting various self-help options for dealing with the situation, or by contacting the attorney either by telephone or letter.

I have _____ I have not _X_ contacted the Client-Attorney Assistance Program.

If you prefer, you have the option to file your grievance online at http://cdc.texasbar.com.

NOTE: Please be sure to fill out each section completely. Do not leave any section blank. If you do not know the answer to any question, write "I don't know."

II. INFORMATION ABOUT YOU -- PLEASE KEEP CURRENT

1. TDCJ/SID # _____ ☐ Mr. ☐ Ms. Name: Ruth Kollman, Steve Fischer, Brian Bouffard
Immigration # _____

Address: See attached letter for contact information

_____

City: _____ State: _____ Zip Code: _____

2. Employer:_____

Employer's Address:_____

_____

3. Telephone numbers: Residence: _____ Work: _____
Cell: _____

4. Email:_____

5. Drivers License # _____ Date of Birth _____

6. Name, address, and telephone number of person who can always reach you.

Name _____ Address _____

_____ Telephone _____

7. Do you understand and write in the English language? Yes
If no, what is your primary language? _____
Who helped you prepare this form? _____
Will they be available to translate future correspondence during this process? _____

8. Are you a Judge? _____
If yes, please provide Court, County, City, State: _____

III. INFORMATION ABOUT ATTORNEY

Note: Grievances are not accepted against law firms. You must specifically name the attorney against whom you are complaining. A separate grievance form must be completed for each attorney against whom you are complaining.

1. Attorney name: Attorney General Ken Paxton Address: PO Box 12548

City: Austin State: TX Zip Code: 78711

2. Telephone number: Work (512)463-2100 Home _____ Other _____

3. Have you or a member of your family filed a grievance about this attorney previously?
Yes ___ No X If "yes", please state its approximate date and outcome. _____

_____

Have you or a member of your family ever filed an appeal with the Board of Disciplinary Appeals about this attorney?

Yes ____ No __X__ If "yes," please state its approximate date and outcome.

_____

4. Please check one of the following:
   _____ This attorney was **hired** to represent me.
   _____ This attorney was **appointed** to represent me.
   ___X___ This attorney was hired to represent **someone else**.

   Please give the date the attorney was hired or appointed. _____

   Please state what the attorney was hired or appointed to do. Attorney General of the State of Texas

   _____

   _____

5. What was your fee arrangement with the attorney? N/A

   _____

   How much did you pay the attorney? N/A

   _____

   If you signed a contract and have a <u>copy</u>, please attach.
   If you have <u>copies</u> of checks and/or receipts, please attach.
   <u>Do not send originals</u>.

6. If you did not hire the attorney, what is your connection with the attorney? Explain briefly
   We are licensed Texas attorneys. Respondent is an elected public official who is the chief law enforcement officer for the State of Texas.

7. Are you currently represented by an attorney? No
   If yes, please provide information about your current attorney: _____

   _____

8. Do you claim the attorney has an impairment, such as depression or a substance use disorder? If yes, please provide specifics (your **personal** observations of the attorney such as slurred speech, odor of alcohol, ingestion of alcohol or drugs in your presence etc., including the date you observed this, the time of day, and location).

No

9. Did the attorney ever make any statements or admissions to you or in your presence that would indicate that the attorney may be experiencing an impairment, such as depression or a substance use disorder? If so, please provide details.

No

IV. INFORMATION ABOUT YOUR GRIEVANCE

1. Where did the activity you are complaining about occur?

County: Travis City: Austin

2. If your grievance is about a lawsuit, answer the following, if known:

a. Name of court _____

b. Title of the suit _____

c. Case number and date suit was filed _____

d. If you are not a party to this suit, what is your connection with it? Explain briefly.

_____

If you have <u>copies</u> of court documents, please attach.

3. Explain in detail why you think this attorney has done something improper or has failed to do something which should have been done. Attach additional sheets of paper if necessary.

If you have <u>copies</u> of letters or other documents you believe are relevant to your grievance, please attach. <u>Do not send originals, as they will not be returned</u>. Additionally, please do not use staples, post-it notes, or binding.

Include the names, addresses, and telephone number of all persons who know something about your grievance.

Also, please be advised that a copy of your grievance will be forwarded to the attorney named in your grievance.

See attached letter

V. HOW DID YOU LEARN ABOUT THE STATE BAR OF TEXAS' ATTORNEY GRIEVANCE PROCESS?

__	**Yellow Pages**	__	**CAAP**
__	**Internet**	__	**Attorney**
_X_	**Other**	__	**Website**

VI. ATTORNEY-CLIENT PRIVILEGE WAIVER N/A

I hereby expressly waive any attorney-client privilege as to the attorney, the subject of this grievance, and authorize such attorney to reveal any information in the professional relationship to the Office of Chief Disciplinary Counsel of the State Bar of Texas. N/A

I understand that the Office of Chief Disciplinary Counsel maintains as confidential the processing of Grievances.

I hereby swear and affirm that I am the person named in Section II, Question 1 of this form (the Complainant).

Signature: See attached Date: July 28, 2015

TO ENSURE PROMPT ATTENTION, THE GRIEVANCE SHOULD BE MAILED TO:

THE OFFICE OF CHIEF DISCIPLINARY COUNSEL
P.O. Box 13287
Austin, Texas 78711

July 27, 2015

SENT VIA FACSIMILE 512-427-4167
Office of the Chief Disciplinary Counsel
State Bar of Texas
P. O. Box 13287
Austin, TX 78711

RE: Warren Kenneth Paxton, Jr., TBL No. 15649200

To the Office of the Chief Disciplinary Counsel:

On behalf of the undersigned attorneys and former State Bar Directors, Judges, and Assistant Attorneys General, we submit this bipartisan grievance against Warren Kenneth Paxton, Jr., the elected Attorney General of the State of Texas. Attorney General Paxton replied to an unauthorized request from Texas Lt. Governor Dan Patrick to issue an attorney general opinion regarding same-sex marriages. *See* **Exhibit 1**, letter dated June 25, 2015; **Exhibit 2**, Attorney General Opinion KP-0025 (June 28, 2015) (the "Opinion").

In issuing the Opinion in response to Lt. Governor Patrick's unauthorized request, Attorney General Paxton exceeded the scope of the constitutional and statutory authority of the Office of the Attorney General. Attorney General Paxton also failed to cite in his Opinion either the Supremacy Clause of the U.S. Constitution or controlling U.S. Supreme Court decisions. Ignoring decades-old federal law to the contrary, Attorney General Paxton's Opinion purports to empower Texas state officials to assert individual religious grounds for refusing to perform their official duties. In addition, Attorney General Paxton released public statements in connection with the Opinion that disparaged the U.S. Supreme Court and encouraged state officials to violate their official oaths of office.

We have evaluated carefully applicable federal and state law and the Rules of Conduct, as discussed below. We note the admonition in Rule of Conduct 8.04(a)(1) that violations may occur outside the context of a client-lawyer relationship. *Cohn v. Comm'n for Lawyer Discipline*, 979 S.W.2d 694, 697 (Tex. App.--Houston [14th Dist.] 1998, no pet.). Also, as lawyers are well aware, misstatements of authority that create an impression "completely opposite to their actual holdings" are condemned "as unprofessional conduct." *See Grogen v. State*, 745 S.W.2d 450, 451 (Tex. App.--Houston [1st Dist.] 1988, no pet.) (referring counsel to disciplinary authorities). Our analysis follows.

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I. Introduction

Public officials are entitled to express disagreement with U.S. Supreme Court decisions. They are not free to disregard them or encourage others to do so. Public officials, particularly those who also are lawyers, are legally and ethically bound to obey federal law. By issuing the Opinion and related public statements, Attorney General Paxton violated his own official oath of office to "preserve, protect, and defend the Constitution and laws of the United States and of this state." He also violated his oath as a Texas attorney to "support the Constitutions of the United States, and of this State."

Attorney General Paxton's violations of his oaths in issuing the Opinion and related public statements implicate Rules of Conduct 3.04(d), 3.07(a), 5.08(a), and 8.04(a)(1), (3), (4), and (12):

II. Respondent's Oaths

A. Respondent's Official Oath as a Public Official.

As mandated by the Supremacy Clause of the U.S. Constitution, the Texas Constitution requires all elected and appointed public officials to swear or affirm to support the U.S. Constitution, as well as Texas law:

> … I will faithfully execute the duties of the office of _____ of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State....

TEX. CONST. Art. 16, § 1; *see* U.S. CONST. Art. VI, Clause 3 ("executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution").

B. Respondent's Oath as a Licensed Texas Attorney.

The Texas Legislature also requires licensed lawyers to swear or affirm to "support the constitutions of the United States and this state." TEX. GOV'T CODE ANN. §82.037.

Attorney General Paxton is both an elected public official and a licensed Texas lawyer. He swore these two oaths before taking office. Each of the oaths prohibits issuance of the misleading Opinion as well as the public statements released by the Office of the Attorney General in connection with the Opinion.

III. The Opinion and Related Public Statements

A. The Opinion.

On June 25, 2015, anticipating that the U.S. Supreme Court was poised to recognize same-sex marriage in *Obergefell v. Hodges*, Lt. Governor Patrick asked Attorney General Paxton two questions:

> If the Supreme Court declares a constitutional right to same-sex marriage, can a county clerk or his or her employees refuse to issue a same-sex marriage license if doing so would violate their sincerely held religious beliefs on marriage? Lastly; could a justice of the peace or a judge refuse to conduct a same-sex wedding ceremony if doing so would violate their sincerely held religious beliefs on marriage?

Exhibit 1, p. 2. The U.S. Supreme Court issued its decision in *Obergefell* the next day, on June 26, 2015. On June 28, 2015, Attorney General Paxton answered Lt. Governor Patrick's request for an opinion. Contrary to law, Attorney General Paxton concluded that county clerks and other public officials in Texas may refuse on individual religious

grounds to perform their official duties to issue same-sex marriage licenses or perform marriage ceremonies for qualified same-sex couples:

> County clerks and their employees retain religious freedoms that may allow accommodation of their religious objections to issuing same-sex marriage licenses.
>
> Justices of the peace and judges similarly retain religious freedoms, and may claim that the government cannot force them to conduct same-sex wedding ceremonies over their religious objections….

Exhibit 2, pp. 1-2. In rendering these legal opinions, Attorney General Paxton failed to cite, much less recognize the supremacy of, controlling federal court decisions and mandates. Exhibit 2. As a result, the Opinion created an impression "completely opposite" to the actual law. *See Grogen*, 745 S.W.2d at 451.

B. The Press Releases.

Attorney General Paxton's press releases in the wake of the U.S. Supreme Court's decision in *Obergefell* reinforced his misstatements of law in the Opinion. On June 26, 2015, Attorney General Paxton confirmed that his Office would defy *Obergefell*. He publicly took the position that "no court, no law, no rule, and no words will change the simple truth that marriage is the union of one man and one woman." *See* **Exhibit 3**, attached, Press Release dated June 26, 2015, https://www.texasattorneygeneral.gov/oagnews/release.php?id=5142.

Then, simultaneous with issuance of the Opinion, Attorney General Paxton compounded his misleading legal opinions by releasing another inflammatory statement. In his second public statement following *Obergefell*, Attorney General Paxton repeatedly described the U.S. Supreme Court as "lawless" and the Court's *Obergefell* decision as "flawed." *See* **Exhibit 4**, attached, Press Release dated June 28, 2015, https://www.Texasattorneygeneral.gov/oagnews/release.php?id=5144 (with Exhibit 3, the "Press Releases").

In the Press Releases, Attorney General Paxton incited state officials to violate their own oaths of office by defying *Obergefell*. He offered not just solace, but legal aid, to those who followed the advice of his Office to violate federal law:

> It is important to note that any clerk who wishes to defend their religious objections and who chooses not to issue licenses may well face litigation and/or a fine. But, numerous lawyers stand ready to assist clerks defending their religious beliefs, in many cases on a pro-bono basis, and I will do everything I can from this office to be a public voice for those standing in defense of their rights.

Exhibit 4. In light of the Supremacy Clause and decades-old U.S. Supreme Court decisions to the contrary, Attorney General Paxton's Opinion and Press Releases are

insupportable. No reasonably prudent lawyer could have reached the legal conclusions Attorney General Paxton announced in the Opinion and Press Releases. No other state attorney general in this country characterized the decision as "flawed" or "lawless."

IV. "The Supreme Law of the Land"

A. "The Constitution and Laws of the United States," which Respondent Is Sworn to Preserve, Protect, Defend, and Support, Include the Supremacy Clause and Federal Court Mandates in *Obergefell v. Hodges* and *DeLeon v. Abbott*.

1. The Supremacy Clause of the U.S. Constitution.

Clause 2 of Article VI of the U.S. Constitution unambiguously establishes that federal law reigns supreme over any contrary state law:

> This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

More than fifty years ago, the U.S. Supreme Court reiterated this long-accepted constitutional principle in deciding that states could not enforce local laws that undermined the Court's decision in *Brown v. Board of Education* that racial segregation in public schools is unconstitutional. *Cooper v. Aaron*, 358 U.S. 1, 78 S.Ct. 1401, 3 L.Ed.2d 5, 3 L.Ed.2d 19, 79 Ohio (1958). In reaffirming that states are bound by its decisions, the U.S. Supreme Court left no reasonable room for doubt that its interpretation of the U.S. Constitution is the "supreme Law of the Land":

> **It is emphatically the province and duty of the judicial department to say what the law is.**

Cooper, 358 U.S. at 18 (citing *Marbury v. Madison*, 1 Cranch 137, 177, 2 L.Ed. 60) (emphasis added). The Court instructed: "No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it." *Cooper*, 358 U.S. at 18-19. State officials' compliance with principles of civil rights, as articulated by the federal courts, is "indispensable for the protection of the freedoms guaranteed by our fundamental charter for all of us. Our constitutional ideal of equal justice under law is thus made a living truth." *Cooper*, 358 U.S. at 18. Further:

> Compliance with decisions of this Court, as the constitutional organ of the supreme Law of the Land, has often, throughout our history, depended on active support by state and local authorities. It presupposes such support. To withhold it, and indeed to use political power to try to paralyze the supreme Law, precludes the maintenance of our federal system as we have known and cherished it….

Cooper, 358 U.S. at 26. Therefore, federal supremacy in civil rights law has been the "supreme Law of the Land" for decades. State officials who exercise their power by not "supporting" federal court mandates violate their oaths of office, as Attorney General Paxton has done and as he is urging public officials to do.

Reinforcing the Supremacy Clause (again) in 1967, the U.S. Supreme Court invalidated state bans on interracial marriages. *Loving v. Virginia*, 388 U.S. 1, 12, 87 S.Ct. 1817, 18 L.Ed.2d 101 (1967). *Loving* established that the U.S. Constitution prohibits official discrimination against interracial couples who seek to marry.

In summary, Article VI of the U.S. Constitution makes decisions by the U.S. Supreme Court the supreme law of the land. This means that the U.S. Supreme Court has the final say on what the U.S. Constitution requires. The Court may be wrong, and on occasion it has been. Yet until overturned by constitutional amendment or until the U.S. Supreme Court reverses itself, the equal rights to marry recognized by *Obergefell* are binding on all lower courts and public officials. Every lawyer and law student knows this.

2. *Obergefell v. Hodges*.

On June 26, 2015, in a logical application of *Loving*'s long-established supremacy principles, the U.S. Supreme Court recognized, as with interracial couples, that the U.S. Constitution prohibits state officials from discriminating against same-sex couples:

> …the right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same sex may not be deprived of that right and that liberty. The Court now holds that same-sex couples may exercise the fundamental right to marry. No longer may this liberty be denied to them. *Baker v. Nelson* [, 409 U.S. 810, 93 S.Ct. 37, 34 L.Ed.2d 65 (1972),] must be and now is overruled, and the State laws challenged by petitioners in these cases are now held invalid to the extent they exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples.

Obergefell v. Hodges, Nos. 14-556, 14-562, 14-571, 14-574, 2015 WL 2473451, at *19 (U.S. June 26, 2015). The U.S. Supreme Court has spoken. Public officials must follow.

Instead of recognizing that the Supremacy Clause confers ultimate authority on the U.S. Supreme Court, Attorney General Paxton defiantly proclaimed that "no court, no law, no rule, and no words will change the simple truth that marriage is the union of one man and one woman." Rather than acknowledge *Cooper* and *Loving*, he declared that "[t]oday's ruling by five Justices of the U.S. Supreme Court marks a radical departure from countless generations of societal law and tradition." He invoked the U.S. Constitution, but in the same breath challenged the legitimacy of the *Obergefell* decision: "this opinion made clear that our governing document – the protector of our liberties through representative government – can be molded to mean anything by unelected judges." Exhibit 3.

Two days later, Attorney General Paxton issued the Opinion, in direct contravention of the Supremacy Clause of the U.S. Constitution and the U.S. Supreme Court's decisions in *Cooper*, *Loving*, and *Obergefell.* Exhibit 2. Tellingly, the Opinion fails to cite either the Supremacy Clause, *Cooper*, or *Loving*. In announcing issuance of his Opinion, Attorney General Paxton reported to the citizens of Texas that the U.S. Supreme Court had "ignored the text and spirit of the Constitution to manufacture a right that simply does not exist." He repeatedly called the opinion "flawed" and the U.S. Supreme Court "lawless." He encouraged Texas state officials to defend "their religious beliefs against the Court's ruling." Exhibit 4.

Attorney General Paxton did not inform the citizens of Texas that sworn public officials act as the State when they issue marriage licenses and perform marriage ceremonies, not as individuals, and the State may not discriminate. *Obergefell* recognized state-sanctioned same-sex marriage. State officials may not refuse to perform their duties on religious grounds, because the "principal effect is to identify a subset of state-sanctioned marriages and make them unequal." *United States v. Windsor*, —— U.S. ——, 133 S.Ct. 2675, 2693, 186 L.Ed.2d 808 (2013). The avowed purpose and practical effect of the assertion of individual religious freedoms by public officials, as espoused by Attorney General Paxton, is "to impose a disadvantage, a separate status, and so a stigma upon all who enter into same-sex marriages." *Windsor*, 133 S.Ct. at 2693.

3. *DeLeon v. Abbott.*

DeLeon was pending at the Fifth Circuit when the U.S. Supreme Court handed down *Obergefell.* The Fifth Circuit responded on July 1, 2015:

> *Obergefell*, in both its Fourteenth and First Amendment iterations, is the law of the land and, consequently, the law of this circuit and should not be taken lightly by actors within the jurisdiction of this court.

DeLeon v. Abbott, --- F.3rd ---, No. 14-50196, 2015 WL 4032161, at *2 (5th Cir. July 1, 2015) (footnote omitted).

Cooper, *Loving*, and *Obergefell* were the "supreme Law of the Land" when Attorney General Paxton issued the unauthorized Opinion and his Press Releases, ignoring all three controlling precedents in opining that state officials may defy the U.S. Supreme Court. *Cooper, Loving,* and *Obergefell*, now joined by the mandate and permanent injunction in *DeLeon*, are the "supreme Laws of the Land" in Texas today, while your office reviews this bipartisan grievance.

B. "The Constitution and Laws of This State," Which Respondent Is Sworn to Preserve, Protect, Defend, and Support, Proscribe His Official Duties.

1. Duties of the Office of the Attorney General.

a. Duties under the Texas Constitution.

The Texas Constitution designates the attorney general as the chief law enforcement officer of the State. TEX. CONST. ART. 6, §22; TEX. ATTY. GEN. OP. LO-96-124 (1996). Among the attorney general's constitutional duties is to "give legal advice in writing to the Governor and other executive officers, when requested by them, and perform such other duties as may be required by law." TEX. CONST. ART. 6, §22. The Legislature has defined the "other executive officers" who are authorized to request attorney general opinions. TEX. GOV'T CODE ANN. §402.042(b).

The attorney general's constitutional duties also include instituting suits to enforce and protect public rights and the "exclusive right and power under the Constitution and statutes to represent state agencies." OP. LO-96-124 (and cited authorities). The attorney general's discretion in litigation includes timely exercise of the State's right to defend Texas law from constitutional challenges. *State v. Naylor*, --- S.W.3d ---, Nos. 11-0114 and 11-0222, 2015 WL 3852284, at *2 n.1 (Tex. June 19, 2015). Pursuant to that discretion, Attorney General Paxton represents the State of Texas and is a defendant (in his official capacity) in *DeLeon*, in which the plaintiffs successfully enjoined enforcement of Texas's constitutional amendment prohibiting same-sex marriage.

After the U.S. Supreme Court handed down *Obergefell*, the Fifth Circuit noted in *DeLeon* that the State agreed *Obergefell* mandated judgment for the plaintiffs:

> In response to *Obergefell*, the same day it was announced, the district court a quo issued a one-paragraph order entitled "Order Granting Plaintiffs' Emergency Unopposed Motion To Lift the Stay of Injunction," stating that it "hereby LIFTS the stay of injunction issued on February 26, 2014 ... and enjoins Defendants from enforcing Article I, Section 32 of the Texas Constitution, any related provisions in the Texas Family Code, and any other laws or regulations prohibiting a person from marrying another person of the same sex or recognizing same-sex marriage." This court sought and promptly received letter advisories from plaintiffs and the state, asking their respective positions on the proper specific disposition in light of *Obergefell*. Because, **as both sides now agree**, the injunction appealed from is correct in light of *Obergefell*, the preliminary injunction is AFFIRMED. This matter is REMANDED for entry of judgment in favor of the plaintiffs. The court must act expeditiously on remand and should enter final judgment on the merits (exclusive of any collateral matters such as costs and attorney fees) by July 17, 2015, and earlier if reasonably possible.
>
> The mandate shall issue forthwith.

DeLeon, 2015 WL 4032161, at *2 (footnote omitted) (emphasis added). In other words, Attorney General Paxton both issued the Opinion and the Press Releases **and** judicially admitted that *Obergefell* controls the outcome of the same-sex marriage legal issue in Texas.

In compliance with the Fifth Circuit's mandate, the lower federal district court in *DeLeon* entered a final judgment. The judgment includes a permanent injunction:

> It is hereby ORDERED, ADJUDGED, and DECREED that:
>
> (1) Any Texas law denying same-sex couples the right to marry, including Article I, §32 of the Texas Constitution, any related provisions in the Texas Family Code, and any other laws or regulations prohibiting a person from marrying another person of the same sex or recognizing same-sex marriage, violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. §1983;
> (2) Defendants are permanently enjoined from enforcing Texas's laws prohibiting same-sex marriage….

Exhibit 5, attached, "Final Judgment" filed July 7, 2015 in Cause No. SA-13-CA-0982-OLG, styled *DeLeon, et al. v. Perry, et al.*, in the U.S. District Court for the Western District of Texas (the "*DeLeon* Injunction").

Despite agreement in *DeLeon* by the Office of the Attorney General that *Obergefell* is the law of the land, and despite issuance of a permanent injunction, Attorney General Paxton persists in advising Texas state officials to ignore *DeLeon*'s mandate and injunction against enforcement of any prohibition against same-sex marriage. Attorney General Paxton refuses to modify or withdraw the unauthorized Opinion.

b. Statutory Duties.

Chapter 402 of the Government Code authorizes the attorney general to issue opinions on matters of public interest in response to authorized requests. The Texas Legislature has defined the "other executive officers" authorized by Section 22 of Article 6 to request attorney general opinions to include only:

> (1) the governor;
> (2) the head of a department of state government;
> (3) a head or board of a penal institution;
> (4) a head or board of an eleemosynary institution;
> (5) the head of a state board;
> (6) a regent or trustee of a state educational institution;
> (7) a committee of a house of the legislature;
> (8) a county auditor authorized by law; or
> (9) the chairman of the governing board of a river authority.

TEX. GOV'T CODE ANN. §402.042(b). The attorney general strictly construes Section 402.042(b). TEX. ATTY. GEN. OP. LO-89-72 (1989) (individual legislators are not among authorized requestors). The attorney general may not issue "a written opinion to a person other than a person named" in section 402.042. TEX. GOV'T CODE ANN. §402.048.

Attorney general opinions are persuasive authority but not controlling. *Weaver v. Head*, 984 S.W.2d 744, 746 (Tex. App.--Texarkana 1999, no pet.). Nonetheless, public officials may seek to avoid personal liability for official acts by showing good faith in acting in reliance on an attorney general's opinion, even if a court later holds that the opinion is erroneous. *Head*, 984 S.W.2d at 746 (citing *City of Garland v. Dallas Morning News*, 969 S.W.2d 548 (Tex. App.--Dallas 1998), *aff'd*, 22 S.W.3d 351 (Tex. 2000)). The legal significance and influence of attorney general opinions in later proceedings before a tribunal cannot be overstated.

2. Duties of the Office of Lieutenant Governor.

The lieutenant governor serves as President of the Senate and acts in the governor's absence. TEX. CONST. ART. 4, §16.[i] Section 402.042(b) does not list the lieutenant governor as an authorized requestor. TEX. GOV'T CODE ANN. §402.042(b). Attorney General Paxton violated his statutory duty to refuse to issue an opinion in response to Lt. Governor Patrick's unauthorized request. *See* TEX. GOV'T CODE ANN. §402.048.

3. Marriage Licensing and Ceremonies in Texas.

a. Licensing.

Marriage licenses in Texas are issued by county clerks and their deputies. TEX. FAM. CODE ANN. §2.001(a), §2.005. County clerks are elected officials. TEX. CONST. ART. 5, §20. Clerks and deputy clerks alike take the same official oath of office required by Section 1 of Article 16 of the Texas Constitution to "preserve, protect, and defend the Constitution…." TEX. LOC. GOV'T CODE ANN. §§82.00l(d), 82.005(b). Since 1967, the U.S. Supreme Court mandates that the U.S. Constitution prohibits county clerks from discriminating in issuing marriage licenses. *See Loving*, 388 U.S. at 12 (interracial couples); *see also DeLeon*, 2015 WL 4032161, at *2; Exhibit 5, *DeLeon* Injunction (same-sex couples). Section 1 of Article 16 does not recognize any exception on religious grounds to compliance with the official oath of office.

b. Officiating.

Texas law authorizes several classes of persons to conduct marriage ceremonies, including state officials, who also take the same official oath of office. TEX. FAM. CODE ANN. §2.202(a)(4), (5). Once a Texas state official undertakes to exercise the authority to marry people granted by the Family Code, the official may not exercise that authority in violation of the equal protection clause of the U.S. Constitution by refusing to conduct a marriage ceremony for a discriminatory reason. TEX. ATTY. GEN. OP. JM-1 (1983); *see*

Loving, 388 U.S. at 12; *DeLeon*, 2015 WL 4032161, at *2; Exhibit 5, *DeLeon* Injunction. A state official "authorized to conduct a marriage ceremony by this subchapter is prohibited from discriminating on the basis of race, religion, or national origin against an applicant who is otherwise competent to be married." TEX. FAM. CODE ANN. §2.205(a). Section 2.205 does not recognize an exception for religious beliefs held by the state official.

Finally, the State's regulation of marriage means that officials who issue marriage licenses and perform marriage ceremonies engage in "state action." OP. JM-1 (citing *Hennessy v. Nat'l Collegiate Athletic Assoc.*, 564 F.2d 1136, 1144 (5th Cir. 1977)). When a state official issues a marriage license or performs a marriage ceremony, the official is acting in the name, and under the authority, of the State of Texas, not as an individual. OP. JM-1. The State's interest in marriage is purely civil in nature:

> For many couples, the wedding ceremony is religious and their religious beliefs inform and mold the ceremony and their union; for other couples, presumably those having no strong religious bond, the wedding ceremony is completely unconnected with any religion or religious belief. Regardless of how the couple views their union—whether they see it primarily as religious or secular—the State governs all legal aspects of the union.

Waite v. Waite, 150 S.W.3d 797, 802 (Tex. App.--Houston [14th Dist.] 2004, pet. denied). Therefore, the issuance of marriage licenses and performance of marriage ceremonies by state officials are not private acts, and state officials may not discriminate in performing their duties:

> The constitutional provision, therefore, must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a State government, deprives another of property, life, or liberty, without due process of law, or denies or takes away the equal protection of the laws, violates the constitutional inhibition; **and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State**. This must be so, or the constitutional prohibition has no meaning. Then the State has clothed one of its agents with power to annul or to evade it.

OP. JM-1 (quoting *Ex parte Virginia*, 100 U.S. 339, 346-47 (1879) (emphasis added)). This is not a new or novel legal concept. Nonetheless, by encouraging state officials to invoke individual religious objections to compliance with *Obergefell*, Attorney General Paxton has clothed Texas's "agents with power to annul or evade it." No reasonably prudent lawyer could form the belief that the Opinion and Press Releases evince "support" for the U.S. Constitution.

State officials who swear official oaths occupy a different position from ordinary citizens when it comes to civil disobedience and defying the U.S. Supreme Court. At their own legal peril, individual citizens may ignore the U.S. Supreme Court on matters

of conscience. Public officials, who act as the State in performing their duties, not as individuals, do not have this luxury. All public officials in Texas take an oath to "preserve, protect, and defend" the U.S. Constitution. A state official may not assert religious objections to refuse same-sex couples the right to marry any more than the official can refuse interracial couples. Nonetheless, the Opinion and Press Releases instigate state officials to assert individual religious freedoms in the mistaken belief they have a private right as public officials to defy *Obergefell* and create an unequal subclass by denying same-sex couples their constitutional right to marry. Attorney General Paxton is responsible for perpetuating that mistaken belief.

V. Respondent's Professional Misconduct

Attorney General Paxton issued an unauthorized attorney general opinion that both urged public officials to ignore federal court mandates and conflicted with the Attorney General's own judicial admission in *DeLeon*. Attorney General Paxton also disseminated public statements that disparaged the U.S. Supreme Court and challenged the supremacy of federal law. His unreasonable and extreme conduct in issuing the Opinion and Press Releases implicates Rules of Conduct 3.04(d), 3.07(a), 5.08(a), and 8.04(a)(1), (3), (4), and (12).[ii]

A. Count 1: Rule of Conduct 3.04(d) Fairness in Adjudicatory Proceedings.

Rule of Conduct 3.04 provides that an attorney shall not:

> (d) knowingly disobey, or advise the client to disobey, an obligation under the standing rules of or a ruling by a tribunal except for an open refusal based either on an assertion that no valid obligation exists or on the client's willingness to accept any sanctions arising from such disobedience.

As of this writing, the defendants in *Obergefell* have not filed a motion for rehearing, but we anticipate that the U.S. Supreme Court's *Obergefell* decision will be final shortly. Also, since July 7, 2015, a permanent junction has been in place in *DeLeon*. Nonetheless, Attorney General Paxton's Opinion and Press Releases encouraged public officials to disobey *Obergefell* and violate the *DeLeon* Injunction by refusing to perform same-sex marriages.

Attorney General Paxton's assertions that public officials have no valid obligation to comply with *Obergefell* or obey the *DeLeon* Injunction is not "based on a reasonable belief." *See* Rule of Conduct 3.04, Comment 7. The Terminology Section of the Rules of Conduct defines the terms used in Rule 3.04. The definitions impose both a subjective and an objective standard. Subjectively, "'Belief' or 'Believes' denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances." Also, "'Knowingly,' 'Known,' or 'Knows' denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances." Objectively, "'Reasonable' or 'Reasonably' when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer."

The Office of the Attorney General agreed in *DeLeon* that *Obergefell* is the law of the land. Inferring from those circumstances in *DeLeon*, it strains credulity to conclude that Attorney General Paxton subjectively believed his own statements in the Opinion and Press Releases. Also, Attorney General Paxton is a graduate of a prestigious law school. He is a highly experienced lawyer and veteran public official. Inferring from those circumstances, Attorney General Paxton knows the law we have cited in this complaint. He simply disregards it. Finally, as to the objective component of Rule 3.04, no reasonably prudent attorney could form the belief that public officials may assert individual religious grounds for disobeying a U.S. Supreme Court decision and violating federal court mandates and injunctions.

The public reactions to *Obergefell* of other states' attorneys general underscore the unreasonableness of the legal positions Attorney General Paxton took in the Opinions and Press Releases. Like Attorney General Paxton, state attorneys general across the Nation responded to *Obergefell* in press releases directed to public officials in their jurisdictions. Not one disparaged the U.S. Supreme Court as "lawless" or the *Obergefell* decision as "flawed." Not one encouraged disobedience by public officials, or offered pro bono legal counsel and the support of their Offices to defiant public officials who get sued or prosecuted. The public statements of Attorney General Paxton's peers emphasize how extreme and unreasonable Attorney General Paxton's Opinion and Press Releases really are:

Alabama

> While I do not agree with the opinion of the majority of the justices in their decision, I acknowledge that the U.S. Supreme Court's ruling is now the law of the land. Short of the passage of a Constitutional Amendment protecting marriage as between one man and one woman, the U.S. Supreme Court has the final say.

http://www.abc3340.com/story/29416887/alabama-ag-luther-strange-disagrees-with-gay-marriage-ruling-acknowledge-it-as-law-of-the-land

Arkansas:

> Although this decision does not reflect the will of Arkansas voters, we are a nation of laws, and the judicial system has an important role to play. I am disappointed that the justices have chosen to ignore the role of the States to define marriage. The justices have issued a decision, and that decision must be followed.

http://arkansasag.gov/news-and-consumer-alerts/details/rutledge-comments-on-u.s.-supreme-court-obergefell-v.-hodges-decision

Connecticut:

> [E]very American benefits by today's reaffirmation and extension of our national commitment to equality and human dignity – principles at the very heart of our

constitutional system of government.

http://www.ct.gov/ag/cwp/view.asp?Q=567586&A=2341

Georgia:

Today the Supreme Court of the United States ruled the Constitution requires a state to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out of state. It does not permit bans on same-sex marriage. In our system of government, the Supreme Court bears the ultimate responsibility for determining the constitutionality of our laws. Once the Supreme Court has ruled, its Order is the law of the land. As such, Georgia will follow the law and adhere to the ruling of the Court.

http://news.blog.ajc.com/2015/06/26/georgia-attorney-general-sam-olens-on-gay-marriage-decision-georgia-will-follow-the-law/

Michigan:

We will honor, respect and uphold the decision of the Supreme Court of the United States. We are appreciative that a decision finally has been reached in this very significant issue.

http://www.clickondetroit.com/news/michigan-attorney-general-bill-schuette-we-will-honor-respect-uphold-the-supreme-courts-gay-marriage-decision/33789740

Missouri:

The history of our country has always been one of moving toward inclusion and equality. I applaud the court for their courage and strong sense of fairness. Missourians should be seen as equals under the law; regardless of their gender, race, or whom they love.

http://www.news-leader.com/story/news/politics/2015/06/26/rep-billy-long-reacts-gay-marriage-ruling/29327357/

Mississippi:

The Office of the Attorney General is certainly not standing in the way of the Supreme Court's decision. We simply want to inform our citizens of the procedure that takes effect after this ruling. The Supreme Court decision is the law of the land and we do not dispute that. When the 5th Circuit lifts the stay of Judge Reeves' order, it will become effective in Mississippi and circuit clerks will be required to issue same-sex marriage licenses.

http://www.ago.state.ms.us/releases/attorney-general-jim-hood-issues-the-following-statement-on-the-u-s-supreme-courts-decision-in-obergefell-et-al-v-hodges-et-al/

Nebraska:

> Recognizing the rule of law, the State of Nebraska will comply with the ruling of the United States Supreme Court in *Obergefell*. Nebraska officials will not enforce any Nebraska laws that are contrary to the United States Supreme Court's decision in *Obergefell*.

http://www.nbcneb.com/home/headlines/Neb-Lawmakers-React-to-Gay-Marriage-Ruling--310077891.html?device=tablet&c=y

North Dakota:

> [T]he Supreme Court's ruling "overrides any conflicting state, constitutional or statutory provisions."

http://www.grandforksherald.com/news/region/3774655-same-sex-couples-can-get-marriage-licenses-grand-forks-county-local-supporters

Ohio:

> While "Ohio argued that the Supreme Court should let this issue ultimately be decided by the voters, the Court has now made its decision."

http://www.nationaljournal.com/politics/what-are-states-with-same-sex-marriage-bans-doing-now-20150626

Utah:

> Regardless of one's opinion of the ruling, the High Court has provided the guidance our office and the citizens of Utah and this nation have sought for several years. Advocacy on both sides helped bring us to this point of resolution. While people of goodwill on all sides of this issue have been at times divided and conflicted, we have an opportunity to come together again as equal citizens of this great state and nation.

http://attorneygeneral.utah.gov/media-center/official-statement-obergefell-v-hodges-marriage-rights

Perhaps the most eloquent and practical statement was issued by the Kentucky Attorney General, who clarified the distinction between the free exercise of individual religious beliefs and the performance of a state official's statutory duties:

Kentucky:

> Today, the United States Supreme Court issued the final word on this issue. The ruling does not tell a minister or congregation what they must do, but it does make clear that the government cannot pick and choose when it comes to issuing marriage licenses and the benefits they confer. It is time to move forward because the good-paying jobs are going to states that are inclusive.
>
> As Attorney General of the Commonwealth of Kentucky, I did my duty and defended Kentucky's constitutional amendment. When Judge Heyburn ruled the amendment was unconstitutional, I agreed with his legal analysis and used the discretion given to me by statute to inform Gov. Beshear and the citizens of the Commonwealth that I would not waste the scarce resources of this office pursuing a costly appeal that would not be successful.
>
> As the Court profoundly stated in its opinion regarding the plaintiffs, "They ask for equal dignity in the eyes of the law. The Constitution grants them that right."

http://kentucky.gov/Pages/Activity-Stream.aspx?viewMode=ViewDetailInNewPage&eventID={F6DF3595-B304-4CDF-BF2D-34074DFF4F5F}&activityType=PressRelease

Unfortunately, like the elected officials in Arkansas who defied the U.S. Supreme Court's decision in *Brown v. Board of Education*, and like those in Virginia who refused to recognize the equal rights of interracial couples to marry, Attorney General Paxton stands on the wrong side of history. His unreasonable and extreme positions bring the Office of the Attorney General of the State of Texas into disrepute. He will subject the citizens of the State of Texas to time-consuming, costly litigation as he violates his oaths of office by challenging the authority of the U.S. Supreme Court, litigation that will not prevail. The citizens of the State of Texas deserve better.

B. Count 2: Rule of Conduct 3.07(a) Extrajudicial Statements.

Rule of Conduct 3.07 provides:

> (a) In the course of representing a client, a lawyer shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicatory proceeding. A lawyer shall not counsel or assist another person to make such a statement.

The Terminology section of the Rules of Conduct defines the terms used in Rule 3.07. "'Should know' when used in reference to a lawyer denotes that a reasonable lawyer under the same or similar circumstances would know the matter in question." The Opinion and Press Releases disparaged the U.S. Supreme Court and encouraged public officials to violate the public officials' own oaths of office by defying federal court

mandates and injunctions. The Attorney General even offered pro bono legal counsel and the support of the Office of the Attorney General to defiant public officials who are prosecuted or sued. Attorney General Paxton knows or reasonably should know that a substantial likelihood exists that the Opinion and his other extrajudicial statements will be relied on to establish recalcitrant public officials' "good faith" in defying federal law, thereby materially prejudicing later adjudicatory proceedings. *See Head*, 984 S.W.2d at 746.

C. Count 3: Rule of Conduct 5.08(a) Prohibited Discriminatory Activities.

Texas lawyers are prohibited from discriminating. Rule of Conduct 5.08 provides:

> (a) A lawyer shall not willfully, in connection with an adjudicatory proceeding, except as provided in paragraph (b), manifest, by words or conduct, bias or prejudice based on race, color, national origin, religion, disability, age, sex, or sexual orientation towards any person involved in that proceeding in any capacity.

"Because the prohibited conduct only must occur 'in connection with' an adjudicatory proceeding, it applies to misconduct transpiring outside of as well as in the presence of the tribunal's presiding adjudicatory official." Rule of Conduct 5.08, Comment 1. The Office of the Attorney General issued the Opinion and Press Releases "in connection with" the *DeLeon* case, to which the Attorney General is both counsel and party. Overt bias and prejudice against same-sex couples seeking to marry in Texas permeate the Opinion and Press Releases. Attorney General Paxton willfully violated the letter as well as the spirit of Rule of Conduct 5.08(a) in issuing the Opinion and Press Releases.

D. Counts 4-7: Rule of Conduct 8.04(a)(1), (3), (4), and (12) Misconduct.

Attorney General Paxton's violations of his oaths in issuing the unauthorized Opinion and promulgating the Press Releases, as described above, also implicate at least four prohibitions in Rule of Conduct 8.04:

> (a) A lawyer shall not:
>
> ***
>
> (1) violate these rules, knowingly assist or induce another to do so, or do so through the acts of another, whether or not such violation occurred in the course of a client-lawyer relationship;
>
> ***
>
> (3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
>
> ***
>
> (4) engage in conduct constituting obstruction of justice;
>
> ***
>
> (12) violate any other laws of this state relating to the professional conduct of lawyers and to the practice of law.

Count 4: Rule 8.04(a)(1) A lawyer shall not violate these rules, whether or not such violation occurred in the course of a client-lawyer relationship.

Attorney General Paxton represents the people of the State of Texas. He also represents the State in litigation. Some of his prohibited conduct occurred in the litigation; most did not.

Count 5: Rule 8.04(a)(3) A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

The current procedural posture of the *DeLeon* Injunction is significant in analyzing Attorney General Paxton's disciplinary rule violations. Apparently, Attorney General Paxton did not present the misstatements of law contained in the Opinion and Press Releases to the *DeLeon* court, or any other tribunal. So, strict application of Rule of Conduct 3.03, which requires presentation of false statements of law or a failure to disclose adverse authority to a "tribunal," would be premature at this point:

> Rule 3.03 Candor Toward the Tribunal
>
> (a) A lawyer shall not knowingly:
>
> (1) make a false statement of material fact or law to a tribunal;
>
> ***
>
> (4) fail to disclose to the tribunal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel

In fact, the Office of the Attorney General agreed that *Obergefell* controls in *DeLeon*, and the *DeLeon* Injunction resulted. Nonetheless, from the standpoint of disciplinary rule violations, it makes no difference that Attorney General Paxton has not yet made the arguments recited in his Opinion and Press Releases to the *DeLeon* tribunal. Comment 3 to Rule of Conduct 3.03 makes clear that misrepresentations of the law are "dishonest":

> Misleading Legal Argument
>
> Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but should recognize the existence of pertinent legal authorities. Furthermore, as stated in paragraph (a)(4), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction which has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly

applicable to the case.

The American Bar Association also takes the position that "[l]anguage in briefs and motions that implies universality when it is not so is deceptive." Hon. Elaine Bucklo, "*The Temptation Not to Disclose Adverse Authority*," LITIGATION, Vol. 40, No. 2 (Winter 2014). http://www.americanbar.org/content/dam/aba/administrative/litigation/materials/2014_inscle_materials/written_materials/p1_4_temptation_disclose_adverse_authority.authcheckdam.pdf.

Further, since 1989 the Texas Lawyer's Creed has required that "[t]he conduct of lawyers should be characterized at all times by honesty, candor, and fairness." Moreover, the Creed provides:

> l. I will always recognize that the position of judge is the symbol of both the judicial system and administration of justice. I will refrain from conduct that degrades this symbol.
>
> 2. I will conduct myself in Court in a professional manner and demonstrate my respect for the Court and the law.
>
> ***
>
> 6. I will not knowingly misrepresent, mischaracterize, misquote or miscite facts or authorities to gain an advantage.
>
> 7. I will respect the rulings of the Court.
>
> 8. I will give the issues in controversy deliberate, impartial and studied analysis and consideration.

TEX. LAWYER'S CREED: A MANDATE FOR PROFESSIONALISM, §IV. Finally, the *Grogen* court recognized these fundamental ethical requirements when it referred a lawyer to the disciplinary authorities for misstating case holdings:

> Counsel's brief misstates the holdings of the cases described, creating the impression that these cases held completely opposite to their actual holdings. We condemn this practice as unprofessional conduct, and refer the matter to the Disciplinary Review Committee of the State Bar of Texas, as we are required to do under the Texas Supreme Court, Code of Judicial Conduct, Canon 3, pt. B(3) (1988).

Grogen, 745 S.W.2d at 451. Accordingly, while Attorney General Paxton may have not yet violated his duty of candor to a tribunal, his conduct in not citing contrary authority in the Opinion and Press Releases was "dishonest" and "deceptive." Therefore, Attorney General Paxton's conduct in issuing the misleading Opinion and Press Releases constituted "conduct involving dishonesty, fraud, deceit or misrepresentation," and he violated Rule of Conduct 8.04(a)(3).

Count 6: Rule 8.04(a)(4) A lawyer shall not engage in conduct constituting obstruction of justice.

Lt. Governor Patrick submitted his unauthorized request for an attorney general opinion on Thursday, June 25, 2015, the day before the U.S. Supreme Court handed down its *Obergefell* decision on Friday, June 26, 2015. Attorney General Paxton issued his first defiant Press Release on June 26, 2015. He issued the Opinion and a second, more inflammatory, Press Release on Sunday, June 28, 2015. From the circumstances surrounding Lt. Governor Patrick's unauthorized request and the lightning-fast publication of Attorney General Paxton's six-page Opinion, Lt. Governor Patrick's unauthorized request was orchestrated well in advance and phrased to assist Attorney General Paxton in immediately carving an opinion contrary to law, so that state officials would continue on Monday morning to deny same-sex couples their constitutional equal protection rights. Therefore, Attorney General Paxton's conduct in issuing the unauthorized, misleading Opinion, as well as the Press Releases, constituted obstruction of justice and violated Rule of Conduct 8.04(a)(4).

Count 7: Rule 8.04(a)(12) A lawyer shall not violate any other laws of this state relating to the professional conduct of lawyers and to the practice of law.

Attorney General Paxton's disregard of his oaths of office violated "other laws of this state relating to the professional conduct of lawyers and to the practice of law." Accordingly, the Opinion and Press Releases violated Rule of Conduct 8.04(a)(12).

Lay citizens of Texas agree. As the Editorial Board of the Dallas Morning News observed:

> No one should deny government employees' right to exercise religious freedom in their personal affairs, but there must be no ambiguity regarding their official responsibilities. They are constitutionally bound to uphold rights and provide government services without discrimination.
>
> The U.S. Supreme Court ruled Friday that same-sex couples have equal rights to marry. Top Texas leaders must stop standing in the way by encouraging government employees to invoke a personal religious exception when asked to provide marriage-related services, such as issuing licenses or officiating at civil ceremonies.
>
> Denton County Clerk Juli Luke struck the right tone regarding Friday's ruling by stating, "Personally, same-sex marriage is in contradiction to my faith and belief. … However, first and foremost, I took an oath on my family Bible to uphold the law, and as an elected public official, my personal belief cannot prevent me from issuing the licenses as required."

http://www.dallasnews.com/opinion/editorials/20150629-editorial-do-public-servants-religious-beliefs-trump-same-sex-couples-rights.ece

VI. Conclusion

Paragraph 4 of the Preamble to the Rules of Conduct best articulates our expectations regarding the conduct of our State's chief law enforcement officer:

> A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

As lawyers, we are not alone in our expectations. As the Editorial Board of the Corpus Christi Caller-Times observed:

> Our expectations are rock bottom. This is, after all, the same Ken Paxton who referred clients to investment advisers without disclosing the pertinent information that he would receive commissions for those referrals. The law against that is a law he supported as a lawmaker. Unfortunately, disclosure of this offense didn't stop Texans from electing him. But, going forward, any assessment of his words and actions as attorney general would be incomplete without a reminder to consider the lawbreaking source. He occupies a high, mighty position but has no business acting high and mighty.

http://www.caller.com/opinion/editorials/editorial-why-ken-paxton-is-tying-up-a-dead-womans-estate_94733265

Lawyers and lay citizens alike expect our public officials to honor their oaths to preserve, protect, defend, and support, in every word and deed, the "living truth" of "[o]ur constitutional ideal of equal justice under law." *See Cooper*, 358 U.S. at 18. Attorney General Paxton's actions fall far short of this expectation. We urge you to investigate his conduct thoroughly.

We reserve the right to amend this bipartisan grievance during the pendency of your investigation to allege any other disciplinary rule violations that arise, including but not limited to: (1) violations of Attorney General Paxton's duties of candor toward a tribunal (see Rule of Conduct 3.03(a)(1), (4)); or (2) Attorney General Paxton's conviction of a "serious crime or other criminal act that reflects adversely on [his] honesty, trustworthiness or fitness as a lawyer in other respects," such as securities fraud (see Rule of Conduct 8.04(a)(2)). http://www.wfaa.com/story/news/politics/2015/07/01/ken-paxton-felony-fraud-case/29593211/

Please contact us if you need more information or have any questions.

Respectfully,

LAW OFFICE OF
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SF/BB/RAK:Exhibits and attachment as noted
JOINED BY THE ATTORNEYS IDENTIFIED IN ATTACHMENT "A"

[i] The lieutenant governor also appoints legislative committees and serves as chair of the Legislative Budget Board and the Legislative Council. *See* TEX. GOV'T CODE ANN. §322.001, §323.001. The lieutenant governor is vice-chair of the Legislative Audit Committee and the Legislative Education Board. Also, when the Legislative Redistricting Board convenes (only when the Legislature is unable to approve a redistricting plan for both houses), the lieutenant governor serves as one of five members. http://www.laits.utexas.edu/txp_media/html/leg/0601.html. Lt. Governor Patrick does not claim in his request for an opinion to be acting in any capacity other than as lieutenant governor, nor does the subject of his request fall within the scope of any of his other functions. Exhibit 1. Moreover, the Opinion is addressed to Lt. Governor Patrick in his capacity as lieutenant governor, not in any of his other capacities. Exhibit 2.

[ii] The "Terminology" section of the Rules of Conduct defines certain of the terms used in the rules and commentary:

> "Belief" or "Believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.
>
> "Fraud" or "Fraudulent" denotes conduct having a purpose to deceive and not merely negligent misrepresentation or failure to apprise another of relevant information.
>
> "Knowingly," "Known," or "Knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.
>
> "Reasonable" or "Reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.
>
> "Should know" when used in reference to a lawyer denotes that a reasonable lawyer under the same or similar circumstances would know the matter in question.
>
> "Tribunal" denotes any governmental body or official or any other person engaged in a process of resolving a particular dispute or controversy. Tribunal includes such institutions as courts and administrative agencies when engaging in adjudicatory or licensing activities as defined by applicable law or rules of practice or procedure, as well as judges, magistrates, special masters, referees, arbitrators, mediators, hearing officers and comparable persons empowered to resolve or to recommend a resolution of a particular matter; but it does not include jurors, prospective jurors, legislative bodies or their committees, members or staffs, nor does it include other governmental bodies when acting in a legislative or rule-making capacity.

RQ-0031-KP

The Senate of
The State of Texas

DAN PATRICK
LIEUTENANT GOVERNOR

CAPITOL OFFICE
State Capitol, Room 2E.13
Post Office Box 12068
Austin, Texas 78711
(512) 463-0001
Fax: (512) 463-8668

June 25, 2015

The Honorable Ken Paxton
Attorney General
Office of the Attorney General of Texas
Post Office Box 12548
Austin, Texas 78711-2548

Dear Attorney General Paxton:

Re: Request for an opinion regarding the religious liberties of county clerks and their employees regarding same-sex marriage licenses and of justices of the peace and judges regarding same-sex marriage ceremonies

The protection of religious liberty rights guaranteed under the First Amendment of the U.S. Constitution is of utmost importance to Texans. Accordingly, Senate Bill 2065, the "Pastor Protection Bill," was passed and signed into law in the 84th Legislative Session to protect houses of worship, religious organizations and their employees and clergy or ministers from being required to participate in a marriage or celebration of a marriage if it would violate a sincerely held religious belief.

In anticipation of the U.S. Supreme Court's ruling in the next few days on *Obergefell v. Hodges*, the case that could redefine marriage, I continue to receive questions from concerned Texans regarding the protection of their religious liberty rights guaranteed under the First Amendment of the U.S. Constitution. As such, I request your opinion on the balance and protection of said religious liberty rights should the Texas definition of marriage be overturned. Specifically, in the event the Texas definition of marriage is overturned, may government officials such as employees of county clerks, justices of the peace, and judges refuse to issue same-sex marriage licenses or conduct same-sex marriage ceremonies due to their sincerely held religious beliefs that marriage is the union of one man and one woman?

EXHIBIT
1

Under Texas law, county clerks issue marriage licenses, TEX. FAM. CODE § 2.001(a), and pastors, justices of the peace, and judges may perform marriage ceremonies, *id.* § 2.202(a). If the Supreme Court declares a constitutional right to same-sex marriage, can a county clerk or his or her employees refuse to issue a same-sex marriage license if doing so would violate their sincerely held religious beliefs on marriage? Lastly, could a justice of the peace or a judge refuse to conduct a same-sex wedding ceremony if doing so would violate their sincerely held religious beliefs on marriage?

Texans have clearly spoken that marriage is the union of one man and one woman. Should the U.S. Supreme Court rule contrary to the voice of Texas, the answers to these questions are important.

I look forward to your response.

Sincerely,

Dan Patrick
Lieutenant Governor

KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 28, 2015

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

Opinion No. KP-0025

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

Dear Governor Patrick:

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

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

This opinion concludes:

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

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

EXHIBIT 2

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

I. County Clerks and Their Employees

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

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

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

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

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

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

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

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

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

[5]*See supra* note 3.

[6]42 U.S.C. § 2000e(j) (2012) ("The term 'religion' includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business."); TEX. LAB. CODE ANN. § 21.108 (West 2015) ("A provision in this chapter referring to discrimination because of religion or on the basis of religion applies to discrimination because of or on the basis of any aspect of religious observance, practice, or belief, unless an employer demonstrates that the employer is unable reasonably to accommodate the religious observance or practice of an employee or applicant without undue hardship to the conduct of the employer's business.").

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

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

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

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

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

II. Justices of the Peace and Judges

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

(1) a licensed or ordained Christian minister or priest;

(2) a Jewish rabbi;

(3) a person who is an officer of a religious organization and who is authorized by the organization to conduct a marriage ceremony;

(4) a justice of the supreme court, judge of the court of criminal appeals, justice of the courts of appeals, judge of the district, county, and probate courts, judge of the county courts at law, judge of the courts of domestic relations, judge of the juvenile courts, retired justice or judge of those courts, justice of the peace, retired justice of the peace, judge of a municipal court, retired judge of a municipal court, or judge or magistrate of a federal court of this state; and

(5) a retired judge or magistrate of a federal court of this state.

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

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

Two aspects of this legal arrangement bear discussing. First, justices of the peace and judges are joined on the list of those authorized to conduct marriage ceremonies by four other types of persons not employed by state or local government. Second, as previous Attorney General opinions have demonstrated, judges and justices of the peace have no mandatory duty to conduct any wedding ceremony: "Although the Family Code authorizes justices of the peace and county judges, among others, to conduct a marriage ceremony, they are not required to exercise that authority . . . ."[8] Tex. Att'y Gen. Op. No. GA-145 (2004) at 6 (citation omitted); *see also* Tex. Att'y Gen. Op. Nos. DM-397 (1996) at 1, JM-22 (1983) at 1, S-70 (1953) at 1.[9] So long as other authorized individuals are willing to conduct same-sex wedding ceremonies, these statutory provisions demonstrate the practical reality that a refusal by a religiously objecting justice of the peace or judge cannot prevent a same-sex couple from participating in a wedding ceremony contemplated by state law. Under the Religious Freedom Restoration Acts, justices of the peace and judges may claim that the government forcing them to conduct a same-sex wedding ceremony over their religious objection, when other authorized individuals have no objection, is not the least restrictive means of the government ensuring that the ceremonies occur, assuming that is compelling governmental interest. Again, the strength of any such claim depends on the particular facts.[10]

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

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

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

SUMMARY

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

Very truly yours,

Ken Paxton

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Chair, Opinion Committee

THE ATTORNEY GENERAL OF TEXAS

KEN PAXTON

Attorney General Ken Paxton: Following High Court's Flawed Ruling, Next Fight is Religious Liberty

Friday, June 26, 2015 – Austin, Texas

Texas Attorney General Ken Paxton today issued the following statement following the U.S. Supreme Court's flawed ruling on states' constitutional right to define marriage, stating the next fight is religious liberty:

"Today's ruling by five Justices of the U.S. Supreme Court marks a radical departure from countless generations of societal law and tradition. The impact of this opinion on our society and the familial fabric of our nation will be profound. Far from a victory for anyone, this is instead a dilution of marriage as a societal institution.

"What is most disturbing is the extent to which this opinion is yet another assault on the actual text of the U.S. Constitution and the rule of law itself. Just as Roe v. Wade ripped from the hands of the American people the issue of life and placed it in the judge-made 'penumbras' of the Constitution, so has this opinion made clear that our governing document – the protector of our liberties through representative government – can be molded to mean anything by unelected judges.

"But no court, no law, no rule, and no words will change the simple truth that marriage is the union of one man and one woman. Nothing will change the importance of a mother and a father to the raising of a child. And nothing will change our collective resolve that all Americans should be able to exercise their faith in their daily lives without infringement and harassment.

"We start by recognizing the primacy and importance of our first freedom – religious liberty. The truth is that the debate over the issue of marriage has increasingly devolved into personal and economic aggression against people of faith who have sought to live their lives

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Attorney General Ken Paxton Statement on Pending Supreme Court Marriage Decision

EXHIBIT 3

consistent with their sincerely-held religious beliefs about marriage. In numerous incidents trumpeted and celebrated by a sympathetic media, progressives advocating the anti-traditional marriage agenda have used this issue to publicly mock, deride, and intimidate devout individuals for daring to believe differently than they do. This ruling will likely only embolden those who seek to punish people who take personal, moral stands based upon their conscience and the teachings of their religion.

"It is not acceptable that people of faith be exposed to such abuse. The First Amendment to the U.S. Constitution protects our religious liberty and shields people of faith from such persecution, but those aspects of its protections have been denigrated by radicals, echoed by the media and an increasingly-activist judiciary. Consistent with existing federal and state Religious Freedom Restoration Acts that should already protect religious liberty and prevent discrimination based on religion, we must work to ensure that the guarantees of the First Amendment, protecting freedom of religion, and its corollary freedom of conscience, are secure for all Americans.

"Our guiding principle should be to protect people who want to live, work and raise their families in accordance with their religious faith. We should ensure that people and businesses are not discriminated against by state and local governments based on a person's religious beliefs, including discrimination against people of faith in the distribution of grants, licenses, certification or accreditation; we should prevent harassing lawsuits against people of faith, their businesses and religious organizations; we should protect non-profits and churches from state and local taxes if the federal government penalizes them by removing their 501(c)(3) status; and we should protect religious adoption and foster care organizations and the children and families they serve. Shortly, my office will be addressing questions about the religious liberties of clerks of court and justices of the peace.

"Displays of hate and intolerance against people of faith should be denounced by all people of good will and spark concern among anyone who believes in religious liberty and freedom for all.

"Despite this decision, I still have faith in America and the American people. We must be vigilant about our freedom and must use the democratic process to make sure America lives up to its promise as a land of freedom, religious tolerance and hope."

THE ATTORNEY GENERAL OF TEXAS

KEN PAXTON

Attorney General Paxton: Religious Liberties of Texas Public Officials Remain Constitutionally Protected After Obergefell v. Hodges

Sunday, June 28, 2015 – Austin, Texas

Attorney General Ken Paxton today made the following statement and issued an opinion in response to questions about the impact of Obergefell v. Hodges, the case that redefined marriage:

"Friday, the United States Supreme Court again ignored the text and spirit of the Constitution to manufacture a right that simply does not exist. In so doing, the Court weakened itself and weakened the rule of law, but did nothing to weaken our resolve to protect religious liberty and return to democratic self-government in the face of judicial activists attempting to tell us how to live.

"Indeed, for those who respect the rule of law, this lawless ruling presents a fundamental dilemma: A ruling by the U.S. Supreme Court is considered the law of the land, but a judge-made edict that is not based in the law or the Constitution diminishes faith in our system of government and the rule of law.

"Now hundreds of Texas public officials are seeking guidance on how to implement what amounts to a lawless decision by an activist Court while adhering both to their respective faiths and their responsibility to uphold and defend the U.S. Constitution. Here is where things currently stand:

"Pursuant to the Court's flawed ruling, the U.S. District Court for the Western District of Texas issued an injunction against the enforcement of Texas marriage laws that define marriage as one man and one woman and therefore those laws currently are enjoined from being enforced by county clerks and justices of the peace.

Related News

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There is not, however, a court order in place in Texas to issue any particular license whatsoever – only the flawed direction by the U.S. Supreme Court on Constitutionality and applicable state laws.

“Importantly, the reach of the Court’s opinion stops at the door of the First Amendment and our laws protecting religious liberty. Even the flawed majority opinion in Obergefell v. Hodges acknowledged there are religious liberty protections of which individuals may be able to avail themselves. Our religious liberties find protection in state and federal constitutions and statutes. While they are indisputably our first freedom, we should not let them be our last.”

“In the Attorney General’s opinion my office issued in response to Lt. Governor Patrick’s request for guidance, we find that although it fabricated a new constitutional right in 2015, the Supreme Court did not diminish, overrule, or call into question the First Amendment rights to free exercise of religion that formed the first freedom in the Bill of Rights in 1791. This newly invented federal constitutional right to same-sex marriage should peaceably coexist alongside longstanding constitutional and statutory rights, including the rights to free exercise of religion and speech. This opinion concludes that:

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

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

“It is important to note that any clerk who wishes to defend their religious objections and who chooses not to issue licenses may well face litigation and/or a fine. But, numerous lawyers stand ready to assist clerks defending their religious beliefs, in many cases on a pro-bono basis, and I will do everything I can from this office to be a public voice for those standing in defense of their rights.

"Texas must speak with one voice against this lawlessness, and act on multiple levels to further protect religious liberties for all Texans, but most immediately do anything we can to help our County Clerks and public officials who now are forced with defending their religious beliefs against the Court's ruling."

To read Attorney General Paxton's full opinion, click here.

To read Attorney General Paxton's earlier comments on this Supreme Court ruling, click here

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

CLEOPATRA DE LEON, et al.
Plaintiffs,

v.

RICK PERRY, in his official capacity as Governor of the State of Texas, et al.,
Defendants.

Cause No. SA-13-CA-00982-OLG

FINAL JUDGMENT

On July 1, 2015, the Fifth Circuit affirmed this Court's grant of a preliminary injunction and issued a mandate for this Court to enter judgment in favor of Plaintiffs in this case. *See De Leon v. Abbott*, No. 14-50196, 2015 WL 4032161, ___ F.3d ___ (5th Cir. 2015). In light of the United States Supreme Court's decision in *Obergefell v. Hodges*, No. 14-556, 2015 WL 2473451, ___ U.S. ___ (2015), and pursuant to the Fifth Circuit's mandate, the Court hereby enters judgment in this case.

It is hereby ORDERED, ADJUDGED, and DECREED that:

1) Any Texas law denying same-sex couples the right to marry, including Article I, §32 of the Texas Constitution, any related provisions in the Texas Family Code, and any other laws or regulations prohibiting a person from marrying another person of the same sex or recognizing same-sex marriage, violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983;
2) Defendants are permanently enjoined from enforcing Texas's laws prohibiting same-sex marriage; and
3) Any taxable costs in this case are assessed against the Defendants.

It is so ORDERED.

SIGNED this 7 day of July, 2015.

United States District Judge Orlando L. Garcia

EXHIBIT
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