

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***

[PROPOSED] PRELIMINARY INJUNCTION

On August 10, 2017, this matter comes before the Court on Plaintiffs Motion for Preliminary Injunction [Dkt. 7] pursuant to Federal Rule of Civil Procedure 65. Plaintiffs appear through their counsel of record. Plaintiffs have given notice to Defendants, who appear through their respective counsel.

Nature of the Case

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. Plaintiffs seek to secure the rights of City employees and their same-sex spouses to spousal employment benefits on the same basis that the City offers those benefits to every other married City employee.

Defendants Pidgeon and Hicks are taxpayers who seek to force the City of Houston and its Mayor to deprive married City employees who have same-sex spouses of spousal employment benefits that the City has offered since November 2013. The Taxpayers contend that by providing those benefits, the City violates two Texas laws, Texas Family Code § 6.204 and Article I, Section 32 of the Texas Constitution (collectively, the Texas Marriage Bans), which prohibit Texas and its political subdivisions from recognizing marriages between same-sex spouses.

Plaintiffs allege that the City may not deprive them of access to the same spousal benefits it offers to other married City employees simply because Plaintiffs are married to a same-sex spouse violates their clearly established constitutional rights.

Question Presented

Thus, this suit presents a simple question of federal law: May a political subdivision of Texas, such as the City, rely on the Texas Marriage Bans to take away from married City employees and their same-sex spouses spousal benefits that are otherwise available to every other City employee married to a different-sex spouse?

Standard for Granting a Preliminary Injunction

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).

Facts

By declarations presented with their Motion [Dkt. 7-2, 7-3, 7-4], Plaintiffs have provided testimony establishing they comprise three same-sex married couples who have been married at various times prior to July 2013 in jurisdictions where same-sex couples could legally marry. One member of each couple is employed by the City of Houston and the spouse of each Plaintiff employee has continuously participated in spousal benefits since the City first began offering them to same-sex spouses in November 2013.

Since November of 2013, the Taxpayers have been engaged in state court litigation with 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 have indicated that, on or soon after August 17, 2017, they will seek a temporary injunction against City to take away spousal benefits of same-sex spouses of City employees and further request the City to recover any benefits previously provided to the City employees and their same-sex spouses [Dkt. 7-1].

Plaintiffs are not parties to the state court proceedings. Plaintiffs allege they will suffer irreparable harm if their benefits suddenly are taken away without

further notice and the City is permitted to infringe on its employees' constitutional rights.

Analysis and Authority

Plaintiffs are likely to succeed on the merit.

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 benefits¹ 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

¹ *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.

Marriage Bans unconstitutional, and permanently enjoined State officials from enforcing those laws. *De Leon v. Abbott*, 791 F.3d 619 (5th Cir. 2015).

Very recently, the United States Supreme Court *summarily reversed* a ruling from Arkansas's highest court that was 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. The significance of *Pavan* cannot be understated: *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*).

Federal law would also 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.

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

Plaintiffs will be harmed absent an injunction.

Injunctive relieve is necessary to maintain the status quo and protect 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. KIRSTIN STOLL-DEBELL, ET AL., INJUNCTIVE RELIEF: TEMPORARY RESTRAINING ORDERS & PRELIMINARY INJUNCTIONS 106, n.14 (2009) (collecting cases). The threatened termination of health insurance benefits here also constitutes irreparable harm.

Beyond the loss of benefits itself, "[i]t 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).

Injury to Plaintiffs outweighs any harm from an 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 Giovanni 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 deprivations 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 are afforded the opportunity to make their case on the merits, while the status quo is preserved. The requested injunction would serve that purpose here.

An injunction serves 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).

Security

The Court will 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). Given the virtual certainty of the federal law concerning treatment of same-sex couples' marriages, potential harm to the City from this injunction is minimal, if present at all.

Relief

The Court grants a Preliminary Injunction against Defendants, the Defendants' officers, agents, servants, employees, and attorneys; and any other persons who are in active concert or participation with the Defendants who have actual notice of this Order:

- A. Enjoining Defendant City of Houston (the "City") from discontinuing employment benefits currently provided to same-sex spouses of City employees,
- B. Enjoining Defendant City of Houston (the "City") from seeking reimbursement of benefits previously paid for coverage of same-sex spouses of City employees, and
- C. Enjoining all Defendants from interfering with continuation of such benefits.

This injunction shall remain in full force and effect until further order of the Court amending or dissolving this injunction, until entry of final judgment, or until dismissal of this action.

SO ORDERED THIS _____ day of August, 2017.

United States District Judge