

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

**U.S. Pastor Council,**

Plaintiff,

v.

**City of Austin; Sareta Davis,** in her  
official capacity as Chair of the Austin  
Human Rights Commission,

Defendants.

Case No. 1:18-cv-849-RP

**FIRST AMENDED COMPLAINT**

The City of Austin’s employment-discrimination ordinance prohibits employers from discriminating on account of “race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.” *See* Austin City Code § 5-3-4(A) (attached as Exhibit 1). But the ordinance provides no exemptions or accommodations for employers who hold religious objections to homosexuality or transgender behavior. It does not even exempt church hiring decisions from its prohibition on sex discrimination, nor does it exempt churches from the ban on discrimination on account of sexual orientation or gender identity.

The City of Austin’s failure to exempt church hiring decisions from its anti-discrimination laws violates the U.S. Constitution, the Texas Constitution, and the Texas Religious Freedom Restoration Act. The plaintiffs seek a declaratory judgment to this effect, and they seek to enjoin city officials from enforcing this anti-discrimination ordinance until the city enacts a religious exemption that accords with constitutional and state-law requirements.

## JURISDICTION AND VENUE

1. The Court has subject-matter jurisdiction under 28 U.S.C. § 1331, 28 U.S.C. § 1343, and 28 U.S.C. § 1367.

2. Venue is proper because a substantial part of the events giving rise to the claims occurred in this judicial district. *See* 28 U.S.C. § 1391(b)(2).

## PARTIES

3. Plaintiff U.S. Pastor Council is a nonprofit corporation headquartered in Houston, Texas. The U.S. Pastor Council comprises approximately 1,000 member churches, including 25 in the city of Austin.

4. Defendant City of Austin is a legal government entity as defined in Texas Government Code § 554.001. It may be served with citation by serving Mayor Steve Adler through the City of Austin, Texas, Secretary Anna Russell, located at 900 Bagby Street, Houston, Texas, 77002.

5. Defendant Sareta Davis chairs the Austin Human Rights Commission. She may be served at City Hall, 301 West 2nd Street, Austin, Texas, 78701. She is sued in her official capacity.

## STATEMENT OF THE CLAIM

6. The Austin-based member churches of the U.S. Pastor Council believe that the Bible is the Word of God.

7. Because these member churches rely on the Bible rather than modern-day cultural fads for religious and moral guidance, they will not hire practicing homosexuals or transgendered people as clergy. *See, e.g.*, Romans 1:26–28; 1 Timothy 1:8–11; 1 Corinthians 6:9–11; Leviticus 18:22; Leviticus 20:13.

8. These member churches also require church employees to live according to the Bible's teachings on matters of sexuality and gender, so they will not consider practicing homosexuals or transgendered people for any type of church employment.

9. Many of these member churches also believe that the Bible forbids a woman to serve in the role of senior pastor. *See* 1 Timothy 2:12 (NIV) (“I do not permit a woman to teach or to assume authority over a man”). These churches will not consider or hire women for such a role.

10. The Bible also teaches Christians to obey the civil authorities, *see* Romans 13, so the member churches believe that they are responsible as Christians to obey the laws of the city of Austin, the state of Texas, and the nation.

11. Section 5-3-4(A) of the Austin City Code forbids employers to “discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment, based on the individual’s race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.”

12. Section 5-3-15 provides some exemptions from 5-3-4’s anti-discrimination rule, but none of them accommodate churches that oppose homosexuality, transgender behavior, or the ordination of women. The only religious accommodations appear in sections 5-3-15(B) and 5-3-15(C). Section 5-3-15(B) provides:

It is not an unlawful employment practice for a school, college, university or other educational institution or institution of learning to hire and employ employees of a particular religion if:

(1) the school, college or university or other educational institution or institution of learning is wholly or substantially owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society; or

(2) the curriculum of the school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

And section 5-3-15(C) provides:

It is not an unlawful employment practice for a religious corporation, association, educational institution, or society to hire and employ indi-

viduals of a particular religion to perform work connected with the activities of the corporation, association, educational institution, or society.

*See* Austin City Code § 5-3-15 (attached as Exhibit 1).

13. Neither of these two exemptions accommodates churches that refuse to hire women, practicing homosexuals, or transgendered people as clergy. Section 5-3-15(B) applies only to educational institutions, not churches. And section 5-3-15(C) creates an exception only to the ordinance's prohibition on *religious* discrimination. There are *no* exceptions to the ban on sex discrimination, and there are *no* exceptions to the ban on discrimination based on sexual orientation or gender identity. The ordinance allows a Catholic church to require its priests to be Catholic, but it forbids the church to exclude Catholic women, Catholic homosexuals, or Catholic transgendered people from the priesthood.

14. The city of Austin's refusal to exempt church hiring decisions from its anti-discrimination laws violates the Free Exercise Clause. *See Hosanna-Tabor Evangelical Lutheran Church and Sch. v. Equal Employment Opportunity Commission*, 565 U.S. 171 (2012). If *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990), requires a different outcome, then *Smith* should be overruled.

15. The city of Austin's refusal to exempt church hiring decisions from its anti-discrimination laws also violates article I, section 6 of the Texas Constitution (attached as Exhibit 2).

16. The city of Austin's refusal to exempt church hiring decisions from its anti-discrimination laws violates the Texas Religious Freedom Restoration Act. *See* Tex. Civ. Prac. & Rem. Code chapter 110 (attached as Exhibit 3).

17. The U.S. Pastor Council provided the notice required by section 110.006 of the Texas Civil Practice & Remedies Code more than 60 days before bringing suit. *See* Exhibits 4–7.

18. Because section 5-3-4(A) fails to provide the constitutionally mandated exemptions for churches and religious objectors, the ordinance is unconstitutional on its face and cannot be enforced in any capacity until it is amended to provide the required religious accommodations. *See Stenberg v. Carhart*, 530 U.S. 914, 930–38 (2000) (declaring an abortion regulation facially unconstitutional and enjoining its enforcement across the board because it lacked a constitutionally mandated exception for the health of the mother).

19. The court lacks authority to carve out an exception in the ordinance for churches and religious objectors because this would “substitute the judicial for the legislative department of the government.” *Whole Woman’s Health v. Hellerstedt*, 136 S. Ct. 2292, 2319 (2016) (citation and internal quotation marks omitted); *see also Reno v. ACLU*, 512 U.S. 844, 884–45 (“This Court will not rewrite a . . . law to conform it to constitutional requirements.” (citations and internal quotation marks omitted)). The appropriate remedy is to enjoin the enforcement of section 5-3-4(A) in its entirety until it is amended to provide the constitutionally mandated accommodations for churches and religious objectors.

20. In the alternative, the court should enjoin the enforcement of the statute as applied to church-hiring decisions. The plaintiff brings both facial and as-applied challenges to section 5-3-4.

### STANDING

21. The U.S. Pastor Council has associational standing to challenge section 5-3-4.

22. To establish associational standing, the U.S. Pastor Council must show that: (a) its Austin member churches would have standing to sue in their own right; (b) the rights of religious freedom and church autonomy that it seeks to vindicate in this lawsuit are germane to the organization’s purpose; and (c) neither the claims asserted

nor the relief demanded requires the individual member churches to participate in the lawsuit. *See Hunt v. Washington State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977).

23. The member churches of the U.S. Pastor Council include churches that are subject to the City of Austin's anti-discrimination law, because they are located in Austin and they have 15 or more employees for each working day in each of the 20 or more calendar weeks in the current or preceding calendar year. *See Austin City Code* § 5-3-1(10).

24. Those Austin-based member churches intend to engage in a course of conduct prohibited by section 5-3-4. Specifically, they intend to discriminate on account of sex, sexual orientation, and gender identity in church employment decisions, by categorially refusing to consider women for the job of senior pastor, by categorially refusing to consider practicing homosexuals or transgendered individuals for church employment, and by requiring all church employees to refrain from homosexual behavior.

25. These Austin-based member churches are suffering "injury in fact" because the city's anti-discrimination law threatens them with prosecution—and requires them to risk prosecution—for following the teachings of their religion.

26. These Austin-based member churches are suffering an additional "injury in fact" because the city's anti-discrimination law compels them to violate the teachings of their religion regardless of whether they choose to comply with city law. If the member churches choose to comply with city law, then they will violate the Bible's teachings on homosexuality and the role of women in the church. *See, e.g.*, Romans 1:26–28; 1 Timothy 1:8–11; 1 Corinthians 6:9–11; Leviticus 18:22; Leviticus 20:13; 1 Timothy 2:12. If the member churches choose to defy city law, then they will violate the Bible's instruction to obey the civil authorities. *See Romans 13*. The city's anti-discrimination law makes it impossible for the member churches to operate in Austin

without violating one or more of their sincere religious convictions. This inflicts “injury in fact” and substantially burdens the members churches’ exercise of their religion.

27. Each of these “injuries in fact” is caused by section 5-3-4, and each will be redressed by a declaratory judgment that declares section 5-3-4 unconstitutional or preempted on account of its failure to exempt church hiring decisions, as well as an injunction that blocks the enforcement of the city’s anti-discrimination law.

28. The U.S. Pastor Council is a membership organization. To become a member of the U.S. Pastor Council, a pastor and its church must submit a membership application and pay a \$250 annual membership fee. Pastors who apply for membership must review the Pastors’ Declaration on Godly Citizenship and affirm they agree with its principles and commit to its implementation. All of this is explained on the U.S. Pastor Council’s website: <http://www.uspastorcouncil.org/get-involved/join-uspc.html> (last visited on January 29, 2019).

29. Defending the right of religious freedom and the right of churches to require their employees to follow the Bible’s standards for conduct is germane to the U.S. Pastor Council’s purpose. The U.S. Pastor Council’s Declaration of Godly Citizenship, which appears on the Council’s website, declares, among other things:

**We believe that the Holy Bible is inerrant, infallible and inspired by God; it is the only revealed source of all truth relevant to the governing of the person and of nations.**

**We believe that all authorities are subordinate to God, including family, church and government authorities, therefore the actions and decisions of each will be accountable to Him.**

**We believe that the church has a unique and sacred role in proclaiming Gods principles to leaders of a city, state and nation . . . .**

**We believe that marriage is a God-created relationship as the lifetime union of one natural man and one natural woman for the**

blessing of both, the good of the people and the foundation of the family for legitimate procreation.

**We believe** that the **traditional, nuclear family of a married father and mother raising their biological and/or adopted children** in a nurturing and protective environment is the essential building block of a stable community and a nation; it therefore must be promoted and protected by both church and state. . . .

*See* <http://www.uspastorcouncil.org/who-we-are/uspc-pastors-declaration-of-godly-citizenship.html> (last visited on January 29, 2019).

### CAUSES OF ACTION

30. The U.S. Pastor Council is suing under 42 U.S.C. § 1983 and the Declaratory Judgment Act, 28 U.S.C. § 2201, each of which supplies a cause of action for the claims that it is asserting.

31. The U.S. Pastor Council is also suing under the Texas Constitution, the Texas Uniform Declaratory Judgment Act, and the Texas Religious Freedom Restoration Act, chapter 110 of the Texas Civil Practice & Remedies Code, and it invokes the supplemental jurisdiction of this court over these state-law claims. *See* 28 U.S.C. § 1367.

### DEMAND FOR RELIEF

32. The U.S. Pastor Council respectfully requests that the court:
- a. declare that the member churches of the U.S. Pastor Council have a federal constitutional right to exclude practicing homosexuals and transgendered people as clergy and church employees in accordance with their sincere religious beliefs, notwithstanding any federal, state, or local anti-discrimination law to the contrary;
  - b. declare that the member churches of the U.S. Pastor Council have a state constitutional right to exclude practicing homosexuals and transgendered people as clergy and church employees in accordance



with their sincere religious beliefs, notwithstanding any state or local anti-discrimination law to the contrary;

- c. declare that Texas Religious Freedom Restoration Act protects the right of the member churches of the U.S. Pastor Council to exclude practicing homosexuals and transgendered people as clergy and church employees in accordance with their sincere religious beliefs, notwithstanding any local anti-discrimination law to the contrary;
- d. declare that the member churches of the U.S. Pastor Council have a federal constitutional right to hire only men as clergy in accordance with their sincere religious beliefs, notwithstanding any federal, state, or local anti-discrimination law to the contrary;
- e. declare that the member churches of the U.S. Pastor Council have a state constitutional right to hire only men as clergy in accordance with their sincere religious beliefs, notwithstanding any state or local anti-discrimination law to the contrary;
- f. declare that the Texas Religious Freedom Restoration Act protects the right of the member churches of the U.S. Pastor Council to hire only men as clergy in accordance with their sincere religious beliefs, notwithstanding any local anti-discrimination law to the contrary;
- g. enjoin the defendants from enforcing section 5-3-4(A) of the Austin City Code in any circumstance until it is amended to exempt church hiring decisions;
- h. in the alternative, enjoin the defendants from enforcing section 5-3-4(A) of the Austin City Code against church hiring decisions;
- i. award costs and attorneys' fees under 42 U.S.C. § 1988 as well as state law; and

- j. award all other relief that the Court may deem just, proper, or equitable.

Respectfully submitted.

/s/ Jonathan F. Mitchell  
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Dated: January 29, 2019

*Counsel for Plaintiff*

**CERTIFICATE OF SERVICE**

I certify that on January 29, 2019, I served this document by CM/ECF upon:

PAUL MATULA  
HANNAH VAHL  
City of Austin  
Post Office Box 1546  
Austin, Texas 78767-1546  
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*Counsel for Defendants*

## § 5-3-1 - DECLARATION OF POLICY.

- (A) It is the policy of the City to bring about through fair, orderly and lawful procedures, the opportunity for each person to obtain employment without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.
- (B) This policy is established upon the recognition of the inalienable rights of each individual to work to earn wages and obtain a share of the wealth of this City through gainful employment; and further that the denial of such rights through considerations based upon race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability is detrimental to the health, safety and welfare of the inhabitants of the City and constitutes an unjust denial or deprivation of such inalienable rights which is within the power and the proper responsibility of government to prevent.

*Source: 1992 Code Section 7-3-1; Ord. 031106-12; Ord. 031211-11; Ord. 040610-7.*

## § 5-3-2 - DEFINITIONS.

In this chapter:

- (1) ADMINISTRATOR means the Equal Employment/Fair Housing Office administrator appointed by the director.
- (2) AGE means a person at least 40 years old.
- (3) CHARGE means a complaint filed by a charging party alleging discrimination under Section 5-3-4 ( *Unlawful Employment Practices* ), Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act of 1990, or Chapter 21 ( *Employment Discrimination* ) of the Texas Labor Code.
- (4) CHARGING PARTY means the person alleging discrimination in a charge.
- (5) COMMISSION means the Austin Human Rights Commission.
- (6) DIRECTOR means the Director of Human Resources Department.
- (7) DISABILITY, with respect to an individual, means:
  - (a) a physical or mental impairment that substantially limits one or more of the major life activities of the individual;
  - (b) a record of the impairment; or
  - (c) being regarded as having an impairment.

- (8) EEOC means the Equal Employment Opportunity Commission.
- (9) EMPLOYEE means an individual employed by an employer, including a City employee. The term does not include an elected official of the City.
- (10) EMPLOYER means a person who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and the person's agent. The term does not include the United States, or a corporation wholly owned by the government of the United States; a bona fide private membership club (other than a labor organization) which is exempt from taxation under Section 501(c) of the Internal Revenue Code of 1954; or the state, a state agency, or political subdivision.
- (11) EMPLOYMENT AGENCY means a person who regularly attempts, with or without compensation, to procure employees for an employer or to procure employment opportunities for employees, including the person's agent.
- (12) EQUAL EMPLOYMENT/FAIR HOUSING OFFICE means the office in the Human Resources Department responsible for receiving, investigating, conciliating, making determinations, and taking other action related to charges received under this chapter.
- (13) GENDER IDENTITY means a person's various individual attributes, actual or perceived, that may be in accord with or sometimes opposed to, one's physical anatomy, chromosomal sex, genitalia, or sex assigned at birth.
- (14) INVESTIGATOR means the person investigating a charge.
- (15) LABOR ORGANIZATION means a labor organization and its agent, including an organization, agency, or employee representation committee, group, association, or plan in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council which is subordinate to a national or international labor organization.
- (16) RELIGION means all aspects of religious observance and practice, as well as belief, unless an employer demonstrates the inability to reasonably accommodate an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.
- (17) RESPONDENT means the person against whom a charging party alleges discrimination in a charge.
- (18) SEX DISCRIMINATION means discrimination on the basis of gender, or any associated condition, including pregnancy, childbirth or related medical conditions. A woman affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all

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employment related purposes, including receipt of benefits under fringe benefit programs, as a person not so affected, but similar in their ability or inability to work.

*Source: 1992 Code Section 7-3-2; Ord. 031106-12; Ord. 031211-11; Ord. 040610-7; Ord. 20051215-010.*

#### § 5-3-3 - INTERPRETATION AND DESIGNATION.

- (A) In construing this chapter, it is the intent of the city council that the courts shall be guided by the rules and regulations of the EEOC and Federal Court interpretations of Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act of 1967, and Chapter 21 ( *Employment Discrimination* ) of the Texas Labor Code.
- (B) The city council designates the Equal Employment/Fair Housing Office a local commission under Chapter 21 ( *Employment Discrimination* ) of the Texas Labor Code, to exercise the powers and duties provided in that chapter.

*Source: 1992 Code Section 7-3-3; Ord. 031106-12; Ord. 031211-11; Ord. 040610-7.*

#### § 5-3-4 - UNLAWFUL EMPLOYMENT PRACTICES.

- (A) An employer may not:
  - (1) fail or refuse to hire or to discharge any individual, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment, based on the individual's race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; or
  - (2) limit, segregate, or classify an employee or applicant for employment in a way which would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect the individual's status as an employee, based on the individual's race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.
- (B) An It shall be an unlawful employment practice for an employment agency may not:
  - (1) fail or refuse to refer for employment, or otherwise discriminate against, an individual based on race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; or
  - (2) classify or refer for employment an individual based on race, color, religion, sex, sexual orientation, gender identity, national origin, age or disability.
- (C) A labor organization may not:
  - (1) exclude or to expel from its membership, or otherwise discriminate against, an individual based on race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.
  - (2)

limit, segregate, or classify its membership, or applicants for membership, or classify or fail or refuse to refer for employment an individual in a way which would deprive or tend to deprive the individual of employment opportunities, limit employment opportunities, or otherwise adversely affect the individual's status as an employee or as an applicant for employment, based on the individual's race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; or

- (3) cause or attempt to cause an employer to discriminate against an individual in violation of this section.
- (D) An employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, may not discriminate against an individual based on race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in admission to or employment in a program established to provide apprenticeship or other training.
- (E) Unless it is a bona fide occupational qualification for employment, an employer, labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, may not print, publish, or cause to be printed or published a notice or advertisement that indicates a preference, limitation, specification, or discrimination based on race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability related to:
- (1) employment by the employer;
  - (2) membership in or classification or referral for employment by an employment agency; or
  - (3) admission to, or employment in, a program established to provide apprenticeship or other training by a joint labor-management committee.
- (F) Based on an individual's opposition to an unlawful employment practice or the individual's filing a charge, or testimony, assistance, or participation in an investigation, proceeding or hearing under this chapter:
- (1) an employer may not discriminate against an employee or applicant for employment;
  - (2) an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, may not discriminate against an individual; and
  - (3) a labor organization may not discriminate against a member or applicant for membership.

*Source: 1992 Code Section 7-3-4; Ord. 031106-12; Ord. 031211-11; Ord. 040610-7.*

A person may not violate this chapter, or knowingly obstruct or prevent compliance with this chapter.

*Source: 1992 Code Section 7-3-5; Ord. 031106-12; Ord. 031211-11; Ord. 040610-7.*

§ 5-3-6 - CHARGES.

- (A) A person must file a charge with the Equal Employment/Fair Housing Office not later than the 180th day after the date the violation occurred.
- (B) A charge under this section must be:
  - (1) made in writing on the form prescribed by the Equal Employment/Fair Housing Office;
  - (2) be sworn to by the charging party; and
  - (3) contain the information required by the Equal Employment/Fair Housing Office.

*Source: Ord. 040610-7.*

§ 5-3-7 - PRELIMINARY REVIEW; REFUSAL.

- (A) Before the Equal Employment/Fair Housing Office accepts a charge, an investigator shall review the charge with the charging party and make a determination that the charge describes a violation of Section 5-3-4 ( Unlawful Employment Practices ), Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act or the Americans with Disabilities Act of 1990, or Chapter 21 ( *Employment Discrimination* ) of the Texas Labor Code.
- (B) If, after a preliminary review, an investigator determines that a charge does not describe a violation of Section 5-3-4 ( Unlawful Employment Practices ) or of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act of 1990, or Chapter 21 ( *Employment Discrimination* ) of the Texas Labor Code the Equal Employment/Fair Housing Office shall notify the charging party that the charge will not be accepted and describe the reason for the refusal, not later than the 10th day after the determination. The Equal Employment/Fair Housing Office shall maintain a record documenting the reason a charge was not accepted.

*Source: Ord. 040610-7.*

§ 5-3-8 - ACCEPTANCE; NOTICE; INVESTIGATION.

If the Equal Employment/Fair Housing Office accepts a charge, it shall notify the respondent not later than the 10th day after acceptance of the charge. If the charge alleges a violation of Section 5-3-4 ( Unlawful Employment Practices ), the Equal Employment/Fair Housing Office shall initiate an investigation.



Source: Ord. 040610-7.

§ 5-3-9 - NO REASONABLE CAUSE DETERMINATION.

If, after an investigation, an investigator determines that there is no reasonable cause to believe that a charge is true, the Equal Employment/Fair Housing Office shall issue a determination explaining why there was no reasonable cause to believe a violation had occurred and shall immediately notify the charging party and the respondent of the determination.

Source: Ord. 040610-7.

§ 5-3-10 - REVIEW OF NO REASONABLE CAUSE DETERMINATION BY COMMISSION.

- (A) A charging party may file with the director a request for review by the Commission of a no reasonable cause determination issued under a charge filed alleging a violation of Section 5-3-4 ( Unlawful Employment Practices ). This request must be filed not later than the 10th day after receipt of the notice of the issuance of a no reasonable cause determination under Section 5-3-9 ( No Reasonable Cause Determination ).
- (B) For charges filed exclusively under Section 5-3-6 ( Charges ) and not deferred by the EEOC pursuant to Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act, or Chapter 21 ( *Employment Discrimination* ) of the Texas Labor Code, if the charging party files a request for review, the Commission, after review, may conduct a hearing and consider evidence presented by the charging party, the respondent, and the Equal Employment/Fair Housing Office. The Commission shall conduct a hearing as prescribed by the Chapter 2001 ( *Administrative Procedure Act* ) of the Texas Government Code. At the conclusion of the hearing, the Commission may, by majority vote, affirm, reverse, or modify the determination of the Equal Employment/Fair Housing Office.

Source: Ord. 040610-7.

§ 5-3-11 - REVIEW OF NO REASONABLE CAUSE DETERMINATION BY EEOC.

A charging party may file with the EEOC an appeal of a no reasonable cause determination issued under a charge filed alleging a violation of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, or the Americans with Disabilities Act of 1990.

Source: Ord. 040610-7.

§ 5-3-12 - CONCILIATION AGREEMENT.

- (A) If, after investigation of the charge or review by the Commission, it is determined that there is reasonable cause to believe a violation of Section 5-3-4 ( *Unlawful Employment Practices* ) or a violation of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act of 1990, or Chapter 21 ( *Employment Discrimination* ) of the Texas Labor Code has occurred, the Equal Employment/Fair Housing Office shall attempt to resolve the alleged violation through a conciliation agreement.
- (B) A respondent may enter into a settlement at any time before a determination is made by the Equal Employment/Fair Housing Office, if the Equal Employment/Fair Housing Office agrees that the settlement is acceptable and complies with the objectives of this chapter.
- (C) The Equal Employment/Fair Housing Office, investigator, charging party, and respondent shall treat as confidential any written or oral communications or documentation prepared during the course of attempting to reach a conciliation agreement or predetermination settlement, unless disclosure is required by law, and may not use this information as evidence in a subsequent proceeding without the written consent of all parties.
- (D) If the Equal Employment/Fair Housing Office is unable to obtain a conciliation agreement acceptable to the Equal Employment/Fair Housing Office and the charging party, the Equal Employment/Fair Housing Office may refer a case involving a violation of Section 5-3-4 ( *Unlawful Employment Practices* ) to the city attorney for prosecution in municipal court or for other civil prosecution as authorized by Chapter 21 ( *Employment Discrimination* ) of the Texas Labor Code. Prosecution in municipal court or by other civil action does not bar the charging party from seeking relief from the EEOC or other civil proceeding.
- (E) If no conciliation agreement acceptable to the charging party and the Equal Employment/Fair Housing Office is reached in a case involving a violation of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, or the Americans with Disabilities Act of 1990, the Equal Employment/Fair Housing Office shall send a failure to conciliate letter to the charging party and the respondent and forward the charge to the EEOC for their review.
- (F) The confidentiality rules in 29 CFR § 1601.22 apply in all cases deferred to the City by the EEOC.

*Source: Ord. 040610-7.*

#### § 5-3-13 - INVESTIGATIVE ACCESS TO RECORDS AND EVIDENCE.

In investigating a charge filed under this chapter, the Equal Employment/Fair Housing Office shall have access to, and may examine and copy, records or other evidence maintained by a respondent that the office believes is relevant to a charge under investigation.

*Source: Ord. 040610-7.*

§ 5-3-14 - LEGAL ASSISTANCE.

The city attorney shall advise the Equal Employment/Fair Housing Office or the Commission relating to the administration and enforcement of this chapter.

*Source: Ord. 040610-7.*

§ 5-3-15 - EXEMPTIONS.

- (A) If an individual's religion, sex, sexual orientation, gender identity, national origin, age, or disability are a bona fide occupational qualification reasonably necessary for the normal operation of a particular business or enterprise, it is not an unlawful employment practice for:
- (1) an employer to hire and employ employees;
  - (2) an employment agency to classify, or refer for employment an individual;
  - (3) a labor organization to classify its membership or to classify or refer for employment an individual; or
  - (4) an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ an individual in a program.
- (B) It is not an unlawful employment practice for a school, college, university or other educational institution or institution of learning to hire and employ employees of a particular religion if:
- (1) the school, college or university or other educational institution or institution of learning is wholly or substantially owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society; or
  - (2) the curriculum of the school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.
- (C) It is not an unlawful employment practice for a religious corporation, association, educational institution, or society to hire and employ individuals of a particular religion to perform work connected with the activities of the corporation, association, educational institution, or society.
- (D) If it is not caused by an employer's intentional discrimination based on an employee's race, color, sex, sexual orientation, gender identity, religion, national origin, age, or disability, it is not an unlawful practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment based on:
- (1) a bona fide seniority or merit system;
  - (2) a system which measures earnings by quantity or quality of production; or
  - (3) to employees who work in different locations.

Source: 1992 Code Section 7-3-10; Ord. 031106-12; Ord. 031211-11; Ord. 040610-7.

THE TEXAS CONSTITUTION

ARTICLE 1. BILL OF RIGHTS

That the general, great and essential principles of liberty and free government may be recognized and established, we declare:

Sec. 1. FREEDOM AND SOVEREIGNTY OF STATE. Texas is a free and independent State, subject only to the Constitution of the United States, and the maintenance of our free institutions and the perpetuity of the Union depend upon the preservation of the right of local self-government, unimpaired to all the States.

Sec. 2. INHERENT POLITICAL POWER; REPUBLICAN FORM OF GOVERNMENT. All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit. The faith of the people of Texas stands pledged to the preservation of a republican form of government, and, subject to this limitation only, they have at all times the inalienable right to alter, reform or abolish their government in such manner as they may think expedient.

Sec. 3. EQUAL RIGHTS. All free men, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services.

Sec. 3a. EQUALITY UNDER THE LAW. Equality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin. This amendment is self-operative.

(Added Nov. 7, 1972.)

Sec. 4. RELIGIOUS TESTS. No religious test shall ever be required as a qualification to any office, or public trust, in this State; nor shall any one be excluded from holding office on account of his religious sentiments, provided he acknowledge the existence of a Supreme Being.

Sec. 5. WITNESSES NOT DISQUALIFIED BY RELIGIOUS BELIEFS; OATHS AND

AFFIRMATIONS. No person shall be disqualified to give evidence in any of the Courts of this State on account of his religious opinions, or for the want of any religious belief, but all oaths or affirmations shall be administered in the mode most binding upon the conscience, and shall be taken subject to the pains and penalties of perjury.

Sec. 6. FREEDOM OF WORSHIP. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent. No human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion, and no preference shall ever be given by law to any religious society or mode of worship. But it shall be the duty of the Legislature to pass such laws as may be necessary to protect equally every religious denomination in the peaceable enjoyment of its own mode of public worship.

Sec. 7. APPROPRIATIONS FOR SECTARIAN PURPOSES. No money shall be appropriated, or drawn from the Treasury for the benefit of any sect, or religious society, theological or religious seminary; nor shall property belonging to the State be appropriated for any such purposes.

Sec. 8. FREEDOM OF SPEECH AND PRESS; LIBEL. Every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press. In prosecutions for the publication of papers, investigating the conduct of officers, or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence. And in all indictments for libels, the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases.

Sec. 9. SEARCHES AND SEIZURES. The people shall be secure in their persons, houses, papers and possessions, from all unreasonable seizures or searches, and no warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be, nor without probable cause, supported by oath or affirmation.

Sec. 10. RIGHTS OF ACCUSED IN CRIMINAL PROSECUTIONS. In all criminal prosecutions the accused shall have a speedy public trial by an impartial jury. He shall have the right to demand the nature and cause of the accusation against him, and to have a copy thereof. He shall not be compelled to give evidence against himself, and shall have the right of being heard by himself or counsel, or both, shall be confronted by the witnesses against him and shall have compulsory process for obtaining witnesses in his favor, except that when the witness resides out of the State and the offense charged is a violation of any of the anti-trust laws of this State, the defendant and the State shall have the right to produce and have the evidence admitted by deposition, under such rules and laws as the Legislature may hereafter provide; and no person shall be held to answer for a criminal offense, unless on an indictment of a grand jury, except in cases in which the punishment is by fine or imprisonment, otherwise than in the penitentiary, in cases of impeachment, and in cases arising in the army or navy, or in the militia, when in actual service in time of war or public danger.

(Amended Nov. 5, 1918.)

Sec. 11. BAIL. All prisoners shall beailable by sufficient sureties, unless for capital offenses, when the proof is evident; but this provision shall not be so construed as to prevent bail after indictment found upon examination of the evidence, in such manner as may be prescribed by law.

Sec. 11a. DENIAL OF BAIL AFTER MULTIPLE FELONIES. (a) Any person (1) accused of a felony less than capital in this State, who has been theretofore twice convicted of a felony, the second conviction being subsequent to the first, both in point of time of commission of the offense and conviction therefor, (2) accused of a felony less than capital in this State, committed while on bail for a prior felony for which he has been indicted, (3) accused of a felony less than capital in this State involving the use of a deadly weapon after being convicted of a prior felony, or (4) accused of a violent or sexual offense committed while under the supervision of a criminal justice agency of the State or a political subdivision of the State for a prior felony, after a hearing, and upon evidence substantially showing the guilt of the accused of the

offense in (1) or (3) above, or of the offense committed while on bail in (2) above, or of the offense in (4) above committed while under the supervision of a criminal justice agency of the State or a political subdivision of the State for a prior felony, may be denied bail pending trial, by a district judge in this State, if said order denying bail pending trial is issued within seven calendar days subsequent to the time of incarceration of the accused; provided, however, that if the accused is not accorded a trial upon the accusation under (1) or (3) above, the accusation and indictment used under (2) above, or the accusation or indictment used under (4) above within sixty (60) days from the time of his incarceration upon the accusation, the order denying bail shall be automatically set aside, unless a continuance is obtained upon the motion or request of the accused; provided, further, that the right of appeal to the Court of Criminal Appeals of this State is expressly accorded the accused for a review of any judgment or order made hereunder, and said appeal shall be given preference by the Court of Criminal Appeals.

(b) In this section:

(1) "Violent offense" means:

(A) murder;

(B) aggravated assault, if the accused used or exhibited a deadly weapon during the commission of the assault;

(C) aggravated kidnapping; or

(D) aggravated robbery.

(2) "Sexual offense" means:

(A) aggravated sexual assault;

(B) sexual assault; or

(C) indecency with a child.

(Added Nov. 6, 1956; amended Nov. 8, 1977; Subsec. (a) amended and (b) added Nov. 2, 1993.)

Sec. 11b. DENIAL OF BAIL FOR VIOLATION OF CONDITION OF RELEASE. Any person who is accused in this state of a felony or an offense involving family violence, who is released on bail pending trial, and whose bail is subsequently revoked or forfeited for a violation of a condition of release may be denied bail pending trial if a judge or magistrate in this state determines by a preponderance of the evidence at a subsequent hearing that the person violated a condition of release



related to the safety of a victim of the alleged offense or to the safety of the community.

(Added Nov. 8, 2005; amended Nov. 6, 2007.)

Sec. 11c. DENIAL OF BAIL FOR VIOLATION OF PROTECTIVE ORDER INVOLVING FAMILY VIOLENCE. The legislature by general law may provide that any person who violates an order for emergency protection issued by a judge or magistrate after an arrest for an offense involving family violence or who violates an active protective order rendered by a court in a family violence case, including a temporary ex parte order that has been served on the person, or who engages in conduct that constitutes an offense involving the violation of an order described by this section may be taken into custody and, pending trial or other court proceedings, denied release on bail if following a hearing a judge or magistrate in this state determines by a preponderance of the evidence that the person violated the order or engaged in the conduct constituting the offense.

(Added Nov. 6, 2007.)

Sec. 12. HABEAS CORPUS. The writ of habeas corpus is a writ of right, and shall never be suspended. The Legislature shall enact laws to render the remedy speedy and effectual.

Sec. 13. EXCESSIVE BAIL OR FINES; CRUEL OR UNUSUAL PUNISHMENT; OPEN COURTS; REMEDY BY DUE COURSE OF LAW. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.

Sec. 14. DOUBLE JEOPARDY. No person, for the same offense, shall be twice put in jeopardy of life or liberty; nor shall a person be again put upon trial for the same offense after a verdict of not guilty in a court of competent jurisdiction.

Sec. 15. RIGHT OF TRIAL BY JURY. The right of trial by jury shall remain inviolate. The Legislature shall pass such laws as may be needed

to regulate the same, and to maintain its purity and efficiency.

Provided, that the Legislature may provide for the temporary commitment, for observation and/or treatment, of mentally ill persons not charged with a criminal offense, for a period of time not to exceed ninety (90) days, by order of the County Court without the necessity of a trial by jury.

(Amended Aug. 24, 1935.)

Sec. 15-a. COMMITMENT OF PERSONS OF UNSOUND MIND. No person shall be committed as a person of unsound mind except on competent medical or psychiatric testimony. The Legislature may enact all laws necessary to provide for the trial, adjudication of insanity and commitment of persons of unsound mind and to provide for a method of appeal from judgments rendered in such cases. Such laws may provide for a waiver of trial by jury, in cases where the person under inquiry has not been charged with the commission of a criminal offense, by the concurrence of the person under inquiry, or his next of kin, and an attorney ad litem appointed by a judge of either the County or Probate Court of the county where the trial is being held, and shall provide for a method of service of notice of such trial upon the person under inquiry and of his right to demand a trial by jury.

(Added Nov. 6, 1956.)

Sec. 16. BILLS OF ATTAINDER; EX POST FACTO OR RETROACTIVE LAWS; IMPAIRING OBLIGATION OF CONTRACTS. No bill of attainder, ex post facto law, retroactive law, or any law impairing the obligation of contracts, shall be made.

Sec. 17. TAKING PROPERTY FOR PUBLIC USE; SPECIAL PRIVILEGES AND IMMUNITIES; CONTROL OF PRIVILEGES AND FRANCHISES. (a) No person's property shall be taken, damaged, or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person, and only if the taking, damage, or destruction is for:

(1) the ownership, use, and enjoyment of the property, notwithstanding an incidental use, by:

(A) the State, a political subdivision of the State, or

the public at large; or

(B) an entity granted the power of eminent domain under law; or

(2) the elimination of urban blight on a particular parcel of property.

(b) In this section, "public use" does not include the taking of property under Subsection (a) of this section for transfer to a private entity for the primary purpose of economic development or enhancement of tax revenues.

(c) On or after January 1, 2010, the legislature may enact a general, local, or special law granting the power of eminent domain to an entity only on a two-thirds vote of all the members elected to each house.

(d) When a person's property is taken under Subsection (a) of this section, except for the use of the State, compensation as described by Subsection (a) shall be first made, or secured by a deposit of money; and no irrevocable or uncontrollable grant of special privileges or immunities shall be made; but all privileges and franchises granted by the Legislature, or created under its authority, shall be subject to the control thereof.

(Amended Nov. 3, 2009.)

Sec. 18. IMPRISONMENT FOR DEBT. No person shall ever be imprisoned for debt.

Sec. 19. DEPRIVATION OF LIFE, LIBERTY, PROPERTY, ETC. BY DUE COURSE OF LAW. No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

Sec. 20. OUTLAWRY OR TRANSPORTATION OUT OF STATE FOR OFFENSE. No citizen shall be outlawed. No person shall be transported out of the State for any offense committed within the same. This section does not prohibit an agreement with another state providing for the confinement of inmates of this State in the penal or correctional facilities of that state.

(Amended Nov. 5, 1985.)

Sec. 21. CORRUPTION OF BLOOD; FORFEITURE OF ESTATE; SUICIDES. No conviction shall work corruption of blood, or forfeiture of estate, and the estates of those who destroy their own lives shall descend or vest as in case of natural death.

Sec. 22. TREASON AGAINST STATE. Treason against the State shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort; and no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on confession in open court.

Sec. 23. RIGHT TO KEEP AND BEAR ARMS. Every citizen shall have the right to keep and bear arms in the lawful defense of himself or the State; but the Legislature shall have power, by law, to regulate the wearing of arms, with a view to prevent crime.

Sec. 24. MILITARY SUBORDINATE TO CIVIL AUTHORITY. The military shall at all times be subordinate to the civil authority.

Sec. 25. QUARTERING SOLDIERS IN HOUSES. No soldier shall in time of peace be quartered in the house of any citizen without the consent of the owner, nor in time of war but in a manner prescribed by law.

Sec. 26. PERPETUITIES AND MONOPOLIES; PRIMOGENITURE OR ENTAILMENTS. Perpetuities and monopolies are contrary to the genius of a free government, and shall never be allowed, nor shall the law of primogeniture or entailments ever be in force in this State.

Sec. 27. RIGHT OF ASSEMBLY; PETITION FOR REDRESS OF GRIEVANCES. The citizens shall have the right, in a peaceable manner, to assemble together for their common good; and apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address or remonstrance.

Sec. 28. SUSPENSION OF LAWS. No power of suspending laws in this

State shall be exercised except by the Legislature.

Sec. 29. BILL OF RIGHTS EXCEPTED FROM POWERS OF GOVERNMENT AND INVIOLATE. To guard against transgressions of the high powers herein delegated, we declare that everything in this "Bill of Rights" is excepted out of the general powers of government, and shall forever remain inviolate, and all laws contrary thereto, or to the following provisions, shall be void.

Sec. 30. RIGHTS OF CRIME VICTIMS. (a) A crime victim has the following rights:

(1) the right to be treated with fairness and with respect for the victim's dignity and privacy throughout the criminal justice process; and

(2) the right to be reasonably protected from the accused throughout the criminal justice process.

(b) On the request of a crime victim, the crime victim has the following rights:

(1) the right to notification of court proceedings;

(2) the right to be present at all public court proceedings related to the offense, unless the victim is to testify and the court determines that the victim's testimony would be materially affected if the victim hears other testimony at the trial;

(3) the right to confer with a representative of the prosecutor's office;

(4) the right to restitution; and

(5) the right to information about the conviction, sentence, imprisonment, and release of the accused.

(c) The legislature may enact laws to define the term "victim" and to enforce these and other rights of crime victims.

(d) The state, through its prosecuting attorney, has the right to enforce the rights of crime victims.

(e) The legislature may enact laws to provide that a judge, attorney for the state, peace officer, or law enforcement agency is not liable for a failure or inability to provide a right enumerated in this section. The failure or inability of any person to provide a right or service enumerated in this section may not be used by a defendant in a criminal case as a ground for appeal or post-conviction writ of habeas

corpus. A victim or guardian or legal representative of a victim has standing to enforce the rights enumerated in this section but does not have standing to participate as a party in a criminal proceeding or to contest the disposition of any charge.

(Added Nov. 7, 1989.)

Sec. 31. FUNDS FOR COMPENSATION TO VICTIMS OF CRIME. (a) The compensation to victims of crime fund created by general law and the compensation to victims of crime auxiliary fund created by general law are each a separate dedicated account in the general revenue fund.

(b) Except as provided by Subsection (c) of this section and subject to legislative appropriation, money deposited to the credit of the compensation to victims of crime fund or the compensation to victims of crime auxiliary fund from any source may be expended as provided by law only for delivering or funding victim-related compensation, services, or assistance.

(c) The legislature may provide by law that money in the compensation to victims of crime fund or in the compensation to victims of crime auxiliary fund may be expended for the purpose of assisting victims of episodes of mass violence if other money appropriated for emergency assistance is depleted.

(Added Nov. 4, 1997.)

Sec. 32. MARRIAGE. (a) Marriage in this state shall consist only of the union of one man and one woman.

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

(Added Nov. 8, 2005.)

Sec. 33. PUBLIC ACCESS TO AND USE OF PUBLIC BEACHES. (a) In this section, "public beach" means a state-owned beach bordering on the seaward shore of the Gulf of Mexico, extending from mean low tide to the landward boundary of state-owned submerged land, and any larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico to which the public has acquired a right

of use or easement to or over the area by prescription or dedication or has established and retained a right by virtue of continuous right in the public under Texas common law.

(b) The public, individually and collectively, has an unrestricted right to use and a right of ingress to and egress from a public beach. The right granted by this subsection is dedicated as a permanent easement in favor of the public.

(c) The legislature may enact laws to protect the right of the public to access and use a public beach and to protect the public beach easement from interference and encroachments.

(d) This section does not create a private right of enforcement.

(Added Nov. 3, 2009.)

Sec. 34. RIGHT TO HUNT, FISH, AND HARVEST WILDLIFE. (a) The people have the right to hunt, fish, and harvest wildlife, including by the use of traditional methods, subject to laws or regulations to conserve and manage wildlife and preserve the future of hunting and fishing.

(b) Hunting and fishing are preferred methods of managing and controlling wildlife.

(c) This section does not affect any provision of law relating to trespass, property rights, or eminent domain.

(d) This section does not affect the power of the legislature to authorize a municipality to regulate the discharge of a weapon in a populated area in the interest of public safety.

(Added Nov. 3, 2015.)

CIVIL PRACTICE AND REMEDIES CODE

TITLE 5. GOVERNMENTAL LIABILITY

CHAPTER 110. RELIGIOUS FREEDOM

Sec. 110.001. DEFINITIONS. (a) In this chapter:

(1) "Free exercise of religion" means an act or refusal to act that is substantially motivated by sincere religious belief. In determining whether an act or refusal to act is substantially motivated by sincere religious belief under this chapter, it is not necessary to determine that the act or refusal to act is motivated by a central part or central requirement of the person's sincere religious belief.

(2) "Government agency" means:

(A) this state or a municipality or other political subdivision of this state; and

(B) any agency of this state or a municipality or other political subdivision of this state, including a department, bureau, board, commission, office, agency, council, or public institution of higher education.

(b) In determining whether an interest is a compelling governmental interest under Section [110.003](#), a court shall give weight to the interpretation of compelling interest in federal case law relating to the free exercise of religion clause of the First Amendment of the United States Constitution.

Added by Acts 1999, 76th Leg., ch. 399, Sec. 1, eff. Aug. 30, 1999.

Sec. 110.002. APPLICATION. (a) This chapter applies to any ordinance, rule, order, decision, practice, or other exercise of governmental authority.

(b) This chapter applies to an act of a government agency, in the exercise of governmental authority, granting or refusing to grant a government benefit to an individual.

(c) This chapter applies to each law of this state unless the law is expressly made exempt from the application of this chapter by reference to this chapter.



Sec. 110.003. RELIGIOUS FREEDOM PROTECTED. (a) Subject to Subsection (b), a government agency may not substantially burden a person's free exercise of religion.

(b) Subsection (a) does not apply if the government agency demonstrates that the application of the burden to the person:

(1) is in furtherance of a compelling governmental interest;  
and

(2) is the least restrictive means of furthering that interest.

(c) A government agency that makes the demonstration required by Subsection (b) is not required to separately prove that the remedy and penalty provisions of the law, ordinance, rule, order, decision, practice, or other exercise of governmental authority that imposes the substantial burden are the least restrictive means to ensure compliance or to punish the failure to comply.

Added by Acts 1999, 76th Leg., ch. 399, Sec. 1, eff. Aug. 30, 1999.

Sec. 110.004. DEFENSE. A person whose free exercise of religion has been substantially burdened in violation of Section 110.003 may assert that violation as a defense in a judicial or administrative proceeding without regard to whether the proceeding is brought in the name of the state or by any other person.

Added by Acts 1999, 76th Leg., ch. 399, Sec. 1, eff. Aug. 30, 1999.

Sec. 110.005. REMEDIES. (a) Any person, other than a government agency, who successfully asserts a claim or defense under this chapter is entitled to recover:

- (1) declaratory relief under Chapter 37;
  - (2) injunctive relief to prevent the threatened violation or continued violation;
  - (3) compensatory damages for pecuniary and nonpecuniary losses;
- and
- (4) reasonable attorney's fees, court costs, and other reasonable expenses incurred in bringing the action.

(b) Compensatory damages awarded under Subsection (a) (3) may not

exceed \$10,000 for each entire, distinct controversy, without regard to the number of members or other persons within a religious group who claim injury as a result of the government agency's exercise of governmental authority. A claimant is not entitled to recover exemplary damages under this chapter.

(c) An action under this section must be brought in district court.

(d) A person may not bring an action for damages or declaratory or injunctive relief against an individual, other than an action brought against an individual acting in the individual's official capacity as an officer of a government agency.

(e) This chapter does not affect the application of Section 498.0045 or 501.008, Government Code, or Chapter 14 of this code.

Added by Acts 1999, 76th Leg., ch. 399, Sec. 1, eff. Aug. 30, 1999.

Sec. 110.006. NOTICE; RIGHT TO ACCOMMODATE. (a) A person may not bring an action to assert a claim under this chapter unless, 60 days before bringing the action, the person gives written notice to the government agency by certified mail, return receipt requested:

- (1) that the person's free exercise of religion is substantially burdened by an exercise of the government agency's governmental authority;
- (2) of the particular act or refusal to act that is burdened; and
- (3) of the manner in which the exercise of governmental authority burdens the act or refusal to act.

(b) Notwithstanding Subsection (a), a claimant may, within the 60-day period established by Subsection (a), bring an action for declaratory or injunctive relief and associated attorney's fees, court costs, and other reasonable expenses, if:

- (1) the exercise of governmental authority that threatens to substantially burden the person's free exercise of religion is imminent; and
- (2) the person was not informed and did not otherwise have knowledge of the exercise of the governmental authority in time to reasonably provide the notice.

(c) A government agency that receives a notice under Subsection (a) may remedy the substantial burden on the person's free exercise of

religion.

(d) A remedy implemented by a government agency under this section:

(1) may be designed to reasonably remove the substantial burden on the person's free exercise of religion;

(2) need not be implemented in a manner that results in an exercise of governmental authority that is the least restrictive means of furthering the governmental interest, notwithstanding any other provision of this chapter; and

(3) must be narrowly tailored to remove the particular burden for which the remedy is implemented.

(e) A person with respect to whom a substantial burden on the person's free exercise of religion has been cured by a remedy implemented under this section may not bring an action under Section 110.005.

(f) A person who complies with an inmate grievance system as required under Section 501.008, Government Code, is not required to provide a separate written notice under Subsection (a). In conjunction with the inmate grievance system, the government agency may remedy a substantial burden on the person's free exercise of religion in the manner described by, and subject to, Subsections (c), (d), and (e).

(g) In dealing with a claim that a person's free exercise of religion has been substantially burdened in violation of this chapter, an inmate grievance system, including an inmate grievance system required under Section 501.008, Government Code, must provide to the person making the claim a statement of the government agency's rationale for imposing the burden, if any exists, in connection with any adverse determination made in connection with the claim.

Added by Acts 1999, 76th Leg., ch. 399, Sec. 1, eff. Aug. 30, 1999.

Sec. 110.007. ONE-YEAR LIMITATIONS PERIOD. (a) A person must bring an action to assert a claim for damages under this chapter not later than one year after the date the person knew or should have known of the substantial burden on the person's free exercise of religion.

(b) Mailing notice under Section 110.006 tolls the limitations period established under this section until the 75th day after the date on which the notice was mailed.

Added by Acts 1999, 76th Leg., ch. 399, Sec. 1, eff. Aug. 30, 1999.

Sec. 110.008. SOVEREIGN IMMUNITY WAIVED. (a) Subject to Section 110.006, sovereign immunity to suit and from liability is waived and abolished to the extent of liability created by Section 110.005, and a claimant may sue a government agency for damages allowed by that section.

(b) Notwithstanding Subsection (a), this chapter does not waive or abolish sovereign immunity to suit and from liability under the Eleventh Amendment to the United States Constitution.

Added by Acts 1999, 76th Leg., ch. 399, Sec. 1, eff. Aug. 30, 1999.

Sec. 110.009. EFFECT ON RIGHTS. (a) This chapter does not authorize a government agency to burden a person's free exercise of religion.

(b) The protection of religious freedom afforded by this chapter is in addition to the protections provided under federal law and the constitutions of this state and the United States. This chapter may not be construed to affect or interpret Section 4, 5, 6, or 7, Article I, Texas Constitution.

Added by Acts 1999, 76th Leg., ch. 399, Sec. 1, eff. Aug. 30, 1999.

Sec. 110.010. APPLICATION TO CERTAIN CASES. Notwithstanding any other provision of this chapter, a municipality has no less authority to adopt or apply laws and regulations concerning zoning, land use planning, traffic management, urban nuisance, or historic preservation than the authority of the municipality that existed under the law as interpreted by the federal courts before April 17, 1990. This chapter does not affect the authority of a municipality to adopt or apply laws and regulations as that authority has been interpreted by any court in cases that do not involve the free exercise of religion.

Added by Acts 1999, 76th Leg., ch. 399, Sec. 1, eff. Aug. 30, 1999.

Sec. 110.011. CIVIL RIGHTS. (a) Except as provided in Subsection (b), this chapter does not establish or eliminate a defense to a civil action or criminal prosecution under a federal or state civil rights law.

(b) This chapter is fully applicable to claims regarding the

employment, education, or volunteering of those who perform duties, such as spreading or teaching faith, performing devotional services, or internal governance, for a religious organization. For the purposes of this subsection, an organization is a religious organization if:

(1) the organization's primary purpose and function are religious, it is a religious school organized primarily for religious and educational purposes, or it is a religious charity organized primarily for religious and charitable purposes; and

(2) it does not engage in activities that would disqualify it from tax exempt status under Section 501(c)(3), Internal Revenue Code of 1986, as it existed on August 30, 1999.

Added by Acts 1999, 76th Leg., ch. 399, Sec. 1, eff. Aug. 30, 1999.

Sec. 110.012. GRANT TO RELIGIOUS ORGANIZATION NOT AFFECTED.

Notwithstanding Section 110.002(b), this chapter does not affect the grant or denial of an appropriation or other grant of money or benefits to a religious organization, nor does it affect the grant or denial of a tax exemption to a religious organization.

Added by Acts 1999, 76th Leg., ch. 399, Sec. 1, eff. Aug. 30, 1999.

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

**U.S. Pastor Council,**

Plaintiff,

v.

**City of Austin; Steve Adler**, in his  
official capacity as Mayor of the City of  
Austin; **Sareta Davis**, in her official  
capacity as Chair of the Austin Human  
Rights Commission,

Defendants.

Case No. 1:18-cv-849

**DECLARATION OF JONATHAN F. MITCHELL**

Jonathan F. Mitchell appeared in person before me today and stated under oath:

1. My name is Jonathan F. Mitchell. I am over 18 years old and fully competent to make this declaration.

2. I have personal knowledge of the facts stated in this declaration, and all of these facts are true and complete.

3. On June 12, 2018, I mailed a letter signed by David Welch of the U.S. Pastor Council to each of the three defendants in this case. A copy of that letter is attached as Exhibit 5 to the complaint.

4. I sent the letter by certified mail, return receipt requested, in compliance with section 110.006 of the Texas Civil Practice & Remedies Code.

5. The certified mail receipts are attached as Exhibit 6 to the complaint.

6. The return receipts from each of the three defendants are attached as Exhibit 7 to this complaint.

7. The return receipts indicate that each of the three defendants received the letter from Mr. Welch on June 19, 2018.

This concludes my sworn statement. I swear under penalty of perjury that, to the best of my knowledge, the facts stated in this declaration are true and complete.

Jonathan F. Mitchell  
JONATHAN F. MITCHELL



June 12, 2018

Honorable Steve Adler  
Mayor, City of Austin  
City Hall  
301 West 2nd Street  
2nd Floor  
Austin, Texas 78701

**Re: Notice of substantial burden on the free exercise of religion**

Dear Mayor Adler:

We write to inform you that the city of Austin’s anti-discrimination ordinance substantially burdens the free exercise of religion, in violation of the Texas Religious Freedom Restoration Act. *See* Tex. Civ. Prac. & Rem. Code §§ 110.001–.012. Your ordinance violates state law because it fails to protect the autonomy and religious freedom of churches, nonprofits, and businesses that hold sincere religious objections to homosexuality, transgender behavior, and women serving as clergy. We write not only on behalf of ourselves and our organizations, but on behalf of all churches, nonprofits, and businesses that object to these lifestyles and behaviors.

Your ordinance prohibits employers and places of public accommodation from discriminating on account of “race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.” *See* Austin City Code § 5-2-4; 5-3-4. But the ordinance provides no exemptions or accommodations for churches, nonprofits, and businesses that hold sincere religious objections to homosexuality, transgender behavior, or women serving as clergy.

The only religious exemptions to the ban on employment discrimination appear in sections 5-3-15(B) and 5-3-15(C). These exemptions allow religious schools and other religious entities to “hire and employ employees of a particular religion” in certain circumstances. But the ordinance provides *no* exemption whatsoever to the ban on sex discrimination. Nor does it provide *any* exemption for religious entities that oppose homosexuality or transgender behavior for sincere religious reasons. This means that every Catholic parish that refuses to hire women as priests is in violation of city law. So are the churches that refuse to hire homosexuals as clergy.

The ban on public-accommodation discrimination also fails to make allowances for Christian businesses that refuse to participate in same-sex marriage ceremonies. The only exceptions to the public-accommodations anti-discrimination rule are for “facilit[ies] owned or operated by the federal, state, or county government, or the



University of Texas,” as well as “private club[s] or other establishment[s] not open to the public.” *See* Austin City Code § 5-2-13.

These are the stingiest religious exemptions we have ever seen in an anti-discrimination law. It is inexcusable that you would purport to subject a church’s hiring decisions to your city’s antidiscrimination ordinance. It is also unacceptable that your ordinance makes no allowance for Christian non-profits that refuse to hire individuals whose lifestyles are incompatible with Christian teaching, or businesses whose religious convictions forbid them to lend support to same-sex marriage ceremonies.

Your ordinance substantially burdens the religious freedom of the U.S. Pastor Council, which has member churches in Austin. And your ordinance substantially burdens the religious freedom of every church, nonprofit, and business in Austin that holds sincere religious objections to homosexuality, transgender behavior, and women serving as clergy.

The Texas Religious Freedom Restoration Act requires us to notify you of these substantial burdens on the free exercise of religion before bringing suit. *See* Tex. Civ. Prac. & Rem. Code § 110.006. We look forward to working with you and city officials to ensure that the city respects the religious freedom of everyone, consistent with the requirements of the Texas Religious Freedom Restoration Act.

Sincerely,

A handwritten signature in black ink, appearing to read "David Welch". The signature is fluid and cursive, with a large initial "D" and "W".

Reverend David Welch  
President, U.S. Pastor Council  
P.O. Box 692207  
Houston, Texas 77269

cc: Sareta Davis, chair, Austin Human Rights Commission  
Anne Morgan, City Attorney of Austin

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- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

*Mayor Steve Adler  
 D. City of Austin  
 P.O. Box 1088*



*Austin, TX 78739*  
 9590 9403 0909 5223 0170 49

2. Article Number (Transfer from service label)

*7018 0360 0000 8675 7130*

PS Form 3811, July 2015 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1?  
 If YES, enter delivery address below:

Agent

Addressee

Yes  
 No

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Insured Mail Restricted Delivery (over \$500)
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

Domestic Return Receipt

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:

City of Austin  
 Attn: Anne Morgan City Atty  
 P.O. Box 1088  
 Austin, TX 787067



9590 9403 0909 5223 0170 32

Article Number (Transfer from service label)

7018 0360 0000 8675 7116

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X 

Agent

Addressee

B. Received by (Printed Name)

C. Date of Delivery

6-15-15

D. Is delivery address different from item 1?

If YES, enter delivery address below:

Yes

No

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

xd Mail  
 xd Mail Restricted Delivery  
 \$500)

Domestic Return Receipt

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:

*City of Austin*  
*Attn: Sareta Davis, Chair,*  
*Austin Human Rights Comm'n*  
*P.O. Box 1088*  
*Austin, TX 78767-1088*



9590 9403 0909 5223 0170 56

Article Number (Transfer from service label)

7018 0360 0000 8675 7123

PS Form 3811, July 2015 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  
 Received by (Printed Name)  Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

*6-19-15*

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Insured Mail Restricted Delivery (over \$500)
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

Domestic Return Receipt