

D-1-GN-18-006108

Cause No. \_\_\_\_\_

**Texas Values,**

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

IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

200TH

XXXX  
310th JUDICIAL DISTRICT

**PLAINTIFF’S ORIGINAL PETITION**

The City of Austin’s anti-discrimination laws violate the state’s Religious Freedom Restoration Act and the Texas Constitution, because they fail to sufficiently protect the conscientious beliefs of those who hold sincere religious objections to homosexual and transgender behavior. The plaintiffs seek a declaratory judgment to this effect, and they seek to enjoin city officials from enforcing anti-discrimination laws in a manner that violates the state’s protections for religious freedom. The plaintiff brings its claims exclusively under state law, and explicitly disclaims any reliance on federal law or any federal cause of action.

**DISCOVERY CONTROL PLAN**

1. The plaintiff intends to conduct discovery under Level 3 of the rules set forth in Rule 196 of the Texas Rules of Civil Procedure.

**PARTIES**

2. Plaintiff Texas Values is a nonprofit corporation whose offices are located in the City of Austin and Travis County.

3. 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, located at 301 West 2nd Street, 2nd Floor, Austin, Texas, 78701.

4. Defendant Steve Adler is the mayor of the City of Austin. He resides in Travis County, Texas. He may be served at his office at City Hall, 301 West 2nd Street, 2nd Floor, Austin, Texas, 78701. He is sued in his official capacity as Mayor of the City of Austin.

5. Defendant Sareta Davis chairs the Austin Human Rights Commission. She is sued in her official capacity.

### JURISDICTION AND VENUE

6. The Court has subject-matter jurisdiction under the Texas Constitution, Article V, § 8, as the amount in controversy exceeds the minimum jurisdictional limits of the court exclusive of interest. The plaintiffs seek relief that can be granted by courts of law or equity.

7. The Court has jurisdiction over the plaintiffs' request for injunctive relief against defendants Steve Adler and Sareta Davis because they are acting *ultra vires* by maintaining and enforcing anti-discrimination laws that substantially burden the religious freedom of those who object to homosexual behavior and transgender behavior, in violation of chapter 110 of the Texas Civil Practice and Remedies Code as well as the Texas Constitution. *See City of El Paso v. Heinrich*, 284 S.W.3d 366, 368–69 (Tex. 2009).

8. The Court has jurisdiction over the plaintiffs' request for declaratory relief against defendants Steve Adler, Sareta Davis, and the City of Austin because the Declaratory Judgment Act waives both sovereign and governmental immunity. *See Tex. Civ. Prac. & Rem. Code §§ 37.004, 37.006; Texas Lottery Com'n v. First State Bank*

of *DeQueen*, 325 S.W.3d 628 (2010); *Tex. Educ. Agency v. Leeper*, 893 S.W.2d 432, 446 (Tex. 1994).

9. Plaintiff Texas Values has standing to seek declaratory and injunctive relief because the city's anti-discrimination laws substantially burden its religious freedom.

10. The Court has personal jurisdiction over each of the defendants.

11. Venue is proper because a substantial portion of the events giving rise to the claims occurred in Travis County, Texas. *See* Tex. Civ. Prac. & Rem. Code §§ 15.002, 15.003, 15.005, 15.035.

### FACTUAL ALLEGATIONS

12. Section 5-2-4 of the Austin City Code provides that "A person is entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a public accommodation, without discrimination or segregation based on race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability." *See* Exhibit 1.

13. Section 5-2-13 provides two narrow exceptions to Section 5-2-4's anti-discrimination rule: It exempts "facilit[ies] owned or operated by the federal, state, or county government, or the University of Texas," and it exempts "private club[s] or other establishment[s] not open to the public." *See* Austin City Code § 5-2-13 (attached as Exhibit 1). There is no exemption for individuals who would be compelled by section 5-2-4 to act in a manner contrary to their sincerely held religious beliefs.

14. Section 5-3-4 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." *See* Exhibit 2.

15. Section 5-3-15 provides some exemptions from 5-3-4's anti-discrimination rule, but none of them are sufficient to accommodate nonprofits or closely held corporations who would be compelled by section 5-3-4 to act in a manner contrary to their sincerely held religious beliefs. 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.

*See* Exhibit 2. 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 individuals of a particular religion to perform work connected with the activities of the corporation, association, educational institution, or society.

*See id.*

16. Neither of these two exemptions accommodates employers that operate in accordance with sincerely held religious beliefs that homosexual and transgender behavior is immoral. Nor does either of these exemptions accommodate employers who, for reasons of sincere religious belief, refuse to hire practicing homosexuals or transgendered people, refuse to extend spousal benefits to same-sex partners or spouses of employees, or refuse to open their sex-specific restrooms to members of the opposite biological sex.

17. Section 5-1-1 of the City Code forbids housing discrimination on the basis of “race, color, creed, religion, sex, national origin, disability, student status, marital status, familial status, sexual orientation, gender identity, age, or source of income.” *See* Exhibit 3.

18. Sections 5-1-14, 15-1-15, and 15-1-16 provide some exemptions from 5-1-1’s anti-discrimination rule, but none of them are sufficient to accommodate individuals or entities who would be compelled by section 5-1-1 to act in a manner contrary to their sincerely held religious beliefs.

19. Section 5-1-15(A) for example, provides that 5-1-1’s anti-discrimination rule will not apply to “a religious organization, association, or society, or a nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society” but only when it “limit[s] the sale, rental, or occupancy of dwellings that it owns or operates for other than a commercial purpose to persons of the same religion.” *See* Exhibit 3. There is no accommodation for landlords who, for reasons of sincere religious belief, require their tenants to refrain from non-marital sex or homosexual behavior when renting their property.

20. Texas Values is a nonprofit corporation whose offices are located in Austin, Texas. Its mission is to preserve and advance a culture of family values in Texas. Its vision is to stand for biblical, Judeo-Christian values by ensuring that Texas is a state in which religious liberty flourishes, families prosper, and every human life is valued.

21. Texas Values believes that the Bible is the Word of God, and that the Bible clearly and unequivocally condemns homosexual and transgender behavior. *See, e.g.*, Romans 1:26–28; 1 Timothy 1:8–11; 1 Corinthians 6:9–11; Leviticus 18:22; Leviticus 20:13.

22. Texas Values will not hire or retain practicing homosexuals or transgendered people as employees, because their lifestyles are contrary to the biblical, Judeo-Christian understandings of sexuality and gender that Texas Values seeks to promote. Nor

will Texas Values recognize same-sex marriages of its employees or provide spousal benefits to an employee's same-sex partner.

23. Other corporate entities in the city of Austin have similar policies that are rooted in sincere religious beliefs that homosexual behavior and transgender behavior are immoral and contrary to the law of God. And some individuals and Christian-owned businesses are unwilling to participate in same-sex marriage or commitment ceremonies for reasons of sincere religious belief.

24. The city of Austin's anti-discrimination laws violate the Texas Religious Freedom Restoration Act by refusing to exempt individuals and corporate entities that object to homosexual behavior and transgender behavior for sincere religious reasons. *See* Tex. Civ. Prac. & Rem. Code chapter 110 (attached as Exhibit 4).

25. The city of Austin's anti-discrimination laws violate article I, section 6 of the Texas Constitution for the same reason. *See* Tex. Const. art. I, § 6 (attached as Exhibit 5).

26. Texas Values provided the notice required by section 110.006 of the Texas Civil Practice & Remedies Code more than 60 days before bringing suit. *See* Exhibits 6-7.

#### **CAUSES OF ACTION**

27. The plaintiffs bring suit under the Declaratory Judgment Act, and they ask this Court to declare chapters 5-1, 5-2, and 5-3 of the Austin City Code invalid under chapter 110 of the Texas Civil Practice & Remedies Code, as well as invalid under the Texas Constitution, to the extent that they: (a) prohibit individuals and entities from refusing to hire or retain practicing homosexuals or transgendered people as employees for reasons based in sincere religious belief; (b) prohibit individuals and entities from refusing to rent their property to tenants who are engaged in non-marital sex of any sort, including homosexual behavior, for reasons based in sincere religious belief;

(c) prohibit individuals and entities from declining to participate in or lend support to homosexual marriage or commitment ceremonies, for reasons based in sincere religious belief; and (d) prohibit individuals and entities from declining to provide spousal employment benefits to the same-sex partners or spouses of employees, for reasons based in sincere religious belief; (e) prohibit individuals and entities from establishing sex-specific restrooms and limiting them to members of the appropriate biological sex, for reasons based in sincere religious belief.

28. The plaintiffs also ask this Court to enjoin the defendants from enforcing chapters 5-1, 5-2, and 5-3 of the Austin City Code against individuals and entities who, for reasons of sincere religious belief, violate those chapters in the manner described in paragraph 27.

#### **DEMAND FOR JUDGMENT**

The plaintiffs ask for the following relief:

- a. declare chapters 5-1, 5-2, and 5-3 of the Austin City Code invalid on their face and as applied to individuals and entities who, for reasons of sincere religious belief, violate those chapters in the manner described in paragraph 27;
- b. enjoin the defendants from enforcing section 5-2-4, section 5-3-4, or section 5-1-1 against any individual or entity who, for reasons of sincere religious belief, violates those chapters in the manner described in paragraph 27;
- c. award costs and attorneys' fees;
- d. award all other relief that the Court may deem just, proper, or equitable.

Respectfully submitted.

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*Counsel for Plaintiff*

Unofficial copy Travis Co. District Clerk Velda L. Price