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MEMORANDUM OF LAW

TO: The Honorable Greg Abbott, Attorney General of Texas
Jason Boatright, Chairman, Opinion Committee

FROM: Jonathan M. Saenz, Esq., President, Texas Values
Austin R. Nimocks, Esq., Senior Counsel, Alliance Defending Freedom

DATE: December 6, 2012

RE: Whether the Texas Constitution prevents local political subdivisions from recognizing domestic partnerships by granting benefits previously only available to married couples (RQ-1097-GA)

The Pflugerville Independent School District ("PISD"), based upon a recommendation by an insurance benefits advisory committee composed of district personnel, recently announced its intention to offer domestic partnership insurance benefits to its employees. Because the extension of such benefits is tantamount to creating or recognizing a "legal status identical or similar to marriage," and because such an extension also constitutes the granting to cohabiting persons outside the marriage covenant a legal benefit "granted to the spouses of a marriage," this new policy ("Policy") violates both the Texas Constitution, Art. 1, § 32, and the Texas Defense of Marriage Act, § 6.204 of the Texas Family Code, respectively.

Although RQ-1097-GA applies to all local political subdivisions, the analysis of this brief focuses specifically on the recent actions by the Pflugerville Independent School District. However, we believe a similar analysis of any other political subdivisions engaged in the same government action in Texas would result in the same conclusions highlighted in this brief.

The Texas Defense of Marriage Act & the Texas Marriage Amendment: History and Intent

In 2003, in "response to court cases and legislative actions in a number of states on the issue of same-sex marriage and civil unions," the Texas legislature enacted S.B. 7, known as the Defense of Marriage Act ("DOMA"). Texas Legislative Council, *Analyses of Proposed*

Constitutional Amendments: November 8, 2005 Election, at 18 (September 2005).[1] The DOMA provides that "a marriage between persons of the same sex or a civil union is contrary to the public policy of this state and is void in this state." Tex. Fam. Code Ann. § 6.204(b). A civil union is defined as "any relationship status other than marriage that . . . is intended as an alternative to marriage or applies primarily to cohabiting persons [and] grants to the parties of the relationship legal protections, benefits, or responsibilities granted to the spouses of a marriage." *Id*. at § 6.204(a)(1)-(2). The DOMA further prohibits Texas or any of its political subdivisions from giving effect to a "public act, record, or judicial proceeding that creates, recognizes, or validates a marriage between persons of the same sex or a civil union . . . [or a] . . . right or claim to any legal protection, benefit, or responsibility asserted as a result of a marriage between persons of the same sex or a civil union." *Id*. at § 6.204(c)(1)-(2).

In 2005, in order to "prevent a possible [court] challenge" to the DOMA, the Legislature took steps to constitutionalize it and thereby remove the issue altogether from the purview of the courts. Tex. H. of Rep., H. Research Org., *Focus Report: Constitutional Amendments Proposed for November 2005 Ballot*, at 8 (Sept. 15, 2005);[2] *see also* S. Research Ctr., *Bill Analysis*, H.J.R. 6, 79th Leg., R.S. (Aug. 16, 2005)[3] (noting that "[l]awsuits challenging state DOMA laws are pending in at least 13 states and in the federal courts . . . [and that] . . . several states have chosen to protect their DOMA laws by passing constitutional amendments"). The Texas Marriage Amendment ("Amendment") began as House Joint Resolution No. 6, and was passed by the House on April 25, 2005, by the Senate on May 21, 2005, signed by the Governor, and eventually styled as Proposition 2 for ballot purposes. Proposition 2 provided that Article I of the Texas Constitution would be "amended by adding Section 32 to read as follows:"

> Sec. 32
> (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.

This office, on October 27, 2005, in construing Proposition 2 as against pre-election challengers who claimed the Amendment's plain language would actually eradicate traditional marriage in Texas, concluded that such an argument was "nonsensical and frivolous as a matter of law," because the "evidence is overwhelming that the amendment is designed to protect traditional marriage." Letter from Greg Abbott, Attorney General of Tex., to Senator Todd Staples and Representative Warren Chisum (October 27, 2005).[4] More specifically, this office concluded that "both sections [of Proposition 2] reflect a clear legislative intent to protect marriage as it has been traditionally understood and to prohibit state-sponsored creation or recognition of non-traditional alternatives to marriage." *Id*.

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[1] *Available at* http://www.lrl.state.tx.us/scanned/Constitutional_Amendments/amendments79_tlc_2005-11-08.pdf.
[2] *Available at* http://www.hro.house.state.tx.us/pdf/focus/amend79.pdf.
[3] *Available at* http://www.lrl.state.tx.us/scanned/srcBillAnalyses/79-0/HJR6.pdf.
[4] *Available at* https://www.oag.state.tx.us/opin/prop2letter.pdf.

This conclusion as to intent is buttressed by contemporaneous records compiled during the amendment process. *See* S. J. of Tex., 79th Leg., R.S. A-4-5 (May 21, 2005) (statement of Sen. Staples)[5] ("I'm personally bringing this legislation because I believe that we should protect the institution of marriage as it is defined in law today. That we should hold that up higher than any other relationships. I believe that there's a distinction between intimate association and the right for government to recognize or subsidize any other form of relationship . . . the institution of marriage, as it is defined in law today, should be protected . . . This bill is about placing in the Constitution what we define as marriage, in order to remove it from a state court challenge"); H. Research Org., *Bill Analysis*, H.J.R. 6, 79th Leg., R.S. (April 25, 2005), at 3-4,[6] (noting that amendment supporters believed that "[a] traditional marriage consisting of a man and a woman is the basis for a healthy, successful, stable environment for children. It is the surest way for a family to enjoy good health, avoid poverty, and contribute to their community. The sanctity of marriage is fundamental to the strength of Texas' families, and the state should ensure that no court decision could undermine this fundamental value.").[7]

On Election Day, November 8, 2005, Texas voters approved Proposition 2 by an overwhelming majority of over 76%. Office of the Sec'y of State, *Race Summary Rep. 2005 Constitutional Amendment Election*, Nov. 8, 2005, http://elections.sos.state.tx.us/elchist.exe. The Amendment was incorporated in the Texas Constitution as Article 1, Section 32, which provides that:

> (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.

PISD's Extension of Insurance Benefits to Domestic Partnerships

In apparent disregard of the dictates of Art. 1, § 32 of the Texas Constitution, and § 6.204 of the Texas Family Code, PISD recently announced that it will provide domestic partnership insurance benefits to its employees beginning January 1, 2013.[8] In order to establish eligibility for said benefits, an employee must complete an Affidavit of Domestic Partnership ("Affidavit").[9] The Affidavit defines a domestic partnership in the following manner:

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[5] *Available at* http://www.journals.senate.state.tx.us/sjrnl/79r/pdf/sj05-21-fa.pdf.
[6] *Available at* http://www.lrl.state.tx.us/scanned/hroBillAnalyses/79-0/HJR6.PDF.
[7] *See also* Letter from Warren Chisum, Texas State Rep. (Oct. 18, 2012) ("[O]ur purpose was to protect marriage as defined, defend the public value of that vital institution and avoid legal recognition of other relationships presented as 'similar to marriage' such as civil unions and domestic partnerships."). *Available at* http://txvalues.org/wp-content/uploads/2012/10/Rep.-Chisum-Letter-to-Pflugerville-ISD.pdf
[8] PISD is a political subdivision and thus subject to the strictures of the Amendment and the DOMA. *See Pharr-San Juan-Alamo Indep. Sch. Dist. v. Acosta*, 230 S.W.3d 277, 279 (Tex. App. 2007) (noting that a school district "operates as a political subdivision" in Texas).
[9] Pflugerville Indep. Sch. Dist., Aff. of Domestic Partnership, *available at* http://cms.pflugervilleisd.net/cms/lib/TX01001527/Centricity/Domain/93/Domestic%20Partnership%20Affidavit.pdf (last visited Nov. 27, 2012).

A Domestic Partnership consists of an employee and one other person of the same sex or opposite sex. Such persons must satisfy *all* the following requirements:

a) Have jointly shared the same regular and permanent residence for at least one year;
b) Are not related by blood or a degree of closeness which would prohibit marriage in the law of state in which they reside;
c) Each is at least 18 years of age;
d) Each is legally and mentally competent to consent to the domestic partnership;
e) Neither is currently married to or legally separated from another person;
f) Neither has been a member of another domestic partnership with someone else under either statutory or common law within the prior year. If previously married, the year starts on the final date of divorce.

PISD's Affidavit further requires that employees provide proof of benefit eligibility by providing documentation regarding at least two of the following:

1. Joint lease, mortgage or deed;
2. Joint ownership of vehicle;
3. Joint ownership of banking account or credit cards;
4. Copy of power [sic] attorney or will attesting to domestic partner as beneficiary of life insurance, retirement benefits or major recipient of estate proceeds;
5. Other documentation as agreed to by employer evidencing significant joint financial interdependency.

PISD Superintendent Charles Dupre has stated that the Policy is a "strong statement of anti-discrimination," one that demonstrates that the district is "going to advocate for equity and social justice and set expectations for valuing our employees." Melissa B. Taboada, *Pflugerville ISD to Offer Benefits for Domestic Partners*, Statesman.com, Oct. 7, 2012, http:// www.statesman.com/news/news/local/pflugerville-district-first-in-texas-to-offer-bene/nSWRX/.

Legal Analysis

In construing any provision of the Texas Constitution, courts must look to factors "such as the language of the constitutional provision itself, its purpose, the historical context in which it was written, the intention of the framers and ratifiers, the application in prior judicial decisions, the relation of the provision to other parts of the Constitution and the law as a whole, the understanding of other branches of government, the law in other jurisdictions, state and federal, constitutional and legal theory, and fundamental values including justice and social policy." *Tilton v. Marshall*, 925 S.W.2d 672, 677 n.6 (Tex. 1996); *see also Beck v. Beck*, 814 S.W.2d 745, 748 (Tex. 1991) (in determining the meaning of a constitutional amendment, courts must be guided by the Legislature's intent, which may be discerned from "the language of the amendment, its legislative history, its purpose and the circumstances of its enactment"). The cardinal rule of statutory construction is to ascertain the "intent of the legislature" and then "give

effect to that intent." *Union Bankers Ins. Co. v. Shelton*, 889 S.W.2d 278, 280 (Tex. 1994). In determining intent courts will ordinarily look to the "language of the statute, legislative history, the nature and object to be obtained, and the consequences that would follow from alternate constructions." *Id.*[10]

A plain language examination of the Amendment, properly informed by history and intent, reveals that PISD, in attempting to extend domestic partnership insurance benefits to its employees, has created and recognized the very type of marriage-like status the Amendment was designed to prevent.

PISD VIOLATES THE TEXAS CONSTITUTION WHEN IT CREATES AND RECOGNIZES DOMESTIC PARTNERSHIPS

With respect to "legal status," PISD effectively enlists its employees to create a domestic partnership by requiring the completion of its Affidavit, and it then recognizes that novel formulation for the purpose of awarding its employees insurance benefits. PISD cannot plausibly maintain that it neither "creates" nor "recognizes" a legal status, as it clearly does both. To create is to "cause to come into being." Random House Webster's Unabridged Dictionary, 2d Ed. (1999). To "recognize" is to "acknowledge or accept formally a specified factual or legal situation." *Id.* It is true that PISD's Affidavit expressly states that the "document does not create a domestic partnership" but merely "certifies [one] only for the purposes of insurance." But there is no such "domestic partnership" formulation under Texas law that PISD can certify, absent its own attempted creation of one.[11] Put simply, PISD's convenient *ipse dixit* cannot transform an otherwise proscribed legal status into a lawful one that triggers insurance benefits, without wholly ignoring the import and effect of the Texas Constitution. Its actions, and not its characterization of those actions, are what matter.

Similarly, PISD cannot without straining credulity claim that its newly-minted "domestic partnership" legal status is not "similar to marriage," when the former approximates the latter with virtual similitude as to a majority of constitutive elements. It is beyond cavil that the criteria PISD uses to establish domestic partnership status are remarkably similar to the criteria established by Texas statute to govern marriage itself. *Compare* Affidavit, *with* 5 Tex. Fam. L. Serv. § 39:1-10 (outlining statutory requirements for marriage in Texas, including consanguinity, age, consent, sex, and status of prior marriages). Similar means "having a likeness or resemblance, especially in a general way." Random House Webster's Unabridged Dictionary, 2d, Ed. (1999). To deny that the domestic partnership status created by PISD is similar to marriage is to deny to words their plain and ordinary meaning, which offends against the canons of constitutional and statutory construction in Texas. *See Stringer v. Cendant Mortg. Co*., 23

[10] *See also* Tex. Gov't Code Ann. § 311.023 (providing that in construing a statute, whether ambiguous or not, a court may consider, among other things, the "object sought to be attained," the "circumstances under which the statute was enacted," the "legislative history," and the "common law or former statutory provisions").

[11] *See* Op. Tex. Att'y Gen., No. JC-0156 (Dec. 16, 1999) (finding that a declaration of domestic partnership need not be accepted by a county clerk for recording, as such status was deemed "a stranger to the laws of Texas").

S.W.3d 353, 355 (Tex. 2000); *Sorokolit v. Rhodes*, 889 S.W.2d 239, 241 (Tex. 1994). Indeed, to employ those canons in the instant case is to arrive at the undeniable conclusion that PISD is violating the Texas Constitution.

PISD VIOLATES THE DOMA WHEN IT EXTENDS TO COHABITING EMPLOYEES BENEFITS OTHERWISE AVAILABLE ONLY TO SPOUSES OF A MARRIAGE

PISD's award of domestic partnership insurance benefits to its employees is also barred by the DOMA, which prohibits the state or a political subdivision from giving effect to a "right or claim to any legal protection, benefit, or responsibility asserted as a result of . . . a civil union," which civil union is defined as "any relationship status other than marriage that . . . applies primarily to cohabiting persons . . . [and grants to them] . . . legal protections, benefits, or responsibilities granted to the spouses of a marriage." Tex. Fam. Code Ann. § 6.204. PISD expressly requires a cohabitation period of one year from its employees for them to qualify as domestic partners eligible for insurance benefits. *See* Affidavit at I(a). The DOMA establishes as constitutive of a civil union the element of cohabitation.

As with its express disavowal that its Affidavit creates a domestic partnership, discussed above, it is likely that PISD has deliberately chosen to label its marriage proxy a "domestic partnership" rather than a "civil union" in an attempt to avoid the application of the DOMA. Once again, this attempt is transparent and futile. An examination of the plain and ordinary meaning of the DOMA, as applied to the PISD Affidavit, reveals that the domestic partnership created by PISD is merely a civil union masquerading under a pseudonym, crafted to make the extension of insurance benefits seem lawful. But the DOMA clearly establishes that these legal benefits may not be so extended. PISD may not, however asymptotically, approximate the marriage relationship in order to justify the extension of legal benefits reserved to spouses of a marriage.

PISD has intentionally created and recognized a prohibited legal status to trigger prohibited benefits, and its amorphous concerns for equity and social justice cannot remedy the constitutional and statutory infirmities at the core of its Policy. Indeed, authority from both Texas and elsewhere confirms that the prohibitions on marriage-like arrangements passed by the Legislature and approved by the People in Texas mean exactly what they say.[12]

TEXAS COURTS HAVE ROUTINELY REJECTED ATTEMPTS TO CIRCUMVENT OR REDEFINE THE CLEAR IMPORT OF THE STATE'S MARRIAGE LAWS

[12] *See McConkey v. Van Hollen*, 326 Wis. 2d 1 (2010). In *McConkey* the Wisconsin Supreme Court held that the Wisconsin Marriage Amendment, which provided that "only a marriage between one man and one woman shall be valid or recognized as a marriage in this state [and a] legal status identical or substantially similar to that of marriage for unmarried individuals shall not be valid or recognized in this state," *id.* at ¶ 1, did not violate the state's separate amendment rule. In so doing the Court, while not deciding what constituted prohibited legal statuses "identical or substantially similar to marriage," found it self-evident that sponsors of the amendment "wanted to protect the current definition and legal status of marriage, and to ensure that the requirements in the first sentence [regarding the exclusivity of man-woman marriage] could not be rendered illusory by later legislative or court action recognizing or creating identical or substantially similar legal statuses." *Id.* at ¶ 54-55.

In *Ross v. Goldstein*, 203 S.W.3d 508 (Tex. App. 2006), a decedent's same-sex partner, in response to a suit for recovery of assets brought by decedent's son and independent administrator of decedent's estate, requested a declaratory judgment, a constructive trust, and the adoption of an equitable remedy based upon a purported "marriage-like relationship." The court flatly refused this last, reminding the partner that "Texas has determined that same-sex couples must address their particular desires through other legal vehicles such as contracts or testamentary transfers." *Id*. at 514. The Court concluded that the two "democratically approved statements of Texas's public policy"—Art. 1, § 32 of the Texas Constitution, and § 6.204 of the Texas Family Code—were both "unambiguous, clear, and controlling on the question of creating a new equitable remedy akin to marriage," and consequently found that it could "not create such a remedy." *Id*.

In *In re Marriage of J.B. and H.B.*, 326 S.W.3d 654 (Tex. App. 2010), the court of appeals held that Texas state courts had no subject-matter jurisdiction to adjudicate divorce petitions in the context of a same-sex marriage lawfully entered into in foreign jurisdictions (in this case Massachusetts), because to entertain such jurisdiction would be to violate both Art. 1, § 32 of the Texas Constitution and § 6.204 of the Texas Family Code, by either "recognizing" a marriage other than one between a man and woman, with respect to the former, or by giving effect to a "right or claim to any legal protection . . . asserted as a result of a same-sex marriage," with respect to the latter. *Id.* at 665. The court concluded that the "Texas Constitution and section 6.204 of the Texas Family Code . . . forbid the State and its agencies from giving *any effect whatsoever* to a same-sex marriage." *Id*. at 666.[13]

These cases stand for the proposition that Texas courts have so far broadly and faithfully interpreted the statutory and constitutional prohibitions on creating or recognizing either same-sex marriage *in toto* or any approximation thereof.[14] A Texas court would have to significantly depart from the jurisprudential approach reflected in these two decisions to find the PISD Policy constitutional. It would also have to ignore persuasive authority from foreign jurisdictions, most prominently Michigan.

OTHER JURISDICTIONS WITH SIMILAR CONSTITUTIONAL AMENDMENTS AGREE WITH TEXAS JURISPRUDENCE ON THE MATTER

Michigan's Marriage Protection Amendment provides that "the union of one man and one woman in marriage shall be the only agreement recognized as a marriage or similar union for any purpose." Mich. Const. Art 1, § 25. In *National Pride at Work, Inc. v. Governor of Michigan*, 748 N.W.2d 524 (2008), various public entities brought suit against the Governor of

[13] *See also Mireles v. Mireles*, 2009 WL 884815, at *2 (Tex. App. April 2, 2009) (holding that a "Texas court has no more power to issue a divorce decree for a same-sex marriage than it does to administer the estate of a living person").

[14] *But see State v. Naylor*, 330 S.W.3d 434, 441-42 (Tex. App. 2011) (dismissing a state appeal for want of jurisdiction in same-sex divorce case, where state did not intervene until after final judgment, and speculating, without holding, that the DOMA may not prohibit a Texas court from granting a divorce, because a divorce can be seen as a benefit of state residency rather than a legal benefit resulting from marriage).

Michigan, seeking a declaratory judgment that their extension of health benefits to same-sex domestic partners was not precluded by the Michigan Constitution.[15] The Michigan Supreme Court, after a close reading of the plain language of the amendment, as applied to the policies implemented by the plaintiffs, found that the provision of health benefits to same-sex domestic partners was indeed constitutionally infirm.

The court found that a domestic partnership was a "union" "similar" to marriage, that public employers "recognize" that union when they provide benefits on the basis of that status, that the domestic partnership agreements required by the public entities constituted the type of agreement barred by the constitution, and that the words "for any purpose" meant that the amendment barred recognition of domestic partnership status even for the limited purpose of extending health-insurance benefits to domestic partners. *Id*. at 532-539.

Perhaps most important, the court noted that a "union does not have to possess *all* the same legal rights and responsibilities that result from a marriage in order to constitute a union 'similar' to that of marriage." *Id*. at 534. The pertinent question was not whether the public employers were recognizing a domestic partnership as a marriage, or whether they were declaring a domestic partnership a marriage or something similar, but rather whether they were "recognizing a domestic partnership as a union similar to a marriage." *Id*. at 533. Whether the unions gave rise to all the same legal effects was immaterial—what mattered was whether "these unions [were] being recognized as unions similar to marriage '<u>for any purpose</u>.'" *Id* (emphasis added). In concluding that they were, the court echoed the court of appeals by noting that "a publicly recognized domestic partnership need not mirror a marriage in every respect in order to

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[15] The various agreements required by the respective entities bear a remarkable resemblance to the Pflugerville Affidavit discussed above. For instance, the tentative agreement reached by the Office of the State Employer and United Auto Workers required the following for individuals to receive health-insurance benefits as domestic partners:

1. Be at least 18 years of age.
2. Share a close personal relationship with the employee and be responsible for each other's common welfare.
3. Not have a similar relationship with any other person, and not have had a similar relationship with any other person for the prior six months.
4. Not be a member of the employee's immediate family as defined as employee's spouse, children, parents, grandparents or foster parents, grandchildren, parents-in-law, brothers, sisters, aunts, uncles or cousins.
5. Be of the same gender.
6. Have jointly shared the same regular and permanent residence for at least six months, and have an intent to continue doing so indefinitely.
7. Be jointly responsible for basic living expenses, including the cost of food, shelter and other common expenses of maintaining a household. This joint responsibility need not mean that the persons contribute equally or in any particular ratio, but rather that the persons agree that they are jointly responsible.

Additionally, the agreement also provided that in "order to establish whether the criteria have been met, the employer may require the employee to sign an Affidavit setting forth the facts and circumstances which constitute compliance with those requirements."

run afoul of article 1, § 25 because the amendment plainly precludes recognition of a similar union for any purpose." *Id*. at 535 (internal quotations and citations omitted).

National Pride is instructive, especially given the similarities between the amendments and the factual scenarios presented. It is true that the Texas Marriage Amendment is not identical to Michigan's Marriage Protection Amendment.[16] It is also true that the policies implicated in *National Pride* differ slightly from the PISD Policy analyzed herein.[17] But the differences are certainly not dispositive or even significant. Indeed, given the similarities, it should be expected that a challenge to PISD's actions would conclude much like *National Pride*—with a judicial decree that finds unconstitutional the attempt by a public entity to circumvent the clear proscription against erecting marriage-like substitutes in order to provide domestic partnership insurance benefits to employees.[18]

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[16] For instance, Michigan's amendment prohibits a "similar union for any purpose," whereas Texas's Amendment prohibits "any legal status . . . similar to marriage." Functionally these differences are more stylistic than substantive. The extant Texas cases have broadly read Art. 1, § 32 of the Texas Constitution, and § 6.204 of the Texas Family Code as effectively prohibiting the recognition of marriage-like substitutes, in the case of *Goldstein* civil unions or domestic partnerships for inheritance purposes, and in the case of *Marriage of J.B.* a same-sex marriage lawfully entered into in a foreign jurisdiction for divorce purposes.

[17] Perhaps the most notable difference is that the policies in *National Pride* required domestic partners to be of the same sex, while the PISD Policy would allow domestic partnerships for unmarried same-sex and opposite-sex couples. If anything, PISD's broad recognition of same-sex and opposite-sex cohabitation as a predicate for insurance benefits threatens the interests protected by the Amendment more than the policies confronted by the court in *National Pride*. The Amendment was explicitly created to protect and uphold a "traditional marriage consisting of a man and a woman [which supporters believed] is the basis for a healthy, successful, stable environment for children." H. Research Org., *Bill Analysis*, H.J.R. 6, 79th Leg., R.S. (April 25, 2005), at 3-4, *available at* http://www.lrl.state.tx.us/scanned/hroBillAnalyses/79-0/HJR6.PDF. But cohabitation—and especially heterosexual cohabitation—harms the Amendment's purpose by potentially channeling procreation outside stable married homes, plainly undermining its ability to normalize marriage. *See* Monte Neil Stewart, *Marriage Facts*, 31 Harv. J.L. & Pub. Pol'y 313, 344 (2008) ("By normalizing and privileging marriage as the situs for man-woman intercourse and thereby seeking to channel all heterosexual intercourse within that institution, society seeks to assure that when man-woman sex does produce children, those children receive from birth onward the maximum amount of private welfare."); *see also* Paul R. Amato, *The Impact of Family Formation Change on the Cognitive, Social, and Emotional Well-Being of the Next Generation*, 15 Future Child 75, 89 (2005) ("Research clearly demonstrates that children growing up with two continuously married parents are less likely than other children to experience a wide range of cognitive, emotional, and social problems, not only during childhood, but also in adulthood…. This distinction is even stronger if we focus on children growing up with two happily married biological parents."); Andrea J. Sedlak, *et al.*, *Fourth National Incidence Study of Child Abuse and Neglect (NIS–4): Report to Congress*, Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Executive Summary at 12 (2010) (finding that, compared to children living with married biological parents, children of cohabiters are 10 times more likely to be abused and 8 times more likely to be victims of neglect).

[18] *See also* Op. Ky. Att'y Gen., OAG 07-004, at 2, 16 (June 1, 2007) (where the state constitution provided that a "legal status identical or substantially similar to that of marriage for unmarried individuals shall not be valid or recognized," concluding that public universities' extension of health benefits to domestic partners of employees was constitutionally infirm, because domestic partner criteria closely resembled the statutory conditions of marriage, and the "contours of the [university] definition[s], far from suggesting a broad and inclusive availability of health insurance for a *bona fide* member of the

Conclusion

PISD's attempt to create and recognize a legal status similar to marriage, and to grant to cohabiting persons legal benefits otherwise granted only to spouses of a marriage, should be recognized for what it is—a clear violation of both the Texas Constitution and the Texas Family Code. This cynical and brazen attempt to flout the will of Texas voters and their democratically elected representatives by administrative fiat should not be tolerated, and must be met with forceful opposition. While the analysis of this brief focuses specifically on the recent actions by the Pflugerville Independent School District, we believe a similar analysis of any other political subdivisions engaged in the same government action in Texas would result in the same conclusions highlighted in this brief. We trust that the foregoing analysis will be helpful to you in that endeavor.

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employee's household, instead indicate a narrowly focused attempt to recognize in 'domestic partnership' an imitation or substitute for the marital relationship"); Letter from Mitchell E. Toryanski, Idaho Deputy Attorney General, to Senator Russell M. Fulcher, Re: File No. 08-21508 – City of Moscow, Health Insurance Policy (Feb. 4, 2008) (where the state constitution provided that "[a] marriage between a man and a woman is the only legal union that shall be valid or recognized in this state," *id.* at 1, and where the amendment ballot's "Effect of Adoption" clause stated that the proposed amendment, if adopted, would prohibit "recognition by the state of Idaho and its political subdivisions of civil unions, domestic partnerships, or any other relationship that attempts to approximate marriage," and would also prohibit "granting any or all of the legal benefits of marriage to civil unions, domestic partnerships, or any other relationship that attempts to approximate marriage," *id.* at 1-2, concluding that city's extension of health benefits to domestic partners of employees was constitutionally infirm, because affidavit required of ostensible domestic partners approximated marriage, and plain words of amendment, legislative history, and notice to voters indicated that domestic partnerships were "one of the disfavored domestic legal unions contemplated"). *Id.* at 6.