No. 05-09-01170-CV
(Consolidated with No. 05-09-01208-CV)

In the
Court of Appeals for the
Fifth District of Texas

In the Matter of the Marriage of J.B. and H.B.,

On Interlocutory Appeal from the 302nd Judicial District Court,
Dallas County, Texas, the Honorable Tena Callahan, Presiding

APPELLEE J.B.'S MOTION FOR *EN BANC* RECONSIDERATION

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ORAL ARGUMENT REQUESTED

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TO THE HONORABLE COURT OF APPEALS FOR THE FIFTH DISTRICT OF TEXAS:

Appellee J.B. files this motion requesting reconsideration *en banc* of the decision issued in this consolidated appeal and mandamus proceeding by a panel of this Court consisting of Justices Bridges, FitzGerald, and Fillmore ("the Panel") on August 31, 2010, and would respectfully show this Court as follows:

INTRODUCTION

The Panel's opinion requires correction through reconsideration *en banc*. Appellee J.B. and H.B.—two men—were married in 2006 in Massachusetts, where same-sex marriage is legal. The couple moved to Texas, then filed for divorce in 2008. The Texas Attorney General ("the State") intervened in the trial court and filed a plea to the jurisdiction, citing the Family Code and the Texas Constitution to argue that the trial court lacked jurisdiction to hear J.B.'s petition for divorce. The trial court rejected the State's plea, determined it had jurisdiction, and held that any provision of Texas law that would prevent jurisdiction violated the U.S. Constitution. On appeal, the Panel reversed the trial court's decision, holding that the trial court lacked subject-matter jurisdiction to hear a petition for divorce involving a same-sex marriage. Slip op. 20. Then, applying the rational-basis test, the Panel upheld these laws as constitutional under the Equal Protection Clause. Slip op. 38.

The Panel's opinion turns family law on its head. If they were not already burdened enough, now, thanks to the Panel's opinion, trial courts must perform a full-fledged adjudication of a marriage's validity at the moment a divorce petition is filed. Trial courts can no longer rely on the well-established law of subject-matter jurisdiction, where a petitioner's allegation of a valid marriage is taken as true and is enough to confer jurisdiction. To be sure, the trial court cannot grant a divorce without a valid marriage—but previously, until a party challenged the validity of the marriage in question, the marriage was presumptively valid and the trial court had jurisdiction. Only after the presumption of validity was challenged did the trial court have to decide the issue—on

the merits, with the benefit of a full record. But now, the Panel's opinion effectively shifts the burden to the trial court to establish that the marriage is valid at the outset—without any challenge, input, or evidence from the parties. The Panel's opinion should not stand.

The Panel's erroneous jurisdiction analysis flows from the Panel's failure to correctly apply rules of constitutional interpretation and statutory construction. The Panel embraces an overbroad construction of article I, section 32 and of Section 6.204 by failing to distinguish between "marriage" (expressly defined as "only" the "**union**" of a man and a woman) and "divorce" (indisputably a **disunion**). Had the Panel correctly construed these provisions as prohibiting same-sex marriage in Texas but having nothing to do with granting a divorce, the Panel would have avoided its error regarding jurisdiction, and likewise would have avoided addressing constitutional issues.

Instead, by failing to distinguish between "marriage" and "divorce," the Panel not only unnecessarily reaches constitutional issues—it also errs in its analysis. The Panel fails to offer any rational connection between (a) the state's purported interest in promoting, as the Panel puts it, "the raising of children in the optimal familial setting" and (b) denying access to divorce for a same-sex couple legally married in another state. In short, the Panel fails to explain how denying J.B. and H.B. equal access to a divorce promotes the raising of children in married heterosexual households.

Lastly, the Panel ignores J.B.'s contention on appeal that denying him a divorce also violates his Due Process rights, his First Amendment right of free association, and his constitutional right to travel. If the Panel is going to to reach constitutional issues,

then—even if it was correct in its Equal Protection analysis—it must address J.B.'s other arguments. As it stands, the Panel ignores these important questions. These serious defects in the Panel's opinion demand reconsideration *en banc* in the interest of justice.

ARGUMENT

I. Extraordinary circumstances make *en banc* reconsideration appropriate.

Texas Rule of Appellate Procedure 41.2(c) permits the Court to grant reconsideration *en banc* when extraordinary circumstances exist. This case involves jurisdictional and constitutional questions of first impression, and of the utmost importance to the people of Texas—especially same-sex couples.[1] The Panel itself notes these questions are likely to recur, Slip op. 6, meaning the Panel's opinion establishes important family-law precedent. Therefore it is crucial that the opinion thoroughly and correctly address the issues at hand. Moreover, the Panel's opinion runs counter to the new consensus that discrimination against gays and lesbians is constitutionally suspect. *See Log Cabin Republicans v. United States*, No. CV 04-08425-VAP (C.D. Cal. Sept. 9, 2010) (holding the military's "Don't Ask, Don't Tell" policy unconstitutional under Due Process and the First Amendment); *Perry v. Schwarzenegger*, --- F. Supp. 2d ---, No. C 09-2292 VRW, 2010 WL 3025614 (N.D. Cal. Aug. 4, 2010) (holding California's Prop. 8 unconstitutional under Due Process and Equal Protection); *Gill v. Office of Personnel Management*, 699 F. Supp. 2d 374 (D. Mass. 2010) (holding the Defense of Marriage Act's definition of marriage unconstitutional because it denies lawfully-married same-sex

[1] Moreover, because this case involves access to divorce for a couple legally married in another state, and because it is inevitable that other couples from other states will move to Texas, this case is also of great importance to same-sex couples everywhere.

couples equal access to "federal marriage-based benefits"); *Massachusetts v. USDHHS*, 698 F. Supp. 2d 234 (D. Mass. 2010) (same). For all these reasons, reconsideration *en banc* is warranted and necessary.

II. The Panel's opinion misapplies the law of subject-matter jurisdiction and errs in granting the State's plea to the jurisdiction.

The Panel holds that the trial court has no jurisdiction to hear a petition for divorce involving a same-sex couple legally married in another state. Slip op. 20. This holding is fundamentally incorrect. To successfully plead an action for divorce the pleader must allege the existence of a valid marriage—**and the allegation alone is sufficient**. *Cuneo v. De Cuneo*, 24 Tex. Civ. App. 436, 59 S.W. 284 (1900). To determine whether the facts pleaded support jurisdiction at the trial court, the appellate court construes the pleadings in favor of the pleader and **takes as true the facts pleaded**. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 446 (Tex. 1993). In other words, whether the marriage is valid or void is a question on the merits of the action—not one of jurisdiction.[2]

The Panel notes that when a plea to the jurisdiction challenges the pleadings, the court determines whether the pleader has alleged facts that demonstrate the court's jurisdiction to hear the case. Slip op. 7. And the Panel acknowledges that J.B. alleged a valid marriage. Slip op. 2. But the Panel ignores the rule that it should construe the

[2] The Panel misstates J.B.'s position, claiming J.B. argued that "the trial court does not adjudicate or establish the validity of a marriage in a divorce case." Slip op. 11. But J.B. argued that "Texas courts do not determine the validity of a marriage **by reference to either Texas law or Texas public policy**. Rather, [courts]…apply the 'place of celebration' test…to determine the validity of the marriage." Appellee J.B.'s Br. 12 (emphasis added). The Panel's misconstrual of J.B.'s position is yet another reason to reconsider the matter *en banc*.

pleadings in J.B.'s favor and take his allegations as true. Instead, the Panel goes to great lengths to do exactly the opposite.[3]

The Panel reaches its erroneous conclusion by construing article I, section 32 and Section 6.204 as depriving the trial court of subject-matter jurisdiction to hear a petition for divorce that involves a same-sex marriage—even when that marriage was legally entered into in another state. But, as demonstrated below, the proper application of statutory-construction principles reveals no "clear legislative intent" to make either article I, section 32 or Section 6.204 jurisdictional. *See City of DeSoto v. White*, 288 S.W.3d 389, 394 (Tex. 2009).[4]

To hold the trial court lacks jurisdiction to hear J.B.'s petition for divorce, because his alleged marriage is void, is to put the cart before the horse. It requires the trial court to pre-judge an element of the petitioner's action—the validity of the alleged marriage—before it determines whether it has jurisdiction to proceed with the case. This turns Texas law on its head and creates troublesome precedent for future family-law cases.[5] The only possible explanation for the Panel's confused analysis is its adverse reaction to same-sex

[3] The Panel not only refuses to take J.B.'s allegations as true—after noting J.B. had attached his marriage certificate to his petition for divorce, the Panel declares that Section 6.204 "precludes **any use** of the marriage certificate in this case." Slip op. 12 (emphasis added). But J.B. was not required to attach the certificate to his petition—merely alleging the marriage was sufficient.

[4] The Panel also relies on *Mireles v. Mireles*. Slip op. 13-14. But *Mireles* involved (i) a collateral attack on a divorce already granted, (ii) a transgender couple, and (iii) a marriage in Texas—so the case is distinguishable on multiple grounds. The Panel ignores these distinctions. Similarly, the Panel claims *Littleton v. Prange* supports its decision. Slip op. 16 n.2. But again, *Littleton* involves a transgender couple that was married in a state where same-sex marriages are void (Kentucky)—so it is distinguishable. Moreover, both *Mireles* and *Littleton* were likely rendered inoperative by the 2009 amendments to Section 2.005(b) of the Family Code. Thus the Panel's reliance on these cases further illustrates the need for reconsideration.

[5] The Panel asserts that exercising jurisdiction—"even if only to deny the petition [for divorce]"—would "give effect" to the marriage, violating Section 6.204. Slip op. 13. This makes no sense. If the trial court heard and denied the petition for divorce, presumably on the basis that the alleged marriage was void, then the State would get precisely what it asks for.

marriage. Reconsideration *en banc* is necessary to reverse and correct this fundamental error in the Panel's opinion.

III. The Panel's opinion errs in its overly broad construction of article I, section 32 of the Texas Constitution, and of Section 6.204 of the Family Code.

The Panel's error regarding subject-matter jurisdiction results from its failure to properly apply rules of constitutional interpretation and statutory analysis. J.B. has sought a narrower construction of Texas law, arguing that, while both article I, section 32 and Section 6.204 seek to prohibit the creation or recognition of same-sex **marriage** in Texas, neither applies to granting **divorce** to a same-sex couple legally married in Massachusetts. *See* Appellee J.B.'s Br. 7-17. Importantly, the Panel itself acknowledged and even relied on this distinction between "marriage" and "divorce" when it distinguished *Baker v. Nelson* as non-controlling in this case. *See* Slip op. 22-23. According to the Panel, *Baker* is not controlling because it concerns the recognition of a same-sex marriage "**on a going-forward basis**"—something "distinguishable from" the mere granting of a divorce at issue here. *Id.* (emphasis added). This is precisely what J.B. has advocated—but the Panel inexplicably abandons this distinction when it construes article I, section 32 and Section 6.204 as prohibiting not only the creation and recognition of same-sex marriage "on a going-forward basis," but also the granting of a divorce to a same-sex couple legally married in another state. In fact, the Panel takes its overbroad construction even further—construing these provisions as not only precluding the court from granting the divorce, but as stripping that court of jurisdiction to hear the petition in the first place. Slip op. 20. This overbroad construction of Texas law demands

reconsideration *en banc*, and reversal.

A. The Panel's opinion misinterprets article I, section 32 of the Texas Constitution.

The Panel relied primarily on its overbroad construction of Section 6.204 for its ruling, but it also relied in part on an overbroad interpretation of article I, section 32. When interpreting the state constitution, the court should rely heavily on the literal text and give effect to the plain language. *Doody v. Ameriquest Mortg. Co.*, 49 S.W.3d 342, 344 (Tex. 2001). The language must be presumed to have been carefully selected, and the court should construe the words as people generally understand them. *Spradlin v. Jim Walter Homes, Inc.*, 34 S.W.3d 578, 580 (Tex. 2000). If doubt about literal meaning exists, the court should strive to give the provision the effect its adopters intended. *Doody*, 49 S.W.3d at 344. Finally, the court should avoid a construction that renders a word or phrase inoperative or meaningless. *Spradlin*, 34 S.W.3d at 580.

Here, the Texas Constitution states plainly: "Marriage in this state shall consist only of the union of one man and one woman," and the state cannot "create or recognize any legal status identical or similar to marriage." Tex. Const. art. I, § 32. The Panel reads this to mean the state cannot "create or recognize" same-sex marriage. Slip op. 11. And the Panel also implicitly interprets article I, section 32 to include a prohibition against granting J.B. a divorce.

But the literal text and plain, carefully selected language of article I, section 32 defines "marriage" as consisting "**only** of the **union** of one man and one woman." Tex Const. art. I, § 32(a) (emphasis added). Analytically speaking, marriage is a status that (i)

is created at some point, (ii) exists for some duration of time, then (iii) is dissolved at some point, either by death or by legal action. Construing the word as people generally understand it, "marriage" refers only to the first two of these stages—to its creation and, as the Panel puts it, to the "going-forward" existence of the marital relationship. *See* Slip op. 23. In article I, section 32's plain words, "marriage" refers "only" to "**union**." Thus, "marriage" does not refer to divorce, because divorce entails **disunion**. In common usage, everyone understands "marriage" to refer to the creation or the "going-forward" existence of a relationship—no one understands "marriage" to refer also to divorce. On the contrary, divorce is rightly viewed as the opposite of marriage. To read "marriage" as including reference to "divorce" is nonsensical, and renders words and phrases in the provision meaningless or inoperative. By the literal and plain meaning of the provision's own language, and construing the words as people commonly understand them, article I, section 32 refers only to the creation or recognition of marriage "on a going-forward basis," and does not refer to divorce.

Thus article I, section 32 does not apply to a petition for divorce involving a same-sex couple legally married in another state. And no basis whatsoever exists for interpreting article I, section 32 as stripping a court of jurisdiction to even hear a petition for divorce in the first place. The Panel's overbroad interpretation to the contrary ignores the literal and plain meaning of the text; refuses to presume the language was carefully selected; refuses to construe the words as people commonly understand them; and renders words or phrases inoperative or meaningless. In short, the Panel's application of article I, section 32 violates the rules of constitutional interpretation.

B. The Panel's opinion misconstrues Section 6.204 of the Family Code.

The Panel noted that the court's objective in construing a statute is "to ascertain and effectuate the legislature's intent," and that the court begins with the "plain and ordinary meaning" of the statutory language. Slip op. 11. But the Panel neglected to mention that the court also relies on legislative definitions, if available; that context matters; and that the court must presume that words excluded from the statute were excluded purposefully—that is, the court should not read language into a statute that the legislature did not put there. *City of Rockwall v. Hughes*, 246 S.W.3d 621, 625-26, 632 (Tex. 2008). And importantly, when faced with multiple constructions of a statute, the court **must** interpret statutory language to avoid a constitutionally suspect construction. *City of Houston v. Clark*, 197 S.W.3d 314, 320 (Tex. 2006).

Section 6.204(b) states: "A **marriage** between persons of the same sex…is contrary to the public policy of this state and is void in this state." And section 6.204(c) says "the state may not **give effect to**" any "public act, record, or judicial proceeding that **creates, recognizes, or validates a marriage** between persons of the same sex," or to any "right or claim to any legal protection, benefit, or responsibility asserted **as a result of a marriage** between persons of the same sex." TEX. FAM. CODE § 6.204 (emphasis added).

Though the Family Code itself offers no legislative definition of "marriage," article I, section 32—as noted above—defines "marriage" as consisting "only" of a "union." This definition does not include divorce, because divorce constitutes disunion. Moreover—as noted above—the plain and common meaning of "marriage" does not

include divorce. Thus, under the rules of statutory construction, "marriage" here should not be construed as referring also to divorce.

Further, the legislature has not stated—in section 6.204 or anywhere else—that Texas courts are precluded from granting a divorce to a same-sex couple legally married in another state. Section 6.204 addresses same-sex **marriage**, not divorce, and the clear intent of the statute is to prohibit the creation or recognition—"on a going-forward basis"—of the union that defines "marriage." Divorce advances the intent of the statute, given that it ends the going-forward existence of a same-sex marriage. Thus, to read into the statute a prohibition against granting a same-sex divorce is to ignore the plain meaning of the language, to thwart the intent of the statute, and to impermissibly read into it words that are not there. If the legislature intended to prohibit same-sex divorce, it should have written this into the statute; otherwise, the court must presume that a prohibition against same-sex divorce was excluded purposefully.

This narrower reading of the statute also conforms to the rule requiring the court to avoid a constitutionally suspect construction. Construing Section 6.204 as not applying to an action for divorce involving a same-sex couple legally married in another state avoids constitutional suspicion surrounding the denial of equal access to divorce. But the Panel ignores these rules of statutory construction and instead construes section 6.204 broadly, to include a prohibition against divorce for same-sex couples legally married in other states. In fact, in granting the plea to the jurisdiction the Panel goes even further, reading Section 6.204 as a jurisdictional bar to hearing a petition for divorce in the first place. By doing so, the Panel violates the rules of statutory construction, misapplies the

law of subject-matter jurisdiction, and compels itself to reach constitutional issues that should have been avoided.[6]

IV. The Panel's opinion fails to provide any rational basis for upholding the constitutionality of its overly broad interpretation of Texas law.

Even assuming the Panel was correct in reaching constitutional issues and in applying "rational basis" in its Equal Protection analysis, the Panel fails to provide a rational basis for denying access to divorce for a same-sex couple legally married in another state.[7] Yet again, the core flaw in the Panel's opinion is its failure to distinguish between "marriage" and "divorce." According to the Panel, the rational bases for upholding the constitutionality of article I, section 32 and Section 6.204 include "promoting the raising of children in the optimal familial setting"; the ability of opposite-sex couples to "naturally produce children"; and "promoting the well-being of children." Slip op. 32-33. In short, the Panel asserts a rational connection between (a) the state's

[6] Notably, the Panel also fails to avoid a construction that leads to absurd results, or that is against public interest. *See City of Rockwall*, 246 S.W.3d at 625-26 (court construes words according to their plain and common meaning unless the construction leads to absurd results); *City of Houston*, 197 S.W.3d at 320. Under the Panel's overbroad construction, nothing prevents a wrongdoer from entering into bigamous relationships—a same-sex marriage in Massachusetts, then an opposite-sex marriage in Texas. And a party to a same-sex marriage in Massachusetts—after amassing 20 years' worth of marital property and obligations under Massachusetts law (including obligations involving children)—could, upon becoming disgruntled, simply run to Texas to have it all voided.

[7] The Panel rejects "strict scrutiny" by construing the right in question as "the right to marry a person of the same sex," then holding this right is not "fundamental." Slip op. 28-29. But the Panel's construction ignores *Perry*, in which the federal court construed the right as the "fundamental right to marry" and held that strict scrutiny applied. 2010 WL 3025614 at *69; *see also Loving v. Virginia*, 388 U.S. 1, 12 (1967). Moreover, the Panel's construction echoes *Bowers v. Hardwick*, in which the Supreme Court construed the right in question, vis-à-vis Georgia's sodomy law, as the right "to engage in sodomy." 478 U.S. 186, 190 (1986). This narrow, self-serving construction was rejected in *Lawrence v. Texas*, which instead construed the right as the right to privacy in one's sexual conduct. 539 U.S. 558, 579 (2003). The Panel's refusal to consider *Perry* and its similarity to *Bowers* further support reconsideration *en banc*, and reversal. The Panel also rejects "heightened scrutiny" by relying on a contorted reading of *City of Cleburne, Tex. v. Cleburne Living Ctr*. In *City of Cleburne*, the Supreme Court held that heightened scrutiny applies to classifications based on gender—a holding applicable here. *See* 473 U.S. 432, 440-41 (1985). But the Panel ignores the Supreme Court's holding and instead relies on dicta—then it misconstrues the dicta.

legitimate interest in "promoting the raising of children in the optimal familial setting" and (b) the state's legal prohibition against same-sex marriage.[8]

But even if these purported state interests provide a rational basis for prohibiting same-sex **marriage**, the Panel fails to explain how any of them are advanced by prohibiting a same-sex couple from obtaining a **divorce**. The right to divorce is distinct from the right to marry. *See Ivy v. Ivy*, 177 S.W.2d 237, 239 (Tex. Civ. App.—Texarkana 1943) ("The right to prosecute a divorce suit is personal."). As the Supreme Court has noted, it is not possible for two consenting adults to "divorce and mutually liberate themselves from the constraints of…marriage, and more fundamentally the prohibition against remarriage, without invoking the State's judicial machinery." *Boddie v. Connecticut*, 401 U.S. 371, 376 (1971). Assuming "rational basis" is the proper standard here, a law classifying persons according to their sexual orientation, so as to deny one class equal access to "the State's judicial machinery" for obtaining a divorce, can be sustained only if it advances a legitimate state interest. *See Romer v. Evans*, 517 U.S. 620, 632 (1996). The Panel purports to offer rational bases for restricting **marriage** to a particular class of persons—but offers no rational connection whatsoever between (a) the state's interest in "promoting the raising of children in the optimal familial setting" and (b) denying a same-sex couple legally married in another state access to divorce. Simply put: How does refusing to grant J.B. and H.B. a **divorce** advance the state's

[8] Notably, the "ability" to "naturally produce children" is not exclusive to heterosexuals. Gays and lesbians are just as capable of "naturally producing children" as heterosexuals. That they must rely on third parties to have children as a couple makes them no different from the millions of opposite-sex couples who must do the same.

interest in the raising of children in married heterosexual households?[9] The Panel's only response to this important constitutional question is to claim divorce is "an integral part of the State's overall scheme to give special protections and benefits to married couples." Slip op. 34. This is insufficient. Without a clear rational basis for broadly construing Section 6.204 to restrict not just **marriage** but also **divorce** to opposite-sex couples, the Panel's broad application of Section 6.204 is unconstitutional.[10]

Further still, even the Panel's proposed rational bases for upholding the statute's restriction of **marriage** to opposite-sex couples is constitutionally suspect. The Panel altogether ignores the recent decision in *Perry*—in which the federal court held California's restriction of marriage to opposite-sex couples unconstitutional, even under rational-basis scrutiny, after conducting extensive factual findings regarding the state's purported interests. The *Perry* court found, among other things, that the evidence showed "beyond any doubt that parents' genders are irrelevant to children's developmental outcomes." 2010 WL 3025614 at *75; *see also Gill*, 699 F. Supp. 2d at 388-89 ("[A] consensus has developed…that children raised by gay and lesbian parents are just as likely to be well-adjusted as those raised by heterosexual parents."). The Panel asserts a state interest in promoting the raising of children in married heterosexual households—but offers nothing to support its conclusion and ignores *Perry*'s findings to the contrary.

[9] Even opposite-sex couples that divorce do not typically intend to have children together. Thus no conceivable rational connection exists between (a) promoting child-rearing in married heterosexual households and (b) allowing only heterosexual couples to divorce.

[10] Yet again it must be noted that the Panel takes all this even further, holding that Section 6.204 strips the trial court of jurisdiction—thereby exacerbating the disparate treatment of same-sex couples. This overreaching misapplication of the law raises federal and state due process concerns—as well as an "open courts" concern—and thus demands reconsideration *en banc*, and reversal.

Had the Panel properly applied longstanding rules of interpretation and construction, it would not have reached these constitutional issues to begin with. Having reached them, the Panel fails to provide a rational basis for upholding its overbroad construction of Texas law to deny J.B. his right to obtain a divorce.

V. The Panel's opinion ignores constitutional questions raised by J.B. on appeal.

Finally, though the Panel addressed the constitutionality of article I, section 32 and of Section 6.204 under the Equal Protection Clause—it ignored J.B.'s arguments on appeal that these provisions also violate Due Process rights, the First Amendment right to free association, and the constitutional right to travel. In fact, the Panel fails to even mention that these other questions were raised. This violates Texas Rule of Appellate Procedure 47.1, which requires a panel to address every argument raised in the briefs.

The Panel also ignores the trial court's Findings of Fact and Conclusions of Law, in which the trial court decided these constitutional issues, claiming the Findings of Fact was improperly entered because it was not signed until after imposition of the automatic stay. Slip op. 8. But the trial court has 30 days to file findings of fact and conclusions of law after an order is signed—and a notice of interlocutory appeal, triggering a stay of proceedings, must be filed within 20 days after an order. Tex. R. App. P. 26.1(b), 28.1(c). Thus the rules contemplate the possibility that a trial court might enter findings of fact and conclusions of law after a stay has been triggered, and provide the court the power to do so. This is consistent with a trial court's continuing authority to interpret its own orders, even when an action is otherwise stayed. *See, e.g.*, *Travelers Indem. Co. v. Bailey*, --- U.S. ---, 129 S. Ct. 2195, 2205 (2009). The Panel fails to address any of this.

CONCLUSION AND PRAYER

For the above reasons, J.B. respectfully requests that the Court grant this motion for reconsideration *en banc* and reverse the Panel's decision. J.B. also requests (1) that the Court order the parties to pay their own costs, given that J.B. is the Appellee here and did not initiate this dispute with the State of Texas (*see* Tex. R. App. Pro. 43.4); and (2) that the Court modify the Panel's judgment to redact J.B.'s full name. J.B. has endeavored to keep his name private, and the Panel's presumably inadvertent inclusion of his name on its judgment should be corrected.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Appellee J.B.'s Motion for *En Banc* Reconsideration was served upon counsel of record via email and certified U.S. mail, return receipt requested, pursuant to the Texas Rules of Appellate Procedure on September 15, 2010.

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