Case No. 14-50196

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

CLEOPATRA DELEON; NICOLE DIMETMAN; VICTOR HOLMES; MARK PHARISS,

Plaintiffs-Appellees,

v.

RICK PERRY, in his official capacity as Governor of the State of Texas; GREG ABBOTT, in his official capacity as Texas Attorney General; DAVID LAKEY, in his official capacity as Commissioner of the Texas Department of State Health Services,

Defendants-Appellants.

On Appeal from the United States District Court
for the Western District of Texas, San Antonio Division

BRIEF OF *AMICUS CURIAE* CENTER FOR THE PRESERVATION OF AMERICAN IDEALS, IN SUPPORT OF DEFENDANTS-APPELLANTS AND SUPPORTING REVERSAL OF THE DISTRICT COURT

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Defendants-Appellants.

CERTIFICATE OF INTERESTED PERSONS

Pursuant to Fifth Circuit Rule 28.2.1, the undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

APPELLANTS:

Rick Perry, in his official capacity as Governor of the State of Texas.

Greg Abbott, in his official capacity as Texas Attorney General.

David Lakey, in his official capacity as Commissioner of the Texas Department of State Health Services.

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Amicus Curiae has no parent corporation or any publicly held corporation that owns 10% or more of its stock.

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TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS i

TABLE OF AUTHORITIES vi

IDENTITY AND INTEREST OF *AMICUS CURIAE* 1

SUMMARY OF ARGUMENT 1

ARGUMENT 3

I. I. THE TRIAL COURT ERRED IN CHARACTERIZING TEX. CONST. ART. I, § 32 AS A BAN ON SAME SEX MARRIAGE. 3

II. THE TRIAL COURT ERRED IN FINDING THAT APPELLEES WERE INJURED BY THE STATE'S REFUSAL TO PERMIT THEM TO MARRY OR TO RECOGNIZE THEIR OUT OF STATE MARRIAGE. 6

CONCLUSION 20

CERTIFICATE OF SERVICE 23

CERTIFICATE OF COMPLIANCE 24

TABLE OF AUTHORITIES

Cases

De Leon v. Perry,

No. SA-13-CA-00982-0LG, 2014 WL715741(W.D. Tex. Feb.26, 2014). 975 F. Supp. 2d 632 (W.D. Tex. 2014)..... 9,12, 14,16,17

In re Sullivan,

157 S.W.3d 911 (Tex. App. 2005).....10

Lawrence v. Texas,

537 U.S. 1102, 123 S. Ct. 953, 154 L. Ed. 2d 770 (2003).....2,7

Planned Parenthood of Se. Pennsylvania v. Casey,

505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992).....1

Roe v. Wade,

410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973).....1

Stanley v. Illinois,

405 U.S. 645, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972).....14

Tigner v. Texas,

310 U.S. 141, 60 S. Ct. 879, 84 L. Ed. 1124 (1940).....19

Troxel v. Granville,

530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000).....4

United States v. Windsor,

__ U.S. ___, 133 S. Ct. 2675, 186 L. Ed. 808 (2013)……2, 3,6,7

Statutes

Tex. Civ. Prac. & Rem. Code Ann. § 71.004 (West) 18

Tex. Const. art. I.....3, 4

Tex. Const. art. XVI.....16

Tex. Fam. Code Ann. § 1.103.....9

Tex. Fam. Code Ann. § 153.002.....11

Tex. Fam. Code Ann. § 154.001.....9

Tex. Fam. Code Ann. § 160.602.....10

Tex. Fam. Code Ann. § 2.003.....4

Tex. Fam. Code Ann. § 2.007.....4

Tex. Fam. Code Ann. § 2.204.....4

Tex. Fam. Code Ann. § 3.003.....16

Tex. Fam. Code Ann. § 6.201.....5

Tex. Fam. Code Ann. § 6.202.....4, 5

Tex. Fam. Code Ann. § 6.204.....17

Tex. Fam. Code Ann. § 6.206.....5

Tex. Fam. Code Ann. § 6.801.....4

Tex. Fam. Code Ann. § 71.0021.....8

Tex. Fam. Code Ann. § 8.051 (West) 18

Tex. Fam. Code Ann. § 81.001 8

Tex. Fam. Code Ann. §§ 160.102 10

Tex. Fam. Code Ann. §§ 7.001 ..... 16, 17

Tex. Fam. Code Ann. §§ 71.005 8

Tex. Fam. Code Ann. §§160.301 14

Tex. Fam. Code Ann. §§3.001 17

Tex. Health & Safety Code Ann. § 166.032 15

Tex. Health & Safety Code Ann. § 711.002(a)(1) 16

Tex. Penal Code Ann. § 12.34 8

Tex. Penal Code Ann. § 25.01(a) 7

Tex. Penal Code Ann. § 25.01(a)(1)(B) 8

Tex. Penal Code Ann. § 25.02 8

Tex. Prob. Code Ann. §§ 38 14

Rules

Fed. R. App. P. 32(a)(5) 24

Fed. R. App. P. 32(a)(6) 24

Fed. R. App. P. 32(A)(7)(B) 24

Fed. R. App. P. 32(a)(7)(B)(iii) 24

Federal Rule of Appellate Procedure 29(a) 1

IDENTITY AND INTEREST OF *AMICUS CURIAE*[1]

Amicus Curiae is a non-profit corporation in the Texas committed to counteracting the breakdown of the traditional, Biblically based family unit, which is the foundation of our society.

Defendants-Appellants and Plaintiffs-Appellees filed a joint notice of consent to the filing of amicus briefs in this appeal on June 25, 2014.

SUMMARY OF ARGUMENT

Some things in life defy an analytical or scientific definition. For example, after a lengthy review of the various beliefs throughout the span of recorded time and across the cultures, the *Roe* court decided that it was impossible to determine what exact and concrete factors signaled the beginning of life. *See, Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973) *holding modified by Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992). Nevertheless, everyone can agree that it does begin and that prior to that beginning it is not. In the same manner the marital union between one man and one woman is a unique and intangible entity, which resists and exceeds the limitations of analytical reasoning or scientific categorization. Any other

[1] This brief is filed with the consent of all parties, pursuant to Federal Rule of Appellate Procedure 29(a). No party or party's counsel authored this brief in whole or in part or financially supported this brief, and no one other than amici curiae, its members, or its counsel contributed money intended to fund preparing or submitting this brief.

relationship, whether it differs in elements or the misuse of those elements is not marriage.

This case is not about an absence of rights, equality, or protections for Appellees. This case is an attempt to change the definition of marriage which has existed throughout the ages; before the Texas Constitution, before the United States Constitution, before Western Civilization, and even before the Church.

Appellees have suffered no concrete and particularized injury cause by Texas' marriage laws. Texas' marriage laws treat Appellees in the same manner and in some cases better than others similarly situated. The marriage amendment to the Texas Constitution does not create new rights for any person or group, nor does it deprive any person or group of rights previously possessed.

This case is also not about the privacy rights of Appellees within their homes. *Lawrence v. Texas*, 537 U.S. 1102, 123 S. Ct. 953, 154 L. Ed. 2d 770 (2003). Marriage is by nature a public institution. It is this public aspect of the institution that permits the government and more specifically the state government, to create a public state definition. "By history and tradition the definition and regulation of marriage…..has been treated as being within the authority and realm of the separate states. *United States v. Windsor*, __ U.S. ___, 133 S. Ct. 2675, 186 L. Ed. 808 (2013). Texas has exercised that authority in way that recognizes the sanctity, separateness and set apartness of the marriage relationship from all others;

and Texans have expressed their approval by ratification of the constitutional amendment. Tex. Const. art. I, § 32(a). If *Windsor* stands for the proposition that the federal government cannot override the authority of the states by refusing to recognize a right to marry granted by a state, then it must also stand for the proposition that the federal government cannot force Texas to redefine marriage. *United States v. Windsor*, __ U.S. ___, 133 S. Ct. 2675, 186 L. Ed. 808 (2013).

Texas has chosen to protect the traditional meaning of marriage. In so doing, it has not discriminated against Appellees in resulting legislation. Appellees are not prohibited from marrying and they are not limited in their choice of a spouse differently from other groups that are limited in their choices. Laws that might affect Appellees' daily lives in the context of their relationships provide equal if not greater protections. If, however, this Court finds that disparities exist within certain other areas of law, then the remedy is to rectify those specific laws, rather than redefine marriage.

ARGUMENT

I. THE TRIAL COURT ERRED IN CHARACTERIZING TEX. CONST. ART. I, § 32 AS A BAN ON SAME SEX MARRIAGE.

The State of Texas possesses "historic and essential authority to define the marital relation." *United States v. Windsor*, __ U.S. ___, 133 S. Ct. 2675, 186 L.

Ed. 808 (2013). The marriage amendment to the Texas Constitution and related statutes are an exercise of that authority.

Gays and lesbians as a class are not prohibited from marrying. Texas law does prohibit some individuals from marrying, regardless of the depth of their commitment and love, including: 1) those who are under eighteen years of age and that do not meet one of the exceptions provided by statute; Tex. Fam. Code Ann. § 2.003 (West)[2]; 2) a person who is currently married; Tex. Fam. Code Ann. § 6.202 (West); 3) a person who has been divorced within the preceding thirty days. Tex. Fam. Code Ann. § 6.801 (West); 4) a person who has obtained less than72 hours prior to the marriage ceremony. Tex. Fam. Code Ann. § 2.204 (West); 5) a person whose marriage license has expired. Tex. Fam. Code Ann. § 2.007 (West). Unless they fall into one of these categories, Appellees are not prohibited from marrying or being married in Texas.

Appellees true complaint is that are limited in their choice of whom to marry. Tex. Const. art. I, § 32(a) defines marriage, as follows: "Marriage in this state shall consist of only of the union of one man and one woman". Tex. Const. art. I, § 32(a). It is facially clear from the language that gays and lesbians are not the only citizens in the State of Texas who are limited in choosing a spouse by

[2] Parents cannot even consent to the marriage of their own child, who is sixteen or younger, despite their fundamental right to make decisions concerning that child. *Troxel v. Granville*, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000).

virtue of this amendment. Neither are they the sole focus of statutory restrictions.

An individual cannot marry a person who already has a spouse. Tex. Fam. Code Ann. § 6.202. Yet, these same people are permitted to procreate and are much more likely to do so than Appellees. Additionally, individuals may not marry each other if they are related within a certain degree of consanguinity, even if the relationship was established by adoption instead of a biological connection. Tex. Fam. Code Ann. § 6.201 (West). A step parent is prohibited from marrying a step-child, even though the step-relationship may have been created long after the step-child left home his parent's home. Tex. Fam. Code Ann. § 6.206 (West). If the justification for limiting marriage within the family for fear of magnifying negative genetic traits in the resulting children, then only laws regarding those related by "blood" would be necessary. Clearly these laws are intended to preserve the traditional concept of the purpose of marriage and family and the propriety of interactions between the members of the same family.

If there is no rational basis for the state to limit marriage to members of the opposite sex, then there is even less of a basis to prohibit a man from marrying all the mothers of his children or a woman from marrying her step-father. Once the definition of marriage is changed to include one group, it will have to be changed to include all groups. Even incest would have to be permitted, at least between members of the same sex or those who have proven themselves infertile. If the

State of Texas is required to define marriage in a way that includes everyone and avoids making anyone feel bad about their personal relationships, then the State will have no meaningful authority at and marriage will mean nothing. *United States v. Windsor*, __ U.S. ___, 133 S. Ct. 2675, 186 L. Ed. 808 (2013).

II. THE TRIAL COURT ERRED IN FINDING THAT APPELLEES WERE INJURED BY THE STATE'S REFUSAL TO PERMIT THEM TO MARRY OR TO RECOGNIZE THEIR OUT OF STATE MARRIAGE.

It is unnecessary to redefine marriage in order ensure that Appellees' interests will continue to be protected. A review of Texas law demonstrates that Appellees, specifically, and gays and lesbians, in general, enjoy equal and in some instances greater protections for their choices than do other Texas citizens who are restricted in some manner regarding their choice of a spouse

Prior to filing this lawsuit, Appellees had enjoyed many rights, privileges, and successes granted to them by or assisted by the State of Texas, which belies their claims of animus and discrimination against them, personally or as a member of a class. De Leon served in the Texas National Air Guard for six years, worked at her chosen field in the State of Texas, and then attended a state graduate school. *DeLeon v. Perry*, No. SA-13-CA-00982-0LG, 2014 WL715741 at 3 (W.D. Tex.

Feb.26, 2014). [3] Dimetman ran a business in Texas, attended the most prestigious state law school, and received a license to practice law in Texas. *Id.* Phariss also received a license to practice law in Texas and chose to live and work in Texas throughout his ongoing relationship with Holmes. *DeLeon v. Perry*, No. SA-13-CA-00982-0LG, 2014 WL715741 at 4 (W.D. Tex. Feb.26, 2014). Although the trial court noted that the two men traveled often to visit each other and marriage has been legal in some states since 2004, they never chose to avail themselves of the option to marry until they were both living in Texas, a state they knew would not issue them a marriage license. *Id*.

Appellees enjoy greater protections from the threat of criminal prosecution as none of the Appellees have or can be prosecuted for sexual behavior or living arrangements within their respective relationships. *Lawrence v. Texas* 537 U.S. 1102, 123 S. Ct. 953, 154 L. Ed. 2d 770 (2003). Yet, if a married heterosexual individual chose to either obtain a license to marry someone other his current spouse or live with a member of the opposite sex, other than her current spouse, that individual could be charged and tried for bigamy, a third degree felony. Tex. Penal Code Ann. § 25.01(a) (1) (B) (West). If convicted, the penalty range is imprisonment for two (2) to ten (10) years and a fine of not more than ten thousand

[3] It appears from the Docket Sheet that the Record on Appeal was forwarded electronically to the parties only and is otherwise unavailable. In lieu of the Record, Amicus cites herein to the slip opinion.

dollars ($10,000.00). Tex. Penal Code Ann. § 12.34 (West). In a day when the State must enforce a parent's obligation to support his children by court orders and threats of contempt, it could be argued that bigamists or polygamists, who desire to support their children and the other parent of those children within a setting that resembles marriage, contribute much to society. Nevertheless, these committed and most likely well intended individuals are not only denied the ability to marry, but are criminally prosecuted for creating circumstances that mimic marriage. Tex. Penal Code Ann. § 25.01(a)(1)(B). In the same manner, couples who have certain familial relationships created or recognized, by law only and not blood, such as through adoption or blended families, face criminal prosecution if they engage in sexual relations. Tex. Penal Code Ann. § 25.02 (West).

Appellees also enjoy the same protections as married couples against violence within their homes and relationships. "A court shall render a protective order as provided by Section 85.001(b), if the court finds that family violence has occurred and is likely to occur in the future." Tex. Fam. Code Ann. § 81.001 (West). "Family violence" includes actions by a member of a family or household against another member of the family or household and dating violence. Tex. Fam. Code Ann. § 71.0021 (West). Those who are or have in the past lived together are also protected as a member of a household. Tex. Fam. Code Ann. §§ 71.005, 71.006 (West).

Same sex marriage is not singled out as the only marriage relationship recognized in another state that must comply with Texas laws. In 1985, nearly twenty years before any state recognized same sex marriage, Texas codified the proposition that the laws of this state apply to persons married elsewhere who are domiciled in this state. Tex. Fam. Code Ann. § 1.103 (West).

Even if Dimetman's and De Leon's marriage were legally recognized in Texas, Dimetman would still face the same legal obstacles in regard to De Leon's child as any other party wishing to be or claiming to be a parent of a child, who is not in fact the biological parent of that child. The trial court notes that Dimetman's only option to become a parent to De Leon's child, was to adopt her. *De Leon v. Perry*, No. SA-13-CA-00982-0LG, 2014 WL715741 at 3 (W.D. Tex. Feb.26, 2014). Even within the context of marriage, adoption is the only legal solution that creates an unchallengeable parent-child relationship between an adult and the other spouse's child that is not the biological child of the adult. An unchallengeable legal parent-child relationship is the only relationship that can create an unchallengeable obligation to support the child. Tex. Fam. Code Ann. § 154.001 (West).

It should first be noted that rules regarding parentage of a child are found in Uniform Parentage Act, which has been adopted by numerous other states and which is described by Sampson and Tindall, as the most progressive parentage

legislation of any state. Tex. Fam. Code Ann. Chapter 160 (West); *Sampson & Tindall's Texas Family Code Annotated; Introductory Comment* [2012 page 805]. However, even within a state recognized marriage, the parentage of a spouse that is not the biological parent of the other's spouse's child risks losing any relationship formed with the child during the marriage unless he or she legally adopts that child. Although the marriage creates a presumption that the husband is the father of the child, that presumption can be challenged by numerous individuals, including, but not limited to the mother of the child and the State. Tex. Fam. Code Ann. § 160.602 (West); *See, In re Sullivan*, 157 S.W.3d 911 (Tex. App. 2005) (Man who donated sperm had standing to adjudicate parentage). If the child has no presumed father, the challenge can be raised at any time. Tex. Fam. Code Ann. §§ 160.102, 160.204, 160.606 (West). Even if Appellees are permitted to marry, they can never both be the biological parents of the same child. Adoption will always be the only avenue to preclude a challenge to a desired parent-child relationship that is not the result of biology.

It is also important to recognize that Appellees are asking this Court to redefine marriage in order to secure an easier route to creating families that either deprive a child of a mother or a father. "The best interest of the child shall always be the primary consideration of the court in determining the issues of

conservatorship and possession of and access to the child." President Obama has emphasized the importance of a father in a child's life.

> "I came to understand the importance of fatherhood through its absence-both in my life and in the life of others. I came to understand that the hole a man leaves when he abandons his responsibility to his children is one that no government can fill. We can do everything possible to provide good jobs and good schools and safe streets for our kids, but it will never be enough to fully make up the difference."

"Promoting Responsible Fatherhood," June 2012, quoting President Barack Obama, June 19, 2009. No one could dispute that President Obama has achieved great success in his professional life, arguably greater than many Americans raised in a home with both biological parents married to each other. It is also reasonable to assume that his feelings regarding the importance of a mother would be similar, had his mother been the absent parent. What this heartfelt declaration demonstrates is that dueling empirical studies and statistics of failed childhoods are important in determining the costs to society resulting from children who are not raised in a home with both biological parents married to each other. However, if this court is to, as charged, make the best interest of the child, every child in Texas, its primary consideration, then it will have to determine many more children, who attain outward success, will be haunted throughout their lives by that inward "hole." Tex. Fam. Code Ann. § 153.002 (West).

Appellees' claim that De Leon's child will suffer humiliation and be stigmatized is without merit. When nearly 41% of children are born to unwed mothers in this country, it is unlikely that De Leon's child will suffer any stigma or humiliation.[4] Nevertheless, it is unreasonable for De Leon and Dimetman or any other individual, with the exception of rape or statutory rape victims, to bring a child into the world knowing that the child will be born out of wedlock and then blame the government. That would be the same as an individual failing the bar and then insisting that bar passage be removed as a qualification for to obtain a law license because he is being prosecuted for practicing law without a license. It is also unlikely that a society that will accept same sex marriage simply because it has been government sanctioned, as Appellees seem to imply by virtue of this suit, would stigmatize any child based on the child's birth circumstances.

The trial court relied on specific statutory benefits in determining that Appellees had been injured even though there was no evidence that any of those statutes would actually be applicable to Appellees. *De Leon v. Perry*, No. SA-13-CA-00982-0LG, 2014 WL715741 at 12-13 (W.D. Tex. Feb.26, 2014). These laws do not apply to Appellees as the result of invidious discrimination, but because

[4] Center for Disease Control and Prevention relying on National Vital Statistics Report, Volume 62, number 9; December 30, 2013; Births: Final Data for 2012; by Joyce A. Martin, M.P.H.; Brady E. Hamilton, Ph. D.; Michelle J.K. Osterman, M.H.S.; Sally C. Curtin, M.A.; and T.J. Mathews, M.S., Division of Vital Statistics.

their individual goals, desires, intentions, and actions of Appellees do not fit within the definition of marriage. Just as Dimetman and Phariss would not be have been permitted to practice law if they did not possess the requisite characteristics of a Texas lawyer such as being a graduate of an accredited law school and individual who passed the Texas Bar Exam. Even though it is possible for certain individuals to do a fantastic job trying a case without these qualifications and some with those qualifications fail miserably, no one immediately assumes that these licensing requirements are the result of animus. Further, none of the Appellees have demonstrated nor has the Court explained how these laws affect them in a manner that is particular or different from all other unmarried individuals in the state causing injury. Nor is it demonstrated that any of the Appellees would directly benefit from the statutes in their own personal lives, if they were married.

Nevertheless, even if circumstances arose in the future in which Appellees would be able to avail themselves of those statutory protections by virtue of being a spouse, there are other statutory provisions and other actions they can take now to ensure the same results and benefits. In the very few instances where that is not possible, the appropriate challenge should be to those particular statutes and not to the definition of marriage. Although it is the position of Amicus that the State of Texas has acted wisely in enacting laws that encourage, support, and strengthen

traditional marriage, should this Court find those laws to be discriminatory, the proper solution would be to amend the offending laws.

Even in instances where the law automatically grants a right to a spouse, almost all of those same rights can be exercised by a non-spouse either under a different statutory provision or by execution of agreements and contracts. The fact that one person must access those rights in a manner different than another is not a deprivation of that right. For example, unless the parent-child relationship is terminated, all biological fathers enjoy the constitutionally protected right to make decisions regarding the care, custody, and control of their children, regardless of their marital status. *Stanley v. Illinois*, 405 U.S. 645, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972). Those rights are not diminished or burdened simply because they must take some additional actions to effectuate those rights, such as filing an Acknowledgment of Paternity or adjudicating their legal relationship to the child. Tex. Fam. Code Ann. §§160.301, 160.01(West). In the same manner, Appellees are not deprived of the right to make certain personal choices, simply because they must take additional actions in order to effectuate those rights.

In regard to the laws of intestacy, the only statutory protection that is not available to Appellees upon the death of one member off a couple is that afforded a spouse under certain circumstances. Tex. Estates Code Ann. §§201.001; 201.002; 201.003 (formerly Tex. Prob. Code Ann. §§ 38, 45 (West)); *De Leon v. Perry*, No.

SA-13-CA-00982-0LG, 2014 WL715741 at 12-13 (W.D. Tex. Feb.26, 2014). Even if the couple is married, the deceased's interest in community property, only passes to the spouse, if no child or child's descendants survive the deceased spouse or all the survivors are the children of the surviving spouse as well. Tex. Estates Code Ann. §201.002 (b). So for example, even if Dimetman and De Leon were married, Dimetman could still be excluded from survivorship unless she adopted De Leon's child.

Appellees are free to make wills that leave their property to whomever they choose, regardless of the characterization of that property. For property that the parties own as joint tenants in common, just as married couples often do, the joint tenants "may agree in writing that the interest of a joint owner who dies survives to the surviving joint owner or owners." Tex. Estates Code Ann. § 111.001. Married couples must also put their intent in writing to accomplish this same goal. Tex. Estates Code Ann. § 112.052. De Leon and Dimetman would have no tax concerns because the federal government determines the tax on inheritances and would recognize their marriage which is valid in another state. Even if Phariss and Holmes might in the future own property together, and one dies, leaving the survivor to pay taxes, the answer to the dilemma is to amend the inheritance tax to benefit everyone.

Appellees are also already able to make all necessary decisions for each other, including, but not limited to medical and last arrangement decisions. A durable power of attorney will permit any adult chosen by the principal to act on the principal's behalf. Tex. Estates Code Ann.Chapters 751 and 752. Appellees are able to designate each other to make medical decisions. Tex. Health & Safety Code Ann. § 166.032 (West); 166.153. They can also either leave written instructions for their final arrangements or designate each other to make those decisions for them. Tex. Health & Safety Code Ann. § 711.002(a)(1) (West).

The remaining statutory complaints can be remedied by modifying the specific laws in question, without redefining marriage and in a manner that provides those same rights to all citizens regardless of marital status or they can be removed from all married couples.

The most notable would be the laws related to community property:

"(3) claim certain protections against the partition of the homestead following the death of a spouse Tex. Const. art. XVI, § 52; (4) receive the community property presumption afforded to married couples. Tex. Fam. Code Ann. § 3.003 (West); and (5) petition the court for an equitable division of community property, including rights in any pension or retirement plan. Tex. Fam. Code Ann. §§ 7.001, 7.003 (West); *De Leon v. Perry*, No. SA-13-CA-00982-0LG, 2014 WL715741 at 12 (W.D. Tex. Feb.26, 2014). The constitutional provision raises the same issues

as the statutory provision and can be addressed in the same manner. Tex. Estates Code Ann. §§201.001; 201.002; 201.003. Since a single person can also claim a homestead exemption, the constitution could be amended to clarify that this provision also applies to parties who claim a homestead exemption for property that they own as joint tenants in common. Tex. Const. art. XVI, § 50.

Further, the community property presumption is simply that, a presumption which can be overcome by proving that the property was acquired before the marriage or by gift, devise, or descent. Tex. Fam. Code Ann. §§3.001,3.003 (West). Community property laws are generally beneficial only to one party, because they permit the court to give the other party more than half of the property during the dissolution of the marriage. Tex. Fam. Code Ann. § 7.001. Should they wish to run that risk, Appellees can form partnerships and enter into contracts, similar to premarital and marital agreements that provide how the property is to be divided if the partnership is dissolved, including the formula and other factors to be followed by the Court, should they need assistance in dividing their property. Tex. Fam. Code Ann. Chapter 4. The laws regarding joint tenants in common could also be amended to provide similar rights for joint tenants in common.

As for retirement and other employee benefits, only state governmental entities are prohibited from providing benefits or other recognitions of marriage. Tex. Fam. Code Ann. § 6.204 (West). All non-governmental entities are free to

extend to these relationships whatever benefits and recognition they choose and many do. It does not appear from the record that any of the Appellees are employed by a political subdivision of Texas. *De Leon v. Perry*, No. SA-13-CA-00982-0LG, 2014 WL715741 at 3-4 (W.D. Tex. Feb.26, 2014); Tex. Fam. Code Ann. § 6.204. Nor do they face a deprivation of benefits more than any other couples who are not married, either by choice or legal prohibition. Any single employee, regardless of sex, sexual orientation, or living arrangements, who performs the same duties as a married individual is precluded from receiving the equivalent compensation that is represented by the benefits provided to the married employee's spouse. If there is an inequity, then it needs to be rectified for all single individuals. As James Dobson, Ph. D. has suggested, the equitable remedy is to permit all employees to designate one adult that may receive any benefits that have historically been provided to the spouse of an employee.

Further, based on the employment history and the education of the Appellees, and the absence of any family violence, it is very unlikely than any of them would qualify for spousal maintenance. Tex. Fam. Code Ann. § 8.051 (West). Again, the simple solution is to extend this option to include other beneficiaries. The same solution would cure any perceived disparities in regard to bringing an action for wrongful death and enjoying the "zone of privacy" in regard

to testimony. Tex. Civ. Prac. & Rem. Code Ann. § 71.004 (West); Tex. Rules Evid.504.

> "The equality at which the 'equal protection' clause aims is not a disembodied equality. The Fourteenth Amendment enjoins the 'equal protection of the laws' and laws are not abstract propositions. They do not relate to abstract units A, B, and C, but are expressions of policies arising out of specific difficulties, addressed to the attainment of specific ends by the use of specific remedies."

Tigner v. Texas, 310 U.S. 141, 60 S. Ct. 879, 84 L. Ed. 1124 (1940). With the exception of the one constitutional provision, all of the statutes cited by the trial court as injurious to Appellees are codifications of common law that developed during a period of time when people were expected to marry, men went to work and women stayed home and cared for the home and children. The State of Texas has deemed it beneficial to continue encouraging this behavior in the context of traditional families, as beneficial to even our modern society. Still, they are now protections and benefits that have been adopted to the exclusion of other ideas and concepts, by the Legislature. If this Court finds that the denial of these benefits and protections discriminates against Appellees, without a rational basis, then the Legislature has the authority to extend these benefits to Appellees, without redefining marriage. Of course, if the union of one man and one woman is not separate enough and important enough to society to deserve special protections, then the State will have a difficult time establishing a rational basis to exclude any citizen of Texas from participating.

CONCLUSION

One Sunday the teacher showed her class a picture and asked the students to identify what was in that picture. After a few moments of complete silence, the teacher became more insistent, pointing out the brown coloring, the big bushy tail, and the nut being eaten. Finally succumbing to the pressure, one little girl raised her hand and stated, "Well, it sure looks like a squirrel to me, but to be safe, I'm going to say it's Jesus."

Appellees complaints all radiate from the one complaint- that they are not included. Changing the legal definition of marriage to include Appellees in the definition may afford them more convenient access to certain rights, should they find the need to use them one day. It will not, however, change the reality that their relationships are not marriage. Nor will it affect Appellees private lives any more than a state granted divorce changes a party's marital status within the confines of religious or other personally held beliefs. It will, however, require inclusion for everyone, which lead to confusion and chaos in domestic policies.

Lest this brief be disregarded as merely alarmist drama, this Court should take note that further deviations from norms that went unquestioned for centuries, are beginning to erupt across the globe. In Australia, just recently a judge agreed that a man who pled guilty of incest with his sister when she was a minor, should not be guilty of incest for the consensual sexual acts that took place between his

sister when she was 18 and himself when he was 26 years old.[5] He likened condemnation of the relationship to that of homosexuality, which for centuries was criminalized, but is now quite acceptable. Three lesbians claim to be married and expecting their first child.[6]

It is time to draw the line and reverse the course as quickly as possible to reinvigorate true marriage, which is and always has been the initial source of security, growth, and stability, so vital to a healthy society. The citizens of the State of Texas by amending their State Constitution and stepping up to defend both its laws and the institution are asking this Court to hold the ground.

Accordingly, the Center for the Preservation of American Ideals earnestly prays this Court find that Appellees have not been injured; or in the alternative that the marriage laws are not the cause of that injury and reverse the lower Court holding.

[5] "Australian Judge Says Incest May no Longer be Taboo", The Telegraph, July 10, 2014, by Jonathan Pearlman.
[6] New York Post, April 23, 2014, by David K. Li.

Respectfully submitted this the 4th day of August, 2014.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 4, 2014, I electronically filed the foregoing amicus curiae brief with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the CM/EFC system. I certify that all participants in the case, which are known to me at the time of filing, are registered CM/EFC users and that service will be accomplished by the CM/EFC system.

Dated: August 4, 2014

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1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(A)(7)(B) because this brief contains 6,119 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

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Dated: August 4, 2014

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NO. 14-50196

Cleopatra De Leon, et al. (Plaintiff) vs. Rick Perry, in his official capacity, et al. (Defendant)

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Name of Lead Counsel (Type or Print) Cecilia M. Wood

A. Name of any Circuit Judge of the Fifth Circuit who participated in this case in the district or bankruptcy court.

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