Pidgeon v. Turner: Insidious Inertia—Texas' Refusal to Extend Spousal Benefits to Same-Sex Couples

I. OVERVIEW

At a time and place in which marriage equality was publicly denounced and the rights of gays and lesbians were routinely under attack, the Mayor of Houston, Texas, bravely took a stand against the homophobic rhetoric surrounding her city.[1] In November 2013, Mayor Annise Parker directed the City of Houston's Human Resource Department to extend the employment benefits program to cover same-sex spouses of city employees who had married in other states.[2] The following month, two residents of Harris County, Texas, sued Parker and the City of Houston in Texas family court, seeking temporary and permanent injunctions to prevent the City from implementing such benefits.[3]

The family court granted the taxpayers' request and issued a temporary injunction preventing the City from granting the benefits in question.[4] Shortly before the injunction expired, the defendants removed the case to federal court, asserting a question of federal law.[5] The U.S.

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1. Pidgeon v. Turner, No. 15-0688, 2017 WL 2829350, at *1 (Tex. June 30, 2017), *cert. denied*, 138 S. Ct. 505 (Tex. 2017).

2. *Id.* at *1-2. Notably, Parker is Houston's first openly gay mayor and made the decision to extend spousal benefits at the advice of the City's attorney after the ruling of *U.S. v. Windsor*, 570 U.S. 744 (2013). *See* Mark Joseph Stern, *Texas Messes with Marriage Equality,* SLATE.COM (June 30, 2017), http://www.slate.com/articles/news_and_politics/jurisprudence/2017/06/texas_supreme_court_refuses_to_extend_spousal_benefits_to_same_sex_couples.html). Parker was heavily criticized by antigay activists and religious leaders for the move for allegedly promoting her own personal agenda as a lesbian. *See* Mike Morris, *Sidestepping City Charter, Parker Offers Spousal Benefits to Gay Employees*, HOUS. CHRON., (Nov. 20, 2013). http://www.houstonchronicle.com/news/politics/houston/article/Sidestepping-city-charter-Parker-offers-spousal-4997360.php). The idea that Parker was acting based solely on her own personal beliefs and self-interest was also reiterated in the Texas Governor's amicus brief. Amicus Curiae Brief of Governor Greg Abbott, Lieutenant Governor Dan Patrick, and Attorney General Ken Paxton in Support of Petitioners, at 2, *Pidgeon*, No. 15-0688, 2017 WL 2829350.

3. Pidgeon v. Parker, 46 F. Supp. 3d 692, 694 (S.D. Tex. 2014).

4. *Pidgeon*, 2017 WL 2829350, at *1-2.

5. *Id.*

District Court for the Southern District of Texas found that there was no federal question warranting the removal and granted the plaintiffs' motion to remand.[6] The case was remanded to the 310th Judicial District Court of Harris County.[7] The City and the Mayor then appealed the injunction to the Court of Appeals for the Fourteenth District of Texas in 2015, via an interlocutory appeal.[8] While the appeal was pending, the United States Supreme Court ruled on *Obergefell v. Hodges*.[9] In light of *Obergefell* and the Fifth Circuit Court of Appeals' finding in *De Leon v. Abbott*, the Court of Appeals for the Fourteenth District of Texas reversed the trial court's temporary injunction and remanded the case for proceedings consistent with both *Obergefell* and *De Leon*.[10] The plaintiffs appealed this decision to the Texas Supreme Court, which initially denied the plaintiffs' petition for review,[11] but later agreed to hear the case.[12] The Supreme Court of Texas *held* that the court of appeals' judgment be reversed, the trial court's temporary injunction be vacated, and the case be remanded without instruction on how to construe *Obergefell*. *Pidgeon v. Turner*, No. 15-0688, 2017 WL 2829350, at *1 (Tex. June 30, 2017), *cert. denied*, 138 S. Ct. 505 (Tex. 2017).

II. BACKGROUND

In *Obergefell v. Hodges*, the United States Supreme Court held that not only could same-sex couples marry, but that they could do so on the same "terms and conditions" as opposite-sex couples.[13] However, the extent of this equality is still being scrutinized by the Texas judiciary.[14] While the Court of Appeals for the Fourteenth District of Texas found that *Obergefell* extended marital employment benefits to the spouses of

6. *Pidgeon*, 46 F. Supp. 3d at 700.
7. *Id.*
8. *Pidgeon*, 2017 WL 2829350, at *1.
9. *Id.*
10. Parker v. Pidgeon, 477 S.W.3d 353, 353-54 (Tex. App. 2015).
11. Pidgeon v. Turner, No. 15-0688, 2016 WL 4938006 (Tex. Sept. 2, 2016), *reh'g granted, order withdrawn* (Jan. 20, 2017). While the Texas Supreme Court initially denied the plaintiff's petition for review, Justice Devine wrote an extensive dissenting opinion for the denial. Justice Devine indicated a favorable view of the plaintiffs' argument, reasoning that while *Obergefell* assumed same- and opposite-sex couples would receive the same benefits, it would still be acceptable to deny benefits to same-sex couples. The Justice justified this disparate treatment due to his belief that same-sex couples are unable to procreate.
12. *Pidgeon*, 2017 WL 2829350, at *5.
13. Obergefell v. Hodges, 135 S. Ct. 2584, 2605 (2015).
14. *Pidgeon*, 2017 WL 2829350, at *1.

same-sex couples,[15] the Texas Supreme Court refused to rule on the issue.[16]

In 1973, Texas became the second state to adopt legislation denying marriage and marital benefits to same-sex couples.[17] These initial restrictions, housed in the Texas Family Code, provided that marriage licenses would "not be issued for marriage of persons of the same sex."[18] These restrictions were later expanded, taking on their current form.[19] Restrictions on same-sex couples' right to marry and receive spousal benefits are often referred to as Defense of Marriage Acts (DOMAs).[20] In the 1990s, while some states began to permit same-sex marriage and expand the rights of citizens, others reacted by further restricting the rights of gay and lesbian couples by enacting DOMAs similar to Texas's law—including the federal government.[21] The federal Defense of Marriage Act allowed states to refuse to recognize same-sex marriages performed in other jurisdictions, while also amending the Dictionary Act[22] to define marriage as exclusively between opposite-sex couples.[23] By limiting the definition of marriage, the amendment impacted over one thousand other federal laws that addressed marital or spousal status.[24]

However, the proliferation of such restrictions under the federal and state DOMAs was not unchallenged. In *United States v. Windsor*, a surviving spouse of a same-sex couple was excluded from the estate tax exemption due to the amended definition of marriage.[25] In a 5-4 decision, the United States Supreme Court found that the federal DOMA's definition of marriage was a violation of the "basic due process

15. *Id.* at *5.
16. *Id.* at *12.
17. *Id.* at *1.
18. *Id.* at *4.
19. *Id.* at *1-2. Article 1, section 32 of the Texas constitution states that "[m]arriage in this state shall consist only of the union of one man one woman" and "this state or political subdivision of this state may not create or recognize any legal status identical or similar to marriage." In addition to this constitutional amendment, section 6.204 of the Texas Family Code states that "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." *Id.* at *4. The statute goes on to state that the state and its political subdivisions will not recognize or give weight to same-sex marriages, nor will it claim any "legal protection, benefit, or responsibility" asserted by persons of the same-sex, even those married in another jurisdiction (TEX. FAM. CODE ANN. § 6.204 (2003)). *Pidgeon*, 2017 WL 2829350, at *4.
20. *Pidgeon*, 2017 WL 2829350, at *1-2.
21. *Id.*
22. 1 U.S.C § 7 (2012).
23. United States v. Windsor, 133 S. Ct. 2675, 2683 (2013).
24. *Id.* at 2683.
25. *Id.* at 2683.

and equal protection principles applicable to [the] Federal Government."[26] The Court reasoned that federal DOMA restrictions conflicted with state laws that permitted same-sex marriage and granted equal rights to same-sex spouses, thereby creating "two contradictory marriage regimes within the same state."[27] Moreover, the Court found that the purpose and practical effect of DOMA was solely to "impose disadvantage, a separate status, and . . . stigma upon all those who enter into same-sex marriage." Consequently, DOMA violated both the Due Process Clause of the Fifth Amendment and the Equal Protection Clause of the Fourteenth Amendment.[28]

Following the trailblazing ruling in *Windsor*, the Supreme Court held in *Obergefell v. Hodges* that denying same-sex couples the right to marry was in violation of the Fourteenth Amendment's Due Process and Equal Protection Clauses.[29] The Court reasoned that marriage is a fundamental right and denying same-sex couples the right to marry amounts to a discriminatory imposition made to disable, "disrespect, and subordinate" gays and lesbians.[30] But the Court went further than simply finding that same-sex couples had the right to marry; it promulgated same-sex couples' right to marriage "on the same terms and conditions as opposite-sex couples."[31] The Court recognized the material benefits marriage confers upon spouses and their children and noted that, historically, marriage has been seen as an *expansion* of governmental rights and benefits, rather than a constriction of these rights.[32] Notably, the Court illustrates several examples of these benefits, such as workers' compensation and health insurance, as privileges that contribute to the "fundamental character of the marriage right."[33] Most crucial among this "constellation" of marriage benefits are the legal safeguards granted to the children of married couples.[34] The Court found that denying such benefits to the children of same-sex couples resulted in "significant material costs" and relegated them to "a more difficult and uncertain family life."[35]

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26. *Id.* at 2693.
27. *Id.* at 2694.
28. *Id.* at 2693.
29. Obergefell v. Hodges, 135 S. Ct. 2584, 2604-05 (2015).
30. *Id.* at 2604.
31. *Id.* at 2605.
32. *Id.* at 2601.
33. *Id.*
34. *Id.* at 2600.
35. *Id.*

Despite the holding in *Obergefell*, states have continued to enforce regulations that allow for the disparate treatment of same-sex spouses. Recently, the Supreme Court expressly addressed whether *Obergefell* extended marriage benefits to the spouses of same-sex couples. In *Pavan v. Smith*, two married, same-sex couples who conceived through anonymous sperm donation brought suit against the Arkansas Department of Health after the state refused to print both spouses' name on their babies' birth certificates.[36] The state's refusal to print both names on the birth certificates was the result of the outdated and gendered language in the Arkansas law regarding state-issued birth certificates.[37] The Supreme Court held that this was inconsistent with *Obergefell*, as it treated same-sex couples differently than opposite-sex couples in the exact same circumstances and thus denied same-sex couples of the right to have both parents listed on their children's birth certificates.[38] The Court's ruling in *Pavan* summarily and unequivocally affirmed the ruling promulgated in *Obergefell*, holding that marriage equality extends beyond just the right to marry and bestows the rights, benefits, and responsibilities conferred by marriage to same-sex couples.[39] Any infringement of the rights of gay and lesbian couples to enjoy these benefits is inconsistent with *Obergfell* and, therefore, unconstitutional.[40]

In addition to the Supreme Court's holdings regarding spousal benefits, the United States Court of Appeals for the Fifth Circuit has also ruled on the issue. In *De Leon v. Abbot*, the Fifth Circuit held that article 1, section 32 of the Texas Constitution, related provisions of the Texas Family Code, and "any other laws or regulations prohibiting a person from marrying another person of the same sex or recognizing same-sex marriage" were inconsistent with the ruling in *Obergefell*.[41] Like the same-sex couple in *Pidgeon*, the plaintiffs in *De Leon* were two same-sex

36. Pavan v. Smith, 137 S. Ct. 2075, 2077 (2017).

37. ARK. CODE ANN. § 20-18-401 (West 2014). "For the purposes of birth registration, the mother is deemed to be the woman who gives birth to the child." *Id.* § 20-18-401(e). Also, "[i]f the mother was married at the time of either conception or birth," the statute instructs that "the name of [her] husband shall be entered on the certificate as the father of the child." *Id.* § 20-18-401(f)(1); *Pavan*, 137 S. Ct. at 2077.

38. *Pavan*, 137 S. Ct. at 2078. The Court goes onto explain the significance of being listed on the birth certificate, which is used to allow parents to make decisions about their children's medical care and schooling. In denying both parents the right to be on the birth certificate, the state was disadvantaging same-sex spouses and their children.

39. *Id.*

40. *Id.*

41. De Leon v. Abbott, 791 F.3d 619, 625 (5th Cir. 2015).

couples who sought to marry in Texas or have their marriage in another state recognized.[42]

III. COURT'S DECISION

In the noted case, the Texas Supreme Court failed to resolve whether *Obergefell* extends spousal benefits to same-sex couples and, instead, vacated the trial court's temporary injunction order and remanded the case to the trial court for further proceedings.[43] Furthermore, the Court held that the court of appeals erred in ordering the trial court to rule "consistently" with the Fifth Circuit Court of Appeals' decision in *De Leon*[44] and declined to instruct the trial court on how to apply *Obergefell*.[45]

The Court addressed each of the plaintiffs' following claims in turn: (1) the court of appeals erred in instructing the trial court to proceed consistently with De Leon; (2) the court of appeals erred in reversing the temporary injunction, arguing that it should have been vacated or dissolved; (3) the plaintiff's claim that the temporary injunction should have been affirmed and required the City to claw back benefits provided prior to *Obergefell*; and (4) the Texas Supreme Court should instruct the trial court to construe *Obergefell* narrowly on remand.[46]

The Court first addressed the court of appeals' conclusion that the trial court should hold consistently with *De Leon* and *Obergefell*.[47] *De Leon* resolves the issue currently before the court, holding that DOMAs like Texas' are unconstitutional and unenforceable.[48] While the Texas Supreme Court acknowledged that *De Leon* is "crucial" to the plaintiffs' case, it explained that circuit court rulings are not binding and, therefore, that the court of appeals erred in ordering the trial court to rule "consistently" with *De Leon*.[49] The Court noted, however, that the trial court should "consider" *De Leon* when resolving the claims, stating that the trial court should proceed "in light of" *De Leon*, rather than "consistent with" it.[50]

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42. *Id.* at 624.
43. Pidgeon v. Turner, No. 15-0688, 2017 WL 2829350, at *12 (Tex. June 30, 2017).
44. *Id.* (finding that the trial court is not required to conduct its proceedings consistent with *De Leon*)
45. *Id.*
46. *Id.* at *7.
47. *Id.* at *7.
48. *Id.*; *see* De Leon v. Abbott, 791 F.3d 619, 625 (5th Cir. 2015).
49. *Pidgeon*, 2017 WL 2829350, at *7, *12.
50. *Id.* at *11.

Next, the Court addressed the plaintiffs' argument that the court of appeals' reversal of the trial court's temporary injunction would have a res judicata effect, prohibiting the plaintiffs from seeking similar relief on remand.[51] The Texas Supreme Court reasoned that the rules of appellate procedure permit the court to "vacate a lower court's judgment and remand the case for further proceedings in light of changes in the law," and that dissolving a temporary injunction bars a later application for the same injunctive relief.[52] As such, the Texas Supreme Court found that, while *Obergefell* warranted a dissolution of the injunction, it also constituted a change in the law, thus allowing the plaintiffs to seek the same or similar relief on remand.[53]

The Court then went on to address the plaintiffs' request to order the City to claw back tax dollars that were previously expended on the employee benefits of same-sex couples prior to *Obergefell*.[54] The plaintiffs argued that, as "devout Christians," they suffered injury from the Mayor's "unlawful edict to subsidize homosexual relationships that they regard as immoral and sinful," and that the United States Supreme Court's ruling in *Burwell v. Hobby Lobby Stores* required the Court to grant their retroactive relief.[55] In response, the City of Houston argued that not only does *Hobby Lobby* not grant the plaintiffs' standing, but that the City cannot recover funds it has already paid to third parties.[56] The Texas Supreme Court found that these arguments were "interesting and important" but declined to state any opinion on whether Pidgeon was entitled to clawback relief.[57] The Court reasoned that because there was never any request for clawback relief before this point, and the temporary injunction that was at issue did not address clawback relief, the court would not express an opinion on the matter.[58] However, the Court did find that Pidgeon was not prohibited from seeking such an injunction on remand.[59]

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51. *Id.* at *8.

52. *Id.*; *see* Sonwalker v. St. Luke's Sugar Land P'ship, 394 S.W.3d 186, 195 (Tex. App. 2012).

53. *Pidgeon*, 2017 WL 2829350, at *8.

54. *Id.*

55. *Id.* at *9. While it is accurate that as in the noted case, the plaintiffs in *Burell v. Hobby Lobby,* 134 S. Ct. 2751, 2757 (2014), were conservative Christians, there is no reference to the type of clawback measures the plaintiffs were demanding in *Hobby Lobby*.

56. *Pidgeon*, 2017 WL 2829350, at *9 (citing Hoffman v. Davis, 128 Tex. 503 (1937)).

57. *Id.*

58. *Id.*

59. *Id.*

The Court next addressed the plaintiffs' suggested instructions on remand.[60] Pidgeon asked that the trial court "narrowly construe" *Obergefell*.[61] Despite acknowledging the holdings of *Windsor*, *Obergefell*, *De Leon*, and *Pavan*, the Texas Supreme Court still found that the issue was unresolved and refused to instruct the trial court in its reading of *Obergefell*.[62] The Court further justified this finding by claiming that the issue had not been "fully developed or litigated."[63]

IV. ANALYSIS

The Texas Supreme Court's evasive and highly political holding in the noted case marks not only a missed opportunity for the Texas judiciary, but a stagnation in the progression of civil rights for gay and lesbian Texans. Since the noted case's initial filing, multiple rulings from the United States Supreme Court and the Fifth Circuit Court of Appeals have definitively determined that same-sex spouses are entitled to the same rights and benefits as their opposite-sex counterparts.[64] Rather than holding consistently with these cases, the Texas Supreme Court refused to rule on the issue,[65] leaving open the possibility that Texas will continue to enforce the outdated and unconstitutional state DOMAs, and that the City of Houston will have to claw back benefits granted before *Obergefell*.[66]

The blatant bias underlying the Texas Supreme Court's decision is evidenced by the fact that the Court initially refused to hear the case, but changed its course after receiving an amicus brief from several prominent conservative politicians, urging the court to rule on the issue.[67] The Republican Governor, Lieutenant Governor, and Attorney General all signed off on the brief, which urged the Texas Supreme Court to rule that neither *Obergefell* nor *De Leon* resolved the issue in the noted case.[68]

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60. *Id.*

61. *Id.* The plaintiffs also argued that *Obergefell* is "poorly reasoned" and fails to "faithfully interpret the constitution."

62. *Id.* at *10, 12.

63. *Id.* at *11-12. The court reasoned that the pending Supreme Court hearing of *Craig v. Masterpiece Cakeshop, Inc.*, is further evidence that the issue has yet to be adjudicated and requires further litigation. The court also analyzed the issue of immunity, as the defendants are an ex-mayor and the government.

64. See Obergefell v. Hodges, 135 S. Ct. 2584, 2605 (2015); De Leon v. Abbott, 791 F.3d 619, 625 (5th Cir. 2015); Pavan v. Smith, 137 S. Ct. 2075, 2078 (2017).

65. *Pidgeon*, 2017 WL 2829350, at *10, 12.

66. *Id.* at 12.

67. Amicus Curiae Brief of Governor Greg Abbott, Lieutenant Governor Dan Patrick, and Attorney General Ken Paxton in Support of Petitioners, *supra* note 2, at 3.

68. *Id.* at 14.

According to the brief, *Obergefell* strictly applies to same-sex couples' right to marry, and the rest of that lengthy ruling is merely an "opinion"—in no way binding upon the noted case.[69] Furthermore, the brief indicated that extending employment benefits to same-sex spouses would amount to "subsidizing" gay marriage.[70] The authors' homophobic bias is immediately apparent, as is the Texas Supreme Court's attempt to cater to that bias. Journalists and LGBT advocates have criticized the Court's ruling as politically motivated, pointing out that the justices of the all-Republican Texas Supreme Court are elected officials.[71] In addition to the obvious political pressure from the state government, the Court also acknowledged the political pressure from the justices' constituencies.[72] The Court noted that it received "emails, letters, and postcards . . . which [it] treated as amicus briefs" informing their decision.[73]

Further evidence of the Texas Supreme Court's biased ruling is demonstrated by the opinion's inconsistent reasoning. First, the Court reasoned that the United States Supreme Court did not "address and resolve" the extent to which states may be required to grant spousal benefits to same-sex couples.[74] However, *Obergefell* clearly does resolve the issue, holding that same-sex couples have a right to civil marriage "on the same terms and conditions as opposite sex couples."[75] What's more, *Obergefell* consisted of multiple consolidated cases, many of which involved issues exactly like those before the Texas Supreme

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69. *Id.* at 4. The brief makes much ado of emphasizing that the majority opinion in *Obergefell* is an opinion, and therefore not binding, by repeatedly italicizing the word opinion. The brief argues that applying the Supreme Court's reasoning in *Obergefell* to the current case would be an "erroneous understanding of the nature of federal courts and their opinions."

70. *Id.* at 7.

71. Chuck Smith, the CEO of the LGBT advocacy group, Equality Texas, said in an interview that the Texas Supreme Court "caved to political pressure." Nico Lang, *The Fight to Repeal Same-Sex Marriage Begins: Texas Hears Case to Restrict Spousal Benefits to LGBT Couples*, SALON (Mar. 7, 2017), https://www.salon.com/2017/03/07/the-fight-to-repeal-same-sex-marriage-begins-texas-hears-case-to-restrict-spousal-benefits-to-lgbt-couples/; *see* Mark Joseph Stern, *Texas Messes with Marriage Equality*, SLATE.COM (June 30, 2017), http://www.slate.com/articles/news_and_politics/jurisprudence/2017/06/texas_supreme_court_refuses_to_extend_spousal_benefits_to_same_sex_couples.html; Dale Carpenter, *How Wrong Was the Texas Supreme Court About Equality for Married Couples,* WASH. POST (July 7, 2017), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/07/02/how-wrong-was-the-texas-supreme-court-about-equality-for-married-gay-couples/?utm_term=.2f5f3dc89961.

72. Pidgeon v. Turner, No. 15-0688, 2017 WL 2829350, at *5 (Tex. June 30, 2017).

73. *Id.* This alarming admission is a departure from tradition, as typically judges do not take public opinion into account when ruling on civil rights issues.

74. *Id.* at *11.

75. Obergefell v. Hodges, 135 S. Ct. 2584, 2605 (2015).

Court—regarding peripheral spousal benefits of marriage, such as employment benefits.[76]

Also notable is the Court's reasoning that it could not resolve the issue because it requires further litigation.[77] This reasoning is completely contrary to *Obergefell*, which rejected a "slower, case-by-case determination of the required availability of specific public benefits to same sex couples."[78] Furthermore, even if the initial ruling in *Obergefell* did not resolve the issue, *Pavan* definitively did. Again, *Pavan* summarily held that state laws that denied spousal benefits to same-sex couples while granting the same benefits to opposite-sex couples are unconstitutional following the ruling in *Obergefell*.[79] While the Texas Supreme Court acknowledged *Pavan* in a footnote, it completely ignored the significance of *Pavan*'s holding.[80]

In reasoning that the matter required further litigation, the court also referenced *Craig v. Masterpiece Cakeshop, Inc.*[81] *Masterpiece Cakeshop* involved the First Amendment rights of businesses to deny service to LGBT individuals under the auspices of religious freedom, and, for many reasons, is not analogous to either *Pavan* or the noted case.[82] The court's reference to *Masterpiece Cakeshop*, and its discounting of *Pavan*, demonstrates a purposeful conflation and misrepresentation of the law, and the political motivation behind the court's holding.

While the Texas Supreme Court has attempted to dodge the legal issue of same-sex spousal benefits, their intention—and the impact of their holding—is clear. Leaders of the antigay conservative group representing the plaintiffs in the noted case, Texas Values, called the Texas Supreme Court's unanimous decision a "huge win . . . for those who support the state's marriage laws."[83] While the court's ruling does not have an immediate impact on the lives of gay and lesbian Texans,[84] it sends a dangerous and disturbing message. Texas' highest court is willing to gamble with the civil liberties of gays and lesbians under political pressure. While it remains unknown whether the City of

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76. *Id.* at 2588, 2595.
77. *Pidgeon*, 2017 WL 2829350, at *12.
78. *Obergefell*, 135 S. Ct. at 2606.
79. Pavan v. Smith, 137 S. Ct. 2075, 2077 (2017).
80. *Pidgeon*, 2017 WL 2829350, at *12.
81. *Id.*
82. *Id.*
83. Alexa Ura, *Texas Supreme Court Throws Out Ruling That Favored Same-Sex Marriage Benefits*, TEX. TRIB. (June 30, 2017), https://www.texastribune.org/2017/06/30/texas-supreme-court-ruling-houston-same-sex-marriage-benefits/.
84. *Pidgeon*, 2017 WL 2829350, at *12. The court vacated the trial court's initial injunction.

Houston will appeal the holding, if they do not, the trial court could allow gays and lesbians to be denied spousal benefits and could even order the City of Houston to claw back previously administered benefits.[85] Vic Holmes, who, along with his husband, Mark Pharris, was one of the original plaintiffs that challenged Texas' marriage ban following *Windsor*, summarized the Texas Supreme Court's holding by stating: "It's an insult to everything we fought for."[86]

Despite the progress made in *Obergefell*, antigay activists continue to fight vigorously to chip away at the rights of gays and lesbians. Regrettably, the Texas Supreme Court sided with these opponents in the noted case, suggesting that the rights and benefits afforded to same-sex Texan couples in Texas end at the altar. *Pidgeon v. Turner* is not the first—and most certainly will not be the last—attack on the sanctity of same-sex marriage. Now, as in the past, LGBT advocates will recoup and continue to fight for equal dignity under the law. As always, these tireless, fearless advocates and attorneys will continue to face these threats while advancing the rights of the LGBT community.

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85. *Id.* In doing so, the court in the noted case promulgates the same second-class of marriage the United States Supreme Court warned of in *Obergefell*.

86. Nico Lang, *The Fight to Repeal Same-Sex Marriage Begins: Texas Hears Case to Restrict Spousal Benefits to LGBT Couples*, SALON.COM (Mar. 7, 2017), https://www.salon.com/2017/03/07/the-fight-to-repeal-same-sex-marriage-begins-texas-hears-case-to-restrict-spousal-benefits-to-lgbt-couples/. Regrettably, the decision also comes months before civil rights activist Edith Windsor's passing. Windsor was the plaintiff in *United States v. Windsor* and a leader in the fight for marriage equality. Robert D. McFaden, *Edith Windsor, Whose Same-Sex Marriage Fight Led to Landmark Ruling, Dies at 88,* N.Y. TIMES (Sep. 12, 2017), https://www.nytimes.com/2017/09/12/us/edith-windsor-dead-same-sex-marriage-doma.html).

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