

TEXAS HOUSE of  
REPRESENTATIVES

James White

House District 19  
Jasper, Newton, Hardin, Polk, TylerHOMELAND SECURITY  
& PUBLIC SAFETY, CHAIR

CORRECTIONS

REDISTRICTING

October 19, 2021

The Honorable Ken Paxton, Attorney General  
Office of the Attorney General  
ATTN: Opinions Committee  
P.O. Box 12548  
Austin, Texas 78711-2548

**RQ-0436-KP**  
**FILE# ML-49045-21**  
**I.D.# 49045**

**Re: Whether *Obergefell v. Hodges*, 576 U.S. 644 (2015), requires private citizens to recognize homosexual marriages when the law of Texas continues to define marriage exclusively as the union of one man and one woman**

Dear General Paxton:

The Constitution and laws of Texas continue to define marriage as the union of one man and one woman. See Tex. Const. art. I, § 32 (“(a) Marriage in this state shall consist only of the union of one man and one woman. (b) This state or a political subdivision of this state may not create or recognize any legal status identical or similar to marriage.”); Tex. Family Code § 6.204(b) (“A marriage between persons of the same sex or a civil union is contrary to the public policy of this state and is void in this state.”).

The State of Texas has not amended or repealed its marriage laws in response to *Obergefell v. Hodges*, 576 U.S. 644 (2015). And the Supreme Court has no power to amend formally or revoke a state statute or constitutional provision — even after opining that the state law violates the Supreme Court’s interpretation of the Constitution. See *Pidgeon v. Turner*, 538 S.W.3d 73, 88 n.21 (Tex. 2017) (“[N]either the Supreme Court in *Obergefell* nor the Fifth Circuit in *De Leon* ‘struck down’ any Texas law. When a court declares a law unconstitutional, the law remains in place unless and until the body that enacted it repeals it”); *Texas v. United States*, 945 F.3d 355, 396 (5th Cir. 2019) (“The federal courts have no authority to erase a duly enacted law from the statute books, [but can only] decline to enforce a statute in a particular case or controversy.” (citations and internal quotation marks omitted)). The federal judicial power extends only to the resolution of cases and controversies between litigants. The fact that a federal district court has enjoined state officials from enforcing the Texas marriage laws<sup>1</sup> in no way affects the existence or validity of those laws with regard to private parties, who are not even bound by the Fourteenth Amendment — let alone the Supreme Court’s purported interpretations of it. See *Civil Rights Cases*, 109 U.S. 3 (1883).

<sup>1</sup> See *De Leon v. Perry*, 5:13-cv-00982-OLG (W.D. Tex.).



# TEXAS HOUSE *of* REPRESENTATIVES

*James White*

*House District 19  
Jasper, Newton, Hardin, Polk, Tyler*

HOMELAND SECURITY  
& PUBLIC SAFETY, CHAIR

CORRECTIONS

REDISTRICTING

I respectfully ask that you clarify that neither *Obergefell* nor *De Leon* requires private citizens to recognize homosexual marriages, and neither decision requires or allows them to disregard the extant laws of Texas that continue to define marriage as the union between one man and one woman.

Thank you for considering this request.

Respectfully,

James White  
State Representative  
House District 19

