

**No. 14-0404**

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**In the Supreme Court of Texas**

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**HEATHER DELGADO, in her capacity a/n/f [REDACTED]  
and [REDACTED], and SIMONA LONGORIA,**

**Petitioners,**

**v.**

**NIKKI ARAGUZ,**

**Respondent.**

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**RESPONDENT'S REPLY IN SUPPORT OF HER  
SUPPLEMENTAL BRIEF ON THE MERITS**

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## ARGUMENT IN REPLY

Petitioners desperately try to show that the United States Supreme Court’s decision in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), does not apply to the issue before this Court. Their effort is to no avail.

### **I. *Obergefell* controls the outcome of this case.**

Petitioners incorrectly claim that this case presents “different issues” from those in *Obergefell*. Response at 2. First, petitioners say that this case “involves the validity of a purported marriage between two people who never sought a same-sex marriage.” *Id.* That argument fails because, as the Court explained in *Obergefell*, from a constitutional standpoint there are not two distinct institutions known as “same-sex marriage” and “opposite-sex marriage.” *See Obergefell*, 135 S. Ct. at 2602. Rather, there is only one institution—marriage—which may be enjoyed by either a same-sex couple or an opposite-sex couple. *See id.* Thus, the Court explained, the couples in *Obergefell* were not seeking “a new . . . ‘right to same-sex marriage,’” but simply the right to participate in the existing institution of marriage. *Id.*

Nikki and Thomas exercised their right to participate in the institution of marriage in 2008 and were married at the time of his tragic death two years later. In this case, Nikki simply seeks recognition of their marriage. The issue of whether the marriage was a “same-sex” marriage arose only because the petitioners

attempted to characterize it in that manner. But for that attempted distinction, which has now been rejected by the Supreme Court, the issue of same sex marriage would never have arisen.

Next, petitioners inexplicably argue that *Obergefell* may be distinguished on the ground that it merely “involved the rights of same sex couples to get married *in the future.*” Response at 2 (emphasis added). But *Obergefell* validated the marriage between James Obergefell and John Arthur, which ended when John passed away before the litigation was filed. *See id.* at 2594-95. Just as James Obergefell was entitled to recognition of his marriage, Nikki is entitled to recognition of hers. *See Harper v. Va. Dep’t of Taxation*, 509 U.S. 86 (1993).

## **II. The State of Texas, through its Attorney General, recently abandoned petitioners’ retroactivity argument.**

Petitioners’ argument about retroactivity was recently abandoned by the Texas Attorney General in *DeLeon v. Abbott*, No. 5:13-cv-00982-OLG (W.D. Tex.). In post-judgment proceedings in that case, the court addressed the validity of the marriage between John Allen Stone-Hoskins and James Stone-Hoskins, who passed away in January 2015.

On June 27, 2015—one day after *Obergefell* was decided—John began requesting that the State of Texas correct James’s death certificate to recognize

John as James's spouse.<sup>1</sup> When the State failed to honor his request, John intervened in *DeLeon* seeking that same relief. The State initially responded that it was not required to correct the death certificate because it was unclear that *Obergefell* applied retroactively.<sup>2</sup> However, on August 10, 2015, the Attorney General altered course and notified the *DeLeon* court that the State had amended the death certificate as requested.<sup>3</sup> On August 12, 2015, the Attorney General notified the *DeLeon* court that in consultation with his office, the Texas Department of State Health Services has developed procedures to ensure future compliance with *Obergefell*.<sup>4</sup> The Attorney General correctly recognized that *Obergefell* applies retroactively, and this Court should do the same.

### CONCLUSION AND PRAYER

As Nikki explained in her supplemental brief on the merits, she no longer opposes a grant of review by this Court for the sole purpose of remanding this case

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<sup>1</sup> John Allen Stone-Hoskins' Emergency Motion to Intervene and for Contempt, filed Aug. 8, 2015 in *DeLeon v. Abbott*, No. 5:13-cv-00982-OLG (W.D. Tex.).

<sup>2</sup> See Miriam Rozen, *Contempt hearing postponed, same-sex families will get to amend birth, death certificates*, TEXAS LAWYER, Aug. 11, 2015 (quoting an August 5, 2015 statement from the Office of the Attorney General that "[w]hether *Obergefell* is retroactive is a complex legal question"); Guillermo Contreras, *Judge orders Paxton to court over gay-marriage order*, HOUSTON CHRONICLE, Aug. 5, 2015 (quoting Neel Lane, one of the lawyers representing John Stone-Hoskins, as saying that Texas officials did not agree that same-sex marriage rulings were retroactive).

<sup>3</sup> Order entered Aug. 11, 2015 in *DeLeon v. Abbott*, No. 5:13-cv-00982-OLG (W.D. Tex.).

<sup>4</sup> Advisory to the Court filed August 12, 2015 in *DeLeon v. Abbott*, No. 5:13-cv-00982-OLG (W.D. Tex.).

to the court of appeals for further action consistent with *Obergefell*. In the alternative, Nikki requests that the Court deny the petition for review, or alternatively affirm the court of appeals' judgment and remand the case to the trial court.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**  
**TEX. R. APP. P. 9.4(i)(3)**

I hereby certify that Respondent's Reply in Support of Her Supplemental Brief on the Merits contains a total of 753 words, excluding the parts exempted under TEX. R. APP. P. 9.4(i)(1), as verified by Microsoft Word 2010. This Brief is therefore in compliance with TEX. R. APP. P. 9.4(i)(2).

Dated: August 17, 2015.

*/s/ Kent Rutter*

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*Attorney for Respondent,*

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## CERTIFICATE OF SERVICE

In accordance with the Texas Rules of Appellate Procedure, I hereby certify that a true and correct copy of *Respondent's Reply in Support of Her Supplemental Brief on the Merits* was served via E-Service on the following counsel of record on this 17th day of August, 2015:

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