

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

James Obergefell, et al.,	:	Civil Action No. 1:13-cv-501
	:	
Plaintiffs	:	Judge Timothy S. Black
	:	
v.	:	
	:	<u>DEFENDANT CITY OF</u>
John Kasich, et al.,	:	<u>CINCINNATI VITAL STATISTICS</u>
	:	<u>REGISTRAR CAMILLE JONES'</u>
Defendants.	:	<u>RESPONSE TO PLAINTIFFS'</u>
	:	<u>MOTION FOR TEMPORARY</u>
	:	<u>RESTRAINING ORDER</u>

The City of Cincinnati, on behalf of its employee Defendant Camille Jones, M.D., the Vital Statistics Registrar for the City, offers the following response to Plaintiffs’ Motion for Temporary Restraining Order. The City notes that this matter is at a preliminary stage and reserves the right to modify this response as additional information is developed.

The City will not defend Ohio’s discriminatory ban on same-sex marriages, but the City’s vital statistics registrar is bound to follow Ohio law until that law is changed or overturned. She could face criminal sanctions for failing to do so.

THE STATE CONTROLS THE VITAL STATISTICS SYSTEM AND LAWS

1. The State of Ohio system for recording vital statistics is established by Chapter 3705 of the Ohio Revised Code. *See* Ohio Rev. Code §§ 3705.01 *et seq.*

2. Ohio’s director of health appoints a state registrar, who administers and enforces the “statewide system” for vital statistics created by Chapter 3705. Ohio Rev. Code §§ 3705.02-03.

3. The state registrar “directs, supervises, and controls all persons engaged in activities governed by” Chapter 3705. Ohio Rev. Code § 3705.03.

4. A local registrar is appointed in each primary health district throughout the state to assist the state registrar. Ohio Rev. Code § 3705.05. Dr. Jones is the local registrar of vital statistics for the City.

5. The local registrar’s job is largely ministerial. She must follow state law and procedures for the recording of vital statistics. The State “prepare[s] and issue[s] instructions necessary to secure the uniform observance of [sections 3705.01-29].” Ohio Rev. Code § 3705.02. The vital statistics forms are prescribed by the State. Ohio Admin. Code § 3701-5-02(B). “No system of registration of births, deaths, fetal deaths, or other vital statistics shall be maintained in any political subdivision in conflict with [sections 3705.01-29].” *Id.*

6. If a death certificate is “incomplete or unsatisfactory, the local registrar shall indicate the defects therein and withhold registering the certificate or issuing a burial permit until such certificate is corrected.” Ohio Rev. Code § 3705.06.

**CITY EMPLOYEES ARE BOUND BY OHIO LAW AND CANNOT
KNOWINGLY FALSIFY RECORDS**

7. An individual in Ohio could be subject to criminal prosecution if she knowingly falsifies a record, Ohio Rev. Code § 2913.42, or if she violates provisions of Ohio Rev. Code § 3705.29. *See* Ohio Rev. Code § 3705.99.

8. Under Article XV, § 11 of the Ohio Constitution, “Only a union between one man and one woman may be a marriage valid in or recognized by this

state at its political subdivisions.” It prohibits “recogniz[ing] a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance or effect of marriage.” *Id.*

9. The Ohio Revised Code prohibits the City from giving legal force or effect to same-sex marriages, including same-sex marriages entered into legally under the laws of other states. Ohio Rev. Code § 3101.01(C).

10. Plaintiffs are a same-sex couple lawfully married according to the laws of Maryland. Doc. 1, Verified Compl., ¶ 12. Plaintiff John Arthur’s death likely is imminent. Verified Compl., ¶ 23. Upon Mr. Arthur’s death, Plaintiff James Obergefell intends to submit, or cause to be submitted, to the City’s vital statistics registrar a death certificate form for Mr. Arthur indicating that they are lawfully married. *See id.* ¶¶ 23-25.

11. If the City’s vital statistics registrar were to knowingly record the Plaintiffs’ marital status as married contrary to Ohio law, she could be subject to criminal prosecution. *See supra* ¶ 7. She also would be violating Ohio’s Constitution and laws. *See supra* ¶¶ 8-9. Knowingly permitting Mr. Arthur’s death certificate to indicate that he is lawfully married to Mr. Obergefell risks creating a false public record that could be used to deceive or defraud another.

12. The vital records registrar will not knowingly record a death certificate that does not comply with Ohio law.

**THE CITY DOES NOT DEFEND OHIO'S LAWS
DISCRIMINATING AGAINST SAME-SEX COUPLES**

13. Although the City's vital records registrar is bound to follow current Ohio law, the City does not defend Article XV, § 11 of the Ohio Constitution or Ohio Rev. Code § 3101.01(C) because those laws discriminate against same-sex couples. The question of whether that discrimination is permissible is for the Court to decide, but it is not supported by the City.

14. The City recently proclaimed July 11, 2013 as "John Arthur and James Obergefell Day," in recognition of the Plaintiffs' marriage. The ceremonial proclamation states that "John and Jim are a shining example of why LGB couples should be treated equally, under the law, in every state." A copy of the proclamation is attached as Exhibit A.

15. Additionally, the City last year extended health care benefits to permit employees in committed same-sex relationships, among others, to enjoy the same benefits as married couples. Eight of nine Councilmembers supported the change. *See, e.g., Cincinnati City Council Motion (Apr. 30, 2012) (Cincinnati Doc. No. 201200663).*

16. And in November 2004, Cincinnati voters amended the City Charter to repeal Article XII, which had prohibited the City from giving legal protections based on sexual orientation. *See Cincinnati Ordinance No. 271-2004.*

TIMING

17. Typically, a funeral director will fill out a preliminary death certificate and ask a physician to certify the cause of death. The medical certification is

supposed to occur within 48 hours of death. Ohio Admin. Code § 3701-5-06. In any event, the preliminary death certificate should be submitted to the local registrar within five working days of the death. If the preliminary certificate is not filed within that time, the local registrar is instructed to investigate the matter and attempt to secure the filing. Ohio Admin. Code §§ 3701-5-07, 3701-5-08.

18. Given the reported imminence of Mr. Arthur's death and the short timeframes prescribed by the State for filing a death certificate, the City asks the Court to rule expeditiously on this matter so that Dr. Jones can comply with current Ohio law, or if that law is unconstitutional, comply with Plaintiffs' request.

Respectfully submitted,

JOHN P. CURP
City Solicitor

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Trial Attorney for Defendant Camille
Jones, City of Cincinnati Registrar of
Vital Statistics

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed on July 22, 2013, using the Court's CM/ECF system, which will deliver electronic notification of the filing to all counsel of record.

/s/ Aaron M. Herzig

Be It Proclaimed:

Whereas, John Arthur and Jim Obergefell have been a committed relationship for more than 20 years and

Whereas, *Whereas,* John and Jim have been married in their own eyes for many years, the State of Ohio does not yet recognize marriage equality for LGB couples and

Whereas, The Supreme Court of the United States of America found the federal Defense of Marriage Act unconstitutional on June 26, 2013, John and Jim began to imagine a future where they were legally wedded spouses and

Whereas, John Arthur suffers from Amyotrophic Lateral Sclerosis or ALS disease and in the care of Crossroads Hospice; and

Whereas, Many friends and family made donations to John and Jim to make it possible for them to travel, via private jet because of John's condition, to a state that does recognize marriage equality; and

Whereas, John and Jim traveled to Baltimore, Maryland on July 11, 2013 and were officially married by John's Aunt Paulette Roberts, who had promised years earlier to marry the two

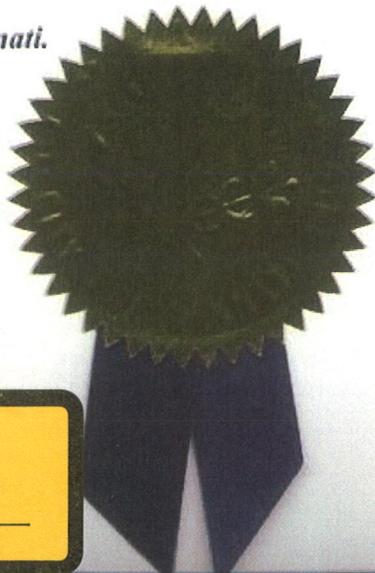
Whereas, John and Jim are overjoyed, in love and so thankful and

Whereas, John and Jim are a shining example of why LGB couples should be treated equally, under the law, in every state and by the United States of America

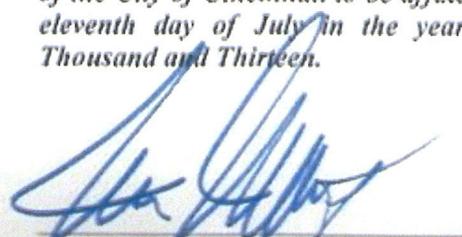
Now, Therefore, I, Mark Mallory,
Mayor of the City of Cincinnati do hereby proclaim July 11th, 2013
as

"John Arthur and Jim Obergefell Day"

in Cincinnati.



IN WITNESS WHEREOF, I have hereunto set my hand and caused this seal of the City of Cincinnati to be affixed this eleventh day of July in the year Two Thousand and Thirteen.


Mark Mallory, Mayor
City of Cincinnati

