

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

JAMES OBERGEFELL and	:	Case No. 1:13-cv-501
JOHN ARTHUR, et al	:	
	:	Judge Timothy S. Black
Plaintiffs,	:	
	:	<u>MOTION FOR TEMPORARY</u>
vs.	:	<u>RESTRAINING ORDER RE</u>
	:	<u>DAVID MICHENER</u>
JOHN KASICH, et al,	:	
	:	
Defendants.	:	
	:	

Pursuant to Fed.R.Civ. Proc. 65 Plaintiff David Brian Michener moves for a temporary restraining order on the same terms and for the same reasons as the temporary restraining order issued to Plaintiffs John Arthur and James Obergefell in this case. Doc. 13. Plaintiff requests that the order issue no later than Tuesday September 3, 2013 in order that the cremation of the spouse of David Brian Michener proceed as scheduled on Wednesday September 4, 2013.

MEMORANDUM

David Michener has been added as a plaintiff through the amended complaint. He and his husband William Herbert Ives were married on July 22, 2013 in the state of Delaware. Mr. Ives has since died. He seeks an immediate order that a death certificate issue listing Mr. Ives' status as married and listing his name as the spouse of Mr. Ives.

A. FACTS

1. David Michener and William Herbert Ives were married in Delaware on July 22, 2013. Their marriage is legally recognized in Delaware.
2. They had been together for eighteen years and they have three adopted children.

3. William died unexpectedly of natural causes at University Hospital in Cincinnati, Ohio on August 27, 2013.

4. His remains are currently at a funeral home in Cincinnati.

5. It was his request that his remains be cremated. A cremation is scheduled for Wednesday, September 4, 2013.

6. A death certificate must be issued before the cremation can be permitted.

7. Surviving spouse David Michener has requested a death certificate that reflects William's status as married spouse and lists David as the surviving spouse. He urgently needs to bring closure to the family in a manner that respects their marriage and the wishes of the decedent to be cremated.

8. Defendant Jones has received a request to issue a death certificate reflecting the death of William Herbert Ives. She has requested, through her counsel that she be given direction from this Court on how to respond to this request.

B. ARGUMENT

This Court has previously issued a temporary restraining order in this case that orders that a death certificate be issued under similar circumstances that lists as married a same-sex couple married outside of Ohio. Doc. 13. A similar order is requested for plaintiff David Brian Michener for the same reasons set out in the pleadings that resulted in the temporary restraining order, Doc. 13. A proposed draft order is attached. Defendants have been given notice of this request for a temporary restraining order. Plaintiffs respectfully request that it be issued immediately.

Respectfully submitted,

<p>Lisa T. Meeks (0062074) Newman & Meeks Co., LPA 215 E. Ninth Street, Suite 650 Cincinnati, OH 45202 phone: 513-639-7000 fax: 513-639-7011 lisameeks@newman-meeks.com</p> <p><i>Attorney for Plaintiffs</i></p>	<p><u>/s/ Alphonse A. Gerhardstein</u> Alphonse A. Gerhardstein # 0032053 <i>Trial Attorney for Plaintiffs</i></p> <p>Jennifer L. Branch #0038893 Jacklyn Gonzales Martin #0090242 Gerhardstein & Branch Co. LPA Attorneys for Plaintiffs 432 Walnut Street, Suite 400 Cincinnati, Ohio 45202 (513) 621-9100 (513) 345-5543 fax agerhardstein@gbfirm.com jbranch@gbfirm.com jgmartin@gbfirm.com <i>Attorneys for Plaintiffs</i></p>
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CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2013, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. I further certify that a copy of the foregoing pleading and the Notice of Electronic Filing has been served by ordinary U.S. mail upon all parties for whom counsel has not yet entered an appearance electronically.

/s/ Alphonse A. Gerhardstein
Alphonse A. Gerhardstein # 0032053