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*Arizona*

UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

Nelda Majors; Karen Bailey; David  
Larance; Kevin Patterson; George  
Martinez; Fred McQuire; Michelle  
Teichner; Barbara Morrissey; Kathy  
Young; Jessica Young; Kelli Olson;  
Jennifer Hoefle Olson; Kent Burbank;  
Vicente Talanquer; C.J. Castro-Byrd; Jesús  
Castro-Byrd; Patrick Ralph; and Josefina  
Ahumada; and Equality Arizona

Plaintiffs,

v.

No. 2:14-cv-00518-JWS

**MOTION FOR TEMPORARY  
RESTRAINING ORDER OF  
PLAINTIFF FRED MCQUIRE;  
MEMORANDUM OF POINTS  
AND AUTHORITIES IN  
SUPPORT**

**(ORAL ARGUMENT REQUESTED)**

**(EXPEDITED RULING  
REQUESTED)**

1 Michael K. Jeanes, in his official capacity as  
2 Clerk of the Superior Court of Maricopa  
3 County, Arizona; Will Humble, in his  
4 official capacity as Director of the  
5 Department of Health Services; and David  
6 Raber, in his official capacity as Director of  
7 the Department of Revenue,

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28	-- U.S. --, 133 S. Ct. 2675, 186 L. Ed. 2d 808 (2013) .....	2, 9, 11, 12
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1 Plaintiff Fred McQuire, a widower as of five days ago, respectfully moves the  
2 Court, pursuant to Federal Rule Civil of Procedure 65, for a temporary restraining order  
3 that immediately (1) declares his marriage to George Martinez lawfully entered into in  
4 California to be valid under Arizona law; (2) enjoins Defendants Michael K. Jeanes, Will  
5 Humble, and David Raber (collectively “Defendants”) and all those acting in concert with  
6 Defendants from enforcing Arizona’s constitutional and statutory marriage restrictions  
7 that prevent the State from honoring same-sex couples’ marriages as against him;  
8 (3) orders that Defendant Will Humble in his capacity of Director of the Department of  
9 Health Services and Registrar of Vital Records, and any acting in concert with him or  
10 under his direction, prepare and issue a death certificate that records Mr. Martinez’s  
11 marital status as “married” and identifies Mr. McQuire as his surviving spouse; and  
12 (4) requires that Defendant Humble issue appropriate directives to the health departments,  
13 funeral homes, physicians, medical examiners and any others involved with preparing and  
14 issuing said death certificate, explaining their duties under this Court’s order.

15 The motion is based upon the memorandum of points and authorities included  
16 herewith, the accompanying supplemental declaration of Fred McQuire and declarations  
17 of Isabel Duff and Jennifer Pizer, the declarations of George Martinez and Fred McQuire  
18 attached as Exhibits D and E, respectively, to the Declaration of Carmina Ocampo in  
19 Support of Plaintiffs’ Motion for Summary Judgment, lodged on August 14, 2014 at  
20 Doc. 55 and filed on August 20, 2014 at Doc. 61, the memorandum of points and  
21 authorities in support of the motion for a preliminary injunction lodged by Mr. Martinez  
22 and Mr. McQuire on August 14, 2014 at Doc. 57 and filed on August 20, 2014 at Doc. 63,  
23 and such further evidence and arguments as may be presented.

24 Initial notice of this motion has been provided to Defendants as detailed in the  
25 Declaration of Jennifer C. Pizer and further notice will be provided promptly. Due to  
26 Mr. Martinez’s death last week and the fact that preparation of his death certificate is  
27 temporarily paused to permit the Court to consider this motion, which has also  
28

1 temporarily paused Mr. Martinez's cremation and related processes, Plaintiff respectfully  
2 requests an expedited hearing and an expedited ruling on this motion. Plaintiff also  
3 requests that he be exempted from the Rule 65(c) bond requirement.

#### 4 INTRODUCTION

5 After 45 years of sharing life's path with George Martinez, Fred McQuire is now a  
6 widower. This is a wrenching emotional loss made even more devastating by the fact that  
7 Arizona law deems Fred a legal stranger to George, denying recognition of the marriage  
8 this couple celebrated in California shortly after they learned that George had Stage IV  
9 pancreatic cancer. More problematically at present, the State disrespects their relationship  
10 and marriage by refusing to allow Fred to apply for and receive George's death certificate,  
11 by requiring that the certificate identify George inaccurately as "never married," and by  
12 forbidding inclusion of Fred on the certificate as George's surviving spouse. The law's  
13 intention to erase George's status as a married man and to exclude Fred's status as  
14 George's grieving husband from the official record of George's life is deeply hurtful to  
15 Fred, especially at this immensely difficult time.

16 In addition, if George's death certificate does record his marital status as "never  
17 married," it will block Fred's ability to access benefits generally available to a surviving  
18 spouse that he needs. Fred has no income other than his \$1,197 per month Social Security  
19 check and his \$130 per month veterans disability check. He is about to turn 70, has severe  
20 health problems himself, and has always been financially dependent upon George. He  
21 will suffer serious financial hardship if he cannot access benefits as George's surviving  
22 spouse, including the likelihood of the irreparable harm of losing the couple's home.

23 Given the steady stream of federal court decisions affirming same-sex couples' due  
24 process and equal protection rights with respect to marriage in the year since the Supreme  
25 Court decided *United States v. Windsor*, -- U.S. --, 133 S. Ct. 2675, 186 L. Ed. 2d 808  
26 (2013),<sup>1</sup> the significant and irreparable hardships threatening Fred, the negligible burdens

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27  
28 <sup>1</sup> See, e.g., *Bostic v. Schaefer*, No. 14-1167, No. 14-1169, No. 14-1173, 2014 WL 3702493, at \*16 (4th Cir. July 28, 2014); *Bishop v. Smith*, Nos. 14-5003, 14-5006, 2014



1 the requested order would impose on Defendants, and the public interest in ending  
 2 constitutional violations, Plaintiff submits that the requirements for emergency injunctive  
 3 relief pursuant to Rule 65 are more than satisfied and the requested order should be issued.

4 Because the processing of George's death certificate and final disposition of his  
 5 remains are temporarily on hold, and because of Fred's own fragile health, emotional  
 6 state, and vulnerable financial position, he cannot wait for this litigation to run its course  
 7 to a final affirmation of the constitutional rights of all Plaintiffs in this case. As a small  
 8 number of same-sex couples and spouses facing similarly grim circumstances have done  
 9 in other states,<sup>2</sup> Fred therefore asks the Court for immediate injunctive relief requiring  
 10 Defendants to recognize his valid California marriage for all purposes, including when  
 11 preparing and issuing George's death certificate.

### 12 **FACTS<sup>3</sup>**

13 Plaintiff Fred McQuire resides in Green Valley, Arizona. [Supplemental  
 14 Declaration of Fred McQuire ("Supp. McQuire Decl."), submitted herewith, ¶ 1] He is a

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15 WL 3537847, at \*18-21 (10th Cir. July 18, 2014); *Kitchen v. Herbert*, No. 2:13-cv-217,  
 16 2014 WL 2868044, at \*32 (10th Cir. June 25, 2014); *Love v. Beshear*, No. 3:13-cv-750-H,  
 17 2014 WL 2957671, \*2-3 (W.D. Ky. July 1, 2014); *Baskin v. Bogan*, Nos. 1:14-cv-00355-  
 18 RLY-TAB, 1:14-cv-00404-RLY-TAB, 2014 WL 2884868, at \*4-6 (S.D. Ind. June 25,  
 19 2014); *Wolf v. Walker*, 986 F. Supp. 2d 982, 986-87 (W.D. Wis. 2014); *Geiger v.*  
 20 *Kitzhaber*, Nos. 6:13-cv-01834-MC, 6:13-cv-02256-MC, 2014 WL 2054264, at \*14-16.  
 (D. Or. May 19, 2014); *Latta v. Otter*, No. 1:13-cv-00482-CWD, 2014 WL 1909999, at  
 \*28-29 (D. Idaho May 13, 2014); *DeBoer v. Snyder*, 973 F. Supp. 2d 757, 773 n.6 (E.D.  
 Mich. 2014); *De Leon v. Perry*, 975 F. Supp. 2d 632, 647-49 (W.D. Tex. 2014).

21 <sup>2</sup> *Brenner v. Scott*, Nos. 4:14cv107-RH/CAS, 4:14cv138-RH/CAS, 2014 WL  
 4113100, at \*13-15 (N.D. Fla. Aug. 21, 2014) (granting preliminary injunction to  
 22 plaintiffs challenging Florida marriage ban but staying order as to all except plaintiff  
 facing loss of home due to denial of Social Security survivor benefits, and requiring  
 23 immediate correction of death certificate to identify decedent as married and name  
 surviving same-sex spouse); *Baskin*, 2014 WL 2884868, at \*4-6; *Henry v. Himes*, Case  
 24 No. 1:14-cv-129, 2014 WL 1512541 (S.D. Ohio April 14, 2014) (granting preliminary  
 25 relief to four married same-sex couples to require both spouses to be identified as parents  
 on birth certificates for adopted child and soon-to-be born children); *Tanco v. Haslam*,  
 26 No. 3:13-cv-01159, 2014 WL 997525 (M.D. Tenn. Mar. 14, 2014) (same for three  
 married same-sex couples with various needs, including regarding an arriving newborn);  
 27 *Lee v. Orr*, No. 13-cv-8719, 2013 WL 6490577, at \*3 (N.D. Ill. Dec. 10, 2013) (granting  
 injunctive relief for three same-sex couples who wished to marry before Illinois marriage  
 equality law took effect because one member of each couple was terminally ill); *Gray v.*  
 28 *Orr*, No. 13 C 8449, 2013 WL 6355918 (N.D. Ill. Dec. 5, 2013) (same for one couple).

<sup>3</sup> Plaintiff incorporates herein the more detailed statement of facts set forth in the  
 August 15, 2014 motion for a preliminary injunction.

1 veteran of the U.S. Army and the U.S. Air Force, and he will turn 70 years old on  
2 September 17, 2014. [*Id.* ¶ 2] Fred met George Martinez in 1969. [*Id.*] They soon began  
3 a committed relationship that lasted 45 years [*id.*], and ended just last week when George  
4 died at 62 from pancreatic cancer. [Declaration of George Martinez (“Martinez Decl.”),  
5 attached as Exhibit D to the Declaration of Carmina Ocampo in Support of Plaintiffs’  
6 Summary Judgment Motion, lodged August 14, 2014 at Doc. 55 and filed August 20,  
7 2014 at Doc. 61, ¶¶ 1, 12; Supp. McQuire Decl. ¶¶ 5, 9; Declaration of Isabel Duff (“Duff  
8 Decl.”), submitted herewith, ¶ 5]

9 George also served in the Air Force and was a Vietnam War veteran. [Martinez  
10 Decl. ¶ 2; Supp. McQuire Decl. ¶ 3] He became the first Deputy Clerk of Division Two  
11 of the Arizona Court of Appeals in 1976 and served that court for over thirty years.  
12 [Martinez Decl. ¶ 2; Supp. McQuire Decl. ¶ 3] George was diagnosed with Stage IV  
13 prostate cancer three years ago. [Martinez Decl. ¶ 3; Suppl. McQuire Decl. ¶ 4] The VA  
14 determined that his cancer was 100% related to exposure to Agent Orange in Vietnam and  
15 he received compensation as a fully disabled veteran as a result. [Suppl. McQuire Decl.  
16 ¶ 4; Martinez Decl. ¶ 11]

17 George was diagnosed in June 2014 with Stage IV pancreatic cancer. [Suppl.  
18 McQuire Decl. ¶ 5; Martinez Decl. ¶ 12] Because George’s condition was so serious,  
19 Fred and George traveled to California the following month and they were married.  
20 [Suppl. McQuire Decl. ¶ 5; Martinez Decl. ¶ 14] Traveling to California was very  
21 difficult for both men due to George’s illness and chemotherapy and Fred’s multiple  
22 health problems. [Suppl. McQuire Decl. ¶ 5; Martinez Decl. ¶ 18; Declaration of Fred  
23 McQuire (“McQuire Decl.”), attached as Exhibit E to the Declaration of Carmina Ocampo  
24 in Support of Plaintiffs’ Summary Judgment Motion, lodged August 14, 2014 at Doc. 55  
25 and filed on August 20, 2014 at Doc. 61, ¶16] Even so, their wedding day was a glorious  
26 high point for both men. [Suppl. McQuire Decl. ¶ 5; Martinez Decl. ¶¶ 15-17; McQuire  
27 Decl. ¶¶ 14-15]

28

1 Fred's health remains very poor. [Suppl. McQuire Decl. ¶ 6] He suffers from  
2 chronic obstructive pulmonary disease, vascular problems, and Parkinson's disease. [Id.]  
3 The Parkinson's disease causes him to shake to an extent that prevents him from being  
4 able to type or read on a computer. [Id.] He has chronic neck and back pain and  
5 difficulty walking and lifting things. [Id.] In the past five years, he has been hospitalized  
6 repeatedly, sometimes for extended periods, including for pneumonia, vascular surgery,  
7 nerve surgery, and bladder surgery. [Id.] Fred receives his medical care at the Veterans  
8 Administration ("VA") hospital in Tucson. [Id.]

9 Fred also has struggled for years with mental health issues, including anxiety and  
10 depression. [Id. ¶ 7] George's diagnosis of terminal illness was a shock and Fred  
11 struggled during the summer to cope with the prospect of going on without George. [Id.]  
12 The stress and fear about how Fred will be able to support himself without George has  
13 caused his mental health to worsen considerably. [Id.]

14 Last Monday, August 25, 2014, George fell and could not get back up. [Supp.  
15 McQuire Decl. ¶ 8] He was taken by ambulance to the VA hospital. [Id.] The doctors  
16 said he was extremely dehydrated and malnourished because his liver was not functioning  
17 properly. [Id.] George began to recover once he was in the hospital and receiving  
18 treatment. [Id. ¶ 9] But then his condition worsened. [Id.] He died in the early hours of  
19 Thursday, August 28, 2014. [Id.; Duff Decl. ¶ 5] George's death has left Fred  
20 overwhelmed with sadness, emptiness, and depression. [Supp. McQuire Decl. ¶ 9]

21 Some hours after George's passing, Fred and Isabel Duff, George's sister, went to  
22 the VA's Decedent Affairs Office to complete paperwork for the processing of George's  
23 VA burial benefits and related matters. [Supp. McQuire Decl. ¶ 10; Duff Decl. ¶ 6] They  
24 explained to the Decedent Affairs clerk that Fred is George's husband and Isabel is his  
25 sister, and that Fred wanted to fill out the paperwork concerning George. [Supp. McQuire  
26 Decl. ¶ 11; Duff Decl. ¶ 6] The clerk said Fred could not be recognized as George's  
27 spouse and that Isabel had to complete the paperwork as George's next-of-kin. [Supp.  
28 McQuire Decl. ¶ 10; Duff Decl. ¶ 6] Fred was told he could sign the paperwork after

1 Isabel if he wanted to, but it would not be considered in the process. [Supp. McQuire  
2 Decl. ¶ 10] This happened mere hours after George's passing and, although Fred had  
3 tried to prepare himself for such rejection, those comments were crushing. [Supp.  
4 McQuire Decl. ¶ 12; Duff Decl. ¶ 6]

5 Fred and Isabel then went to the mortuary handling George's cremation. [Supp.  
6 McQuire Decl. ¶ 11; Duff Decl. ¶ 7] One of the first tasks was applying for George's  
7 death certificate. [Supp. McQuire Decl. ¶ 11; Duff Decl. ¶ 7] Fred and Isabel again  
8 explained that Fred is George's surviving spouse and wanted to fill out the application for  
9 his husband. [Supp. McQuire Decl. ¶ 11; Duff Decl. ¶ 7] The proprietor insisted that  
10 Isabel had to do so because Fred's marriage to George is not recognized, making Isabel  
11 George's legal next of kin. [Supp. McQuire Decl. ¶ 11; Duff Decl. ¶ 7]

12 Fred is distraught that his own government refuses to acknowledge his marriage to  
13 George and requires issuance of a death certificate for George that denies who George  
14 was in life and who he still is to Fred. [Supp. McQuire Decl. ¶¶ 12-13; Duff Decl. ¶¶ 9-  
15 10] Fred sees that impending denial as a negation of the couple's love, their lives  
16 together, and his profound, ongoing grief. [Supp. McQuire Decl. ¶ 12; Duff Decl. ¶ 10]  
17 After years of coping with society's hostility and discrimination against them as gay men,  
18 they were happy and proud to have survived long enough to marry legally and to achieve  
19 that official validation of their relationship. [Supp. McQuire Decl. ¶ 13] Fred does not  
20 want that validation and his role erased from the official document that records the  
21 conclusion of his husband's life. [*Id.*]

22 Fred is retired, unable to work, and has no assets. [*Id.* ¶ 14] His sole income is his  
23 monthly Social Security check of \$1,197 and his monthly veterans disability check of  
24 \$130. [*Id.*] George earned more than Fred and has always financially supported him.  
25 [*Id.*] George received retirement payments through the state court, Social Security  
26 payments of \$1,454 per month, and veterans disability benefits of \$2,868 per month. [*Id.*]  
27 The monthly mortgage payment for their home is \$724.92. [*Id.*]

28

1 If Fred is recognized as George’s surviving spouse under Arizona law, he will be  
2 able to apply to increase his monthly Social Security payment to the level George was  
3 receiving. [Supp. McQuire Decl. ¶ 15] He will also be able to apply for VA benefits as  
4 the surviving spouse of a fully disabled veteran. [Supp. McQuire Decl. ¶ 15; Duff Decl.  
5 ¶ 12] If Fred cannot receive benefits as George’s surviving spouse, he will not be able to  
6 afford to remain in the couple’s home and will otherwise struggle to survive financially.  
7 [Supp. McQuire Decl. ¶ 16; Duff Decl. ¶ 11]

## 8 ARGUMENT

### 9 I. PLAINTIFF SATISFIES THE STANDARDS FOR EMERGENCY RELIEF.

10 “The standard for issuing a temporary restraining order is essentially the same as  
11 that for issuing a preliminary injunction. To be entitled to injunctive relief, a movant must  
12 demonstrate (1) that he is likely to succeed on the merits, (2) that he is likely to suffer  
13 irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in  
14 his favor, and (4) that an injunction is in the public interest.” *Beaty v. Brewer*, 649 F.3d  
15 1071, 1072 (9th Cir. 2011) (citing *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7  
16 (2008)).

17 These standards strongly favor granting the relief Plaintiff seeks here, which  
18 simply would require the State to recognize his valid California marriage and treat him as  
19 other surviving spouses are treated. To recognize George and Fred’s marriage—and  
20 Fred’s current status as a surviving spouse—would impose negligible burdens, if any, on  
21 Defendants, and would merely require Defendants to perform minor administrative tasks  
22 that are no different from those routinely performed for different-sex couples and  
23 heterosexual widows and widowers who married outside Arizona. By contrast, Plaintiff  
24 will suffer substantial, irreparable harm absent a temporary restraining order because he is  
25 being denied the right to obtain a death certificate for George properly identifying George  
26 as married and himself as George’s surviving husband. Further, without a death  
27 certificate so identifying him, Fred is unable to pursue Social Security and Veterans  
28 Benefits that routinely are provided to surviving spouses who married a person of a

1 different sex. If he is unable to receive benefits as George's surviving husband, Fred will  
2 not be able to afford to remain in the couple's home and will lack adequate resources to  
3 sustain himself. Fred is desperately worried about how he will manage if Arizona is  
4 permitted to continue denying him recognition as George's husband.

5 In addition to these pressing practical concerns are core dignitary concerns.  
6 George has already been permanently denied the dignity of being recognized during his  
7 lifetime as married to the love of his life under the law of his home state, Arizona,  
8 something for which he had yearned. But Fred still hopes for this basic measure of equal  
9 citizenship under state law. Now alone, heartsick, and frail, he wants at least a brief  
10 period of proper recognition as George's husband, beginning with his inclusion on the  
11 official record of George's life. The processing of that record and the disposition of  
12 George's remains both have been temporarily paused to permit this motion asking for  
13 such inclusion. For the additional reason of Fred's fragile physical health and emotional  
14 state, it is important that the requested relief be provided as expeditiously as possible.

15 **A. Plaintiff Is Likely To Succeed On The Merits Of His Claim That**  
16 **Arizona's Marriage Ban Is Unconstitutional.**

17 Plaintiff's argument on the merits is set forth in more detail in the memorandum of  
18 points and authorities in support of his and George's preliminary injunction motion of  
19 August 15, 2014. These arguments are incorporated herein and an abbreviated version is  
20 presented here.

21 The Arizona Legislature enacted explicit exclusions of same-sex couples from  
22 marriage in 1996. These include A.R.S. § 25-101(C), which states: "Marriage between  
23 persons of the same sex is void and prohibited," and A.R.S. § 25-112(A), which excludes  
24 the marriages of same-sex couples from the State's usual rule that "[m]arriages valid by  
25 the laws of the place where contracted are valid in this state." Twelve years later, in 2008,  
26 Arizona voters reinforced that exclusion by inscribing into the Arizona Constitution:  
27 "Only a union of one man and one woman shall be valid or recognized as a marriage in  
28

1 this state.” Ariz. Const., art. XXX, sec. 1. These constitutional and statutory provisions  
2 are referred to herein collectively as the State’s “marriage ban.”

3 The freedom to marry the person of one’s choice long has been recognized as a  
4 fundamental right protected by the Fourteenth Amendment’s Due Process Clause.  
5 *Zablocki v. Redhail*, 434 U.S. 374, 384 (1978); *Loving v. Virginia*, 388 U.S. 1, 12 (1967).  
6 It also is established that the freedom to marry necessarily includes the freedom to remain  
7 married. *Loving*, 388 U.S. at 1. Arizona’s marriage ban singles out lesbian and gay  
8 couples and denies them the freedom to marry and to enjoy the protected liberties of  
9 family life based on their sexual orientation and each one’s sex in relation to the other’s.  
10 *See Lawrence v. Texas*, 539 U.S. 558, 574-75, 578 (2003) (holding that Texas’  
11 “homosexual conduct” law unconstitutionally interfered with gay people’s protected  
12 liberty to define one’s identity and form the personal relationships that give life meaning).

13 Arizona excludes same-sex couples from marriage not to advance compelling or  
14 important interests, but simply to make them and their families unequal to everyone else.  
15 Doing so offends the Fourteenth Amendment’s Equal Protection Clause. *See Windsor*,  
16 133 S. Ct. at 2675; *Romer v. Evans*, 517 U.S. 620, 634-35 (1996). Arizona’s marriage ban  
17 does make Fred unequal. It deprives him of legal security, financial benefits, and the  
18 dignity of being able to hold himself out to his community as being just as married as  
19 anyone else. The ban compounds these substantial, irreparable harms by denying Fred  
20 recognition and surviving spouse benefits that he needs to retain his home and otherwise  
21 to sustain himself.

22 The Supreme Court observed in *Windsor* that, when government relegates same-  
23 sex couples’ relationships to a “second-tier” status, it “demeans the couple,”  
24 “humiliates . . . children being raised by same-sex couples”, deprives these families of  
25 equal dignity, and “degrade[s]” them, while also causing countless tangible harms, all in  
26 violation of “basic due process and equal protection principles.” 133 S. Ct. at 2693-95.  
27 Fred’s and George’s experiences living under Arizona’s marriage ban confirm the truth of  
28 these observations. The ban deprived them of equal dignity and branded them as inferior

1 to other Arizonans, inviting discrimination in innumerable daily interactions in medical  
2 settings, and in the benefits and family recognition designed to compensate for work,  
3 military service, and a lifetime of mutual caring. Now that George has succumbed to the  
4 cancer caused by his military service, there is no conceivable—let alone important—  
5 governmental interest served by denying respect and protections to his surviving husband.  
6 Essentially pretending these men have been “single” accomplishes nothing legitimate at  
7 all; it only harms an honorable man who, like his husband, served his state and country  
8 proudly and seeks only fair treatment in return.

9 An ever-lengthening list of federal court decisions affirms that there is no “gay  
10 exception” to our U.S. Constitution’s guarantees of liberty and equality for all, including  
11 the freedom to celebrate love, commitment, and family with the person of one’s choice in  
12 marriage.<sup>4</sup> Indeed, just ten days ago, the district court for the Northern District of Florida  
13 agreed in a case presenting, *inter alia*, the same issue Plaintiff presents here. The court  
14 granted immediate injunctive relief, explaining “[t]he death certificate says  
15 Ms. Goldwasser was ‘never married’ and, in the blank for listing a spouse, says ‘none.’  
16 That a spouse would find this offensive and seek to have it changed is neither surprising  
17 nor trivial.” *Brenner*, 2014 WL 4113100, at \*5. This Court should do the same and grant  
18 this Plaintiff the emergency injunctive relief he requests.

19 **B. Plaintiff Will Suffer Irreparable Harm Absent The Requested Relief.**

20 In the absence of the relief requested, Plaintiff will suffer certain, not merely likely,  
21 irreparable harm. *Winter*, 555 U.S. at 22. If he is excluded from George’s death

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23 <sup>4</sup> See, e.g., *Bostic*, 2014 WL 3702493, at \*16 (invalidating Virginia’s marriage  
24 ban); *Bishop*, 2014 WL 3537847, at \*18 (invalidating Oklahoma’s marriage ban); *Kitchen*,  
25 2014 WL 2868044, at \*32 (invalidating Utah’s marriage ban); *Baskin*, 2014 WL 2884868,  
26 at \*4-6 (invalidating Indiana’s marriage ban); *Geiger*, 2014 WL 2054264, at \*14-16  
27 (invalidating Oregon’s marriage ban); *Latta*, 2014 WL 1909999, at \*28-29 (invalidating  
28 Idaho’s marriage ban); *DeBoer*, 973 F. Supp. 2d at 759-60 (invalidating Michigan’s  
marriage ban); *Tanco*, 2014 WL 997525, at \*2 (granting preliminary injunction requiring  
recognition of marriage of three same-sex plaintiff couples); *De Leon*, 975 F. Supp. 2d at  
639-40 (striking down Texas’s marriage ban); *Bourke v. Beshear*, 2014 WL 556729, at  
\*11-12 (W.D. Ky. Feb. 12, 2014) (invalidating Kentucky’s marriage ban); *Obergefell v.*  
*Wymyslo*, 962 F. Supp. 2d 968, 973 (S.D. Ohio 2013) (granting injunction compelling  
Ohio to recognize out-of-state marriages of same-sex couples on Ohio death certificates).



1 certificate, the injury to Fred will be irreparable. He will be denied the dignity of having  
2 his marriage to his loving partner of 45 years respected by his government during the  
3 period when his loss is most debilitating. And he will be denied benefits to which he  
4 should be entitled, leaving him unable to retain his home.

5 Arizona's continuing refusal to recognize George and Fred's marriage violates  
6 Fred's constitutional rights, which alone establishes irreparable harm as a matter of law.  
7 *See, e.g., Elrod v. Burns*, 427 U.S. 347, 373 (1976) (loss of constitutional "freedoms, for  
8 even minimal periods of time, unquestionably constitutes irreparable injury"); *Monterey*  
9 *Mech. Co. v. Wilson*, 125 F.3d 702, 715 (9th Cir. 1997) ("[A]n alleged constitutional  
10 infringement will often alone constitute irreparable harm."); *Brenner*, 2014 WL 4113100,  
11 at \*12 ("[T]he ongoing unconstitutional denial of a fundamental right almost always  
12 constitutes irreparable harm.").

13 Since *Windsor*, numerous courts have granted requests for preliminary injunctive  
14 relief in circumstances resembling those presented here (and in some considerably less  
15 dire), applying this presumption of irreparable injury from constitutional violations while  
16 also noting additional, tangible, irreparable harms. *See, e.g., Brenner*, 2014 WL 4113100,  
17 at \*13-15 (granting preliminary injunctive relief against Florida's marriage ban and then  
18 staying order except portion directing that death certificate be issued immediately  
19 identifying decedent as married and naming surviving same-sex spouse); *Baskin*, 983 F.  
20 Supp. 2d at 1028 (granting preliminary injunction requiring recognition of out-of-state  
21 marriage of lesbian couple where one spouse was facing imminent death due to advanced  
22 cancer, noting that "the court reaffirms its conclusion that a constitutional violation, like  
23 the one alleged here, is indeed irreparable harm for purposes of preliminary injunctive  
24 relief" (citing cases); *Obergefell v. Kasich*, Case No. 1:13-cv-501, No. 1:13-cv-501, 2013  
25 WL 3814262, at \*7 (S.D. Ohio July 22, 2013) (issuing injunction requiring recognition of  
26 same-sex couple's out-of-state marriage for purposes of death certificate, noting that  
27 "when an alleged deprivation of a constitutional right is involved, most courts hold that no  
28 further showing of irreparable injury is necessary."); *Lee*, 2013 WL 6490577, at \*3

1 (granting injunctive relief for three same-sex couples wanting to marry before Illinois law  
2 took effect because one member of each couple was dying); *Gray*, 2013 WL 6355918, at  
3 \*5-6 (granting same with respect to one couple).<sup>5</sup> The law thus presumes irreparable  
4 harm to Fred from the State’s ongoing violation of his due process right to be recognized  
5 as married, and his equal protection right to be treated equally with respect to this  
6 fundamental right and as compared with others who married outside Arizona, regardless  
7 of his sexual orientation and his sex in relation to the sex of his deceased husband.

8 In addition to the irreparable harm that flows presumptively from these  
9 constitutional violations, Fred will suffer severe and irreparable tangible and intangible  
10 harms if a temporary restraining order is not issued as to him. First, because a marriage  
11 “is a far-reaching legal acknowledgement of the intimate relationship between two  
12 people,” the State inflicts grave dignitary harm when it deems George and Fred’s marital  
13 relationship not “worthy of dignity in the community equal with all other marriages.”  
14 *Windsor*, 133 S. Ct. at 2692. By refusing to honor their marriage because they were a gay  
15 couple rather than a heterosexual couple, Arizona “demeans” and “humiliates” Fred. *Id.*;  
16 *see also Tanco*, 2014 WL 997525, at \*7 (“The state’s refusal to recognize the plaintiffs’  
17 marriages de-legitimizes their relationships, degrades them in their interactions with the  
18 state, causes them to suffer public indignity, and invites public and private discrimination  
19 and stigmatization.”); *Baskin*, 983 F. Supp. 2d at 1028 (“Niki suffers irreparable harm as  
20 she drives to Illinois to receive treatment at a hospital where her marriage will be  
21 recognized. In addition, Niki may pass away without enjoying the dignity that official  
22 marriage status confers.”); *Lee*, 2013 WL 6490577, at \*3, 10-11 (describing federal  
23 benefits as “particularly momentous” for “medically critical plaintiffs,” but “[e]qually  
24 compelling are the intangible personal and emotional benefits that the dignity of equal and  
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26 <sup>5</sup> *See also Henry*, 2014 WL 1512541, at \*1-2 (granting preliminary injunctive  
27 relief to four married same-sex couples to require both spouses to be identified as parents  
28 on the birth certificates for an adopted child and three soon-to-be born children); *Tanco*,  
2014 WL 997525, at \*7 (granting same for three married same-sex couples with various  
legal needs, including regarding an imminently arriving newborn).

1 official marriage status confers.”); *Gray*, 2013 WL 6355918, at \*5-6 (holding that,  
2 “without temporary relief, [plaintiffs] will also be deprived of enjoying the less tangible  
3 but nonetheless significant personal and emotional benefits that the dignity of official  
4 marriage status confers”).

5 The pain and humiliation that Fred feels because George died a legal stranger to  
6 him in the eyes of the State is especially significant due to the death certificate that the  
7 State will imminently issue. In Arizona, a death certificate can only be issued to an  
8 individual with a “legal or other vital interest”, such as a “surviving spouse or other adult  
9 member of the deceased person’s immediate family or an attorney, funeral director or  
10 other person acting directly for them.” Ariz. Admin. Code § R9-19-405. Further, the  
11 death certificate reflects the person’s marital status and, if married, the identity of the  
12 spouse. *See* Ariz. Admin. Code § R9-19-304. Because Fred currently is not recognized  
13 as George’s spouse in Arizona, the State will not issue a death certificate to him; the  
14 proprietor of the mortuary that will carry out George’s cremation once the official  
15 paperwork is approved confirmed that this is the case.<sup>6</sup>

16 The Ohio district court confronted this issue in *Obergefell v. Wymyslo* and  
17 concluded that a state’s refusal to respect the valid out-of-state marriage of a same-sex  
18 couple when issuing a death certificate to the surviving spouse inflicts irreparable harm  
19 that warrants preliminary relief. *Obergefell*, 962 F. Supp. 2d at 997. The *Obergefell* court  
20 recognized that, without injunctive relief, the official record of the terminally ill plaintiff’s  
21 death, and the last official record of his existence, would incorrectly classify him as  
22 “unmarried,” despite his marriage to his spouse. *Id.*

23 The same scenario is presented here. Without emergency relief, Arizona will deny  
24 that his marriage to Fred ever existed on George’s death certificate. George will be  
25 “incorrectly classif[ied] as unmarried, despite [his] legal marriage.” *Id.* *Obergefell*

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26  
27 <sup>6</sup> The experiences of Plaintiffs Patrick Ralph and Josefina Ahumada confirm the  
28 likelihood of the State’s refusal absent the requested injunction. [*See* Declaration of  
Patrick Ralph, attached as Exhibit K to the Ocampo Declaration, ¶¶ 11-12; Declaration of  
Josefina Ahumada, attached as Exhibit L to the Ocampo Declaration, ¶ 10.]

1 acknowledged the “extreme emotional hardship” that the marriage ban inflicts.  
2 *Obergefell*, 2013 WL 3814262, at \*7. And while an eventual ruling recognizing Fred as  
3 George’s surviving spouse might allow Fred to obtain an amended death certificate, if  
4 Fred lives long enough, it would not undo the emotional hardship suffered by Fred now,  
5 as he is grieving George’s death. *See id.* The only way to avoid this harm is for the Court  
6 to issue an order now that this couple’s marriage must be respected by the State, and that  
7 Fred is entitled to be treated during this immediate post-death process like other widows  
8 and widowers, regardless of the fact that Fred is a gay man who has lost a beloved  
9 husband rather than a beloved wife.

10 Beyond dignitary harms, Arizona’s marriage ban is a source of practical and  
11 financial hardship for Fred. Because he and George spent their lives in a State that does  
12 not recognize same-sex couples’ marriages, the VA does not recognize their marriage as  
13 valid and, as a result, George was not eligible for the increased veterans disability  
14 compensation to which disabled veterans who are married to a different-sex spouse are  
15 entitled. *See* Ariz. Admin. Code R9-19-405;<sup>7</sup> *see also De Leon*, 975 F. Supp. 2d at 663-64  
16 (discussing access to various federal benefits including those for service members). Now,  
17 absent the requested order, Fred is not eligible to apply for benefits through the VA as  
18 George’s surviving spouse.

19 Fred also will face significant challenges when applying for Social Security  
20 survivor benefits. First, the Social Security Administration requires proof of death, either  
21 from a death certificate or a funeral home.<sup>8</sup> That George’s death certificate will list him  
22 as “never married” will interfere with Fred’s ability to pursue benefits as a surviving  
23 spouse. Second, because the Social Security Administration by regulation defers to the  
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25 <sup>7</sup> *See also Office of Public and Intergovernmental Affairs: Important Information*  
26 *on Marriage*, U.S. DEP’T OF VETERANS AFFAIRS, <http://www.va.gov/opa/marriage/> (last  
27 visited Sept. 2, 2014); *Veterans Compensation Benefits Rate Tables - Effective 12/1/13*,  
U.S. DEP’T OF VETERANS AFFAIRS, [http://benefits.va.gov/compensation/resources\\_](http://benefits.va.gov/compensation/resources_comp01.asp)

28 <sup>8</sup> SOC. SEC. ADMIN., SURVIVORS BENEFITS, SSA PUBLICATION NO. 05-10084.  
(July 2013) at p. 7, <http://www.ssa.gov/pubs/EN-05-10084.pdf>.

1 law of a couple's state of residence when determining whether an individual is a qualified  
2 spouse (rather than the law of the state where the couple celebrated their marriage), Fred  
3 will be denied survivor benefits altogether even if he is otherwise eligible for them, absent  
4 a declaration that Arizona's marriage ban is unconstitutional as applied to them and that  
5 their marriage must be respected as valid for all purposes by the State. *See* 20 C.F.R.  
6 § 404.345 ("To decide your relationship as the insured's widow or widower, we look to  
7 the laws of the State where the insured had a permanent home when he or she died.").

8 Social Security survivor benefits are just one of the many "concrete financial  
9 benefits" afforded to married couples and Arizona's refusal to recognize Fred as married  
10 "will cause irreparable harm by preventing [him] from realizing those benefits." *Gray*,  
11 2013 WL 6355918, at \*9. *See also Brenner*, 2014 WL 4113100, at \*3 ("Social-security  
12 benefits are Ms. Goldberg's primary income. Florida's refusal to recognize the marriage  
13 has precluded Ms. Goldberg from obtaining social-security survivor benefits.  
14 Ms. Goldberg says that for that reason only, she will have to sell her house."). During  
15 their many years together, George supported Fred financially. Fred is in extremely poor  
16 health and unable to work, has no assets, and has no family members with whom he can  
17 live if he loses his home. Now that George has passed away, Fred will suffer very  
18 considerable and immediate financial hardship, including being unable to afford to remain  
19 in the couple's home, if he cannot receive benefits as George's surviving spouse.

20 **C. The Balance of Equities Tips Sharply in Plaintiff's Favor.**

21 To qualify for injunctive relief, Plaintiff must establish that "the balance of equities  
22 tips in his favor." *Winter*, 555 U.S. at 20. In assessing whether Plaintiff has met this  
23 burden, the Court has a "duty . . . to balance the interests of all parties and weigh the  
24 damage to each." *Stormans, Inc. v. Selecky*, 586 F. 3d 1109, 1138 (9th Cir. 2009).

25 Any harm to Defendants from the requested order will be minimal because Fred  
26 seeks only the as-applied relief that the State respect his marriage and treat him like other  
27 surviving spouses. Defendants will not suffer irreparable harm, or any harm at all, if they  
28 must stop infringing his constitutional rights. *United Food & Commer. Workers Local 99*

1 v. *Bennett*, 934 F. Supp. 2d 1167, 1216-17 (D. Ariz. 2013) (“Defendants would suffer no  
2 harm in being enjoined from enforcing unconstitutional . . . laws, so the balance of  
3 hardships tips in favor of the Plaintiffs.”). As Judge Hinkle of the Northern District of  
4 Florida determined just 10 days ago, making an exception to the stay order concerning the  
5 relief granted the other plaintiffs as against Florida’s marriage ban:

6           The exception is the requirement to correct Ms. Goldwasser’s death  
7           certificate. The correction is important to Ms. Goldberg. There is  
8           little if any public interest on the other side of the scale. There is no  
9           good reason to further deny Ms. Goldberg the simple human dignity  
          of being listed on her spouse’s death certificate. Indeed, the state’s  
          refusal to let that happen is a poignant illustration of the controversy  
          that brings us here.

10 *Brenner*, 2014 WL 4113100, at \*13; *see also Obergefell*, 2013 WL 3814262, at \*7, 20  
11 (finding state would not be harmed by TRO affecting one couple because “[n]o one  
12 beyond Plaintiffs themselves will be affected by such a limited order at all”); *Baskin*, 983  
13 F. Supp. 2d at 1029 (“The court is faced with one injunction affecting one couple in a  
14 State with a population of over 6.5 million people. This will not disrupt the public  
15 understanding of Indiana’s marriage laws.”).

16           Honoring the marriage of one same-sex couple entails virtually no administrative  
17 burden and only a minuscule financial burden. *See Tanco*, 2014 WL 997525, at \*4.  
18 (“[T]he administrative burden on [the State] from preliminarily recognizing the marriages  
19 of the three couples in this case would be negligible.”). And in the unlikely event that the  
20 marriage ban is later upheld, this injunction merely would have allowed Fred to be treated  
21 the same as countless heterosexual surviving spouses across the state during a period of  
22 grief, fear and loss. Considering the significant emotional and financial harms looming  
23 for Plaintiff in the absence of a restraining order—the likelihood of Fred losing his home  
24 and economic support, and having his most important relationship in life negated by the  
25 State’s vital records bureaucracy while he is in mourning—the balance of harms tips  
26 emphatically in Plaintiff’s favor.



1 Dated: September 2, 2014

Respectfully submitted,

2 **LAMBDA LEGAL DEFENSE AND**  
3 **EDUCATION FUND, INC.**

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 2, 2014, I electronically transmitted the attached documents to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

- Robert L. Ellman: robert.ellman@azag.gov
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I hereby certify that on September 2, 2014, I served the attached document by first class mail on Honorable John W. Sedwick, United States District Court, Federal Building and United States Courthouse, 222 West 7th Avenue, Box 32, Anchorage, Alaska 99513-9513.

s/ D. Freouf

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