

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

ASHLEE HENDERSON, et al.

Plaintiffs,

v.

DR. JEROME ADAMS, et al.

Defendants,

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CAUSE NO. 1:15-CV-220-TWP-MJD

TIPPECANOE COUNTY DEFENDANTS' ANSWER TO  
SECOND AMENDED COMPLAINT

Come now Defendants, Dr. Jeremy Adler, Craig Rich, Glenda Robinette, Pam Aaltonen, Thomas Padgett, Thometra Foster, Karen Combs, Kate Nail, Dr. John Thomas, and Dr. Hsin-Yi Weng, all in their official capacities (hereinafter "Defendants" or "Tippecanoe County Defendants") and for their answer to the Plaintiffs' Amended Complaint state as follows:

1. **ALLEGATION:** Plaintiffs bring this action to challenge the constitutionality under the United States Constitution of Indiana Code provisions § 31-9-2-15 ("Child born in wedlock"), § 31-9-2-16 ("Child born out of wedlock") and § 31-14-7-1 ("Presumption of Paternity") ("Statutes"). These statutes bastardize L.W.C.H., I.J.B-S, H.N.B., H.S. G.R.M.B. and Unborn Baby Doe (a/k/a "Children") by refusing to recognize that the Children were or will be born in wedlock to two lawfully married same-sex spouses; deny to the Children the benefits and stability of presuming two parents obligated and responsible for the Children upon their birth; and deny a presumption of parenthood and all the rights and responsibilities which are attendant to such a presumption to Ashlee Henderson, Captain Nicole Singley, Tonya Bush-Sawyer, Cathy Bannick, Sarah Janson, and

Nikkole McKinley- Barrett ("Same-Sex Non-Birth Parent"), because they are female spouses respectively married to the Children's birth mothers. Said challenge to the Statutes is both facial and as applied to Plaintiffs.

**RESPONSE:** Defendants admit that Plaintiffs are bringing an action to challenge the constitutionality of the specified statutes, lack information sufficient to admit the biographical facts alleged and request proof thereof, and deny the legal conclusions alleged by plaintiff.

**2. ALLEGATION:** Indiana Code § 31-9-2-15 provides as follows:

"Child born in wedlock", for purposes of IC 31-19-9 [Consent to Adoption], means a child born to:

(1) a woman; and

(2) a man who is presumed to be the child's father under IC 31-14-7-1(1) [Presumption of Paternity] or IC 31-14-7-1(2) unless the presumption is rebutted.

**RESPONSE:** Defendants admit that Plaintiffs have accurately quoted IC 31-9-2-15 and that the parenthetical descriptions are accurate as to the statutes described. Defendants would expand upon that to note that IC 31-14-7-1(1) addresses a presumption of biological fatherhood where the child is born during the marriage of the man and the child's biological mother and 300 days after the termination of the marriage while IC 31-14-7-1(2) addresses the presumption of biological fatherhood where the child is born during an apparent but void or voidable marriage.

**3. ALLEGATION:** Indiana Code § 31-9-2-16 provides as follows:

"Child born out of wedlock", for purposes of IC 31-19-3, IC 31-19-4-4, and IC 31-19-9, means a child who is born to:

(1) a woman; and

(2) a man who is not presumed to be the child's father under IC 31-14-7-1(1) or IC 31-14-7-1(2).

**RESPONSE:** Defendants admit that Plaintiffs have accurately quoted IC 31-9-2-16.

4. **ALLEGATION:** Indiana Code § 31-14-7-1(1) provides as follows:

A man is presumed to be a child's biological father if:

(1) the:

(A) man and the child's biological mother are or have been married to each other; and

(B) child is born during the marriage or not later than three hundred (300) days after the marriage is terminated by death, annulment, or dissolution.

**RESPONSE:** Defendants admit that Plaintiffs have accurately quoted IC 31-14-7-1(1).

5. **ALLEGATION:** Indiana Code § 31-9-2-15 and § 31-9-2-16, which define a child born in and out of wedlock, bastardize the Children because by statute, they were not/will not be born to a woman married to a man but instead were/will be born to a woman married to another woman, despite the fact that Indiana now recognizes same-sex marriage.

**RESPONSE:** Defendants deny that the statutes "bastardized" the children. The cited statutes are statutory definitions and, as such, have no effect by themselves but rather inform the interpretation and application of other statutes; of particular relevance to this litigation is IC 31-14-7-1(1) and (2) which create a presumption of biological fatherhood based on marital status or apparent marital status.

6. **ALLEGATION:** The only means by which parenthood will be granted to the female spouse of the birth mother is through adoption of the baby that she planned for with her spouse.

**RESPONSE:** Defendants admit that adoption is a means available to Plaintiffs to accomplish their goals with respect to establishing legal rights and duties as between the child and the same sex spouse of the biological mother. Defendants lack knowledge as to whether it is the only means and, therefore, request proof thereof.

7. **ALLEGATION:** In contrast, under I.C. § 31-14-7-1(1), a man is granted the presumption of parenthood by virtue of the fact that he is married to the biological mother of the child, regardless of whether the husband is biologically related to the child. For example, a third person can serve as sperm donor and the husband is still presumed to be the father of the child even though he is not biologically related to the child.

**RESPONSE:** Defendant denies this allegation. IC 31-14-7-1 does not create "a presumption of parenthood." Rather, it creates a presumption of biological fatherhood. The presumption is rebuttable. "Parenthood," as defined in the Indiana Code can be biological or adoptive. *See* IC 31-9-2-88. Defendant lacks sufficient information to admit the remainder of the allegation, and requests proof thereof. For example, Plaintiff's allegation may not be accurate if the biological mother executes a paternity affidavit indicating that her husband is not the child's biological father.

8. **ALLEGATION:** Defendants' refusal to recognize Same-Sex Non-Birth Parents on the respective birth certificates of the Children harms the Children because a birth certificate is the official document that establishes a person's identity. A birth certificate also establishes a baby's

family. As the Seventh Circuit Court of Appeals has stated: "The [S]tate [of Indiana] recognizes that family is about raising children and not just about producing them." *Baskin v. Bogan*, 766 F.3d 648, 663 (7th Cir. 2014), *cert. den. Bogan v. Baskin*, 135 S. Ct. 316, 190 L. Ed. 2d 142, 2014 U.S. LEXIS 5797, 83 U.S.L.W. 3189 (U.S. 2014) (holding unconstitutional Indiana statute that prohibited and refused to recognize same-sex marriage).

**RESPONSE:** Defendants lack information as to the existence, nature, or extent of harm to the children, if any, and therefore request proof thereof. Defendants deny that they caused any such harm. Defendants lack information sufficient to admit that a birth certificate is necessary to establish a family or an identity for the children and therefore request proof thereof. Defendants admit that *Baskin v. Bogan*, 766 F.3d 648 (7th Cir. 2014) contained the quoted statement.

9. **ALLEGATION:** This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1343 because this suit raises federal questions pursuant to 42 U.S.C. § 1983. Plaintiffs seek both injunctive relief and a declaratory judgment pursuant to 28 U.S.C. § 2201.

**RESPONSE:** Defendants admit this allegation.

10. **ALLEGATION:** Venue is proper in the Indianapolis Division of the Southern District of Indiana under 28 U.S.C. § 139 1(b) because more than one defendant has a principal office in this district.

**RESPONSE:** Defendants admit this allegation.

11. **ALLEGATION:** Defendant Dr. Jeremy P. Adler is the Health Officer for the Tippecanoe

County Health Department. Defendant Craig Rich is the Administrator of the Tippecanoe County Health Department. Defendant Glenda Robinette is the Vital Records Registrar for the Tippecanoe County Health Department. Defendants Pam Aaltonen, RN, Dr. Thomas C. Padgett, Thometra Foster, Karen Combs, Kate Nail, RN, Dr. John Thomas and Dr. Hsin-Yi Weng are all members of the Board of Health of Tippecanoe County, Indiana.

**RESPONSE:** Defendants admit this allegation.

12. **ALLEGATION:** Dr. Brian Niedbalski, is the Health Officer for the Bartholomew County Health Department. Collis Mayfield is the Director of the Bartholomew County Health Department. Beth Lewis is the Vital Records Registrar for the Bartholomew County Health Department. Dennis Stark, Dr. Michael Chadwick, Dr. Susan Sawin-Johnson, Michael Meyer, Dr. Charles Hatcher, Dr. Brooke F. Case, Cindy Boll, and Jim Reed are all members of the Board of Health of Bartholomew County, Indiana.

**RESPONSE:** The Tippecanoe County Defendants lack information sufficient to form a belief as to this allegation and request proof thereof.

13. **ALLEGATION:** Dr. Darren Brucken is the Health Officer for the Vigo County Health Department. Joni Wise is the Administrator for the Vigo County Health Department. Terri Manning is the Supervisor of Vital Statistics for the Vigo County Health Department. Jeffery DePasse, Dora Abel, Dr. Irving Haber, Brian Garcia, Michael Eldred, Dr. James Turner and Dr. Robert Burkle are all members of the Board of Health of Vigo County Indiana.

**RESPONSE:** The Tippecanoe County Defendants lack information sufficient to form a

belief as to this allegation and request proof thereof.

14. **ALLEGATION:** Dr. Virginia A. Caine is the director and health officer of the Marion County Health Department, a division of the Health and Hospital Corporation of Marion County. Darren Klingler is the Administrator of Vital Records for the Marion County Health Department. Dr. James D. Miner, Gregory S. Fehribach, Lacy M. Johnson, Charles S. Eberhardt, II, Deborah J. Daniels, Dr. David F. Canal and Joyce Q. Rogers are all trustees of the Health and Hospital Corporation of Marion County.

**RESPONSE:** The Tippecanoe County Defendants lack information sufficient to form a belief as to this allegation and request proof thereof.

15. **ALLEGATION:** Pursuant to I.C. § 16-20-1-17(b), "The local health officer shall be the registrar of births" and "[a]fter making a birth . . . record, the local health officer shall, by the fourth day of each month, forward the original record to the state department." Pursuant to I.C. § 16-20-1-19, "Local health officers shall enforce the health laws, ordinances, orders, rules, and regulations of the officer's own and superior boards of health."

**RESPONSE:** Defendant admits that Plaintiff has accurately quoted the specified sections of IC 16-20-1-17(b) and IC 16-20-1-19. However, Defendants would add that, under IC 16-19-3, the State Department has latitude to enforce the orders and rules of the State Department within the territorial jurisdiction of the local board of health and to remove the local health officer and, further, that under IC 16-37-1-3.1, records of live births are reported electronically to the State Department by persons in attendance at a live birth.

16. **ALLEGATION:** Pursuant to I.C. § 16-20-2-3, the county Board of Health is charged with managing the County Health Department. Pursuant to I.C. § 16-22-8-34(a)(23), the board of the HHC and the HHC has the authority to "do all acts necessary or reasonably incident to carrying out the purposes of this chapter, including the following: . . . (23) To enforce Indiana laws, administrative rules, ordinances, and the code of the health and hospital corporation of the county."

**RESPONSE:** Defendants admit that Plaintiff has accurately described the contents of IC 16-20-2-3 and IC 16-22-8-34(a)(23).

17. **ALLEGATION:** All of the Defendants affiliated with county health departments and/or the Health and Hospital Corporation of Marion County are persons within the meaning of 42 U.S.C. § 1983 who were acting under color of state law at all times relevant to this complaint.

**RESPONSE:** Defendants admit this allegation subject to the understanding that the Tippecanoe County Defendants are being sued for injunctive relief in their official capacities.

18. **ALLEGATION:** Dr. Jerome M. Adams is the commissioner of the Indiana State Department of Health ("ISDH"). ISDH maintains the Indiana Birth Registration System and authors the affiliated forms including, among other things, the Indiana Birth Worksheet used to capture information for the birth registry, all pursuant to I.C. § 16-37-1, *et seq.* Dr. Adams is a person within the meaning of 42 U.S.C. § 1983 who was acting under color of state law at all times relevant to this complaint.

**RESPONSE:** Defendants admit this allegation.

19. **ALLEGATION:** All Defendants named herein are sued in their official capacities. Each of the Defendants, and those subject to their supervision, direction, and control, intentionally performed, participated in, aided and/or abetted in some manner the acts alleged herein, proximately caused the harm alleged herein, and will continue to injure Plaintiffs irreparably if not enjoined from enforcing I. C. §§ 31-9-2-15 and -16 and I. C. § 31-14-7-1 on behalf of men only.

**RESPONSE:** Defendants admit that they are being sued in their official capacities. Tippecanoe County Defendants deny they, or those for whose actions they are responsible, harmed or are harming Plaintiffs. Defendants state that the remainder of the allegation is too ambiguous for them to admit and, therefore, deny same and request proof thereof. Defendants further observe that IC 31-9-2-15 and 16 are statutory definitions and, as such, are not "enforced" but rather may inform the enforcement of statutes that use those definitions.

20. **ALLEGATION:** On November 11, 2014, plaintiffs Ashlee and Ruby Henderson were lawfully married in Tippecanoe County, Indiana. Prior to their marriage, the couple had been together for over eight years and decided they wanted a child in their family. Subsequent to the artificial conception of L.W.C.H., the Indiana statute prohibiting same-sex marriage was declared unconstitutional and Ashlee and Ruby Henderson married, desiring that their child be born to a wedded couple.

**RESPONSE:** Defendants lack information sufficient to admit this allegation and, therefore request proof thereof.

21. **ALLEGATION:** During the week of November 2, 2014, the couple contacted IU Health

Arnett Hospital where it was anticipated that L.W.C.H. would be born, to ask if both spouses would be listed on the birth certificate as parents of L.W.C.H., once they were married. The couple was informed that they would need to contact the Tippecanoe County Health Department.

**RESPONSE:** Defendants lack information sufficient to admit this allegation and, therefore, request proof thereof.

22. **ALLEGATION:** On that same day, the couple contacted the Tippecanoe Department of Health and were told that Ashlee Henderson would not be listed on the birth certificate as a parent of L.W.C.H. without a court order.

**RESPONSE:** Defendants admit that a court order following adoption is part of the process by which non-biological parents are listed in the birth record and that this information was communicated to Ashlee Henderson.

23. **ALLEGATION:** On or about December 2, 2014, Glenda Robinette, Vital Records Registrar, Tippecanoe County Health Department, informed Ashlee Henderson that only Ruby Henderson would be listed on the birth certificate of L.W.C.H. Attached as Exhibit A is the explanation of why Ashlee Henderson would not be presumed to be the parent of L.W.C.H. that was forwarded by Ms. Robinette.

**RESPONSE:** Defendants admit that the document attached as Exhibit A was provided to Ashlee Henderson and that, in the absence of an order concerning the status of the non-biological mother, Ashlee Henderson could not be listed in the birth record by the Tippecanoe County Health

Department.

24. **ALLEGATION:** L.W.C.H. was born at I.U. Health Arnett Hospital in Lafayette, Indiana. Subsequent to his birth, Ruby Henderson was asked to complete the Indiana Birth Worksheet, version 27, 05/25/12. *See*, Exhibit B, pertinent pages included. The couple marked through each question asking for information regarding the father and in lieu of the word "father" inserted the term "Mother #2". All information provided regarding "Mother #2" related to Ashlee Henderson, the legal spouse of the birth mother.

**RESPONSE:** Defendants lack information sufficient to admit this allegation and therefore request proof thereof. Defendants would further observe that, in the prior iterations of the Plaintiffs' Complaint, Plaintiffs alleged that " I.U. Health Arnett informed the couple that the software they were required by the State of Indiana to use regarding birth certificates would not allow the entry of information regarding Ashlee Henderson as a parent of L.W.C.H."

25. **ALLEGATION:** On January 22, 2015, the Tippecanoe County Health Department issued the certificate of birth, on which L.W.C.H. is listed as the child of only Ruby L. Henderson.

**RESPONSE:** Defendants admit this allegation.

26. **ALLEGATION:** Captain Nicole Singley and her wife, Jennifer Singley, were married in January of 2014. On March 29, 2015, H.S. was delivered to Jennifer Singley. The Marion County Health Department declined to list Captain Nicole Singley on the birth certificate of H.S.

**RESPONSE:** Defendants lack information sufficient to admit this allegation and therefore

request proof thereof.

27. **ALLEGATION:** The Singley's baby was artificially conceived. Both Captain Singley and Jennifer Singley are students pursuing law degrees. Captain Singley recently transitioned from her position of assisting returning veterans with integration into the Veteran's Affairs office and now oversees a Department of Defense ("DOD") initiative that provides for the procurement of active duty orders for guard/reserve personnel in order to augment the staff of various DOD agencies.

**RESPONSE:** Defendants lack information sufficient to admit this allegation and therefore request proof thereof.

28. **ALLEGATION:** Captain Singley is an active duty member of the U.S. Army and is entitled to all the benefits available to members of the Army including health insurance. Currently, her family is covered by military health insurance. H.S. is eligible for healthcare coverage under the military insurance program because H.S. is considered to be the stepchild of Captain Singley; however, if Jennifer Singley should predecease H.S. then he will no longer be considered eligible for Captain Singley's health insurance because Captain Singley will no longer be considered a stepparent.

**RESPONSE:** Defendants lack information sufficient to admit this allegation and therefore request proof thereof.

29. **ALLEGATION:** Because Captain Singley is not listed as a parent on the birth certificate of H.S., he will not be eligible for all military benefits available to the families of U.S. Army enlisted

personnel unless and until he is legally adopted by Captain Singley.

**RESPONSE:** Defendants lack information sufficient to admit this allegation and therefore request proof thereof.

30. **ALLEGATION:** Nicki and Tonya Bush-Sawyer were married in Washington, D.C. in 2010. Nicki is a research scientist at Eli Lilly and Tonya is a stay-at-home mother.

**RESPONSE:** Defendants lack information sufficient to admit this allegation and therefore request proof thereof.

31. **ALLEGATION:** I.J.B-S was artificially conceived and born on January 10, 2014. Nicki completed a document similar to the Indiana Birth Worksheet attached hereto as Ex. B. Wherever information was requested regarding the "father", Nicki inserted information regarding Tonya. A few weeks after their son's birth, the couple received the hospital's confirmation of birth with all names listed as parents. Shortly thereafter, they also received a social security card for their son.

**RESPONSE:** Defendants lack information sufficient to admit this allegation and therefore request proof thereof.

32. **ALLEGATION:** In approximately March or April of 2014, Nicki went to the Marion County Health Department to pick-up her son's official birth certificate. She was told there was a problem and to return the following week. When she returned, she discovered that only her name was listed as parent of the couple's son and his name had been changed from I.J.B-S to I.J.B. Additionally, a second social security card was received in the mail with a new social security

number for their son and in his "new" name of I.J.B.

**RESPONSE:** Defendants lack information sufficient to admit this allegation and therefore request proof thereof.

33. **ALLEGATION:** Nicki did not request a change of name for her son nor a new social security number.

**RESPONSE:** Defendants lack information sufficient to admit this allegation and therefore request proof thereof.

34. **ALLEGATION:** Calle and Sarah Janson were married in Indianapolis, Indiana on June 27, 2014. Their baby was artificially conceived. Calle is expected to deliver in November 2015 in Marion County Indiana.

**RESPONSE:** Defendants lack information sufficient to admit this allegation and therefore request proof thereof.

35. **ALLEGATION:** Calle holds a Master's Degree in Social Work and works as a mental health therapist. Sarah is a flight dispatcher and holds a bachelor's of science degree in aerospace.

**RESPONSE:** Defendants lack information sufficient to admit this allegation and therefore request proof thereof.

36. **ALLEGATION:** Both want Sarah listed as a parent on the birth certificate of Unborn Baby Doe.

**RESPONSE:** Defendants lack information sufficient to admit this allegation and therefore

request proof thereof.

37. **ALLEGATION:** At this time, the Marion County Health Department will not issue a birth certificate containing the name of the birth mother and her same-sex spouse without a court order.

**RESPONSE:** Defendants lack information sufficient to admit this allegation and therefore request proof thereof.

38. **ALLEGATION:** Nikkole McKinley-Barrett and Donnica Barrett have been together for approximately 12 years. Both are registered nurses. They were married on June 25, 2014.

**RESPONSE:** Defendants lack information sufficient to admit this allegation and therefore request proof thereof.

39. **ALLEGATION:** Following a joint commitment by the couple to have a child and artificial insemination, G.R.M.B. was born on April 3, 2014 to Donnica Barrett in Vigo County.

**RESPONSE:** Defendants lack information sufficient to admit this allegation and therefore request proof thereof.

40. **ALLEGATION:** On the Record of Live Birth form, information regarding Nikkole McKinley-Barrett was provided to the State of Indiana so that McKinley Barrett could be listed as the second parent on the birth certificate of G.R.M.B. The State did not list Nikkole McKinley-

Barrett as a second parent on the birth certificate.

**RESPONSE:** Defendants lack information sufficient to admit this allegation and therefore request proof thereof.

41. **ALLEGATION:** Lyndsey and Cathy Bannick were married in October, 2013 in Iowa. Lindsey is a finance manager for Cummins in Columbus, Indiana. Cathy also works for Cummins and is an extended coverage manager.

**RESPONSE:** Defendants lack information sufficient to admit this allegation and therefore request proof thereof.

42. **ALLEGATION:** Following a joint commitment by the couple to have a child and artificial insemination, H.N.B. was born on May 8, 2015 to Lyndsey Bannick in Bartholomew County.

**RESPONSE:** Defendants lack information sufficient to admit this allegation and therefore request proof thereof.

43. **ALLEGATION:** On the Record of Live Birth form, information regarding Cathy Bannick was provided so that Cathy Bannick could be listed as the second parent on the birth certificate of H.N.B. The State did not list Cathy Bannick as a second parent on the birth certificate.

**RESPONSE:** Defendants lack information sufficient to admit this allegation and therefore request proof thereof.

44. **ALLEGATION:** The Indiana Birth Worksheet was created by the State of Indiana as part of the Indiana Birth Registration System. <http://www.state.in.us/isdh/23575.htm> (Last visited Jan. 26, 2015) The Indiana Birth Worksheet asks mothers if they are married and then asks, "Are you married to the father of your child?" (Ex. B, Indiana Birth Worksheet, questions 35 and 37). As the husband is presumed to be the father of the birth mother's child, the birth mother can affirmatively answer the question and the husband will be listed on the birth certificate as father of the child, even if he is not the actual biological father of the child.

**RESPONSE:** Defendants admit that question 35 of Exhibit B asks about the mother's marital status but would expand upon that to note that the question asks "Current Marital Status" and offers as choices "never married, widowed, divorced, currently married, married, but refusing father's information, and unknown." Defendants admit that question 37 of Exhibit B asks if the mother is married to the father of her child but would further note that, if the mother is married to someone other than the father of her child (or is unmarried), the worksheet directs her to go to question 38 which asks whether a paternity affidavit has been completed and, if not, directs her to skip questions 39 through 52. Defendant admits that the presumption in IC 31-14-7-1 is available to husbands who are not, in fact, biological fathers but would further state that the presumption is rebuttable and that if, as alleged, the mother declared that her husband was not the biological father, that declaration would contribute to a rebuttal. *See Green v. Estate of Green*, 724 N.E.2d 260, 264-265 (Ind. Ct. App. 2000).

45. **ALLEGATION:** Plaintiffs incorporate by reference the allegations of paragraphs 1- 44.

**RESPONSE:** Defendants incorporate their corresponding responses thereto.

46. **ALLEGATION:** The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that “no State shall . . . deny to any person within its jurisdiction the equal protection of the laws.”

**RESPONSE:** Defendants admit this allegation.

47. **ALLEGATION:** Indiana law expressly provides that a child born to a lawfully married man and woman is a child born in wedlock. I.C. § 31-9-2-15. A child born to a woman and a man who is not presumed to be the child's father is a child born out of wedlock. I.C. § 31-9-2-16. A man married to the birth mother is presumed to be the father of the child. I.C. § 31-14-7-1(1).

**RESPONSE:** Defendants admit that, for purposes of IC 31-19-3, IC 31-19-4-4, and IC 31-19-9, Plaintiffs have accurately characterized IC 31-9-2-16 with the caveat that the presumption is as defined under IC 31-14-7-1(1) or IC 31-14-7-1(2). Defendant admits that, absent a rebuttal of the presumption, a man is presumed to be a child’s biological father if the child is born during or within 300 days after the man’s marriage to the child’s biological mother. Defendants deny the remainder of the allegation.

48. **ALLEGATION:** "'Bastard child' and 'child born out of wedlock' are synonymous." *Curry v. Maynard*, 227 Ind. 46, 83 N.E.2d 782, 783 (Ind. 1949).

**RESPONSE:** Defendants admit that the cited case contains the quoted language, but notes that court was considering whether a petition containing the word “bastard child” instead of “child born out of wedlock” deprived the court of subject matter jurisdiction. Defendants question its

applicability to the case at hand.

49. **ALLEGATION:** "Bastard" is most commonly used as a slur. BLACK'S LAW DICTIONARY, 172 (9th ed. 2009).

**RESPONSE:** Defendants admit that Black's Law Dictionary contains the quoted language. To the extent this allegation is meant to be read in conjunction with ¶48, Defendants lack information sufficient to admit that the usage in 2009 was comparable to the usage in 1949 and, to the extent relevant, request proof with respect thereto.

50. **ALLEGATION:** An "adulterine bastard" is defined as follows: A child born to a married woman whose husband is not the father of the child. The rebuttable presumption is generally that a child born of the marriage is the husband's child. A child born to a woman by means of artificial insemination may be termed an *adulterine bastard*, but most jurisdictions prohibit a husband who has consented to the artificial insemination from denying paternity and responsibility for the child. BLACK'S LAW DICTIONARY 172 (9th Ed. 2009).

**RESPONSE:** Defendants admit that Black's Law Dictionary contains the specified definition but lack information with respect to the dictionary's legal assertions concerning various jurisdictions and, to the extent relevant, request proof with respect thereto.

51. **ALLEGATION:** The Indiana Code does not recognize that children born to a woman married to another woman are children born in wedlock.

**RESPONSE:** Defendant admits that IC 31-9-2-15 defining "child born in wedlock" creates

a presumption of biological fatherhood and, as such, does not extend that presumption to women who are not the biological parent of the child. However, the Indiana Code encompasses a great deal and the term "recognize" is ambiguous; Defendants therefore lack information sufficient to admit the remainder of the allegation, deny same, and request proof thereof.

**52. ALLEGATION:** Defendants' refusal to recognize that the Children were/will be born in wedlock following the same-sex marriages of the birth mothers infringes on protections offered by the Equal Protection Clause of the Fourteenth Amendment and treats the Children differently solely because both of their married parents are females and of the same-sex instead of the opposite-sex.

**RESPONSE:** Defendants deny this allegation.

**53. ALLEGATION:** Indiana law provides different protections for children born in and out of wedlock. For example, if another party seeks to adopt a child born in wedlock, Indiana law protects the man who is presumed to be the father even if he is not biologically related to the child through notice and other requirements. *See, e.g.*, I.C. § 31-19-9-1(a)(1) (adoption petition can only be granted if written consent is given by the biological father, adoptive father or the "man who is presumed to be the child's biological father" pursuant to I.C. § 31-14-7-1(1)).

**RESPONSE:** Defendants admit that IC 31-19-9-1(a) requires that for a petition for adoption to be granted as to a child less than eighteen years of age, among other things, a consent to adoption must be executed by "each living parent of a child born in wedlock, including a man who is presumed to be the child's biological father under IC 31-14-7-1(1) if the man is the biological or

adoptive parent of the child." Defendants further admit that, in the case of a "child born out of wedlock," the father whose paternity has been established by affidavit or a court proceeding must execute a consent (with exceptions under, *inter alia*, IC 31-14-20-2, IC 31-19-9-8, and IC 31-19-9-15). Defendants further admit that, under those statutes, a consent is not required to be executed by a woman who is the spouse of the child's biological mother. To the extent the allegation is inconsistent with or goes beyond these admissions, Defendants lack sufficient information to admit the remainder of the allegation and, therefore, request proof thereof.

**54. ALLEGATION:** The Children's parental relationship with the Same-Sex Non-Birth Parents is not protected by the requirements of I.C. § 31-19-9-1, should something happen to the birth mothers.

**RESPONSE:** Defendants restate their response to the allegation in ¶53.

**55. ALLEGATION:** By refusing to recognize the marriage of the plaintiff couples for purposes of determining the children were born in-wedlock, Defendants, acting under color of Indiana law deprive the Children of the rights secured by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

**RESPONSE:** Defendants deny this allegation.

**56. ALLEGATION:** Plaintiffs incorporate by reference the allegations of paragraphs 1- 44.

**RESPONSE:** Defendants incorporate their responses thereto.

57. **ALLEGATION:** By refusing to grant the presumption of parenthood to the Same-Sex Non-Birth Parents, Defendants are depriving the Children of the numerous legal protections afforded by having a legally recognized second parent. These protections include but are not limited to:

- a. Having two people obligated to financially and emotionally provide and care for the Children, *See, e.g.*, I.C. §31-16-6-1, *Matter of S.T.*, 621 N.E.2d 371, 373 (Ind. Ct. App. 1993);
- b. Right of inheritance (I.C. § 29-1-2-1); and,
- d. (sic) The Children's right to have their parental relationship with Ashlee Henderson, Captain Nicole Singley, Tonya Bush-Sawyer, Cathy Bannick, Sarah Janson, and Nikkole McKinley-Barrett protected by law.

**RESPONSE:** Defendants deny that they deprived Ashlee Henderson of any legal protections and further deny that it is within their power to grant a presumption of parenthood to Ashlee Henderson. Defendants lack sufficient information to admit the remainder of this allegation and, therefore, request proof thereof.

58. **ALLEGATION:** By refusing to grant the presumption of parenthood to Same- Sex Non-Birth Parents upon the birth of the Children, Defendants are depriving the Same-Sex Non-Birth Parents of the legal protections afforded a person presumed to be a parent of a child. These protections include the right to:

- a. Make decisions regarding the medical care of the Children, *See, e.g.*, I.C. § 31-17-2-17;
- b. Visitation by and custody of the Children in the event of divorce, *See, e.g.*, I.C. § 37-17-4-1; and,
- c. Make personal and private decisions regarding the raising of the Children, *See, e.g.*, *Troxel v.*

*Granville*, 530 U.S. 57, 65 (2000) ("The interest of parents in the care custody and control of their children [is] perhaps the oldest of the fundamental liberty interest recognized by the court").

**RESPONSE:** Defendants deny that they deprived Ashlee Henderson of any legal protections and further deny that it is within their power to grant a presumption of parenthood to Ashlee Henderson. Defendants lack sufficient information to admit the remainder of this allegation and, therefore, request proof thereof.

59. **ALLEGATION:** Defendants' refusal to recognize the Plaintiffs' marriages for purposes of presuming that the Same-Sex Non-Birth Parents of the Children are the legally presumed parents of the Children infringes on protections offered by the Equal Protection Clause of the Fourteenth Amendment and treats the Children differently because their married parents are female and of the same-sex instead of the opposite-sex.

**RESPONSE:** Defendants deny the allegation generally, but specifically deny that they refused to recognize the marriage of Ashlee and Ruby Henderson and further deny that they had the power to grant or deny the statutory presumption requested.

60. **ALLEGATION:** By refusing to presume parenthood for the Same-Sex Non- Birth Parents of the Children, Defendants, acting under color of Indiana law, deprive the Children of the rights secured by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

**RESPONSE:** Defendants deny this allegation.

61. **ALLEGATION:** The granting of a presumption of parenthood to male spouses who are not biologically related to the offspring of their wives who were artificially inseminated and refusing to grant the same presumption of parenthood to the female spouses of birth mothers who were also artificially inseminated is gender-based discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment.

**RESPONSE:** Defendants deny this allegation.

62. **ALLEGATION:** Plaintiffs incorporate by reference the allegations of paragraphs 1- 44.

**RESPONSE:** Defendants incorporate their responses thereto.

63. **ALLEGATION:** The Fourteenth Amendment to the United States Constitution guarantees to all citizens due process of law.

**RESPONSE:** Defendants admit this allegation.

64. **ALLEGATION:** Decision-making regarding child rearing is a central part of the liberty protected by the Due Process Clause.

**RESPONSE:** Defendants admit that a parent's ability to make decisions about the care, custody, and control of the parent's child is a protected liberty interest. To the extent this allegation goes beyond that proposition, Defendants lack information sufficient to admit the allegation and request proof thereof.

65. **ALLEGATION:** As the spouses of the birth mothers, the Same-Sex Non-Birth Parents

have the fundamental right to the care, custody and control of the Children born to their marriages, just like the same parental rights accorded to male spouses who are not biologically related to children born in the marriage but who are presumed to be the parent of the child.

**RESPONSE:** Defendants deny that, solely by virtue of being married to Ruby Henderson, Ashlee Henderson acquired a right to direct the care, custody, and control of a child born to Ruby Henderson. For example, if Ruby Henderson objected to Ashlee Henderson making decisions about the child's care, custody, and control, such an objection would likely override any claims made by Ashlee Henderson. Similarly, if the biological father of the child objected to such care, custody, and control, such a right might not be recognized on the part of Ashlee Henderson. Defendants therefore lack information sufficient to admit this allegation.

66. **ALLEGATION:** The Children have the fundamental familial right to be raised and nurtured by both of their parents. *See, e.g., Berman v. Young*, 291 F.3d 976, 983 (7th Cir. 2002) (citing *Troxel*, 530 U.S. at 65-66 (2008)).

**RESPONSE:** Defendants admit that parents have a due process right to care for and raise their children, and children enjoy the corresponding familial right to be raised and nurtured by their parents. To the extent this allegation goes beyond that proposition, Defendants lack information sufficient to admit the allegation and request proof thereof.

67. **ALLEGATION:** All Plaintiffs have a protected property interest in maintaining their lawful familial status and the comprehensive protections and mutual obligations that are provided to families under Indiana law.

**RESPONSE:** Defendants lack information sufficient to admit this allegation and request proof thereof.

68. **ALLEGATION:** The failure of Indiana's laws to recognize the Children as children born in wedlock to a married couple stigmatizes the Children and the denies the Children the same rights accorded to children born to a married man and woman.

**RESPONSE:** Defendants lack information sufficient to admit this allegation and request proof thereof.

69. **ALLEGATION:** The failure of Indiana's laws to presume parenthood for the Same-Sex Non-Birth Parents at the time of the Children's birth, denies the Plaintiffs their fundamental right to live as a legal familial unit and denies them due process and the myriad benefits, privileges and rights accorded to parents and children under Indiana law.

**RESPONSE:** Defendants deny this allegation.

70. **ALLEGATION:** Defendants' refusal to recognize the marriages of the plaintiff couples for purposes of determining whether the Children were born in or out of wedlock and their refusal to presume parenthood for Same-Sex Non-Birth Parents while presuming parenthood for men who are not biologically related to the children born to their wives, violates the Due Process Clause of the U.S. Constitution.

**RESPONSE:** Defendants deny that they refused to recognize the Hendersons' marriage. Defendants further deny that the presumption set forth in the Indiana Code is a "presumption of

parenthood," rather it is a presumption of "biological fatherhood." Defendants deny that their actions violate the Constitution.

71(a). **ALLEGATION:** Plaintiffs incorporate by reference the allegations of paragraphs 1-70.

**RESPONSE:** Defendants incorporate their responses thereto.

71(b). **ALLEGATION:** This case presents an actual controversy because Defendants' present and ongoing denial of equal treatment to Plaintiffs; the infringement of Plaintiffs' fundamental rights; and the denial of due process to Plaintiffs, subjects them to serious and immediate harms, including ongoing emotional distress and stigma, warranting the issuance of a judgment declaring that I. C. § 31-9-2-15, § 31-9-2-16 and § 31-14-7-1 violate the Equal Protection Clause and/or the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

**RESPONSE:** Defendants lack information sufficient to admit this allegation and, therefore, request proof thereof.

72. **ALLEGATION:** A favorable decision enjoining Defendants from further constitutional violations, and mandating them to recognize the marriage and presumed parenthood of Ashlee and Ruby Henderson, Captain Nicole and Jennifer Singley, Nicki and Tonya Bush-Sawyer, Calle and Sarah Janson, Nikkole McKinley-Barrett and Donnica Barrett, and Lyndsey and Cathy Bannick would redress and prevent the irreparable injuries to all Plaintiffs which they have identified, and

for which they have no adequate remedy at law or in equity.

**RESPONSE:** Defendants deny that they have violated the constitution. The Tippecanoe County Defendants deny that action or inaction on their part caused any injury to the Plaintiffs. Defendants lack information as to the existence, nature, and extent of Plaintiffs' injuries and, therefore, request proof thereof.

#### **ADDITIONAL DEFENSES**

73. All allegations not explicitly admitted are hereby denied.

74. Plaintiffs fail to state a claim upon which relief may be granted as to these Defendants. With respect to Tippecanoe County Health Department and its employees, the Complaint alleges only that the Health Department indicated that Ashlee Henderson would not be listed on the birth certificate in the absence of a court order directing that she be placed on the birth certificate and that it issued a birth certificate without Ashlee Henderson listed on the certificate. (Complaint at ¶¶19, 20, and 23). There is no constitutional right to have a particular name appear on a birth certificate, and the presence or absence of such information on a birth certificate does not, itself, confer or deny the rights and duties sought by the Plaintiffs.

75. Plaintiffs claims for equitable relief are moot with respect to the Tippecanoe County Defendants.

76. Plaintiffs have failed to join all necessary parties, in particular the biological father of L.W.C.H., to speak to his parental interests, if any.

77. The Tippecanoe County Defendants' alleged acts or omissions with respect to the statute in question are ministerial in nature and afford the Tippecanoe County Defendants no discretion to deviate therefrom.

78. Defendants reserve the right to raise additional defenses as they become known upon proper application to the court.

WHEREFORE, Defendants request judgment be entered in their favor and against the Plaintiff and for all other appropriate relief.

Respectfully submitted,  
HOFFMAN, LUHMAN & MASSON, PC

By: /s/Douglas J. Masson  
Douglas J. Masson #19474-53  
Attorney for Tippecanoe County Defendants  
200 Ferry Street, Suite C  
P.O. Box 99  
Lafayette, IN 47902  
Telephone: (765) 423-5404

CERTIFICATE OF SERVICE

I hereby certify that on June 22, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

Raymond L. Faust  
rfaust@housereynoldsfaust.com

William R. Groth  
wgroth@fdgtlaborlaw.com

Lara K. Langeneckert  
lara.langeneckert@atg.in.gov

Anna M. Konradi  
anna.konradi@Faegrebd.com

Anthony Scott Chinn  
scott.chinn@faegrebd.com

Richard A. Mann  
rmann@mannlaw.us

Karen Celestino-Horseman  
karen@kchorseman.com

Thomas M. Fisher  
tom.fisher@atg.in.gov

Anne Kramer Ricchiuto  
anne.ricchiuto@FaegreBD.com

/s/Douglas J. Masson  
Douglas J. Masson