

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
SIXTH DIVISION

MARISA N. PAVAN and TERRAH D. PAVAN,
individually and as parents, next friends, and
guardians of T.R.P., a minor child

PLAINTIFFS

LEIGH D.W. JACOBS and JANA S. JACOBS,
individually, and as parents, next friends, and
guardians of F.D.J., a minor child

COURTNEY M. KASSEL and KELLY L. SCOTT,
individually, and as parents, next friends, and
guardians of A.G.S., a minor child

VS.

CASE NO. 60CV-15-3153

NATHANIEL SMITH, MD, MPH,
Director of the Arkansas Department of Health,
in his official capacity, and his successors in office

DEFENDANT

MEMORANDUM OPINION

This case was submitted to the court on cross-motions for summary judgment. A hearing was conducted on Monday, November 23, 2015. At the conclusion of the hearing, the court orally ordered from the bench that the defendant was to immediately issue amended certificates of birth to each of the three plaintiff couples evidencing both spouses as the parents of their respective minor children. The court took under advisement all further rulings pending issuance of a written decision. This *Memorandum Opinion* is issued in conjunction with the *Order* filed on even date herewith in this case.

SUMMARY OF MATERIAL FACTS

The parties have filed cross-motions for summary judgment in which each side avers there are no material facts in dispute.¹ After reviewing the parties' pleadings the court agrees with the litigants.

The plaintiffs Pavan are a same-sex couple legally married in New Hampshire in 2011. The minor child T.R.P. was born in Arkansas in May of 2015. The Pavans completed the birth certificate form at the hospital indicating they were married and the parents of the minor child. The Arkansas Department of Health, Bureau of Vital Statistics did not include Marisa Pavan on the original birth certificate. In July of 2015, the Pavans requested that the birth certificate be amended to show them both as the minor's parents. The Arkansas Department of Health refused to amend the birth certificate absent a court order.

The plaintiffs Jacobs are a same-sex couple legally married in Iowa in 2010. The minor child F.D.J. was born in Arkansas in June of 2015. The Jacobs completed the birth certificate form at the hospital indicating they were married and the parents of the minor child. The Arkansas Department of Health, Bureau of Vital Statistics did not include Jana Jacobs on the original birth certificate. In July of 2015, the Jacobs requested that the birth certificate be amended to show them both as the minor's parents. The Arkansas Department of Health refused to amend the birth certificate absent a court order.

Plaintiffs Kassel and Scott are a same-sex couple who were married on July 1, 2015 in Arkansas. The minor child A.G.S. was born in January of 2015. Only one of the two plaintiffs was included on the original birth certificate. Subsequent to their marriage, the plaintiffs Kassel

¹ The only disputed fact between the parties is whether without court action in this matter, the minor children of the plaintiffs can be added to health insurance plans as dependents. The court agrees with the State that such factual dispute is not material to resolution of the Plaintiffs' constitutional claims by summary proceeding.

and Scott were told by the Arkansas Department of Health that it would not amend the birth certificate to include both plaintiffs as parents absent a court order.

***Wright v. State, 60CV-13-2662 and
Smith v. Wright, 2015 Ark. 298 (June 26, 2015)***

The Arkansas litigation challenging the ban on same-sex marriage was filed in Pulaski County as *Wright v. State*, 60CV-13-2662. The defendant in the present case, Nathaniel Smith, was also a named defendant in *Wright*. He was named both times in his official capacity as either Acting Director or Director of the Arkansas Department of Health. The Bureau of Vital Statistics is a division of the Arkansas Department of Health and is the state agency charged with maintenance of vital records, including the issuance of certificates of birth and amended certificates of birth. *See*, A.C.A. § 20-18-201.

The defendant appealed the trial court's decision in *Wright*, the case being styled as *Smith v. Wright* on appeal. The Arkansas Supreme Court entered an *Order* dismissing that appeal on June 26, 2015. *See, Smith v. Wright*, 2015 Ark. 298 (June 26, 2015).

The Wright plaintiffs filed a *Motion for Summary Judgment* on February 26, 2014. In their prayer for relief, the plaintiffs requested that the court issue a permanent mandatory injunction as follows:

[R]equiring Defendant Nathaniel Smith, M.D., as interim director of the Arkansas Department of Health, and his successors, to henceforth issue birth certificates for children born of marriages between members of the same sex that were entered into in other states to reflect that the married parents are the parents of the children born of the marriage; and, also, requiring said Defendant to issue amended birth certificates to any married couples of the same sex that previously gave birth to children in Arkansas to reflect that the married parents are the parents of the children born of this marriage.

The trial court in *Wright* entered *Summary Judgment* in favor of the plaintiffs on May 9, 2014. On May 15, 2014, the trial court issued a *Final Judgment and Rule 54(b) Certification*.

The *Final Judgment* reads, in relevant part, that:

[I]t is and was the intent of the Order to grant Plaintiffs' Motion for Summary Judgment without exception and as to all injunctive relief requested therein. In fact, this was the expressly stated title of the May 9, 2014 Order.

RES JUDICATA

The Arkansas Supreme Court recently addressed the principle of *res judicata* in the case of *Abraham v. Beck*, 2015 Ark. 80, 456 S.W.3d 744, 2015 LEXIS 88, where it stated:

The concept of *res judicata* has two facets, one being issue preclusion and the other claim preclusion. *Huffman v. Alderson*, 335 Ark. 411, 414, 983 S.W.2d 899, 901 (1998) ... Collateral estoppel, also known as issue preclusion, bars relitigation of issues of law or fact previously litigated by a party. *Johnson v. Union Pac. R.R.*, 352 Ark. 534, 544, 104 S.W.3d 745, 750 (2003). The elements of collateral estoppel are as follows: (1) the issue sought to be precluded must be the same as that involved in the prior litigation; (2) the issue must have been actually litigated; (3) it must have been determined by a valid and final judgment; and (4) the determination must have been essential to the judgment. *Id.* In *Johnson v. Union Pacific R.R.*, this court adopted the offensive use of collateral estoppel, which prevents a defendant from relitigating a defense, approved by the United States Supreme Court in *Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322, 99 S. Ct. 645, 58 L. Ed. 2d 552 (1979). This court held that the offensive use of collateral estoppel should be available only in limited cases, and that the trial court should be given broad discretion to determine if it should be applied.

Defendant Smith has raised the issue that Judge Piazza's *Final Judgment* didn't strictly comply with Rule 65(d) of the Arkansas Rules of Civil Procedure concerning the specificity of injunctive language. This is an issue that could have been and should have been raised by the defendant Smith in the appeal in *Wright*. When the Arkansas Supreme Court dismissed *Wright* as being moot in light of the decision in *Obergefell v. Hodges*, 567 U.S. ____ (2015), the defendant Smith again had the opportunity to point out to the Court that all of the issues involved in the

injunction had not been conclusively resolved by *Obergefell*. Collateral attacks on judgments are only allowed if there are allegations of fraud or lack of jurisdiction.²

It is clear with respect to the claims of the plaintiffs Pavan and Jacobs that the issues before the court now were fully and completely litigated in the *Wright* case, and that the *Wright* injunction is res judicata and binding upon the defendant Smith.

**DECLARATORY JUDGMENT AS TO
THE CONSTITUTIONALITY OF
A.C.A. §20-18-401 and A.C.A. §20-18-406**

The plaintiffs seek declaratory judgment alleging that two statutes addressing birth certificates are unconstitutional in whole or part pursuant to the United States Supreme Court decision in *Obergefell*. The subject statutes are A.C.A. § 20-18-401 and A.C.A. § 20-18-406.³

² See, *Fannie Mae v. Taylor*, 2015 Ark. 78, 455 S.W.3d 811, 2015 Ark. LEXIS 79, and *Powers v. Bryant*, 309 Ark. 568, 571, 832 S.W.2d 232, 233 (1992).

³ 20-18-401. **Birth Registration generally.**

(a) A certificate of birth for each live birth which occurs in this state shall be filed with the Division of Vital Records of the Department of Health, or as otherwise directed by the State Registrar of Vital Records, within ten (10) days after the birth and shall be registered if it has been completed and filed in accordance with this section.

(b) When a birth occurs in an institution or en route thereto, the person in charge of the institution or his or her authorized designee shall obtain the personal data, prepare the certificate, certify that the child was born alive at the place, time, and date stated on the certificate either by signature or in an approved electronic process, and file the certificate as directed in subsection (a) of this section. The physician or other person in attendance shall provide the medical information required by the certificate within seventy-two hours after the birth.

(c) When a birth occurs outside an institution:

(1) The certificate shall be prepared and filed by one (1) of the following in the indicated order of priority:

(A) The physician in attendance at or immediately after the birth, or in the absence of such a person;

(B) Any other person in attendance at or immediately after the birth, or in the absence of such a person; or

(C) The father, the mother, or in the absence of the mother, the person in charge of the premises where the birth occurred; and

(2) The division shall determine what evidence may be required to establish the fact of birth.

(d) When a birth occurs on a moving conveyance within the United States and the child is first removed from the conveyance in this state, the birth shall be registered in this state and the place where it is first removed shall be considered the place of birth. When a birth occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space and the child is first removed from the conveyance in this state, the birth shall be registered in this state, but the certificate shall show the actual place of birth insofar as can be determined.

(e) For the purposes of birth registration, the mother is deemed to be the woman who gives birth to the child, unless otherwise provided by state law or determined by a court of competent jurisdiction prior to the filing of the birth certificate. The information about the father shall be entered as provided in subsection (f) of this section.

(f)(1) If the mother was married at the time of either conception or birth or between conception and birth the name of the husband shall be entered on the certificate as the father of the child, unless:

(A) Paternity has been determined otherwise by a court of competent jurisdiction; or

(B) The mother executes an affidavit attesting that the husband is not the father and that the putative father is the father, and the putative father executes an affidavit attesting that he is the father and the husband executes an affidavit attesting that he is not the father. Affidavits may be joint or individual or a combination thereof, and each signature shall be individually notarized. In such event, the putative father shall be shown as the father on the certificate and the parents may give the child any surname they choose.

(2) If the mother was not married at the time of either conception or birth or between conception and birth, the name of the father shall not be entered on the certificate of birth without an affidavit of paternity signed by the mother and the person to be named as the father. The parents may give the child any surname they choose.

(3) In any case in which paternity of a child is determined by a court of competent jurisdiction, the name of the father and surname of the child shall be entered on the certificate of birth in accordance with the finding and order of the court.

(4) If the father is not named on the certificate of birth, no other information about the father shall be entered on the certificate.

(g) Either of the parents of the child or other informant shall verify by signature or electronic process the accuracy of the personal data to be entered on the certificate in time to permit the filing of the certificate within the ten (10) days prescribed in this section.

(h) Certificates of birth filed after ten (10) days but within one (1) year from the date of birth shall be registered on the standard form of live birth certificate in the manner prescribed in this section. Such certificates shall not be marked "DELAYED". The state registrar may require additional evidence in support of the facts of birth.

20-18-406. New certificates.

(a) The State Registrar of Vital Records shall establish a new certificate of birth for a person born in this state when he or she receives the following:

(1) A certificate of adoption as provided in 20-18-405 [repealed], or a certificate of adoption prepared and filed in accordance with the laws of another state or foreign country, or a certified copy of the decree of adoption, together with the information necessary to identify the original certificate of birth and to establish a new certificate of birth. However, a new certificate of birth shall not be established if so requested by the court decreeing the adoption, the adoptive parents, or the adopted person;

(2) A request that a new certificate be established and any evidence, as required by regulation, proving that the person has been legitimated, or that a court of competent jurisdiction has determined the paternity of the person or that both parents have acknowledged the paternity of the person and request that the surname be changed from that shown on the original certificate.

(b) When a new certificate of birth is established, the actual city or county, or both, and date of birth shall be shown. The new certificate shall be substituted for the original certificate of birth. Thereafter, the original certificate and the evidence of adoption, paternity determination, or legitimation shall not be subject to inspection except upon order of an Arkansas court of competent jurisdiction or as provided by regulation.

(c) Upon receipt of a report of an amended certificate of adoption, the certificate of birth shall be amended as provided by regulation.

(d) Upon receipt of a report of annulment of adoption, the original certificate of birth shall be restored to its place in the files, and the new certificate and evidence shall not be subject to inspection except upon order of a court of competent jurisdiction or as provided by regulation.

(e) Upon written request of both parents and receipt of a sworn acknowledgment of paternity signed by both parents of a child born out of wedlock, the state registrar shall reflect paternity on the certificate of birth in the manner prescribed by regulation if paternity is not already shown on the certificate of birth.

(f) (1) Upon request, the state registrar shall prepare and register an Arkansas certificate of birth for a person born in a foreign country, who is not a citizen of the United States, and for whom a final order of adoption has been entered in a court of competent jurisdiction in Arkansas when he or she receives the following:

(A) A certificate of adoption as provided in 20-18-405 [repealed];

(B) Proof of the date and place of the adopted child's birth;

(C) A request by the court decreeing the adoption, the adoptive parents, or the adopted person if eighteen (18) years of age or older.

(2) After preparation of the birth certificate in the new name of the adopted person, the state registrar shall seal and file the certificate of adoption. This certificate shall not be subject to inspection except upon order of a court of competent jurisdiction or as provided by regulation or as otherwise provided by state law.

(3) The birth certificate shall show the actual foreign country of birth and shall state that the certificate is not

It is well settled under the doctrine of separation of powers that it is not the business of the courts or of the executive branch to legislate. *See, Ark. State Bd. Of Election Comm'rs v. Pulaski County Election Commission*, 2014 Ark. 236, 437 S.W.3d 80, 2014 LEXIS 367. Further, the courts have a duty to only declare unconstitutional those portions of an Act that are unconstitutional, and if the constitutional remainder remains complete in itself, the court's obligation is to uphold that portion of the legislation. *See, Seagrave v. Price*, 349 Ark. 433, 79 S.W.3d 339, 2002 LEXIS 393 (2002), quoting *Levy v. Albright*, 204 Ark. 657, 163 S.W.2d 529 (1942).

The defendant Smith states on page 5 of his *Brief in Support of Defendant's Motion for Summary Judgment*, that:

As explained below, Plaintiffs' constitutional challenges fail because parental rights, and parental designations on birth certificates, do not arise from marital relationships. Plaintiffs' claims conflate statutorily distinct legal categories of marriage, vital records, and parental rights. In Arkansas and most states, and under the common law that predates statutory law, parental rights arise from biological parentage, not from marriage.

The defendant's argument on this point is supported collaterally by the definition of "parent" as defined in A.C.A. § 9-27-303(40).⁴

evidence of United States citizenship for the child for whom it is issued.

(g) If no certificate of birth is on file for the person for whom a new birth certificate is to be established under this section and the date and place of birth have not been determined in the adoption or paternity proceedings, a delayed certificate of birth shall be filed with the state registrar as provided in 20-18-402 or 20-18-403 before a new certificate of birth is established. The new certificate of birth shall be prepared on the delayed birth certificate form.

(h) When a new certificate of birth is established by the state registrar, all copies of the original certificate of birth in the custody of any other custodian of vital records in this state shall be sealed from inspection or forwarded to the state registrar as he or she shall direct.

⁴ "Parent" is defined in § 9-27-303(40) as a "biological mother, an adoptive parent, or a man to whom the biological mother was married at the time of conception or birth or who has signed an acknowledgment of paternity pursuant to § 9-10-120 or who has been found by a court of competent jurisdiction to be the biological father of the juvenile." This definition is from the Arkansas Juvenile Code subchapter of the Family Law title, but is instructive of the type of present code language that exists which may need to be changed as a result of the *Obergefell* decision.

Defendant's argument is legally well fashioned and has been extremely well argued but it is not correct factually with respect to the actual language of A.C.A. § 20-18-401. In that statute, the General Assembly has intertwined the concepts of "parent" with certain rights and presumptions occurring within a marital relationship, using now impermissible limiting spousal terms of "husband" and "wife." Such language categorically prohibits every same-sex married couple, regardless of gender, from enjoying the same spousal benefits which are available to every opposite-sex married couple.

The majority of A.C.A. § 20-18-401 remains constitutional under *Obergefell*. The stricken parts below are declared unconstitutional, the remainder is constitutional:

20-18-401. Birth Registration generally.

- (a) A certificate of birth for each live birth which occurs in this state shall be filed with the Division of Vital Records of the Department of Health, or as otherwise directed by the State Registrar of Vital Records, within ten (10) days after the birth and shall be registered if it has been completed and filed in accordance with this section.
- (b) When a birth occurs in an institution or en route thereto, the person in charge of the institution or his or her authorized designee shall obtain the personal data, prepare the certificate, certify that the child was born alive at the place, time, and date stated on the certificate either by signature or in an approved electronic process, and file the certificate as directed in subsection (a) of this section. The physician or other person in attendance shall provide the medical information required by the certificate within seventy-two hours after the birth.
- (c) When a birth occurs outside an institution:
 - (1) The certificate shall be prepared and filed by one (1) of the following in the indicated order of priority:
 - (A) The physician in attendance at or immediately after the birth, or in the absence of such a person;
 - (B) Any other person in attendance at or immediately after the birth, or in the absence of such a person; or
 - (C) The father, the mother, or in the absence of the mother, the person in charge of the premises where the birth occurred; and
 - (2) The division shall determine what evidence may be required to establish the fact of birth.
- (d) When a birth occurs on a moving conveyance within the United States and the child is first removed from the conveyance in this state, the birth shall be registered in this state and the place where it is first removed shall be considered the place of birth. When a birth occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space and the child is first removed from the conveyance in this state, the birth shall be registered in this state, but the certificate shall show the actual place of birth insofar as can be determined.

~~(e) For the purposes of birth registration, the mother is deemed to be the woman who gives birth to the child, unless otherwise provided by state law or determined by a court of competent jurisdiction prior to the filing of the birth certificate. The information about the father shall be entered as provided in subsection (f) of this section.~~

~~(f)(1) If the mother was married at the time of either conception or birth or between conception and birth the name of the husband shall be entered on the certificate as the father of the child, unless:~~

~~(A) Paternity has been determined otherwise by a court of competent jurisdiction; or~~

~~(B) The mother executes an affidavit attesting that the husband is not the father and that the putative father is the father, and the putative father executes an affidavit attesting that he is the father and the husband executes an affidavit attesting that he is not the father. Affidavits may be joint or individual or a combination thereof, and each signature shall be individually notarized. In such event, the putative father shall be shown as the father on the certificate and the parents may give the child any surname they choose.~~

~~(2) If the mother was not married at the time of either conception or birth or between conception and birth, the name of the father shall not be entered on the certificate of birth without an affidavit of paternity signed by the mother and the person to be named as the father. The parents may give the child any surname they choose.~~

~~(3) In any case in which paternity of a child is determined by a court of competent jurisdiction, the name of the father and surname of the child shall be entered on the certificate of birth in accordance with the finding and order of the court.~~

~~(4) If the father is not named on the certificate of birth, no other information about the father shall be entered on the certificate.~~

(g) Either of the parents of the child or other informant shall verify by signature or electronic process the accuracy of the personal data to be entered on the certificate in time to permit the filing of the certificate within the ten (10) days prescribed in this section.

(h) Certificates of birth filed after ten (10) days but within one (1) year from the date of birth shall be registered on the standard form of live birth certificate in the manner prescribed in this section. Such certificates shall not be marked "DELAYED". The state registrar may require additional evidence in support of the facts of birth.

The nonstricken portions allow either spouse, as the parents of the child—without gender restrictive language—to provide the personal data to either the hospital, if it is a hospital birth, or for either of the spouses to give that information directly to the Arkansas Department of Health in the event of a non-hospital birth.

In analyzing the challenge to A.C.A. § 20-18-406, a separate rule of statutory construction is applicable. It is the court's obligation, if possible, to interpret a statute as constitutional if such interpretation can reasonably be reached. The use of the term "legitimated" occurs only twice in the entire Arkansas Code. Once in A.C.A. § 20-18-406(a)(2) in the phrase,

“that the person has been legitimated,” and one other time, also in Title 20. “Legitimated” is not a legislatively defined term, it is only defined by State Board of Health regulation, and is therefore subject to reasonable judicial interpretation in order to insure A.C.A. § 20-18-406 is constitutional, as presently written.

In light of the decision in *Obergefell*, and in addition to any other meaning presently given to the term by existing case law, the phrase “person has been legitimated” is declared to include the minor children of any couple—same-sex or opposite-sex—who married subsequent to the birth of the minor child, and who present proof to the Arkansas Department of Health of the date of birth of the minor child and of the date of their marriage. In the event any biological parent is listed on a birth certificate sought to be amended, a court order shall be required before an amended certificate is issued which removes such person(s) name. In the event one or both of the spouses was married to another individual at any time from the birth of the minor child forward, no amended birth certificate shall be issued absent a court order naming the current spouses as the parents of the minor child.

This court-ordered definition of the phrase will allow the Department of Health to immediately begin issuing amended birth certificates to same-sex couples without requiring the State Board of Health to first amend its regulations. This interpretation also gives both the State Board of Health and the General Assembly the time to fully and completely consider all viewpoints prior to promulgating any rule changes or amending the subject legislation.

LEGAL EFFECT OF DECLARATORY JUDGMENT

From their own different litigation perspectives, the parties have each touched on a very important legal issue. The plaintiffs framed the issue by averring that issuance of a decision acknowledging their constitutional right to be treated the same as opposite-sex married couples

with respect to being named as parents on birth certificates, would be a panacea with respect to a litany of potential legal issues⁵ created by the decision in *Obergefell*. The defendant Smith first argues that the Department of Health only has a non-discretionary ministerial duty to issue and amend birth certificates in accordance with applicable statutes and regulations⁶, but then attempts to become the advocate for the minor children involved by alleging that the relief requested by the plaintiffs is contrary to the “best interests of the minor children.”⁷

In cases involving title to real property, the execution of a deed, whether warranty or quitclaim, is only evidence of title between the parties to the deeds, and does not affect the rights of anyone else in the entire world. The proper way to obtain good and valid title against the entire world is to institute and prosecute a quiet title action. At the end of such proceeding, provided that all persons who may claim interest in the real property have been made parties, the court issues a decree vesting title in the claimant. This legal scenario is analogous to that presented in the present case. The defendant Smith, in his pleadings, correctly warns the plaintiffs of potential future problems.

The *Obergefell* case was decided less than six months ago. In the years to come it will cause significant changes to established law in many areas. Those cases are not before the court, nor are the legal issues that will be presented by those cases being decided in this case. Today’s decision affords the plaintiffs, as same-sex couples, the same constitutional rights with respect to the issuance of birth certificates and amended birth certificates as opposite-sex couples. That is the sum total of the legal effect of this decision.

⁵ *Complaint for Declaratory and Injunctive Relief*, Paragraph 31.

⁶ Defendant’s Reply in Support of Motion for Summary Judgment and Response to Plaintiffs’ Motion for Summary Judgment, p. 2.

⁷ Defendant’s Reply in Support of Motion for Summary Judgment and Response to Plaintiffs’ Motion for Summary Judgment, pp. 5-7.

In paragraph 31 of their Complaint, the plaintiffs list eight specific examples of how the failure to include both same-sex spouses on birth certificates or amended birth certificates may adversely affect legal status with respect to the minor children. The list includes: identification procedures for Social Security numbers and passports, denial of the right to authorize medical care for the minor, denial of the right to authorize school related activities, denial of the right to apply for needed governmental or employment related benefits, denial of survivor benefits in the case of death of one of the spouses, denial to the child of inheritance rights, disruption of the parent-child relationship in the event of divorce of the same-sex couple, and the award of child support in the event of divorce of a same-sex couple. The court's declaration today does not conclusively resolve any of those legal issues. It may create equitable and legal arguments for resolution of issues that involve only the two spouses of the same sex-marriage, such as child support or child custody. It does not in any manner resolve the multitude of legal issues that may arise involving third parties. Biological parents, mother or father, whose statutory and/or common law rights may not have been properly terminated, whether through an adoption proceeding or by the signature of surrogacy documents, are not bound by the listing of two names on a birth certificate. Other heirs claiming against a same-sex spouse estate, or attempting to disallow a minor child's interest in the estate of one of the same-sex spouses, are not bound by an amended birth certificate. Insurance companies—life, health, or casualty—may decide in order to prevent potential duplication of claims, or liabilities not actuarially considered in premium calculations, to change their contract language to exclude birth certificates as indicia of acceptable legal relationship, and may require other documentation such as adoption decrees. In the future, government benefits, both state and federal, may key off of legal documentation other than a birth certificate. Today's decision does not legally resolve any of those potential issues.

The defendant Smith addresses these potential legal problems several times in his pleadings, and the warnings have substance to them. The plaintiffs are constitutionally entitled to the declaration issued today by the court, but the only way for same-sex couples to foreclose potential future legal problems involving their minor children is the exact same way that opposite-sex couples, who are not both the biological parents of the minor child or children, must follow. There must be a court-approved adoption, or surrogacy contracts must be executed in accordance with statutory procedure, or any of the other statutorily approved methods for legally foreclosing all other individuals from claiming parentage of the minor child or children must be utilized.

IT IS SO ORDERED.


TIMOTHY DAVIS FOX
CIRCUIT JUDGE

12.1.2015
DATE