

**SUPREME COURT OF ARKANSAS**

No. CV-15-988

NATHANIEL SMITH, MD, MPH,  
DIRECTOR OF THE ARKANSAS  
DEPARTMENT OF HEALTH, IN  
HIS OFFICIAL CAPACITY AND HIS  
SUCCESSORS IN OFFICE  
PETITIONER

V.

MARISA N. PAVAN AND TERRAH  
D. PAVAN, INDIVIDUALLY AND  
AS PARENTS, NEXT FRIENDS,  
AND GUARDIANS OF T.R.P., A  
MINOR CHILD; LEIGH D.W.  
JACOBS AND JANA S. JACOBS,  
INDIVIDUALLY AND AS PARENTS,  
NEXT FRIENDS, AND  
GUARDIANS OF F.D.J., A MINOR  
CHILD; AND COURTNY M.  
KASSEL AND KELLY L. SCOTT,  
INDIVIDUALLY AND AS PARNTS,  
NEXT FRIENDS, AND  
GUARDIANS OF A.G.S., A MINOR  
CHILD  
RESPONDENTS

Opinion Delivered December 10, 2015

CONCURRING IN PART AND  
DISSENTING IN PART.

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**RHONDA K. WOOD, Associate Justice**

I dissent from the majority's decision to stay the circuit court's order declaring portions of Arkansas Code Annotated section 20-18-401 unconstitutional. This section relates to the issuance of initial birth certificates. In this case, same-sex couples have asked the Department of Health to issue birth certificates to their children, born subsequent to

their union, with both spouses' names listed as the parents. The circuit court granted this request, and I think this portion of the circuit court's order should remain in place.

The factors we consider for determining the appropriateness of a stay weigh against granting the stay. First, there is little likelihood of success on the merits to the State's challenge of the circuit court's ruling on section 20-18-401. Nor will irreparable harm ensue. The State has elected not to appeal the court's ruling as it relates to these respondents. This suggests that, at a minimum, the State concedes that children born subsequent to a same-sex couple's union should be issued birth certificates and that there is no irreparable harm in issuing the certificates. Next, the balance of the equities weighs in favor of all same-sex couples having the right to have both spouses listed on the child's birth certificate when the child was born subsequent to that union. This is especially true because these respondents are receiving immediate relief while, as a result of the majority's stay, others will not. Last, the public interest weighs in favor of recognizing children born of a lawful union so these children receive certain benefits.

The same factors weigh in favor of staying the circuit court's ruling regarding section 20-18-406, and on this point I agree with the majority.