

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

NOELL and CRYSTAL ALLEN, a married couple; )  
JACKIE and LISA PHILLIPS-STACKMAN, )  
a married couple and L.J.P-S, by her mother )  
and next friend, Lisa Phillips-Stackman )

Plaintiffs, )

-vs- )

DR. JEROME M. ADAMS, in his official capacity as )  
Indiana State Health Commissioner; )  
DR. VIRGINIA A. CAINE, in her official capacity )  
as Director and Health Officer of the )  
Marion County Health Department; )  
DARREN KLINGLER, Administrator, Vital Records, )  
Marion County Health Department; )  
DR. JAMES MINER, GREGORY S. FEHRIBACH, )  
LACY M. JOHNSON, CHARLES S. EBERHARDT II, )  
DEBORAH J. DANIELS, DR. DAVID F. CANAL, and )  
JOYCE Q. ROGERS, all in their official capacities )  
as Trustees, Health 85 Hospital Corporation )  
of Marion County )

Defendants. )

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

Plaintiffs Noel and Crystal Allen, a married couple; and, Jackie and Lisa Phillips-Stackman, a married couple and L.J.P-S, by her mother and next friend, Lisa-Phillips-Stackman, by counsel ("Plaintiffs"), hereby allege as follows:

**INTRODUCTION**

1. Plaintiffs bring this action to challenge the constitutionality

under the United States Constitution of Indiana Code § 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 r L.J.P-S 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 Noell Allen and Jackie Phillips-Stackman ("Same-Sex Non-Birth Parent"), because they are female spouses respectively married to the Children's birth mothers. .

2. 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) or IC 31-14-7-1 unless the presumption is rebutted.

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

"Child born out of wedlock", for purposes of IC 31-19-3, IC 31-9-4-4, 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).

4. 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

5. Indiana Code §§ 31-9-2-15 and-16, which define a child born in and out of wedlock, render the Children illegitimate 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.

6. 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.

7. By 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.

8. 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. denied*. 135 S. Ct. 316, 190 L. Ed. 2d 142, (2014) (holding unconstitutional Indiana statute that prohibited and refused to recognize same-sex marriage).

### **JURISDICTION AND VENUE**

9. 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.

10. Venue is proper in the Indianapolis Division of the Southern District of Indiana under 28 U.S.C. § 1391(b) because more than one defendant has a principal office in this district.

### **Marion County**

11. 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.

12. 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."

13. 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."

14. All of the Defendants affiliated with 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.

### **State of Indiana**

15. 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.

### **All Defendants**

16. 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 31-14-7-1 in a gender-exclusionary manner.

### **FACTUAL ALLEGATIONS**

#### **NOELL AND CRYSTAL ALLEN** **MARION COUNTY**

17. Noell and Crystal Allen were lawfully married in New York City, New York on November 22, 2013. At the time of their marriage, they had already been together 14 years. Currently, they have a five year old daughter, E.A. who was conceived through artificial insemination and delivered by Noell. Crystal subsequently adopted E.A. and both Noelle and Crystal are legal parents of E.A.

18. Noell is an administrative law judge with the Indiana Civil Rights Commission and Crystal is a certified public accountant with the Department of Defense.

19. The couple decided together that they wanted to add to their family, as Crystal also wanted to share in the joy of giving birth. She eventually became pregnant with the aid of intra-uterine insemination.

20. Their twins, Ashton David Allen and Alivea Deon Allen, were born prematurely on November 21, 2015 and died the same day.

21. On November 22, 2015, the day of their wedding anniversary and in the midst of their grief, the hospital informed them that despite being a lawfully married couple, Noell would not be listed on the twins' birth certificates.

22. Noelle was later informed by the Indiana State Department of Health that the State was unwilling to add Noell to a birth certificate in the absence of a court order. The Allens have not yet received the death certificate for the twins.

**JACKIE AND LISA PHILLIPS STACKMAN**  
**MARION COUNTY**

23. Jackie and Lisa Phillips-Stackman were married on October 5, 2015. Jackie is a homicide/robbery detective with the Indianapolis Metropolitan Police Department and Lisa is a hair stylist.

24. Together they decided to have a child with the assistance of in vitro fertilization. Jackie's egg was paired with the sperm of a donor and implanted in Lisa.

25. On October 21, 2015, L.J.P-S was born with hydrocephalus, a brain condition that is caused when cerebrospinal fluid pools in the

skull and cannot drain. She only recently was discharged from the hospital and now faces an unknown future that, at a minimum, will likely require much medical care in her early years.

26. The MCHD refused to list Jackie on the birth certificate of L.J.P-S. Lisa received notice from the MCHD that L.J.P-S is a child born out-of-wedlock.

27. Jackie's health insurance is paying for L.J.P-S, who is considered to be a stepchild. If anything should happen to Lisa, because Jackie is not legally recognized as the parent of L.J.P-S, not only does Jackie have no legal right to claim the child or make medical decisions for her, but L.J.P-S would no longer qualify for health care under Jackie's insurance.

#### **INDIANA'S BIRTH REGISTRATION SYSTEM**

28. The Indiana Birth Work Sheet was created by the State of Indiana as part of the Indiana Birth Registration System. The Indiana Birth Worksheet asks mothers if they are married and then asks, "Are you married to the father of your child?" <http://www.state.in.us/isdh/23575.htm> (Page 4) (Last visited Dec. 7, 2015) 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.

**COUNT I**  
**Defendants' Refusal to Recognize The Children as born in Wedlock**  
**Violates the Equal Protection Clause**  
**of the Fourteenth Amendment to the United States Constitution**

29. Plaintiffs incorporate by reference the allegations of paragraphs 1- 28.

30. 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."

31. 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).

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

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

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).

34. Indiana law does not recognize that children born to a woman married to another woman are children born in wedlock.

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.

35. 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)).

36. 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.

37. 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.

**COUNT II**  
**Indiana's Refusal to Grant The Presumption Of Parenthood to**  
**Noell Allen and Jackie Phillips-Stackman**  
**Violates the Equal Protection Clause**  
**of the Fourteenth Amendment to the United States Constitution**

38. Plaintiffs incorporate by reference the allegations of paragraphs 1-37

39. By refusing to recognize the Same-Sex Non-birth Parents as parents on the birth certificate, the defendants are refusing to legally recognize lawful families.

40. 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,
- c. L.J.P-S' right to have a parental relationship with Jackie Phillips-Stackman that is protected by law.

41. 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").

42. 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..

43. 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.

44. 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.

**COUNT III**  
**Indiana's Refusal to Recognize that**  
**L.J.P-S and Ashton and Alivea were Born in Wedlock and to**  
**Grant the Presumption of Parenthood to**  
**Noell Allen and Jackie Phillips-Stackman**  
**Violates the Due Process Clause of the Fourteenth Amendment**  
**to the United States Constitution**

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

46. Decision-making regarding child rearing is a central part of the liberty protected by the Due Process Clause.

47. As the spouses of the birth mothers, the Same-Sex Non-Birth Parents have the fundamental right to be recognized as parents and to have 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.

48. The Same-Sex Non-Birth Parents have the right to determine how the remains of their children shall be treated and handled upon the

death of the child and have the right to address any issues which might arise regarding the child's estate.

49. 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) (citation omitted).

50. 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.

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

52. 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.

53. 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.

**DECLARATORY AND INJUNCTIVE RELIEF**  
**28 U.S.C. §§ 2201 and 2202;**  
**Federal Rules of Civil Procedure, Rules 57 and 65**

54. Plaintiffs incorporate by reference the allegations of paragraphs 1- 53.

55. 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 the refusal to recognize them as parents and loving, lawfully married families, 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.

56. A favorable decision enjoining Defendants from further constitutional violations, and mandating them to recognize the marriage and presumed parenthood of Noell and Crystal Allen and Jackie and Lisa Phillips-Stackman 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.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court:

a. Enter a declaratory judgment that §§ I. C. § 31-9-2-15 and-16 and § 31-14-7-1, as applied to Plaintiffs, violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution;

b. Enter a declaratory judgment that I. C. §§ 31-9-2-15 and § -16 and § 31-14-7-1, as applied to Plaintiffs, violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution;

c. Enter a permanent injunction enjoining Defendants to recognize L.J.P-S and Ashton and Alivea Allen as children born in wedlock;

d. Enter a permanent injunction enjoining Defendants to identify Noell Allen as a parent of Ashton and Alivea Allen and Jackie Phillips-Stackman as a parent of L.J.P-S and to so reflect on the birth certificates;

e. Award Plaintiffs the costs of suit, including reasonable attorneys' fees under 42 U.S.C. § 1988; and,

f. Enter all further relief to which Plaintiffs may be justly entitled.

Respectfully submitted,

/s/ Karen Celestino-Horseman

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