

**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,

v.

DR. JEROME M. ADAMS, in his official capacity as Indiana State Health Commissioner; et al.,

Defendants.

Case No. 1:15-cv-01929-TWP-MJD

**RESPONSE IN OPPOSITION TO
PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION**

Plaintiffs have filed a motion for preliminary injunction seeking this Court enjoin the Defendants from enforcing Indiana Code Sections 31-14-7-1(1), 31-9-2-15 and 31-9-2-16. In essence, Plaintiffs are seeking an order requiring the Defendants to place the Plaintiffs’ names on the birth certificates of their children and to consider the children to be children “born in wedlock.” The challenged statutes are set forth below.

But under Indiana law, parental rights flow from only two sources: a biological parental relationship or a legal adoption proceeding. Plaintiffs here seek to create a new third source of parental rights—a marriage relationship with a biological parent—solely for same-sex married couples. But the Constitution does not require Indiana to confer parental rights through a marriage relationship; thus, Plaintiffs’ public policy arguments are better addressed to the General Assembly.

Indiana Code Section 31-14-7-1(1) (the “Paternity Presumption Statute”) provides:

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.

Indiana Code Section 31-9-2-15 (the "Child Born in Wedlock Statute") states:

"Child born in wedlock", for purposes of IC 31-19-9, 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(2) unless the presumption is rebutted.

Indiana Code Section 31-9-2-16 (the "Child Born Out of Wedlock Statute")

states:

"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).

I. Introduction

Indiana defines "parent" as: "a biological or an adoptive parent." Ind. Code § 31-9-2-88(a); *see also* 410 Ind. Admin. Code 18-0.5-10 ("[p]arent' means the biological or adoptive mother or father of the individual."). "Adoptive parent" is "an adult who has become a parent of a child through adoption." Ind. Code § 31-9-2-6.

Indiana courts have rejected attempts to broaden this statutory definition. Indeed, when the Indiana Court of Appeals held "that when two women involved in a domestic relationship agree to bear and raise a child together by artificial insemination of one of the partners with donor semen, both women are the legal parents of the resulting child," *In re A.B.*, 818 N.E.2d 126, 131–32 (Ind. Ct. App. 2004), the Indiana Supreme Court vacated the opinion in full and issued a much narrower decision. *King v. S.B.*, 837 N.E.2d 965, 967 (Ind. 2005) (concluding that Indiana trial courts have authority to grant visitation to "persons other than natural parents" under certain circumstances). The Court of Appeals has since said of that vacatur: "Although the

Court did not expressly disapprove of this court’s holding in *In re A.B.*, we believe its decision to vacate our opinion and decide the case on a much narrower procedural basis amounts to the same thing; the Court’s discomfort with the breadth of our holding bespeaks its disapproval.” *A.C. v. N.J.*, 1 N.E.3d 685, 692 (Ind. Ct. App. 2013).

Thus, when a child is born in Indiana, that child has two legal parents: a biological mother and a biological father. Identifying those persons has been made more difficult by the decline of marriage among biological parents, whether owing to artificial reproductive technologies or other causes. Indiana’s parentage laws have evolved incrementally to accommodate those developments.

A. The Development of Indiana’s Parentage Laws

1. The establishment of biological parenthood

a. By presumption

In the early years of statehood, parental rights in Indiana were governed by the common law; there were no statutes codifying them. The woman who gave birth to a child was—and still is—presumed to be the child’s biological mother. *In re Paternity of Infant T.*, 991 N.E.2d 596, 601 (Ind. Ct. App. 2013) *trans. denied* (citing *In re Paternity & Maternity of Infant R.*, 922 N.E.2d 59, 61 (Ind. Ct. App. 2010)); *see also Adoptive Parents of M.L.V. v. Wilkens*, 598 N.E.2d 1054, 1059 (Ind. 1992) (“Because it is generally not difficult to determine the biological mother of a child, a mother’s legal obligations to her child arise when she gives birth.”); Ind. Code Ann. § 31-9-2-10 (defining “birth parent” in relevant part as “the woman who is legally presumed under Indiana law to be the mother of biological origin”). And the man married to that woman was—and still is—presumed to be the child’s biological father. *See, e.g., Tarver v. Dix*, 421 N.E.2d 693, 698 n.2 (Ind. Ct. App. 1981) (noting 1979 legislation “merely codified” existing

common-law presumption); *see also In re Paternity of I.B.*, 5 N.E.3d 1160 (Ind. 2014) (Dickson, C.J., dissenting to denial of transfer) (“Like most states, Indiana has long adhered to a strong presumption that a child, born of a woman during marriage, is also the *biological child* of the woman’s husband.” (emphasis added)).

Both presumptions were—and still are—rebuttable by clear and convincing evidence. *Infant T*, 991 N.E.2d at 601 (finding affidavits and stipulations insufficient to rebut the presumption of maternity); *Fairrow v. Fairrow*, 559 N.E.2d 597, 600 (Ind. 1990) (finding absence of sickle-cell trait sufficient to rebut presumption of paternity). Indiana courts have found the presumption of paternity rebutted by evidence that the husband was “impotent,” *Phillips v. State*, 145 N.E. 895, 897 (Ind. Ct. App. 1925); “steril[e],” *Whitman v. Whitman*, 215 N.E.2d 689, 691 (Ind. Ct. App. 1966); had no access to his wife during the period of conception, *Pilgrim v. Pilgrim*, 75 N.E.2d 159, 162 (1947); or “was present only under such circumstances as to afford clear and satisfactory proof that there was no sexual intercourse.” *Phillips*, 145 N.E. at 897.

The common-law presumption of maternity has never been codified, but the common-law presumption of paternity was enacted in 1979:

- (a) A man is presumed to be a child’s *biological* father if:
 - (1) he and child’s *biological* mother are or have been married to each other . . .
 - (2) he and the child’s *biological* mother attempted to marry each other . . .
 - (3) after the child’s birth, he and the child’s *biological* mother marry, or attempt to marry, each other . . . and he acknowledged his paternity in a writing filed with the registrar of vital statistics of the Indiana state board of health or with a local board of health.
- (b) If there is no presumed *biological* father under subsection (a), a man is presumed to be the child’s *biological* father if, with the consent of the child’s mother:
 - (1) he receives the child into his home and openly holds him out as his *biological* child; or

(2) he acknowledges his paternity in writing with the registrar of vital statistics of the Indiana state board of health or with a local board of health.

Pub. L. No. 1979-277, 101st Gen. Assemb., 1st Reg. Sess., 1979 Ind. Acts 1448 (April 10, 1979), § 1 (codified at Ind. Code § 31-6-6.1-9 (1980)) (emphases added). Like the common-law presumption, the statute was intended to confer legal parental rights only where a biological parental relationship already existed.

As evidence in paternity cases became more scientific, parties rebutted the presumption through blood grouping test results, *Murdock v. Murdock*, 480 N.E.2d 243, 246 (Ind. Ct. App. 1985), and the presence or absence of a sickle-cell trait. *Fairrow v. Fairrow*, 559 N.E.2d 597, 600 (Ind. 1990). The legislature recognized this development by amending the statute in 1994 to create a presumption of paternity when “the man undergoes a blood test that indicates with at least a ninety-nine percent (99%) probability that the man is the child’s *biological* father.” Pub. L. No. 101-1994, 108th Gen. Assemb., 2d Reg. Sess., 1994 Ind. Acts 1238 (Mar. 11, 1994), § 17 (emphasis added). In 2001, the legislature amended the statute to require a “genetic” test rather than a “blood” test. Pub. L. No. 138-2001, 112th Gen. Assemb., 1st Reg. Sess., 2001 Ind. Acts 873 (May 2, 2001), § 6.

Currently, “[a] man is presumed to be a child’s biological father” where: (1) the “man and the child’s biological mother are or have been married to each other” and the “child is born during the marriage or not later than three hundred (300) days [or 9.8 months] after the marriage is terminated”; (2) the “man and the child’s biological mother attempted to marry each other by a marriage solemnized in apparent compliance with the law, even though the marriage . . .” is void or voidable and the child is born during the attempted marriage or within 300 days after the attempted marriage terminated; or (3) “the man undergoes a genetic test that indicates with at

least a ninety-nine percent (99%) probability that the man is the child's biological father." Ind. Code § 31-14-7-1.

b. By affidavit

Because not all biological parents are married to each other, the General Assembly has provided for the establishment of paternal rights through affidavit. *See generally* Ind. Code § 16-37-2-2.1. When a child "is born out of wedlock, a person who attends or plans to attend the birth" must "provide an opportunity for: (A) the child's mother; and (B) a man who reasonably appears to be the child's *biological* father" to execute a paternity affidavit. Ind. Code § 16-37-2-2.1(b) (emphasis added). The affidavit must include a sworn statement from the mother asserting that her co-affiant "is the child's *biological* father," Ind. Code § 16-37-2-2.1(g)(1) (emphasis added), and "[a] woman who knowingly or intentionally falsely names a man as the child's biological father under this section commits a Class A misdemeanor." Ind. Code § 16-37-2-2.1(i). The affidavit must also include a statement from the purported father "attesting to abelief that he is the child's *biological* father." Ind. Code § 16-37-2-2.1(g)(2) (emphasis added). The parties must review the agreement outside each other's presence. Ind. Code § 16-37-2-2.1(r). Through the affidavit, the parties may agree to share joint legal custody, but that agreement will be void unless they submit a DNA test demonstrating that the purported father "is the child's *biological* father" to the local health officer within sixty days of the child's birth. Ind. Code § 16-37-2-2.1(h)(5) (emphasis added).

A paternity affidavit confers legal "parental rights and responsibilities" upon the man who executes it except where: (1) a court "determine[s] that fraud, duress, or material mistake of fact existed in the execution" of the affidavit, or (2) if, within sixty days after executing the

affidavit, a genetic test excludes the man as biological father. Ind. Code §§ 16-37-2-2.1(j)(2); 31-14-7-3; 16-37-2-2.1(k), (l), (n).

2. The establishment of adoptive parenthood

In recognition of the fact that a child's biological parents may be unwilling or unable to care for their child, Indiana law provides a mechanism by which a person who is not a child's biological parent may establish a legal parental relationship with that child: adoption. Any Indiana resident may file a petition to adopt a child under eighteen, Ind. Code § 31-19-2-2. A couple, married or unmarried, opposite-sex or same-sex, may file a joint petition. *In re Infant Girl W.*, 845 N.E.2d 229, 242 (Ind. Ct. App. 2006). A married petitioner must file jointly with the spouse, Ind. Code § 31-19-2-4(a), except for a step-parent adoption. Ind. Code § 31-19-2-4(b).

The statutory requirements for an adoption petition evince a concern for the preservation of biological, genealogical, and medical history information about the child. A petition must state the child's birthplace, sex, race, and age. Ind. Code § 31-19-2-6(a)(1). It must be accompanied by a medical report that includes "neonatal, psychological, physiological, and medical care history" on a form "prescribed by the state registrar." Ind. Code § 31-19-2-7. The report must be sent to the registrar and the "prospective adoptive parents." *Id.* If the court finds that "the adoption requested is in the best interest of the child" and that other statutory requirements are met, the court shall grant the petition. Ind. Code § 31-19-11-1(a). Ordinarily, adoption extinguishes biological parents' rights and obligations respecting the child. Ind. Code § 31-19-15-1. But where "the adoptive parent of a child is married to a biological parent of the child, the parent-child relationship of the biological parent is not affected by the adoption." Ind. Code § 31-19-15-2.

B. The “Wedlock” Statutes and Indiana legitimacy law

For the narrow purpose of obtaining parental consent to adoption, Indiana law recognizes a distinction between children whose biological parents are married to each other and children whose biological parents are not married to each other. A “child born out of wedlock,” “for purposes of IC 31-19-3, IC 31-19-4-4, and IC 31-19-9,” is a child born to a woman and 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).” Ind. Code § 31-9-2-16. And a “child born in wedlock,” “for purposes of IC 31-19-9,” is a child born to a woman and a “man who is presumed to be the child’s father under IC 31-14-7-1(1) or IC 31-14-7-1(2) *unless the presumption is rebutted.*” Ind. Code § 31-9-2-15 (emphasis added). These statutory definitions are expressly and exclusively intended for use in the context of consent to adoption. Ind. Code ch. 31-19-3 (governing pre-birth notice of adoption); § 31-19-4-4 (specifying the format for giving notice of an adoption proceeding to an unknown putative father); ch. 31-19-9 (governing consent to adoption). Specifically, when a child is born out of wedlock, the biological father’s consent is sometimes not required for an adoption. Ind. Code § 31-19-9-8(a)(3)-(6).

In these definitions, biology is paramount. “[A] child born into an intact marriage but fathered by a man other than the husband is a child born out of wedlock.” 5 Ind. Law Encyc. Children Born Out of Wedlock § 1 (citing *K.S. v. R.S.*, 669 N.E.2d 399 (Ind. 1996); *Cochran v. Cochran*, 717 N.E.2d 892 (Ind. Ct. App. 1999); *Johnson Controls, Inc. v. Forrester*, 704 N.E.2d 1082 (Ind. Ct. App. 1999); *C.J.C. v. C.B.J.*, 669 N.E.2d 197 (Ind. Ct. App. 1996)). “[T]he fact that the child was born while mother was married does not establish that the child was born during wedlock.” *K.S.*, 669 N.E.2d at 402. Under that precedent, a child born to a married

couple—whether opposite-sex or same-sex—but conceived using sperm from an anonymous donor is plainly a “child born out of wedlock.”

These statutes do not disfavor anyone based on illegitimacy.¹ Indiana did once disfavor children born out of wedlock, such as by disinheritance. *Townsend v. Meneley*, 74 N.E. 274, 275 (Ind. Ct. App. 1905). But that ended decades ago. *See* Ind. Probate Code Study Comm’n, Comments, § 207 (1953) (“We have erased the Scarlet Letter.”). Indiana now grants inheritance rights to children born out of wedlock the same as children born in wedlock. Ind. Code § 29-1-2-7. The only scenario where it is legally relevant whether a child was born in wedlock is when determining whether the father’s consent must be obtained prior to an adoption.

C. Indiana’s vital records and their relationship to parentage laws

The Indiana General Assembly has charged the State Department of Health with maintaining a system of vital statistics, which is administered by the State Registrar. Ind. Code § 16-37-1-1, -2. The Registrar’s duties include, among other things, “[k]eep[ing] files and records pertaining to vital statistics” such as births and deaths. Ind. Code § 16-37-1-2(1). When a child is born, a “person in attendance” (or if there is no such person, one of the child’s parents) must file a “certificate of birth” with the local health officer using the electronic Indiana Birth Registration System. Ind. Code § 16-37-2-2(a), (b). If that is not done, the local health officer must “prepare a certificate of birth from information secured from any person who has knowledge of the birth” and file it using the Indiana Birth Registration System. Ind. Code § 16-37-2-2(c). Regardless of who files the certificate of birth, the local health officer must report the birth to the State Department within five days. Ind. Code § 16-37-1-5(a). Indiana law requires

¹ The Supreme Court has held such discrimination unconstitutional. *Jimenez v. Weinberger*, 417 U.S. 628, 632 (1974) (“the Equal Protection Clause does enable us to strike down discriminatory laws relating to status of birth where . . . the classification is justified by no legitimate state interest, compelling or otherwise.” (quoting *Weber v. Aetna Cas. & Sur. Co.*, 406 U.S. 164, 175-76 (1972))).

that a “child born out of wedlock” be given the mother’s surname unless a paternity affidavit dictates to the contrary. Ind. Code § 16-37-2-13.

Once a birth certificate is created, it may not be changed unless (1) the State Department receives “adequate documentary evidence, including the results of a DNA test . . . or a paternity affidavit,” Ind. Code § 16-37-2-10(b); or (2) the child is adopted. Following adoption, the State Department must issue a new birth certificate showing the child’s actual place and date of birth—unless the court decreeing the adoption, the adoptive parents, or the adopted individual requests that the department not issue a new certificate. Ind. Code § 31-19-13-1. But the original certificate is not destroyed; rather, it is retained and filed with the evidence of adoption, though it may not be released except in the case of a step-parent adoption or in other limited circumstances. Ind. Code § 31-19-13-2.

D. Plaintiffs in this matter

Plaintiffs Crystal and Noell Allen are married. (Deposition of Crystal Allen, 5:4-5; Deposition of Noell Allen, 5:18-21².) The Allens had two children who passed away on November 21, 2015. (Depo. of Noell Allen, 6:16-19.) Crystal Allen’s name will appear on the birth certificates of the two children. (Depo. of Crystal Allen, 6:21-25.) Noell Allen would like her name on her children’s birth certificates because she would like closure, she is tired of fighting, it is a connection to her children, and she does not want her children to be stigmatized. (Depo. of Noell Allen, 22:24-25-24:14.)

Plaintiffs Lisa Phillips-Stackman and Jacqueline Phillips-Stackman are married. (Deposition of Lisa Phillips-Stackman, 5:22-25; Deposition of Jacqueline Phillips-Stackman, 5:3-

² In support of Defendants’ response in opposition, Defendants designate portions of the transcripts of the depositions of Plaintiffs, Crystal Allen, Noell Allen, Jacqueline Phillips-Stackman, and Lisa Phillips-Stackman. Defendants reserve the right to introduce additional testimony at the hearing currently scheduled for February 5, 2015, at 9:00 a.m.

6.) The Phillips-Stackman's have one child. (Depo. of Jacqueline Phillips-Stackman, 5:12-13.) Lisa Phillips-Stackman's name will appear on the birth certificate for the child. (Depo. of Lisa Phillips-Stackman, 7:5-7.) Jacqueline Phillips-Stackman is employed as a violent crimes detective for the Indianapolis Metropolitan Police Department. (Depo. of Jacqueline Phillips-Stackman, 5:18-20.) Jacqueline Phillips-Stackman would like her name on her child's birth certificate because she is concerned that her child will not receive benefits if she is killed in the line of duty, she is concerned that her child will not have health insurance if something happens to her wife, Lisa Phillips-Stackman, and she is concerned that she will not be recognized as a parent able to make medical decisions at doctor's appointments or in the event of a medical emergency. (Depo. of Jacqueline Phillips-Stackman, 8:22-25-11:15.)

II. Standard for Preliminary Injunctions

While a court may exercise the "very far-reaching power" of a preliminary injunction, such power should never "be indulged in except in a case clearly demanding it." *Roland Mach. Co. v. Dresser Indus., Inc.*, 749 F.2d 380, 389 (7th Cir. 1984) (internal quotations and citation omitted).

A court should consider several factors when a party moves for a preliminary injunction: the moving party must show a likelihood of success on the merits, no adequate remedy at law, and irreparable harm if the court does not grant the preliminary injunction. *Reid L. v. Ill. State Bd. of Educ.*, 289 F.3d 1009, 1020–21 (7th Cir. 2002). After considering these factors, a court should balance any irreparable harm an injunction would cause an opposing party, adjusting the calculus depending on the party's likelihood of success. *Girl Scouts of Manitou Council, Inc. v. Girl Scouts of U.S. of America, Inc.*, 549 F.3d 1079, 1086 (7th Cir. 2008). A party with little likelihood of success must show more harm than would a party with a strong likelihood of a

success. *Id.* This harm must be real and a court may only award relief “upon a clear showing that the plaintiff is entitled to such relief. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (citing *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997)). The court should also consider the public interest, including that of any nonparties to the litigation. *Girl Scouts of Manitou Council, Inc.*, 549 F.3d at 1100.

III. Plaintiffs do not have a likelihood of success on the merits.

Plaintiffs here challenge three Indiana statutes, arguing that each violates the Equal Protection and Due Process Clauses of the Fourteenth Amendment. Plaintiffs’ Memorandum in Support of Motion for Preliminary Injunction, pp. 5-6.³ Plaintiffs’ claims must fail, however, because these statutes impinge no fundamental rights, apply equally to all, reflect biological reality rather than legislative discrimination, and in any event are narrowly tailored to vindicate compelling state interests.

A. Plaintiffs do not have standing to challenge the “wedlock” statutes

Plaintiffs challenge Indiana’s “wedlock” statutes, but it is not clear that they have standing to do so. Those statutes define when a child is born in wedlock or out of wedlock only for purposes of determining when a biological father’s consent to adoption is required. Plaintiffs have not argued that they intend to adopt under circumstances where invalidation of the wedlock statutes would aid their cause. Indeed, to the extent Spouses would, absent this litigation, adopt the Children, the wedlock statutes would make that process easier, as they would likely excuse any need for consent from a biological father whose paternity has not been established. Ind. Code § 31-19-9-8(a)(3).

Standing requires federal courts to satisfy themselves that the plaintiff has made an allegation that he has a personal stake in the outcome of the controversy so as to warrant his

³ Plaintiffs’ Memorandum in Support of Motion for Preliminary Injunction is cited hereinafter as Plaintiffs’ Memo.

invocation of federal-court jurisdiction. *Summers v. Earth Island Institute*, 555 U.S. 488 (2009) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559-560 (1992); *Los Angeles v. Lyons*, 461 U.S. 95, 111-112 (1983)). Plaintiffs bear the burden of showing that they have standing for each type of relief sought. *Id.* To seek injunctive relief, a plaintiff must show that he is under threat of suffering “injury in fact” that is concrete and particularized. *Id.* The threat must be actual and imminent, not conjectural or hypothetical. It must also be fairly appreciable to the challenged action of the defendant. *Id.* (citing *Friends of Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 180-181 (2000)). This requirement assures that “there is a real need to exercise the power of judicial review in order to protect the interests of the complaining party[.]” *Id.* (citing *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 221 (1974)). If that need does not exist, it would permit courts to oversee legislative or executive action and would significantly alter the allocation of power away from a democratic system of government. *Id.* As Judge Posner stated in *American Bottom Conservancy v. U.S. Army Corp of Engineers*, 650 F.3d, 652, 656 (7th Cir. 2011), “[t]he doctrine [of standing] is needed to limit premature judicial interference with legislation.”

Plaintiffs generally lack standing because they present no actual or imminent threat of harm, only a hypothetical one. There is no particularized or concrete injury that the Plaintiffs point to in support of their claims. As such, each of them and the classes that they purport to represent do not have standing to raise their claims. *See Rock Energy Cooperative v. Village of Rockton*, 614 F.3d 745, 747 (7th Cir. 2010). Indeed, a ruling without standing is tantamount to an advisory opinion. *See Lyons*, 461 U.S. at 134.

Accordingly, as Plaintiffs cannot claim to suffer injury from application of the wedlock statutes, they lack Article III standing to challenge them. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992).

B. The Fourteenth Amendment Does Not Protect a Right to “Intended Parenthood,” Either as a Matter of Due Process or Equal Protection

Though Plaintiffs cite cases establishing that parents have certain fundamental rights with regard to their children, Plaintiffs’ Memo., pp. 13-14, they cite no case establishing that a person has a fundamental right to *be* a parent in the absence of a biological or adoptive relationship. A fundamental right is one that is “objectively, deeply rooted in this Nation’s history and tradition . . . and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if [it] were sacrificed[.]” *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997) (internal quotations and citations omitted). There simply is no “history and tradition” of conferring parental rights upon persons who have no biological or adoptive relationship to the child. On the contrary, “[f]or most of its history, American law proceeded on the assumption that parents were persons who created a child through sexual reproduction or who assumed the legal obligations of parenthood through formal adoption.” David D. Meyer, *The Constitutionality of “Best Interests” Parentage*, 14 Wm. & Mary Bill Rts. J. 857, 859 (2006).

Parents, of course, have fundamental rights to direct the upbringing and education of their children. *Meyer v. Nebraska*, 262 U.S. 390, 400, 403 (1923). But legal parental status is a necessary prerequisite to the exercise of those rights, and such status is unquestionably conferred by state law. *Michael H. v. Gerald D.*, 491 U.S. 110, 129–30 (1989) (“It is a question of legislative policy and not constitutional law whether California will allow the presumed parenthood of a couple desiring to retain a child conceived within and born into their marriage to be rebutted.”); *see also* Mary Patricia Byrn & Jenni Vainik Ives, *Which Came First the Parent or*

the Child?, 62 Rutgers L. Rev. 305, 313 (2010) (“Legal parentage is a status that is conferred by a state statute. Therefore, before a person can exercise the fundamental right to raise one’s child, the State must deem that person to be a legal parent.”). Indiana law confers parental rights exclusively through biological relationships and adoption.

To the extent the Constitution protects a fundamental right to *be* a parent, it protects only the rights of biological parents, not the rights of spouses of biological parents. *Santosky v. Kramer*, 455 U.S. 745, 753 (1982) (recognizing the “fundamental liberty interest of natural parents in the care, custody, and management of their child” engendered by “blood relationships”). Spouses in this case therefore do not have fundamental constitutional rights to be legal parents, and cannot assert any fundamental rights of legal parents.

C. The Challenged Statutes Apply Equally to All

Plaintiffs allege the challenged statutes impermissibly treat opposite-sex married couples differently from same-sex married couples or on the basis of gender, Plaintiffs’ Memo., pp. 12-13, but that is not so. Any differential outcomes arise from biology, not discrimination, so no heightened scrutiny applies.

1. Application of the Paternity Presumption Statute to the Spouses would be inconsistent with biological reality

Plaintiffs contend that it is “discrimination” not to apply the Paternity Presumption Statute to confer legal parental rights upon the Spouses. Plaintiff’s Memo., pp. 11-13. But the Paternity Presumption Statute is a substitute for a definitive fact-finding; it is intended to confer parental rights on the child’s “biological father.” Ind. Code § 31-14-7-1. In the context of a same-sex married couple in which both spouses are women, it defies reality to presume that when one of the female spouses gives birth to a child, the other female spouse is the biological

father of that child. In essence, plaintiffs are asking the State to presume something to be true which everyone knows not only to be untrue but also impossible.

What is more, application of the presumption under those circumstances would be inconsistent with the presumption's rebuttable nature. As described above, in the context of opposite-sex married couples, the presumption of biological fatherhood is rebuttable by clear and convincing evidence that the husband could not possibly be the child's biological father. *See, e.g., Minton v. Weaver*, 697 N.E.2d 1259, 1260 (Ind. Ct. App. 1998), *trans. denied* (finding the presumption rebutted where husband presented a DNA test showing a 99.97% probability that another man was the child's father).

In the context of heterosexual married couples, that evidence generally comes in the form of a DNA test. But in the context of female same-sex married couples, no test is needed. The very fact that the mother's spouse is a woman rebuts the notion that she is the biological *father*.

2. Indiana's parentage laws apply the same way to same-sex married couples as they do to opposite-sex married couples

Plaintiffs allege that the State considers Plaintiff L.J.P-S a child born out of wedlock "because she has two mothers." Plaintiffs' Memo., p. 16. That is untrue and as discussed in Part III.A, *supra*, Plaintiffs lack standing to challenge the "wedlock" statutes. The State considers the Children to be born out of wedlock because their biological mothers are not married to their biological fathers. This would be equally true if Plaintiffs were opposite-sex married couples in the same circumstances; Indiana law is clear that "a child born into an intact marriage but fathered by a man other than the husband is a child born out of wedlock." 5 Ind. Law Encyc. Children Born Out of Wedlock § 1 (citing *K.S. v. R.S.*, 669 N.E.2d 399 (Ind. 1996); *Cochran v. Cochran*, 717 N.E.2d 892 (Ind. Ct. App. 1999); *Johnson Controls, Inc. v. Forrester*, 704 N.E.2d 1082 (Ind. Ct. App. 1999); *C.J.C. v. C.B.J.*, 669 N.E.2d 197 (Ind. Ct. App. 1996)).

The Paternity Presumption Statute states that such a husband is “*presumed* to be [the] child’s *biological* father[.]” Ind. Code § 31-14-7-1 (emphasis added). If such a husband is not *actually* the child’s biological father, the mother would presumably disclose as much at the hospital, in which case her husband’s name would not appear on the birth certificate. What is more, birth certificate aside, the husband’s presumed parental rights could be extinguished at the mother’s or biological father’s insistence. And, if an action were brought to determine whether the child was born in wedlock and evidence showed the husband was not the child’s biological father, the court would determine the child was not born in wedlock.

A hypothetical scenario demonstrates how this could occur. Consider a female same-sex married couple who conceived a child with the aid of a known sperm donor. If the birth mother spouse were married to a man instead of a woman, the law would presume that man to be the biological father of her child. But all it would take to defeat that presumption would be for the birth mother or the donor to file a paternity action. As part of that action, the court could order a DNA test, and when the results showed that the donor rather than the husband was the child’s biological father, the court would issue an order establishing paternity in the donor, thereby necessarily disestablishing it in the birth mother’s husband. *See, e.g., K.S. v. R.S.*, 669 N.E.2d 399, 401 (Ind. 1996) (upholding a trial court order establishing paternity in a man over objections from the mother and her husband). (Or, if an action were brought to determine whether the child was born in wedlock, the court would determine the child was not born in wedlock because the birth mother was not married to the donor.)

A paternity action in that circumstance would cause pain and upheaval for the entire family. That is precisely why Indiana law vests parental rights through more permanent and substantial bonds: immutable biological relationships and court-ordered adoptions. If a

biological mother's spouse—whether man or woman—is not the biological father of her child but nonetheless wishes to be a legal parent to that child, the spouse should use the procedural mechanism the General Assembly has provided for that purpose: adoption. This is true even with respect to a husband presumed the father of his wife's child who knows he actually lacks a biological connection to the child. There, adoption would preclude a successful paternity action.

3. Indiana's parentage laws do not discriminate based on sex or sexual orientation

Indiana parentage law, by vesting parental rights based upon biological relationships, does impact same-sex couples differently from opposite-sex couples, but that difference is an unavoidable result of biological reality. A man can be a child's biological father, but a woman cannot. That is not sex discrimination; it is a biological fact. Similarly, a man and a woman, whether married or unmarried, can both be a child's biological parents, but two women cannot. That is not sexual orientation discrimination; it is a biological fact.

Because Indiana's parentage statutes are facially neutral, Plaintiffs' challenge is properly evaluated under the rational basis standard. *See, e.g., Washington v. Davis*, 426 U.S. 229, 242 (1976) (holding that disparate impact on a suspect class is insufficient to justify strict scrutiny absent evidence of discriminatory purpose). Strict scrutiny is unwarranted unless plaintiffs demonstrate that “a state legislature[] selected or reaffirmed a particular course of action at least in part because of, not merely in spite of, its adverse effects [on] an identifiable group.” *Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979) (internal quotation marks omitted). Plaintiffs have not even alleged, much less proven, any such discriminatory intent.

D. Indiana's Parentage Laws Satisfy Any Level of Constitutional Review

Under the rational basis standard, the State may justify limits on government benefits and burdens by reference to whether including additional groups would accomplish the government's

underlying objectives. *Johnson v. Robison*, 415 U.S. 361, 383 (1974) (“When . . . the inclusion of one group promotes a legitimate governmental purpose, and the addition of other groups would not, we cannot say that the statute’s classification of beneficiaries and nonbeneficiaries is invidiously discriminatory.”). This framework accords with the longstanding principle that “[t]he Constitution does not require things which are different in fact or opinion to be treated in law as though they were the same[,]” *Tigner v. Texas*, 310 U.S. 141, 147 (1940), and, therefore, “where a group possesses distinguishing characteristics relevant to interests the State has the authority to implement, a State’s decision to act on the basis of those differences does not give rise to a constitutional violation.” *Bd. of Trs. of Univ. of Ala. v. Garrett*, 531 U.S. 356, 366–67 (2001) (internal quotations and citation omitted).

Here, the State has not just a legitimate interest, but a compelling interest to ensure that biological parents are vested with legal parental rights (subject to any subsequent adoption). That interest is compelling because biological parents have a constitutionally protected liberty interest in their relationships with their children. *Santosky v. Kramer*, 455 U.S. 745, 753 (1982); *see also Stanley v. Illinois*, 405 U.S. 645, 651 (1972) (“The rights to conceive and to raise one’s children have been deemed ‘essential,’ . . .”); *In re Paternity of S.R.I.*, 602 N.E.2d 1014, 1016 (Ind. 1992) (“there is a substantial public policy in correctly identifying parents and their offspring. Proper identification of parents and child should prove to be in the best interests of the child for medical or psychological reasons.”); *In re Paternity of Infant T.*, 991 N.E.2d 596, 600 (Ind. Ct. App. 2013) (“establishing the biological heritage of a child is the express public policy of this State.” (quoting *In re Paternity & Maternity of Infant R.*, 922 N.E.2d 59, 61–62 (Ind. Ct. App. 2010) (citing Ind. Code § 31–14–4–1))); *Infant R.*, 922 N.E.2d at 60 (“it is well-settled that it is in the best interests of a child to have his or her biological parentage established.”). To that

end, the State seeks to ensure that a child's biological parents are correctly identified and recorded by requesting pertinent information to complete accurate birth certificates. *See* Plaintiffs' Exhibit C. Applying a paternity presumption statute to Spouses and listing them on Children's birth certificates—in effect, changing the question on the Worksheet (Plaintiffs' Exhibit C) to “what other person would you like to be listed on the birth certificate as the other parent of your child?”—would thwart rather than advance that interest.

1. The Constitution does not require states to confer parental rights via marriage or include non-parents on birth certificates, which would undermine the fundamental rights of biological parents in many cases

The United States Supreme Court has not recognized that same sex couples are entitled to be recognized on birth certificates. *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), recognized that “the States are in general free to vary the benefits they confer on all married couples” and that those benefits have in some states historically included “birth and death certificates.” *Obergefell*, 135 S. Ct. at 2601. At most, *Obergefell* stands for the proposition that any benefit of marriage must now be extended to same-sex married couples just as it would be to opposite-sex married couples; for instance, if a state has traditionally listed the spouse of a child's biological parent on the child's birth certificate, regardless of whether that spouse is the child's biological or adoptive parent, the state must continue to follow that practice with regard to same-sex married couples.

Indiana has no such practice; rather, when a birth mother married to a man answers “no” to the question “are you married to the father of your child?”, her husband is not listed on the child's birth certificate. Thus, if the State were to list Spouses on Children's birth certificates in this case, it would actually be treating them differently from similarly situated opposite-sex married couples. Inclusion on a child's birth certificate, however, is not a right that

“accompan[ies] marriage.” Rather, it is a right that accompanies a biological or adoptive relationship. A biological relationship may be presumed in the birth mother’s husband, but that presumption is rebuttable, and what ultimately counts is the husband’s actual biological connection to the child (or an adjudication vesting him with parental rights), not merely his marriage to the child’s mother.

Next, Plaintiffs cite Indiana cases they believe support their argument that Spouses can establish parental rights to Children through their marriages to Birth Mothers without any biological or adoptive connection. Plaintiffs’ Memo., pp. 10-12. But none does; at most, they uphold support orders and custody arrangements in the dissolution context. In *Levin v. Levin*, the Indiana Supreme Court held that a husband who knowingly and voluntarily consented to the artificial insemination of his wife with donor semen, and then held the child out as his own for fifteen years, is equitably estopped from later denying his obligation to support the child. 645 N.E.2d 601, 604–05 (Ind. 1994). The *Levin* Court also stated that “[a] child conceived through artificial insemination, with the consent of both parties, is correctly classified as a child of the marriage.” *Id.* at 605; *see also Engelking v. Engelking*, 982 N.E.2d 326, 328–29 (Ind. Ct. App. 2013).

Plaintiffs read *Levin* and *Engelking* to mean that such children are “born in wedlock.” Plaintiffs’ Memo., p. 10. That is not so; “child of the marriage” is not the same as “child born in wedlock.” The *Levin* Court recognized the difference, reading the statutory definition of “child born in wedlock” to “include[] children born out of wedlock to the parties” and “children born or adopted during the marriage of the parties.” *Levin*, 645 N.E.2d at 605 (emphasis added). Thus, a child may be a “child of the marriage” for custody and support determinations regardless

whether the child is “born in wedlock” (*i.e.* the biological child of both spouses) or “born out of wedlock” (*i.e.* not the biological child of both spouses).

b. Plaintiffs’ extra-jurisdictional authority is inapplicable

Plaintiffs also cite a case from Utah where it has taken a different approach to parental rights in the context of same-sex marriages. Plaintiffs’ Memo., pp. 7-8. The case is inapposite, however, because the parentage laws are materially different.

In Utah, the State agreed to the entry of a permanent injunction requiring the State to treat spouses of women who conceive children using donor sperm the same way regardless of whether those spouses are men or women. *Roe v. Patton*, No. 2:15-cv-253 (D. Utah Oct. 20, 2015) (order granting permanent injunction). But the statutes at issue in that case conferred parentage based not on biological relationship but on marital relationship and consent to assisted reproduction. Utah Code Ann. §§ 78B-15-201(2) (“The father-child relationship is established between a man and a child by: . . . (e) the man having consented to assisted reproduction by a woman . . . which resulted in the birth of the child[.]”); 78B-15-703 (“If a husband provides sperm for, or consents to, assisted reproduction by his wife as provided in Section 78B-15-704, he is the father of a resulting child born to his wife.”); 78B-15-704 (providing that a spouse’s consent to assisted reproduction must be in a signed writing and that failure of such consent does not preclude a finding of parenthood if both spouses “openly treat the child as their own.”).

Indiana has no such statutes and no clear authority whether sperm donors are legal parents under Indiana law. *See Straub v. B.M.T. by Todd*, 645 N.E.2d 597, 598 (Ind. 1994) (finding sperm donation a contract “void and unenforceable” where no doctor involved and the contract was rudimentary); *but see In re Paternity of M.F.*, 938 N.E.2d 1256, 1260–61 (Ind. Ct.

App. 2010) (finding a contract for sperm donation enforceable where doctor involved and the writing was formal). Accordingly, the cases Plaintiffs cite from other states are inapposite here.

**c. The challenged statutes serve a compelling public interest—
identifying and recording a child’s biological parents—and are
neither over- nor underinclusive**

Rational basis review does not require drafting with surgical precision. *Vance v. Bradley*, 440 U.S. 93, 108 (1979) (“Even if the classification involved . . . is to some extent both underinclusive and overinclusive, and hence the line drawn by [the legislature] imperfect, it is nevertheless the rule that in a case like this perfection is by no means required”) (internal citations and quotations omitted)).

Plaintiffs’ proposed relief would transgress long-respected privacy interests that simply do not exist with same-sex couples. In the context of an opposite-sex marriage, a question regarding the paternity of the wife’s child “would be destructive of family integrity and privacy.” *Michael H. v. Gerald D.*, 491 U.S. 110, 120 (1989). Indeed, one of the primary purposes of the common-law presumption was to protect the marital relationship, which could be irretrievably damaged by suspicions or discoveries of infidelity. *Id.* at 125. The presumption still serves that interest with respect to opposite-sex married couples, where in all cases, and without more, both spouses may plausibly be biologically related to children born to the marriage. It would *not* serve such an interest for same-sex couples, where questions of biological parentage must *always* arise for children born to the marriage. Accordingly, with opposite-sex couples, but not same-sex couples, the paternity presumption serves Indiana’s compelling interest in identifying the two biological parents of each child with the greatest practicable accuracy, efficiency, cost-effectiveness, and privacy protection. There is no significant gap, therefore, between the State’s means and its ends, and, if necessary, the statutes meet the narrow tailoring required by strict

scrutiny. *Grutter v. Bollinger*, 539 U.S. 306, 327 (2003) (“Narrow tailoring does not require exhaustion of every conceivable [non-discriminatory] alternative.”). Here, there is no alternative that would serve the State’s interest “about as well.” *Id.* (citing *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 280 (1986)).

3. Conferring parental rights upon spouses through marital relationships to birth mothers does not respect the rights of biological fathers or children and even undermines the interests of other same-sex couples

Like every State—if not the entire world—Indiana holds that, in the main, it is best for children to be raised by their biological parents. *Stanley v. Illinois*, 405 U.S. 645, 651 (1972) (“It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.” (quoting *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944))); *In re Guardianship of L.L.*, 745 N.E.2d 222, 230 (Ind. Ct. App. 2001) (“there is a presumption in all cases that the natural parent should have custody of his or her child.”). To protect biological parents’ rights and the best interests of children, Indiana requires adjudication of any knowing departure from the biological-parent standard. *See generally* Ind. Code art. 31-19 (governing adoption). Often, the best interests of the child will be clear, and the adoption may even be uncontested. But in contested or other difficult cases, the adoption process ensures protection of everyone’s fundamental constitutional rights and provides certainty as to the identity of the legal parents. Plaintiffs’ desire for Spouses to be “presumed parents” ignores two important fundamental constitutional rights: Biological fathers’ rights to their Children, and Children’s rights to their biological fathers. *In re B.W.*, 908 N.E.2d 586, 593 (Ind. 2009) (noting that a biological father’s parental rights are “constitutionally protected”); *Troxel v. Granville*, 530 U.S. 57, 88 (2000) (Stevens, J., dissenting) (“While this Court has not yet had occasion to elucidate the nature of a

child's liberty interests in preserving established familial or family-like bonds, . . . it seems to me extremely likely that, to the extent parents and families have fundamental liberty interests in preserving such intimate relationships, so, too, do children have these interests, and so, too, must their interests be balanced in the equation.”).

It is unclear, in any event, what effect under Indiana law, any purported waiver would have on a biological father's parental rights and obligations. A biological parent's rights can be terminated only through adoption by another person, Ind. Code § 31-19-15-1, or when a court determines that the child's parents have failed to meet their parental obligations, Ind. Code § 31-35-2-4; *C.A. v. Ind. Dep't of Child Services*, 15 N.E.3d 85, 92 (Ind. Ct. App. 2014) (“although parental rights are of a constitutional dimension, the law provides for the termination of these rights when the parents are unable or unwilling to meet their parental responsibilities.”). Further, children have a non-waivable right to support from their parents, which includes biological parents at birth. Ind. Code § 31-16-6-6. On top of that, while one Indiana intermediate appellate case has enforced a donor's waiver where a doctor was involved and the writing was formal, *In re Paternity of M.F.*, 938 N.E.2d 1256, 1260-61 (Ind. Ct. App. 2010), the Indiana Supreme Court has invalidated a waiver where no doctor was involved and the contract was rudimentary. *Straub v. B.M.T. by Todd*, 645 N.E.2d 597, 598 (Ind. 1994).

Furthermore, where the sperm donor has *not* signed a release, his rights would need to be respected and taken into account. *See, e.g., In the Interest of R.C.*, 775 P.2d 27, 35 (Colo. 2005) (refusing to bar donor-father's claim to establish parental rights based on oral agreement between donor and unmarried recipient and parties' subsequent conduct). Accordingly, a general presumption of parenthood in Birth Mother's spouse would undermine the fundamental rights of biological fathers (and children) in a substantial set of cases.

Another critical problem for Plaintiffs is that a presumption of parentage disconnected from biological relationships would implicitly be *irrebuttable*. Again, the Paternity Presumption Statute creates a presumption of *biological fatherhood* rebuttable by biological evidence. That is, under current law as applied to an opposite-sex married couple, a child born to the marriage and the child's mother and biological father all may challenge husband's presumed biological paternity. Ind. Code § 31-14-4-1. In contrast, Plaintiffs wish to presume *legal parenthood*, which could apparently not be rebutted, even where the biological father has not released his rights. So for example, if a woman were to conceive a child via secret extramarital affair, her female spouse would be presumed a parent of the child, with no apparent way to account for the rights of the biological father—precisely because a biological connection would not be relevant to parental rights. Surely that would transgress the father's fundamental constitutional rights, to say nothing of the child's rights.

An irrebuttable presumption could also create problems for well-intentioned parties. Situations may plausibly arise where a child's biological mother is married to a person other than the biological father, yet desires that the biological father be the child's legal parent, perhaps to confer financial or social advantages upon the child. As the law now stands, the child's two biological parents could file a paternity action and obtain a court order stating they are the child's legal parents. Ind. Code § 31-14-4-1. Plaintiffs' desired irrebuttable presumption of parenthood would foreclose that option, regardless whether all concerned wanted the spouse, who has no biological connection to the child, to become a legal parent.

Rewriting the Paternity Presumption Statute to create automatic legal parenthood for a biological parent's spouse carries still *other* shortcomings for other contexts. Were a male same-sex married couple to conceive a child using one spouse's sperm and a surrogate's egg, the

resulting child would seemingly have *three* legal parents: (1) the birth mother, who cannot disestablish her own presumed maternity without establishing it in another woman, (2) the biological father, who could assert rights through paternity affidavit or paternity action, and (3) the biological father's spouse, who under Plaintiffs' logic would be the "presumed second father." Similarly confusing scenarios would arise in the cases of female same-sex spouses who become pregnant using donor eggs or have a surrogate carry a child for them (or both). In these cases, the married couple would surely need to seek judicial relief to clarify parental rights.

In other words, Plaintiffs' alternative parental rights presumption would apparently account for their own circumstances, but not many other plausible family configurations and preferences. And again, notwithstanding Plaintiffs' own irrefutable presumption of parenthood, opposite-sex married couples would presumably still need to contend with biological refutability, though same-sex married couples would not. Plaintiffs' plan accordingly would not only erase the connection between biology and presumed parentage for themselves, but it would also introduce inequality in the bestowal of parental rights that does not currently exist. Thus would Plaintiffs' alternative method of determining parental rights detached from a biological or adoptive connection impose unpredictable and undesirable outcomes on untold family configurations.

4. Simply including Spouses on Children's birth certificates would not confer parental rights upon Spouses

Parental rights in Indiana have two sources: biology and adoption. Birth certificates are not a source of parental rights; rather, birth certificates are designed to be a reflection of those rights. "[T]he mere issuance of the birth certificate" is "[a]t best . . . a ministerial act by and on behalf of the State Board of Health" and "by no means constitutes a judicial proceeding[.]" *Burnett v. Camden*, 254 N.E.2d 199, 201 (Ind. 1970). Parental rights exist apart from, and

generally dictate, birth certificate data. *Johnson v. Ross*, 405 N.E.2d 569, 573 n.7 (Ind. Ct. App. 1980) (“the issue in this case is not whether a birth certificate was properly altered, but rather whether Johnson admitted his paternity of the child.”); *see also Steele v. Campbell*, 82 N.E.2d 274, 275 (Ind. Ct. App. 1948) (finding birth certificate not admissible to prove paternity).

Therefore, merely listing Spouses on Children’s birth certificates would not dictate Spouses’ parental rights. Such spouses would still have to go through the adoption process—just as any non-biologically-related person who wanted parental rights would be required to do.

In sum, Indiana law recognizes biological and adoptive parental rights. The Spouses in this case currently have neither. This is not a function of their sex, for a man whose wife is artificially inseminated by a third-party donor has no definitive parental rights to the child produced thereby, only a presumption of paternity. Nor is it a function of their sexual orientation, for a heterosexual married woman has no parental rights to the biological child of her husband and another woman. Thus, there is no discrimination here, and in any event the parentage statutes as written advance the compelling state interest of identifying both biological parents through an efficient, accurate means that, to the extent reasonably possible, respects marital privacy interests unique to opposite-sex couples. Under Plaintiffs’ constitutional theory, that objective would necessarily be cast aside. If Plaintiffs wish to create a third path to legal parenthood, whether through marriage or any other means, they should seek relief from the General Assembly—not this Court.

IV. The Plaintiffs are unable to show any irreparable harm.

“Irreparable harm is a type of injury that ‘cannot be repaired, retrieved, put down again, atoned for. . .’ and is not compensable in monetary terms.” *River of Life Kingdom Ministries v.*

Village of Hazel Crest, 585 F.3d 364, 375 (7th Cir. 2009) (quoting *Graham v. Med. Mut. of Ohio*, 130 F.3d 293, 296 (7th Cir. 1997)). “An injury is irreparable for purposes of granting preliminary injunctive relief only if it cannot be remedied through a monetary award after trial.” *East St. Louis Laborers Local 100 v. Bellon Wrecking & Salvage Company*, 414 F.3d 700, 703-704 (7th Cir. 2005). “The likelihood of injury must be real, not speculative.” *Young v. Ballis*, 762 F.Supp. 823, 827 (S.D. Ind. 1990) (citing *Outboard Marine Corp. v. Liberty Mutual Insurance*, 536 F.2d 730 (7th Cir. 1976)). “Speculative injuries do not justify this extraordinary remedy [a preliminary injunction].” *White Eagle Co-op. Ass’n v. Johanns*, 396 F.Supp.2d 954, 961 (N.D. Ind. 2005) (quoting *East St. Louis Laborers’ Local 100 v. Bellon Wrecking & Salvage Co.*, 414 F.3d 700, 704 (7th Cir. 2005)).

First, the names of Crystal Allen and Lisa Phillips-Stackman will appear on the birth certificates of their respective children. (Depo. of Crystal Allen, 6:21-25; Depo. of Lisa Phillips-Stackman, 7:5-7.) Thus, they do not have any actual injury and are not entitled to an injunction, preliminary or otherwise.

Second, Noell Allen testified that she would like her name on her children’s birth certificates because she would like closure, she is tired of fighting, it is a connection to her children, and she does not want her children to be stigmatized. (Depo. of Noell Allen, 22:24-25-24:14.) Defendant does not contend these are invalid reasons; however, there is nothing irreparable in the delay in determining the merits of this case and before potentially providing Plaintiff Noell Allen with birth certificates with her name on them. Any delay in receiving birth certificates, assuming the Plaintiffs prevail, could potentially be compensated by monetary relief

for any additional emotional injury suffered by the Plaintiff.⁴ Thus, a preliminary injunction should not be issued for Plaintiff Noell Allen.

Third, Jacqueline Phillips-Stackman testified that she would like her name on her child's birth certificate because she is concerned that her child will not receive benefits if she is killed in the line of duty, she is concerned that her child will not have health insurance if something happens to her wife, Lisa Phillips-Stackman, and she is concerned that she will not be recognized as a parent able to make medical decisions at doctor's appointments or in the event of a medical emergency. (Depo. of Jacqueline Phillips-Stackman, 8:22-25-11:15.) Taking each of these reasons in order, in the event of Jacqueline Phillips-Stackman's death in the line of duty, her spouse and children may be eligible for survivor benefits. Ind. Code § 36-8-6-10.1 Any decisions regarding benefits would be subjected to review under the Administrative Orders and Procedures Act, Indiana Code 4-21.5 *et seq.* See *Linthecome v. Board of Trustees of the Public Employees' Retirement Fund*, 585 N.E.2d 651 (Ind. Ct. App. 1991) (court lacked jurisdiction over declaratory action seeking declaration that proper recipient of pension fund because cannot circumvent administrative process). Thus, there is a remedy available to the Plaintiffs in the event that Jacqueline Phillips-Stackman is killed in the line of duty. There is no evidence that Lisa Phillips-Stackman is ill or suffering from any chronic condition. (Depo. of Lisa Phillips-Stackman, 8:4-7.) Therefore, it is pure speculation at this point that something could possibly happen to Lisa Phillips-Stackman that would cause the child to lose health insurance benefits carried by Jacqueline Phillips-Stackman. This speculation is insufficient to meet the Plaintiffs' burden of showing irreparable harm. It is also speculation that Jacqueline Phillips-Stackman will be unable to make medical decisions for the child. She has attended all medical appointments

⁴ Defendants do not concede Plaintiff Noell Allen is entitled to any monetary relief.

for the child. (Depo. of Jacqueline Phillips-Stackman, 17:12-22.) As of now, the child is doing well. (Depo. of Jacqueline Phillips-Stackman, 12:19-22.)

Because the Plaintiffs have only alleged speculative injuries – or no injury at all – they are not entitled to a preliminary injunction.

V. The Plaintiffs have an adequate remedy at law.

Injunctive relief is not appropriate here because there are adequate remedies at law. The Plaintiffs cannot show that they will suffer immediate harm. As set forth above, Plaintiffs have an adequate remedy at law. Crystal Allen and Lisa Phillips-Stackman have not suffered any injury because their names will be placed on the birth certificates of their respective children. Any injury for Noell Allen can be remedied by the payment of monetary damages for pain and suffering in the event Plaintiffs prevail. Finally, there is an administrative procedure for challenging the denial of any survivor benefits in the event of Jacqueline Phillips-Stackman's death in the line of duty.

Thus, the extreme remedy of a preliminary injunction is not appropriate or necessary based on the safeguards they would be afforded if their allegations came to fruition.

VI. The public interest will not be served by the entry of an injunction.

The public interest would be disserved by a preliminary injunction. As explained above, the rebuttable presumption regarding paternity is an important public policy. *See* Part III.D., *supra*.

VII. Conclusion

For the foregoing reasons, the Plaintiffs' motion for preliminary injunction should be denied. Plaintiffs do not have a likelihood of succeeding on the merits, are unable to show any

irreparable harm, have an adequate remedy at law, and the public interest will not be served by the entry of a preliminary injunction.

Respectfully submitted,

GREGORY F. ZOELLER
Indiana Attorney General
Attorney No. 1958-98

By: s/ Betsy M. Isenberg
Betsy M. Isenberg
Deputy Attorney General
Attorney No. 23856-71
Counsel for State Defendant Dr. Jerome Adams

s/Anne K. Ricchiuto
Anne K. Ricchiuto
Anthony Scott Chinn
Anna M. Konradi
Faegre Baker Daniels LLP
300 North Meridian Street
Suite 2700
Indianapolis, Indiana 46204
Phone: (317) 237-1420
Fax: (317) 237-1000
Email: anne.ricchiuto@FaegreBD.com
Counsel for Marion County Defendants

CERTIFICATE OF SERVICE

I hereby certify that on January 11, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system.

Richard A. Mann
rmann@mannlaw.us
Megan L. Gehring
mgehring@mannlaw.us
RICHARD A. MANN, P.C.

William R. Groth
wgroth@fdgtlaborlaw.com
FILLENWARTH DENNERLINE
GROTH & TOWE, LLP

Raymond L. Faust
rfaust@housereynoldsfaust.com
HOUSE REYNOLDS & FAUST, LLP

Karen Celestino-Horseman
Karen@kchorseman.com
AUSTIN & JONES, P.C. (of counsel)
*Counsel for Plaintiffs –
Noel Allen, Crystal Allen, Jackie
Phillips-Stackman, Lisa Phillips-
Stackman, L. J. P-S.*

Anna M. Konradi
Anna.konradi@FaegreBD.com
Anne Kramer Ricchiuto
Anne.ricchiuto@FaegreBD.com
Anthony Scott Chinn
Scott.chinn@FaegreBD.com
FAEGRE BAKER DANIELS, LLP
*Counsel for Defendants
Virginia Caine, Darren Klingler,
James Miner, Gregory Fehribach,
Lacy Johnson, Charles Eberhardt II,
Deborah Daniels, David Canal and
Joyce Q Rogers*

s/ Betsy M. Isenberg
Betsy M. Isenberg
Deputy Attorney General

OFFICE OF INDIANA ATTORNEY GENERAL
Indiana Government Center South, 5th Floor
302 West Washington Street
Indianapolis, IN 46204-2770
Phone: (317) 232-6231
Fax: (317) 232-7979
E-Mail: Betsy.Isenberg@atg.in.gov

Crystal Allen
December 29, 2015

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF INDIANA
3 TERRE HAUTE DIVISION

4 CAUSE NO. 1:15-cv-01929-TWP-MJD

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

11 Plaintiffs,)

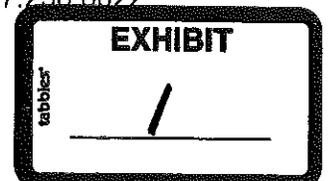
12 -vs-)

13 DR. JEROME M. ADAMS, in his)
14 official capacity as Indiana)
15 State Health Commissioner;)
16 DR. VIRGINIA A. CAINE, in her)
17 official capacity as Director)
18 and Health Officer of the Marion)
19 County Health Department; DARREN)
20 KLINGLER, Administrator, Vital)
21 Records, Marion County Health)
22 Department; DR. JAMES MINER,)
23 GREGORY S. FEHRIBACH, LACY M.)
24 JOHNSON, CHARLES S. EBERHARDT,)
25 II, DEBORAH J. DANIELS,)
26 DR. DAVID F. CANAL, and JOYCE Q.)
27 ROGERS, in all their official)
28 capacities as Trustees, Health)
29 85 Hospital Corporation of)
30 Marion County,)

31 Defendants.)

32 DEPOSITION OF CRYSTAL ALLEN

33 The deposition upon oral examination of
34 CRYSTAL ALLEN, a witness produced and sworn before
35 me, Tamara J. Brown, CSR, RMR, CRR, Notary Public in
36 and for the County of Marion, State of Indiana,
37 taken on behalf of the Defendants, at the offices of
38 the Attorney General, 302 W. Washington Street,
39 Indianapolis, Marion County, Indiana, on the 29th
40 day of December, 2015, pursuant to the Federal Rules
41 of Civil Procedure with written notice as to time
42 and place thereof.



Crystal Allen
December 29, 2015

5

5

1 A No.

2 Q Are you currently married?

3 A Yes.

4 Q And who are you married to?

5 A Noell Allen.

6 Q And do you have any children?

7 A I have three kids. One is [REDACTED] Allen, and the
8 other two are deceased, Ashton and Alivea.

9 Q Where do you live?

10 A McCordsville.

11 Q Are you currently employed?

12 A Yes.

13 Q Where did you work?

14 A Department of Defense, Finance and Accounting
15 Service.

16 Q You indicated you had twins that are deceased.

17 Is that accurate?

18 A Yes.

19 Q And did you give birth to those twins?

20 A Yes.

21 Q And did they pass away in November of last year?

22 A Of this year.

23 Q Of this year, yes. Apparently I want to be in
24 2016 already.

25 After your children were born, did you have

Crystal Allen
December 29, 2015

6

6

1 any communications with the hospital regarding
2 the birth certificates for your children, for
3 the twins?

4 A Yes. I mean -- yes.

5 Q Who did you speak to?

6 A I spoke with the lady who came in to try to take
7 information about the birth certificates.

8 Q And did she take that information from you?

9 A Yes.

10 Q And did you receive birth certificates for your
11 children?

12 A Did we get them? I don't believe so. I don't
13 believe we ever got them. What we did receive
14 was a document indicating that they had been
15 submitted from the hospital, if I'm recalling
16 this correct.

17 Q And what hospital did you receive -- what
18 hospital did you go to for the birth of your
19 children?

20 A [REDACTED]

21 Q When you spoke to the hospital employee
22 regarding the birth certificates, was it your
23 understanding that your name would be on the
24 birth certificates for your children?

25 A Yes.

Crystal Allen
December 29, 2015

13

13

1 telling you not to go forward with the lawsuit,
2 were they?

3 A No. They were telling us that we need to let go
4 of things that basically inhibit us from
5 healing, and to me than means getting it done
6 and over with so that we can move forward with
7 what we need to do. There is no way we can let
8 go of the lawsuit because of everything, you
9 know, that to us is inherent in getting this
10 addressed. It's like, we let go, then we let go
11 our connection to our babies. And we will not
12 do that.

13 MS. CELESTINO-HORSEMAN: That's it.

14 MS. ISENBERG: I don't have anything else.

15 THE REPORTER: Same on reading and
16 signature and so forth?

17 MS. CELESTINO-HORSEMAN: Same.

18 (Time Noted 11:57 a.m.)

19 AND FURTHER THE DEPONENT SAITH NOT.

20

21

CRYSTAL ALLEN

22

23

24

25

Crystal Allen
December 29, 2015

14

14

1 STATE OF INDIANA)
) SS:
2 COUNTY OF MARION)

3 I, Tamara J. Brown, CSR, RMR, CRR, a
4 Notary Public in and for the County of Marion,
5 State of Indiana at large, do hereby certify
6 that CRYSTAL ALLEN, the deponent herein, was by
7 me first duly sworn to tell the truth, the whole
8 truth, and nothing but the truth in the
9 aforementioned matter;

10 That the foregoing deposition was
11 taken on behalf of the Defendant, at the offices
12 of Attorney General, 302 W. Washington Street,
13 IGCS Fifth Floor, Indianapolis, Marion County,
14 Indiana, on the 29th day of December, 2015,
15 commencing at the hour of 11:42 a.m., pursuant
16 to the Federal Rules of Civil Procedure;

17 That said deposition was taken down
18 in stenograph notes and afterwards reduced to
19 typewriting under my direction, and that the
20 typewritten transcript is a true record of the
21 testimony given by the said deponent; and
22 thereafter presented to said deponent for
23 his/her signature;

24 That the parties were represented by
25 their counsel as aforementioned.

Crystal Allen
December 29, 2015

15

15

1 I do further certify that I am a
2 disinterested person in this cause of action;
3 that I am not a relative or attorney of either
4 party, or otherwise interested in the event of
5 this action, and am not in the employ of the
6 attorneys for either party.

7 IN WITNESS WHEREOF, I have hereunto
8 set my hand and affixed my notarial seal this
9 _____ day of _____, 2016.

10 
11
12 NOTARY PUBLIC

13
14 My Commission Expires:
15 November 3, 2017
16 County of Residence:
17 Marion

18
19
20
21
22
23
24
25

Noell Allen
December 29, 2015

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF INDIANA
3 TERRE HAUTE DIVISION

4 CAUSE NO. 1:15-cv-01929-TWP-MJD

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

11 Plaintiffs,)

12 -vs-)

13 DR. JEROME M. ADAMS, in his)
14 official capacity as Indiana)
15 State Health Commissioner;)
16 DR. VIRGINIA A. CAINE, in her)
17 official capacity as Director)
18 and Health Officer of the Marion)
19 County Health Department; DARREN)
20 KLINGLER, Administrator, Vital)
21 Records, Marion County Health)
22 Department; DR. JAMES MINER,)
23 GREGORY S. FEHRIBACH, LACY M.)
24 JOHNSON, CHARLES S. EBERHARDT,)
25 II, DEBORAH J. DANIELS,)
26 DR. DAVID F. CANAL, and JOYCE Q.)
27 ROGERS, in all their official)
28 capacities as Trustees, Health)
29 85 Hospital Corporation of)
30 Marion County,)

31 Defendants.)

32 DEPOSITION OF NOELL ALLEN

33 The deposition upon oral examination of NOELL
34 ALLEN, a witness produced and sworn before me,
35 Tamara J. Brown, CSR, RMR, CRR, Notary Public in and
36 for the County of Marion, State of Indiana, taken on
37 behalf of the Defendants, at the offices of the
38 Attorney General, 302 W. Washington Street,
39 Indianapolis, Marion County, Indiana, on the 29th
40 day of December, 2015, pursuant to the Federal Rules
41 of Civil Procedure with written notice as to time
42 and place thereof.



Noell Allen
December 29, 2015

5

5

1 that you can understand it. However, if I ask
2 you a question and you answer it, I'm going to
3 assume that you understood the question I was
4 asking. Is that fair?

5 A Yes.

6 Q If at any time you need to take a break, just
7 let me know and we can take a break. I would
8 only ask that you answer whatever question is
9 pending before we take a break.

10 A That's fine.

11 Q Are you on any medication that's going to affect
12 your ability to answer questions today?

13 A No.

14 Q Are you on any sort of medication that would
15 affect your memory in any way?

16 A No.

17 Q Just a little bit of background information.
18 Are you currently married?

19 A Yes.

20 Q And what is your spouse's name?

21 A Crystal Allen.

22 Q How long have you been married?

23 A Two years.

24 Q And what town do you live in?

25 A McCordsville.

Noell Allen
December 29, 2015

6

6

1 Q Are you currently employed?
2 A Yes.
3 Q Where do you work?
4 A State of Indiana.
5 Q Do you have any children?
6 A Yes.
7 Q How many children do you have?
8 A Can I ask a clarifying question?
9 Q Of course.
10 A Living?
11 Q Yes, we'll go with living. How many living
12 children do you have?
13 A One.
14 Q And do you have any children that are deceased?
15 A Yes.
16 Q And how many do you have that are deceased?
17 A Two.
18 Q And when did your two children pass away?
19 A November 21st, 2015.
20 Q And are those two children the subject --
21 related to the subject of the litigation that we
22 have here?
23 A Yes.
24 Q And what is your understanding of what the
25 lawsuit is about that you have filed?

Noell Allen
December 29, 2015

22

22

1 for the cremation to occur, for us to receive
2 the death certificates, because of the holdup,
3 because of the continuous questions back and
4 forth with legal counsel. And we had a praise
5 and worship service for our babies instead of a
6 funeral.

7 And we just kept asking ourselves when is
8 the cremation going to occur, when will we get
9 our ashes for our babies, and it just, it took a
10 long time. And I think it was a result of again
11 just waiting for clarification, waiting for a
12 response from legal to say yea or nay on the
13 death certificates.

14 Q But you have them now, the death certificates?

15 A We do.

16 Q You've asked in this litigation for a
17 preliminary injunction for an order basically on
18 an emergency basis from the court to order the
19 Department of Health to provide you with a birth
20 certificate with your name on it. Is that your
21 understanding of what has been asked for in this
22 litigation?

23 A Yes.

24 Q Can you explain to me what the reason is that it
25 is of an emergent nature that you need to have

Noell Allen
December 29, 2015

23

23

1 your name put on the birth certificates for your
2 children?

3 A Sure. I need closure. I'm tired of fighting.
4 November 13th, the day we went into the
5 hospital, all of a sudden -- and it's still
6 going on. We lost our babies. We could not
7 save them.

8 We had to fight to save Crystal. She
9 developed an infection. It was a touch-and-go
10 situation. I need to -- I need to close this
11 chapter. We want to have children, more
12 children in the future. And I can't take the
13 next step with this lingering. I need this to
14 end. In fact, I was even saying earlier, how do
15 we circumvent this process, just to get the
16 names on the birth certificates? Who do I need
17 to call? What cards do I need to pull to get
18 this done and over with?

19 Q So other than your need for closure, and the
20 fact that you're tired of fighting, are there
21 any other reasons that you have for wanting your
22 name on the birth certificate right away?

23 A The birth certificate is the connection that I
24 have to these children. The wonderful thing
25 about the hospital, they gave you bracelets and

Noell Allen
December 29, 2015

24

24

1 teddy bears and trinkets, things to remember
2 your babies by. We even received social
3 security cards in the mail.

4 I don't want my children to be stigmatized.

5 Q What do you mean by you don't want your children
6 to be stigmatized?

7 A Every other married couple that looks different
8 than mine have the benefit of birth certificates
9 whenever their babies are born, no questions
10 asked, but because I was in the room, because my
11 marriage looks different than someone else's
12 marriage who is of opposite sex, I got treated
13 differently. My children are treated
14 differently.

15 Q So we have your need for closure, that you're
16 tired of fighting, that it's your connection to
17 your children, and you don't want your children
18 to be stigmatized. Are there any other reasons
19 that you have for your desire to have your name
20 on your children's birth certificates
21 immediately?

22 A No.

23 Q Are there any issues that you had with medical
24 insurance related to your children's birth or
25 their time in the hospital that relate to your

Noell Allen
December 29, 2015

27

27

1 MS. CELESTINO-HORSEMAN: Yes.

2 (Time Noted 11:40 a.m.)

3 AND FURTHER THE DEPONENT SAITH NOT.

4

5

NOELL ALLEN

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Noell Allen
December 29, 2015

28

28

1 STATE OF INDIANA)
) SS:
2 COUNTY OF MARION)

3 I, Tamara J. Brown, CSR, RMR, CRR, a
4 Notary Public in and for the County of Marion,
5 State of Indiana at large, do hereby certify
6 that NOELL ALLEN, the deponent herein, was by me
7 first duly sworn to tell the truth, the whole
8 truth, and nothing but the truth in the
9 aforementioned matter;

10 That the foregoing deposition was
11 taken on behalf of the Defendant, at the offices
12 of Attorney General, 302 W. Washington Street,
13 IGCS Fifth Floor, Indianapolis, Marion County,
14 Indiana, on the 29th day of December, 2015,
15 commencing at the hour of 11:04 a.m., pursuant
16 to the Federal Rules of Civil Procedure;

17 That said deposition was taken down
18 in stenograph notes and afterwards reduced to
19 typewriting under my direction, and that the
20 typewritten transcript is a true record of the
21 testimony given by the said deponent; and
22 thereafter presented to said deponent for
23 his/her signature;

24 That the parties were represented by
25 their counsel as aforementioned.

Noell Allen
December 29, 2015

29

29

1 I do further certify that I am a
2 disinterested person in this cause of action;
3 that I am not a relative or attorney of either
4 party, or otherwise interested in the event of
5 this action, and am not in the employ of the
6 attorneys for either party.

7 IN WITNESS WHEREOF, I have hereunto
8 set my hand and affixed my notarial seal this
9 _____ day of _____, 2016.

10 
11 _____
12 NOTARY PUBLIC

13
14 My Commission Expires:
15 November 3, 2017
16 County of Residence:
17 Marion

18
19
20
21
22
23
24
25

Jacqueline Phillips-Stackman
December 29, 2015

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF INDIANA
3 TERRE HAUTE DIVISION

4 CAUSE NO. 1:15-cv-01929-TWP-MJD

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

11 Plaintiffs,)

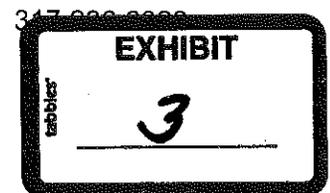
12 -vs-)

13 DR. JEROME M. ADAMS, in his)
14 official capacity as Indiana)
15 State Health Commissioner;)
16 DR. VIRGINIA A. CAINE, in her)
17 official capacity as Director)
18 and Health Officer of the Marion)
19 County Health Department; DARREN)
20 KLINGLER, Administrator, Vital)
21 Records, Marion County Health)
22 Department; DR. JAMES MINER,)
23 GREGORY S. FEHRIBACH, LACY M.)
24 JOHNSON, CHARLES S. EBERHARDT,)
25 II, DEBORAH J. DANIELS,)
26 DR. DAVID F. CANAL, and JOYCE Q.)
27 ROGERS, in all their official)
28 capacities as Trustees, Health)
29 85 Hospital Corporation of)
30 Marion County,)

31 Defendants.)

32 DEPOSITION OF JACQUELINE PHILLIPS-STACKMAN

33 The deposition upon oral examination of
34 JACQUELINE PHILLIPS-STACKMAN, a witness produced and
35 sworn before me, Tamara J. Brown, CSR, RMR, CRR,
36 Notary Public in and for the County of Marion, State
37 of Indiana, taken on behalf of the Defendants, at
38 the offices of the Attorney General, 302 W.
39 Washington Street, Indianapolis, Marion County,
40 Indiana, on the 29th day of December, 2015, pursuant
41 to the Federal Rules of Civil Procedure with written
42 notice as to time and place thereof.



Jacqueline Phillips-Stackman
December 29, 2015

5

5

1 prevent you from remembering things?

2 A No, ma'am.

3 Q Are you currently married?

4 A Yes.

5 Q And who are you married to?

6 A To Lisa Phillips-Stackman.

7 Q And where do you live? What town do you live
8 in?

9 A Indianapolis.

10 Q Do you have children?

11 A Yes.

12 Q How many?

13 A One child.

14 Q And is it a boy or a girl?

15 A It's a girl.

16 Q How old is she?

17 A She is almost 10 weeks.

18 Q And what do you do?

19 A I'm a violent crimes detective for the
20 Indianapolis Metro Police Department.

21 Q Can you tell me what your understanding is of
22 what this lawsuit is about?

23 A My understanding is that we're filing an
24 emergency injunction for -- to put me on the
25 birth certificate of my biological child.

Jacqueline Phillips-Stackman
December 29, 2015

8

8

1 A No, she didn't say anything specifically.

2 Q Just those things?

3 A Yes.

4 Q Do you remember who the other person was from

5 [REDACTED] who was there?

6 A She was a social worker. Her name was Kristen.

7 I don't remember her last name either. I have

8 it written down at home.

9 Q Other than those two employees at [REDACTED]

10 [REDACTED] Hospital, have you spoken to anyone else

11 about your desire to have your name on your

12 child's birth certificate?

13 A My attorney.

14 Q Anyone else?

15 A Other than friends and family, the desire,

16 general desire, absolutely, but no.

17 Q You said that -- I believe it's your testimony

18 that you have filed something in order to have

19 your name put on your child's birth certificate

20 in an emergency type basis.

21 A Correct.

22 Q Can you explain to me your reasons for why you

23 need your name on your child's birth certificate

24 as soon as possible?

25 A Well, for a few reasons. No. 1, if -- I'm a

Jacqueline Phillips-Stackman
December 29, 2015

9

9

1 violent crimes detective, and my job is very
2 dangerous -- if, God forbid, something should
3 happen to me in the line of duty, my child at
4 this point would not stand any benefit that
5 children who lose parents that are police
6 officers get. There's a significant financial
7 contribution that goes to those children, and
8 there's also an educational benefit where these
9 children get free school tuition in that state.
10 And at this, where it stands now, legally L [REDACTED]
11 would be my stepchild, even though she's my
12 biological child because my wife gave birth to
13 her. And if something should happen to me, she
14 doesn't stand to get those benefits.

15 Also, Lisa and I [REDACTED] are both under my
16 insurance. My wife is self-employed. She
17 doesn't carry the insurance, I do. If something
18 should happen to Lisa, I don't have tie to my
19 biological daughter, which is a very scary
20 feeling.

21 Also I [REDACTED] has -- she's doing very well now,
22 but she was born with some significant health
23 issues. She was born with hydrocephalus, a
24 severe case of that. She was also born with a
25 rare chromosome deletion, and she could face --

Jacqueline Phillips-Stackman
December 29, 2015

10

10

1 although she's doing well now, the future is
2 unknown, and that's going to be a battle in
3 itself, and I'd rather not be fighting that
4 battle along with this one as well.

5 Q I'm going to ask you about all three of those
6 things, but are there any other reasons you have
7 other than the potential for death benefits in
8 the event you're killed in the line of duty,
9 your medical insurance, and then the potential
10 for health issues for your child; are there any
11 other reasons that you have for wanting your
12 name on your child's birth certificate right
13 now?

14 A I think those are the main reasons, other than I
15 think I should just -- I deserve to be on her
16 birth certificate. But that's -- it's
17 bothersome that I have to think very
18 strategically in my daily life just to make sure
19 that my biological child is taken care of, that
20 my wife is taken care of, and if something
21 should happen, although I would, I would assume
22 that we will be welcome and we won't get any
23 headaches from hospitals or other docs, because
24 we have lots of doctors that we have to take our
25 daughter to. We have neurologists, surgeons,

Jacqueline Phillips-Stackman
December 29, 2015

11

11

1 genetic doctors, and although they recognize
2 that we're married, I don't know if I'm going to
3 run into an issue if I take my daughter to a
4 doctor's appointment, and someone doesn't
5 recognize me as her mother because legally I'm
6 not.

7 Q You -- I want to talk about each of those things
8 separately. You talked about how you're the
9 provider of medical insurance for your family.
10 Is that accurate?

11 A Correct, yes.

12 Q And you have a concern that if something should
13 happen to your wife, that you may not have
14 coverage for your daughter. Is that accurate?

15 A Correct.

16 Q Have you spoken to your health care provider
17 about those concerns?

18 A I have spoken to the City. And while they
19 recognize L [REDACTED], they didn't really give me
20 any -- they didn't give me any sort of backlash
21 on adding her. I had no problems adding her
22 onto my insurance. If, I can't say for certain
23 if something happened to my wife, that they
24 would continue coverage, because she's a
25 stepchild and I don't have a legal -- I don't

Jacqueline Phillips-Stackman
December 29, 2015

12

12

1 have a legal title.

2 Q But did you ask the City about that potential
3 and whether or not you would have coverage for
4 your daughter?

5 A I did ask the representative. And she was
6 reaching out. It's something that they are not
7 really super familiar with. This was kind of a
8 new curve ball for them too.

9 Q So you're waiting for an answer from them?

10 A Yes.

11 Q So as you sit here today, you don't know for
12 sure whether or not your insurance would cover
13 your daughter in the event something happened to
14 your wife?

15 A Correct.

16 Q You also talked about potential health issues in
17 the future for your daughter.

18 A Yes.

19 Q As you sit here today, it sounds like your
20 daughter is doing okay, health-wise. Is that
21 right?

22 A Yes.

23 Q Good. But are there concerns in light of the
24 previous conditions that she had, that there
25 will be future problems that she will have?

Jacqueline Phillips-Stackman
December 29, 2015

17

17

1 someone might argue that, some people might have
2 different opinions on that or might not be as
3 welcoming. We have no idea what we're going to
4 run into there.

5 MS. ISENBERG: Okay. I think I'm about
6 done, if you'll give me a second.

7 (A discussion was held off the record.)

8 MS. ISENBERG: I just have like two more
9 things.

10 THE WITNESS: Sure.

11 BY MS. BETSY M. ISENBERG:

12 Q We were talking about your daughter has a lot of
13 doctor's appointments.

14 A Yes.

15 Q Have you gone to those appointments for your
16 daughter?

17 A I have.

18 Q Have you taken your daughter alone to any of the
19 appointments?

20 A No, I have not.

21 Q So you have all gone together as a family?

22 A Yes.

23 MS. ISENBERG: All right. I have nothing
24 else.

25 MS. CELESTINO-HORSEMAN: Okay. I just want

Jacqueline Phillips-Stackman
December 29, 2015

20

20

1 thing with signature, and we'll take a
2 condensed.

3 (Time Noted 2:21 p.m.)

4 AND FURTHER THE DEPONENT SAITH NOT.

5

6

JACQUELINE PHILLIPS-STACKMAN

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Jacqueline Phillips-Stackman
December 29, 2015

21

21

1 STATE OF INDIANA)
) SS:
2 COUNTY OF MARION)

3 I, Tamara J. Brown, CSR, RMR, CRR, a
4 Notary Public in and for the County of Marion,
5 State of Indiana at large, do hereby certify
6 that JACQUELINE PHILLIPS-STACKMAN, the deponent
7 herein, was by me first duly sworn to tell the
8 truth, the whole truth, and nothing but the
9 truth in the aforementioned matter;

10 That the foregoing deposition was
11 taken on behalf of the Defendant, at the offices
12 of Attorney General, 302 W. Washington Street,
13 IGCS Fifth Floor, Indianapolis, Marion County,
14 Indiana, on the 29th day of December, 2015,
15 commencing at the hour of 1:56 p.m., pursuant to
16 the Federal Rules of Civil Procedure;

17 That said deposition was taken down
18 in stenograph notes and afterwards reduced to
19 typewriting under my direction, and that the
20 typewritten transcript is a true record of the
21 testimony given by the said deponent; and
22 thereafter presented to said deponent for
23 his/her signature;

24 That the parties were represented by
25 their counsel as aforementioned.

Jacqueline Phillips-Stackman
December 29, 2015

22

22

1 I do further certify that I am a
2 disinterested person in this cause of action;
3 that I am not a relative or attorney of either
4 party, or otherwise interested in the event of
5 this action, and am not in the employ of the
6 attorneys for either party.

7 IN WITNESS WHEREOF, I have hereunto
8 set my hand and affixed my notarial seal this
9 _____ day of _____, 2016.

10 
11 _____
12 NOTARY PUBLIC

13
14 My Commission Expires:
15 November 3, 2017
16 County of Residence:
17 Marion

18
19
20
21
22
23
24
25

Lisa Phillips-Stackman
December 29, 2015

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF INDIANA
3 TERRE HAUTE DIVISION

4 CAUSE NO. 1:15-cv-01929-TWP-MJD

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

11 Plaintiffs,)

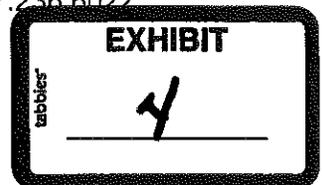
12 -vs-)

13 DR. JEROME M. ADAMS, in his)
14 official capacity as Indiana)
15 State Health Commissioner;)
16 DR. VIRGINIA A. CAINE, in her)
17 official capacity as Director)
18 and Health Officer of the Marion)
19 County Health Department; DARREN)
20 KLINGLER, Administrator, Vital)
21 Records, Marion County Health)
22 Department; DR. JAMES MINER,)
23 GREGORY S. FEHRIBACH, LACY M.)
24 JOHNSON, CHARLES S. EBERHARDT,)
25 II, DEBORAH J. DANIELS,)
26 DR. DAVID F. CANAL, and JOYCE Q.)
27 ROGERS, in all their official)
28 capacities as Trustees, Health)
29 85 Hospital Corporation of)
30 Marion County,)

31 Defendants.)

32 DEPOSITION OF LISA PHILLIPS-STACKMAN

33 The deposition upon oral examination of LISA
34 PHILLIPS-STACKMAN, a witness produced and sworn
35 before me, Tamara J. Brown, CSR, RMR, CRR, Notary
36 Public in and for the County of Marion, State of
37 Indiana, taken on behalf of the Defendants, at the
38 offices of the Attorney General, 302 W. Washington
39 Street, Indianapolis, Marion County, Indiana, on the
40 29th day of December, 2015, pursuant to the Federal
41 Rules of Civil Procedure with written notice as to
42 time and place thereof.



Lisa Phillips-Stackman
December 29, 2015

5

5

1 thing.

2 A Yes.

3 Q If you don't understand a question I ask, just
4 let me know and I'll rephrase it or figure out a
5 way to make you understand what I'm trying to
6 ask you.

7 A Okay.

8 Q But if I ask you a question and you answer, I'm
9 going to assume that you understood what I was
10 asking. Is that fair?

11 A Yes.

12 Q If you need a break for any reason, just let me
13 know. I'd just ask that you answer the question
14 I've asked before we take the break.

15 A Okay.

16 Q Are you taking any medication that would affect
17 your ability to answer questions today?

18 A No.

19 Q Are you taking any medication that would affect
20 your memory?

21 A No.

22 Q Are you married?

23 A Yes.

24 Q Who are you married to?

25 A Jackie Phillips-Stackman.

Lisa Phillips-Stackman
December 29, 2015

7

7

1 well as myself.

2 Q Have you received your daughter's birth
3 certificate?

4 A No.

5 Q But it's your understanding that your name will
6 be on the birth certificate?

7 A Yes.

8 Q Did you speak -- or have you spoken to anyone
9 about getting your wife's name put on the birth
10 certificate?

11 A I have not, no.

12 Q As you sit here today, what are the reasons that
13 you have that you would like your wife's name on
14 your daughter's birth certificate as soon as
15 possible?

16 A My reasons are health benefits as well, and to
17 make sure that she is able to take Lola to any
18 doctor's appointments or for any emergency that
19 would arise, same things that she's concerned
20 about.

21 Q Have you spoken with anyone regarding your
22 wife's health insurance or benefits?

23 A No, I have not.

24 Q And are your concerns essentially that if
25 something were to happen to you, you want your

Lisa Phillips-Stackman
December 29, 2015

8

8

1 daughter to be covered by your wife's health
2 insurance?

3 A Yes.

4 Q Do you currently have any sort of health
5 condition, chronic condition that might cause
6 you illness, or anything like that?

7 A No.

8 Q And your concerns related to medical emergencies
9 and doctor's appointments, just to make sure I
10 understand them, are they that you want your
11 wife to be able to go to these appointments
12 without concerns that she wouldn't be able to
13 make medical decisions for your daughter?

14 A Yes.

15 Q So far you haven't had that issue, have you?

16 A No, so far.

17 Q And for medical appointments that you have had,
18 you have all attended them together, correct?

19 A Yes, correct.

20 Q Other than those two reasons that you gave, do
21 you have any other reasons that you would like
22 your wife's name on your daughter's birth
23 certificate immediately?

24 A Those are the main concerns, L [REDACTED]'s health
25 concerns, and medical benefits as well as other

Lisa Phillips-Stackman
December 29, 2015

9

9

1 benefits.

2 Q And when you say other benefits, which benefits
3 are you talking about?

4 A The benefits that she would be entitled to if
5 anything happened to Jackie in the line of duty.

6 Q And have you spoken to anyone about what those
7 benefits would be should something happen to
8 your wife?

9 A No.

10 Q So you don't know anything about what those
11 benefits would be?

12 A No, I do not.

13 MS. ISENBERG: I don't have anything else.
14 That's it.

15 MS. CELESTINO-HORSEMAN: Nope.

16 THE REPORTER: Same as before?

17 MS. ISENBERG: Yes.

18 MS. CELESTINO-HORSEMAN: Yes.

19 (Time Noted 2:29 p.m.)

20 AND FURTHER THE DEPONENT SAITH NOT.

21

22

LISA PHILLIPS-STACKMAN

23

24

25

Lisa Phillips-Stackman
December 29, 2015

10

10

1 STATE OF INDIANA)
) SS:
2 COUNTY OF MARION)

3 I, Tamara J. Brown, CSR, RMR, CRR, a
4 Notary Public in and for the County of Marion,
5 State of Indiana at large, do hereby certify
6 that LISA PHILLIPS-STACKMAN, the deponent
7 herein, was by me first duly sworn to tell the
8 truth, the whole truth, and nothing but the
9 truth in the aforementioned matter;

10 That the foregoing deposition was
11 taken on behalf of the Defendant, at the offices
12 of Attorney General, 302 W. Washington Street,
13 IGCS Fifth Floor, Indianapolis, Marion County,
14 Indiana, on the 29th day of December, 2015,
15 commencing at the hour of 2:22 p.m., pursuant to
16 the Federal Rules of Civil Procedure;

17 That said deposition was taken down
18 in stenograph notes and afterwards reduced to
19 typewriting under my direction, and that the
20 typewritten transcript is a true record of the
21 testimony given by the said deponent; and
22 thereafter presented to said deponent for
23 his/her signature;

24 That the parties were represented by
25 their counsel as aforementioned.

Lisa Phillips-Stackman
December 29, 2015

11

11

1 I do further certify that I am a
2 disinterested person in this cause of action;
3 that I am not a relative or attorney of either
4 party, or otherwise interested in the event of
5 this action, and am not in the employ of the
6 attorneys for either party.

7 IN WITNESS WHEREOF, I have hereunto
8 set my hand and affixed my notarial seal this
9 _____ day of _____, 2016.

10 
11
12 NOTARY PUBLIC

13
14 My Commission Expires:
15 November 3, 2017
16 County of Residence:
17 Marion

18
19
20
21
22
23
24
25