UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ASHLEE and RUBY HENDERSON, a married couple and L.W.C.H., by his parent and next friend Ruby Henderson, *et al.*,	)	
Plaintiffs,	)	
vs.	)	No. 1:15-cv-220-TWP-MJD
DR. JEROME M. ADAMS, in his official capacity as Indiana State Health Commissioner, *et al.*,	)	
Defendants.	)	

PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION TO ALTER OR AMEND JUDGMENT

Come now, Ashlee and Ruby Henderson, a married couple and L.W.C.H., by his parent and next friend Ruby Henderson; Nicole and Jennifer Singley and H.S., by his parent and next friend, Jennifer Singley; Nicki and Tonya Bush-Sawyer and I.J.B-S by his mother and next friend Nicki Bush-Sawyer; Lyndsey and Cathy Bannick, a married couple and H.N.B. by his parent and next friend, Lyndsey Bannick; Calle and Sarah Janson and Unborn Baby Doe by his/her next friend and mother-to-be Calle Janson; Nikkole McKinley-Barrett and Donnica Barrett, a married couple and G.R.M.B., by his mother and next friend, Donnica Barrett; Noell and Crystal Allen, a married couple; and, Jackie and Lisa Phillips-Stackman, a married couple and L.J.P-S, by her mother and next friend, Lisa-Phillips-Stackman, (all hereinafter

"Plaintiffs") by counsel, hereby state as follows in response to Defendant's Motion to Alter or Amend Judgment:

I THE COURT HAS JURISDICTION TO ADJUDICATE THE VALIDITY OF I.C. § 31-9-2-15 AND -16

This Court has the jurisdiction to adjudicate the constitutionality of I.C. § 31-9-2-15 and -16 as the statutes classify the Plaintiff children as illegitimate simply because the children were born to a married same-sex couple instead of a married heterosexual couple. The State argues that because the Plaintiffs are not currently engaged in adoption proceedings, they lack Article III standing to challenge the statutes. The State's argument fails.

I.C. § 31-9-2-15 provides:

> "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.

I.C. § 31-9-2-16 provides:

> "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).

In their motion for summary judgment, the Plaintiffs made it very clear that Defendants were using these statutory definitions to classify

the Plaintiff children. At no time did the State or the Counties deny this.[1] Even in its Rule 59 motion, the State does not deny that it and the Counties used these definitions to define a child "born out of wedlock." Thus while no adoption may have been involved, the statutes were used by the Counties to define children "born out of wedlock."

The categories of "born out of wedlock" and "born in wedlock" were created by these statutes and exist regardless of whether the children are the subject of an adoption proceeding. For example, both the Bannicks and the Singleys received a notice from the county health departments that informed them that because their children were born -out-of-wedlock, the child would be recorded under the name of the birth mother only. Affidavit of Singley, Attachment 2, Filing No. 78-11 at ECF

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[1] The Counties were dismissed from this action because the Court found:

> The County Defendants do not have authority or discretion to deviate from the State's regulatory system for creating and issuing birth certificates in the State of Indiana. The State dictates what information is collected, the method by which information is collected, how information is stored, and how information can be used to generate birth certificates. The State also governs how information on a birth certificate may be modified. The real injury to the Plaintiffs stems from the State's regulatory framework and ISDH's control over the State's vital statistics system. Injury is not fairly traceable to the County Defendants. Additionally, the Plaintiffs ignore the Tippecanoe County Defendants' clear qualifier that it would comply with an order from the Court, but adhering to such an order would not redress the injuries suffered because the actions would be *ultra vires*, and the resulting birth certificates would be invalid and of questionable value." Entry on Cross Motions for Summary Judgment dated June 30, 2016 (Doc. 116), p. 15.

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p. 682; Affidavit of Bannick, Attachment 4, Filing No. 79-13 at ECF p. 753. According to these two statutes, the children of the Plaintiff couples are children who were not born in wedlock because they are the children of same-sex marriages, and not marriages between a man and a woman. The Plaintiff children are held to be "born out of wedlock" because no male was presumed to be the father.

It is disingenuous for the State to claim that I.C. § 31-9-2-15 and -16 have no application to Plaintiffs and apply only in the adoption context. In the Indiana code, the term "born out of wedlock" is used within 25 different Indiana statutes.[2] The only place "born out of

[2] *See,* I.C. § 5-20-3-7(5) ("A contract for state financial assistance with a mutual housing association under section 6 [IC 5-20-3-6] of this chapter must include (for each housing site) the following provisions: . . . The mutual housing association may not refuse to rent a dwelling accommodation to an otherwise qualified applicant because one (1) or more of the proposed occupants are children born out of wedlock"); I.C. § 12-14-7-3 (cooperation by mother of child born out of wedlock or nonparent guardian or custodian"; I.C. § 16-37-2-2(a)(2)(A)-(b) ("A person in attendance at a live birth shall do the following . . . Advise the mother of a child born out of wedlock of . . . the availability of paternity affidavits under section 2.1 [IC 16-37-2-2.1] of this chapter; and the existence of the putative father registry established by IC 31-19-5-2); I.C. § 16-37-2-2.1(b)(1)(A)-(B) ("Immediately before or after the birth of a child who is born out of wedlock, a person who attends or plans to attend the birth, including personnel of all public or private birthing hospitals, shall . . . provide an opportunity" for the execution of a paternity affidavit); I.C. § 16-37-2-13 (how to record birth of child born out of wedlock); I.C. § 16-37-2-16 (corrections to certificate of birth following marriage of parents of child born out of wedlock); I.C. § 16-37-2-18(3) ("If a certificate of birth is issued from the record described in section 16 [IC 16-37-2-16] of this chapter, the certificate . . . may not refer to the fact that the child was born out of wedlock"); I.C. § 22-3-3-19(b) ("As used in this section, the term "child" includes stepchildren, legally adopted children, posthumous children, and acknowledged children born out of wedlock"); I.C. § 22-3-7-

wedlock" is defined is I.C. § 31-9-2-16. The term "born in wedlock" is

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13(b) ("As used in this section, the term "child" includes stepchildren, legally adopted children, posthumous children, and acknowledged children born out of wedlock"); I.C. § 27-8-23-5(1) ("An insurer may not deny enrollment of a child under the health coverage of the child's parent on any of the following grounds . . . (1) That the child was born out of wedlock"); I.C. § 29-1-1-3(1) ("Child" includes an adopted child but does not include a grandchild or other more remote descendants, nor, except as provided in IC 29-1-2-7, a child born out of wedlock"); I.C. § 29-1-2-7 (probate code) (children born out of wedlock); I.C. § 29-1-2-7 ("However, if a natural parent of a child born in or out of wedlock marries the adopting parent, the adopted child shall inherit from the child's natural parent as though the child had not been adopted, and from the child's adoptive parent as though the child were the natural child"); I.C. § 29-1-6-1 ("In construing a will making a devise to a person described by relationship to the testator or to another, a person born out of wedlock shall be considered the child of the child's mother"); (trusts and fiduciaries) I.C. § 30-4-1-12 ("If the right of a person born out of wedlock to inherit from the person's father is established under IC § 29-1-2-7, the person shall also be considered a child of the person's father"); I.C. § 31-9-2-10(3) ("'Birth parent', for purposes of IC 31-19-17 through IC 31-19-25.5, means . . . (3) a man who establishes paternity of a child born out of wedlock"); I.C. § 31-9-2-13(1) ("'Child", for purposes of IC 31-15, IC 31-16 (excluding IC 31-16-12.5), and IC 31-17, means a child or children of both parties to the marriage" and "includes the following . . . (1) Children born out of wedlock to the parties"); I.C. § 31-14-1-1 ("The general assembly favors the public policy of establishing paternity under this article of a child born out of wedlock"); I.C. § 31-14-13-1 ("A biological mother of a child born out of wedlock has sole legal custody of the child"); I.C. § 31-17-5-1(a)(3) ("(a) A child's grandparent may seek visitation rights if . . . (3) subject to subsection (b), the child was born out of wedlock"); I.C. § 31-17-5-8(a) (survival of visitation rights through establishment of paternity) ("This section applies to a child born out of wedlock"); I.C. § 31-19-9-1(a)(2) (consent to adoption required when "child born out of wedlock" and father has established paternity); I.C. § 31-19-9-8(a)(3)-(4) (consent to adoption not required when "child born out of wedlock" and father has failed to establish paternity or child conceived through rape, child molesting or incest"); I.C. § 31-25-4-17(a)(3) (Title IV-D shall "[a]ssist in establishing paternity for children born out of wedlock"); I.C. § 31-34-15-6(a) (prosecutor shall file paternity action on behalf of children born out of wedlock); I.C. § 31-35-1-4(a) (petition for voluntary termination of parental rights must identify the parents of child born out of wedlock).

used throughout I.C. § 31-13-2, *et seq.* (procedure for determining whether child born in wedlock) and within I.C. § 31-19-9-1 (written consent to adoption required from both parents of child born in wedlock).

When interpreting Indiana statutes, Indiana courts utilize the doctrine of *in pari materia* which directs that " [s]tatutes which relate to the same thing or general subject matter . . . should be construed together." *Citizens Action Coalition of Indiana, Inc. v. Northern Indiana Public Service Company*, 485 N.E.2d 610, 617 (Ind. 1985). "A word or phrase which appears in different parts of the statute will be given the same meaning, unless an intention to the contrary clearly appears. *Id.* (citations omitted) ("The term "accommodation" in the definitional section of the Public Service Commission Act must be read *in pari materia* with the same term in the Railroad Commission law").

"The legislative definition of certain words in one statute, while not conclusive, is entitled to consideration in construing those same words in another statute." *Allen v. Allen*, 54 N.E.3d 344, 347 (Ind. 2016). In *Allen*, the question was how to define the term "postsecondary" for purposes of determining a parent's obligation to pay a portion of a child's graduate school expenses. The Supreme Court noted: "While the term postsecondary is not defined in the family law and juvenile law titles of the Code, it is defined in the higher education title." *Id.* The statute being interpreted was within Title 31 while the definition used by the Supreme Court was within Title 21. *Id.* The

Supreme Court noted that while the "definition does not purport to apply generally outside of Title 21. . . several statutes outside of Title 21 explicitly incorporate this definition". *Id.* Thus, "[w]hile the statutory provision at issue (*Ind. Code § 31-16-6-2*) does not incorporate the definition of postsecondary educational institution found in *Ind. Code § 21-7-13-6(a)*, this definition is used throughout the Code and thus, informs our interpretation." *Allen v. Allen*, 54 N.E.3d 344, 347-348 (Ind. 2016). *See also, Orndorff v. New Albany Housing Authority*, 843 N.E.2d 592, 595 (Ind. Ct. App. 2006) (to determine whether Indiana Tort Claim Act ("ITCA") contained within Title 34 covers "municipal corporations", court looked to definition of "municipal corporation" contained within Title 36 as both covered the same general subject matter).

The State also attempts to claim that "the Commissioner has no way to recognize each of the Plaintiff Children in this matter as a child born in wedlock[.]" (State's Memorandum, p. 6). Again, the State misrepresents the law. Title 16 of the Indiana Code covers health. There are five statutes that direct the defendant, the Indiana State Department of Health ("ISDH"), on steps to be taken when a child is born out of wedlock. Under I.C. § 16-37-2-2(a)(2)(A)-(b), the ISDH is required to "[a]dvise the mother of a child born out of wedlock of . . . the availability of paternity affidavits. Under I.C. § 16-37-2-2.1(b)(1)(A)-(B), the mother of a child born out of wedlock is "provide[d] an opportunity" for the execution of a paternity affidavit. I.C. § 16-37-2-13 instructs the

ISDH how to record the birth of child born out of wedlock. I.C. § 16-37-2-16 directs the ISDH on how to correct a birth certificate of a child born out of wedlock once the parents marry. I.C. § 16-37-2-18(3) provides that birth certificates cannot refer to the fact that a child was born out of wedlock. In each of these instances, the ISDH, through the counties, must make a determination as to whether the child is born in or out of wedlock so that it can then take the appropriate action.

Finally, this Court did have jurisdiction to determine the constitutionality of I.C. § 31-9-2-15 and -16. Plaintiffs were required to " demonstrate that they have 'suffered a concrete and particularized injury that is fairly traceable to the challenged conduct, and is likely to be redressed by a favorable judicial decision.'" *Lewert v. P.F. Chang's China Bistro, Inc.*, 819 F.3d 963, 966 (7th Cir. 2016) (citing *Hollingsworth v. Perry*, 133 S. Ct. 2652, 2661, 186 L. Ed. 2d 768 (2013) (citing *Lujan*, 504 U.S. at 560-61)). Stigma is a cognizable constitutional injury. *Obergefell v. Hodges*, 135 S. Ct. 2584, 2602 (2015) ("laws excluding same-sex couples from the marriage right impose stigma and injury of the kind prohibited by our basic charter"). Plaintiffs and their children were injured, i.e., stigmatized, when the children were declared to be born out-of-wedlock, despite being born to a married couple. Thus Plaintiffs did suffer injury.

The State has never denied that the definitions within I.C. § 31-9-2-15 and -16 are the definitions used by the State to determine which

children are born in and out-of-wedlock. This definition damaged Plaintiffs, i.e., declaring their children bastards with all the accompanying stigma, etc., as discussed in Plaintiffs' original pleading. On this basis, Plaintiffs do have constitutional standing to pursue their claims.

II THE COURT PROPERLY HELD THAT THE STATUTES ARE UNCONSTITUTIONAL AS APPLIED

The State claims that Dr. Adams "is unclear as to scope of the judgment, and to the extent the Court meant to invalidate Indiana Code sections 31-9-2-15, 31-9-2-16 and 31-14-7-1 on their face, it was manifest legal error for it to do so."[3] (State's Memorandum, p. 7). The

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[3] The State fails to provide any legal basis for its argument except to reference *United States v. Salerno*, 481 U.S. 739, 745 (1987) for the proposition "that a successful facial challenge 'must establish that no set of circumstances exists under which the [law] would be valid.'" (State's Memorandum, p. 9). The State fails to properly cite the rule regarding facial challenges:

> A facial challenge to the constitutionality of a law can succeed only where Plaintiffs can "'establish that no set of circumstances exists under which the Act would be valid.'" *Doe v. Heck, 327 F.3d 492, 528 (7th Cir. 2003)* (quoting *United States v. Salerno, 481 U.S. 739, 745, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987)*). Nonetheless, "[t]he proper focus of constitutional inquiry is the group for whom the law is a restriction, not the group for whom the law is irrelevant." *Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 894, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992)*.

Fields v. Smith, 653 F.3d 550, 557 (7th Cir. 2011). In the instant case, under *Fields*, the aggrieved Plaintiffs were required to show that under no circumstances could the law be applied to them constitutionally. The Court agreed that the law is unconstitutional as regards two female same-sex spouses, one of whom is the birth mother.

State argues: "If the statutes are unconstitutional on their face, they cannot be applied under any circumstances." (Memorandum, p. 8). At the same time, the State argues that the Statute cannot be unconstitutional as applied to these Plaintiffs married male same-sex couples "would enjoy no presumption of parentage when a child is born to their marriage, even if one of them is actually the biological father" thus "leav[ing] male same-sex married couples on seemingly unequal footing compared with female same-sex married couples." (State's Memorandum, p. 8). Not only is the State's argument surprising, but the State refuses to recognize that it controls how the statute is to be interpreted.

This action sought declaratory and injunctive relief. A declaration of unconstitutionality has no direct impact upon the statute itself. A "statute cannot be repealed by a district court opinion; only the legislature can repeal the statute." *Wisconsin Right to Life, Inc. v. Goldberg*, 366 F.3d 845, (7th Cir. 2004). "Furthermore, a district court's declaration that the statute is unconstitutional does not automatically stop state officials from trying to enforce the statute." *Id.* Thus it is up to the State how it wishes to interpret the statute and the Court's opinion. For *res judicata* purposes, the declaratory judgment can only be asserted by the named Plaintiffs and for purposes of *stare decisis*, the opinion is not binding on any other court. The State fails to discuss how the declaratory judgment forecloses the State from applying the Statute in

any manner, even a constitutional manner.

As for the injunction, the Court made it very clear that the State is "[e]njoined from enforcing [the statutes at issues] in a manner that prevents the presumption of parenthood to be granted to female, same-sex spouses of birth mothers as to any child born during the marriage" and that the State is "[e]njoined to recognize children born to a birth mother who is married to a same-sex spouse as a child born in wedlock." (Permanent Injunction, p. 1). The only classification impacted by the injunction are married female same-sex couples to whom a child is born during the course of the marriage. All the State is required to do is make sure it grants the presumption of parenthood to the classification described in the injunction. Any couple not within the described classifications, e.g., a male married same-sex couple, cannot claim to be protected by the injunction and cannot bring a contempt action.

Thus it is the State's choice as to whether it wishes to limit the Statute's application only to the class of female married same-sex couples and children described in the injunction or expand the application to include male same-sex married couples. Neither the Court's opinion nor permanent injunction squarely addresses this issue because it was not raised by the Plaintiffs nor the State but the State is free to interpret the Statute in whatever way it wishes, so long as it does not do so unconstitutionally in regards to married, female same-sex couples.

III THE STATUTES AT ISSUE ARE TO BE APPLIED TO ALL FEMALE SPOUSES OF BIRTH MOTHERS MARRIED JUST AS THEY ARE TO BE APPLIED TO ALL MALE SPOUSES OF BIRTH MOTHERS

The next issue raised is whether the Court's decision is intended to apply only to same-sex female married couples where the birth mother is artificially inseminated by an anonymous donor or whether the decision is intended to apply to same-sex female married couples in the same manner that the statutes are applied to heterosexual married couples. Again, the Court's injunction makes it clear that the method of conception is not the factor to be used in determining whether the presumption of parenthood is to be applied. Plaintiffs maintain that if Equal Protection and Due Process mean anything, it is that married female same-sex couples are to be treated in the same manner as heterosexual couples - no more, no less.

When a birth mother who is married to a man is asked to provide information for the birth certificate, she is not asked if she knows the biologically-related father of the child. She is simply asked if she is married to the father of her child. She is not asked if the child was conceived via intercourse with someone other than her husband. She is not asked if she knows the identity of the third party sperm donor who assisted with conception. If the birth mother identifies her husband as the parent of her child, he goes on the birth certificate. That is also how birth mothers with a female same-sex spouse should be treated. When

the birth mother married to a same-sex spouse is asked if she is married to the second parent of the child, the information should be recorded without question or challenge, just as it is done for heterosexual birth mothers.

The State posits that this somehow provides less protection for the biological father but again, the State ignores existing law. If, after the child is born and the birth mother has identified her husband as the parent of the child and the actual biological father wants to be listed on the birth certificate, then the biological father must file a petition to establish paternity. I.C. § 31-14-2-1. The biological father has two (2) years from the date of birth to file to establish paternity. I.C. § 31-14-5-3. In the event that a donor agreement has been entered and the parties have complied with the Uniform Parentage Act formalities, a petition to establish paternity would be denied and the donor agreement would be enforced pursuant to Indiana law. *In re Paternity M.F.*, 938 N.E.2d 1256 (Ind. Ct. App. 2010) (petition to establish paternity denied as child conceived pursuant to valid donor agreement but paternity could be established for second child who was not conceived subject to donor agreement). The same case law would be applicable to married female same-sex couples should the biological father wish to challenge to be named parent on the birth certificate. Therefore, under the Court's order, a biological father's rights are exactly the same whether the birth mother is married to a man or a woman.

The State questions the ability to pursue child support when there is a known sperm donor who is not identified. This is not a question to be answered by the opinion of this Court but rather by existing Indiana case law. For example, inferring a parent-child relationship where a child has been conceived by artificial insemination with the consent of both marital partners has been the law in Indiana for at least two decades. *Levin v. Levin*, 645 N.E.2d 601 (Ind. 1994). If a husband and wife decide together to conceive a child via a third party sperm donor, then both parties remain financially responsible for the child. *Id.*; *See, e.g., Engelking v. Engelking*, 982 N.E.2d 326, 328-29 (Ind. Ct. App. 2013) (divorcing husband who "knowingly and voluntarily consent[ed]" to artificial insemination of wife is obligated to pay child support even though there is no biological relationship between father and children). The Indiana courts will simply apply the same case law to divorcing same-sex female couples who also conceived a child with the assistance of a third party sperm donor. The State has certainly not presented any evidence or law that would indicate otherwise.

If the sperm donor is known and for some reason the State wishes to bring an action against the biological father for child support, then it becomes a question of whether there was a sperm donor agreement. *See*, *In re Paternity of MF*, 938 N.E.2d 1256 (Ind. 2010) (donor found not legally responsible to support child to whom sperm donor agreement

applied)[4]. The State does not require a birth mother married to a male spouse to provide the identity of a known sperm donor for purposes of later determining child support obligations. To secure his identity at the time the child is born is unnecessary for as the State well knows the county prosecutors often do not file paternity actions and seek child support until some years after the child's birth. I.C. § 31-14-5-3(a) specifically exempts the State from the application of the two year statute of limitations to file a paternity action. Instead, the government "may file an action before the child becomes nineteen (19) years of age or graduates from high school, whichever occurs first."

The State's attempt to limit the holding of the Court's opinion to only those married female same-sex couples which conceived a child with an unknown sperm donor is simply the State's attempt to continue discrimination against married female same-sex couples. The Supreme Court's *Obergefell* decision ushered in a new paradigm of family law and requires the judiciary to root out "unjustified inequality within our most fundamental institutions that once passed unnoticed and unchallenged." 135 S. Ct. at 2603. Thus, the State must now treat married female same-sex couples and their children the same as it treats married heterosexual

[4] The State argues that "a mother cannot waive the father's support obligations" and this is true; however, in situations where children are conceived with the assistance of third party sperm donors, this rule would only apply when a second parent who is not biologically related to the child has been found to be financially responsible for the child, as discussed in the case law *supra.*

couples and this Court's decision does nothing more than implement that mandate.

IV THE PRESUMPTION OF PARENTHOOD IS REBUTTABLE REGARDLESS OF WHETHER IT IS APPLIED TO A MARRIED SAME-SEX COUPLE AND CAN BE REBUTTED IN THE SAME MANNER AS IS DONE IN CASES OF MARRIED HETEROSEXUAL COUPLES

The State's motion demonstrates the difficulty it is having in adjusting to the new paradigm of parenthood. It argues that it does not know if the presumption to be applied to female same-sex married couples is the same as that which is applied to married heterosexual couples. The State writes:

> Here, however, the Court does not specify whether or how the "presumption of parenthood" it has created could ever be rebutted. Nor does it account for the apparent extinction of the parental rights of anonymous or known biological fathers of the Children in this case. Accordingly, in order to ensure the Court's intentions are clear, the Court should alter or amend its judgment to clarify whether this new legal presumption is rebuttable and if so, how it can be rebutted.

(State's Memorandum, p. 12). The State makes the sweeping claim that the "rights" of anonymous or known biological fathers are extinguished without providing any discussion of existing law. The State knows that such is not true pursuant to the discussion of the case law and statutes discussed *supra*.

The State acknowledges that the presumption is rebuttable as applied to married heterosexual couples. Nothing in either the judgment nor the injunction states that the presumption to be applied to married

female same-sex couples is in any way different than is the rebuttable presumption applied to heterosexual couples. Nothing in the Court's decision can be construed as granting greater rights to married same-sex female couples than is granted to heterosexual married couples.

The State itself has acknowledged that it is printing new birth certificate forms that will "implement sex-neutral labeling on Indiana birth and death certificates." (State's Ex. A). Birth certificates will no longer use the terms "mother" or "father" but will instead use the term "parent." Contrary to the State's claim, the rights of third party sperm donors, known or unknown, are not affected by applying the rebuttable presumption to married same-sex female couples. Prior to this litigation, the presumption of fatherhood was rebutted "by clear and convincing evidence that the presumed biological father is not, in fact, the *actual* biological father." (State's Memorandum, p. 11). With the recognition of same-sex marriage and this Court's injunction, the rebuttable presumption of parenthood can now be rebutted "by clear and convincing evidence that the *presumed* [parent] is not, in fact, the *actual* biological [parent]", pursuant to the same limitations already established by Indiana case law for heterosexual couples in *Levin* and *In re Paternity of MF*, as discussed *supra*. 645 N.E.2d 601 (Ind. 1994); 938 N.E.2d 1256 (Ind. 2010). It is unclear why the State is having such difficulty in using the term "parent" instead of "father" when it comes to interpreting statutes and case law. It simply needs to follow the example of the new

birth certificates.

CONCLUSION

Because the Court's order concisely provided that the statutes be applied equally to male and female spouses of birth mothers and the children born to these marriages, it is unnecessary that the Court amend or alter its judgment to restate the obvious: the permanent injunction simply requires the Statutes to be applied equally regardless of the gender of the birth mother's spouse.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *Plaintiffs' Response to Defendants' Motion to Alter or Amend Judgment* was filed electronically. Notice of this filing will be sent to the all counsel of record by operation of the Court's electronic filing system.

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