

July 12, 2017

Office of the Clerk of Court
United States Court of Appeals for the Seventh Circuit
Room 2722
219 S. Dearborn St.
Chicago, IL 60604

Re: Response to Rule 28(j) Letter in *Henderson v. Adams*,
No. 17-1141

Dear Clerk:

This responds to Plaintiffs' letter of June 27, 2017, asserting that *Pavan v. Smith*, No. 16-992, 2017 WL 2722472 (U.S. June 26, 2017), "squarely rejects Indiana's argument that birth certificates are entirely about identifying biological parentage." In short, *Pavan* did not foreclose biology and adoption as touchstones for parental rights and birth certificates. It only addressed Arkansas's discriminatory—and distinguishable—statutes.

First, in Arkansas, "[a]ny child born to a married woman by means of artificial insemination shall be deemed the legitimate natural child of the woman *and the woman's husband*" Ark. Code Ann. § 9–10–201(a) (emphasis added). Second, if the mother is married at the time of birth, "*the name of the husband* shall be entered on the certificate as the father of the child." Ark. Code Ann. § 20–18–401(f)(1) (emphasis added). So, in Arkansas, "the State will—indeed, *must*—list the name of [a mother's] *male* spouse on the child's birth certificate" regardless whether he is a biological (or adoptive) parent; but, "in those very same circumstances," the code "allows Arkansas officials to omit a married woman's *female* spouse" *Pavan*, 2017 WL 2722472, at *2 (emphasis added).

Pavan said such *discrimination* undermined Arkansas's claim that birth certificates depend only on a biological parent-child connection. *Id.* In contrast, no Indiana law conclusively "deems" a husband without a biological connection to be a "natural father." Indiana law only *rebuttably presumes* a birth-mother's husband *factually* is the child's "biological father," Ind. Code § 31-14-7-1, and requires adoption

to attain parental rights if he is not. *See Cochran v. Cochran*, 717 N.E.2d 892, 894 (Ind. Ct. App. 1999). Further, the name of the birth-mother's spouse, regardless of sex, should appear on the birth certificate *only* if that person is a biological or adoptive parent. Appellant's Br. 13-15.

Finally, Plaintiffs' Indiana cases regarding "child of the marriage" determinations address *not* parental rights at birth, but only estoppel and "best interests" considerations equally applicable to same-sex and opposite-sex couples.

Because Indiana law is not discriminatory, *Pavan* does not control.

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

I verify that the body of this letter contains 350 words according to the word-count function of Microsoft Word, the word-processing program used to prepare this brief.

By: s/ Thomas M. Fisher
Thomas M. Fisher
Solicitor General

CERTIFICATE OF SERVICE

I hereby certify that on July 12, 2017, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system, which sent notification of filing to all registered parties.

s/ Thomas M. Fisher

Thomas M. Fisher
Solicitor General