



STATE OF INDIANA

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October 2, 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:

Appellees' letter of September 21, 2017, asserts that *McLaughlin v. Jones*, No. CV-16-0266-PR, 2017 WL 4126939 (Ariz. Sept. 19, 2017), "reinforces" that "*Obergefell*, as applied in *Pavan*, compels affirmance of the district court's decision[.]" To the contrary, the only principle that *McLaughlin* reinforces is that *if* a state affords parental status to husbands of birth mothers regardless of a biological connection to the child, it must afford the same status for wives of birth mothers.

*McLaughlin* was a divorce and custody dispute litigated largely without the State of Arizona's input. Critically, without analyzing statutory text or precedents, the court made a definitive interpretation of Arizona law that "in cases of artificial insemination, a husband in an opposite-sex marriage whose wife is artificially inseminated by an anonymous sperm donor can establish his parental rights through [the paternity presumption statute]." *McLaughlin*, 2017 WL 4126939 at \*2. Having so declared the law of Arizona, the court unsurprisingly concluded that *Pavan* required extension of such status to wives of birth mothers.

In contrast, as the State has established in its briefing here, Indiana statutes do *not* confer parental status on a husband based on marriage alone. *McLaughlin* offers no guidance for construing Indiana's statutes any other way, other than by raw judicial fiat that effectively amends the statutory text.

Finally, the *McLaughlin* court did not consider the constitutional rights of biological fathers that are implicitly terminated by automatic parental status for

spouses of birth mothers having no biological connection to the child. *See* Appellant’s Br., Dkt. No. 9, at 33–38; Reply Br., Dkt. No. 39 at 19–21. Indeed, the *McLaughlin* court’s “presumption” is apparently not subject to rebuttal (even by a biological father) so long as both spouses consented to the insemination. *McLaughlin*, 2017 WL 4126939 at \*8–9.

As written, Indiana law both preserves the constitutional rights of biological fathers and treats husbands and wives of birth mothers equally: Neither may attain parental status without either a biological connection to the child or adoption. Accordingly, *Pavan* and *Obergefell* do not control here.

Respectfully submitted,

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## CERTIFICATE OF WORD COUNT

I verify that the body of this letter contains no more than 350 words according to the word-count function of Microsoft Word, the word-processing program used to prepare it.

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

## CERTIFICATE OF SERVICE

I hereby certify that on October 2, 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