

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.)

NOELL and CRYSTAL ALLEN, a married couple;)
et al.,)

Plaintiffs,)

vs.)

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

Defendants.)

**PLAINTIFFS MEMORANDUM OF LAW IN REPLY TO TIPPECANOE COUNTY
DEFENDANTS' OPPOSITION AND RESPONSE TO TIPPECANOE COUNTY
DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT**

Comes now Plaintiffs and submit this memorandum of law in Reply to Tippecanoe County Defendants'¹ Opposition to Plaintiffs' Motion for Summary Judgment and Response to Tippecanoe County Defendants' Cross-Motion for Summary Judgment.

I PLAINTIFFS HAVE STANDING TO BRING THIS ACTION AGAINST THE TIPPECANOE DEFENDANTS

Plaintiffs, to have standing, "must present an injury that is concrete, particularized, and actual or imminent; fairly traceable to the defendant's challenged behavior; and likely to be redressed by a favorable ruling." *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 733 (2008). The Supreme Court has stated, "There must be a causal connection between the injury and the conduct complained of--the injury has to be 'fairly...trace[able] to the challenged action of the defendant, and not...th[e] result [of] the independent action of some third party not before the court.'" *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992) (quoting *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 41-42 (1976)).

Plaintiffs, Ashlee and Ruby Henderson (the "Hendersons"), have standing to sue the Tippecanoe Defendants as the Hendersons have set forth specific injuries which are fairly traceable to the Tippecanoe Defendants' application of

¹ The Tippecanoe Defendants are Dr. Jeremy Adler, Craig Rich, Glenda Robinette, Pam Aaltonen, Thomas Padgett, Thometra Foster, Karen Combs, Kate Nail, Dr. John Thomas, and Dr. Hsin-Yi Weng, all in their official capacities as the Tippecanoe County Health Officer, administrator of the Tippecanoe County Health Department, birth registrar for Tippecanoe County, and members of the Tippecanoe County board of health.

[I.C. 31-14-7-1](#), [I.C. 31-9-2-15](#), and [I.C. 31-9-2-16](#) (the "Parenthood Statutes").² Specifically, in their Second Amended Complaint and Affidavits, the Hendersons set forth the tangible harms, as well as the discrimination, humiliation, and dignitary harms, they suffer as a result of Tippecanoe Defendants' implementation of the Parenthood Statutes. (Compl. [Filing No. 38 at ECF p. 17-21](#)). The Hendersons will continue to suffer these harms if the Tippecanoe Defendants are not enjoined from enforcing Indiana's Parenthood Statutes and ordered to list Ashlee Henderson as a parent on the birth certificate of L.W.C.H.

Furthermore, when a statute is being challenged, the focus for the issue of standing is on the injury requirement. The Supreme Court made this focus clear in stating, "A plaintiff who challenges a statute must demonstrate a realistic danger of sustaining a direct injury as a result of the statute's operation or enforcement." [Babbit v. United Farm Workers Nat'l Union](#), 442 U.S. 289, 298 (1979) (citing [O'Shea v. Littleton](#), 414 U.S. 488, 494 (1974)). Plaintiffs have clearly alleged a direct injury to themselves and meet this requirement. Furthermore, "standing is not necessarily lost because of the weakness of the causal connection." [Banks v. Secretary of Indiana Family and Social Services Admin.](#), 997 F.2d 231, 239 (7th Cir. 1993) (citing [Warth v. Seldin](#), 422 U.S. 490, at 505 (1975)).

² Ashlee and Ruby Henderson are the Plaintiffs with claims related to Tippecanoe County Defendants and the Plaintiffs which Tippecanoe Defendants focus their Response in Opposition and Cross-Motion for Summary Judgment.

A. THERE IS A CAUSAL CONNECTION BETWEEN THE TIPPECANOE DEFENDANTS AND THE PLAINTIFFS' INJURY

The causation prong of the standing test was articulated by the Supreme Court in *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26 (1976). In that case, the Court made clear that the alleged injury must be fairly traceable to the defendant rather than the actions of a third party who is not a party to the action. *Id.* at 41-42.

Every case upon which the Defendants rely to argue that there is no causal connection between the Tippecanoe Defendants and Plaintiffs' alleged injury addresses situations in which the court held that either the governor or the attorney general, by merely their general duty to enforce state law, was not a proper party.³ Defendants cite to *Hearne v. Board of Education*, 185 F. 3d 770 (7th Cir. 1999). However, in that case the court specifically stated, "the governor has no role to play in the enforcement of the challenged statutes." *Id.* at 777. That is simply not the case here. Plaintiffs do not bring this action against the Tippecanoe Defendants based on a general duty. Rather, Plaintiffs assert that the actual actions of the Tippecanoe Defendants and their role in applying the presumption of parenthood in issuing birth certificates violates the Plaintiffs Equal Protection and Due Process rights.

The Tippecanoe Defendants readily admit that they are responsible for the information submitted to the Indiana State Department of Health and for

³ Furthermore, the majority of the cases cited were not from the Seventh Circuit, and the dismissal in *Love v. Pence* which was cited was reconsidered and the case against the governor reinstated in part by *Love v. Pence*, 47 F.Supp.3d 805 (S.D. Ind. 2014).

the issuance of birth certificates. Memorandum in Opposition, [Filing No. 83 at ECF p. 4](#). As such, they are not only a proper party to this action, but a necessary party. The Tippecanoe Defendants are the parties taking the actions at issue, not an unnamed third party as is the case when courts have found a lack of a causal connection. The Tippecanoe Defendants receive the information of the Certificate of Live Birth Worksheet and issue the letter notifying the mother of such information. Memorandum in Opposition, [Filing No. 83 at ECF p.4](#). The Tippecanoe Defendants then issue a certified birth certificate to an individual who completes the application for such. *Id.* The Tippecanoe Defendants are charged with the authority to submit the records of birth by state law. [I.C. § 16-37-1-3.1](#). Because the injury Plaintiffs allege is fairly traceable to the Tippecanoe Defendants, the Plaintiffs have met the causation requirement for standing.

B. A FAVORABLE DECISION BY THIS COURT AGAINST THE TIPPECANOE DEFENDANTS WILL REDRESS THE PLAINTIFFS' INJURY

A favorable decision requiring Defendants to apply the presumption of parenthood to Ashlee Henderson and thereby list her on the birth certificate would redress the injuries to Plaintiffs. Tippecanoe Defendants state that if ordered to do so, they would issue a birth certificate listing Ashlee as parent to L.W.C.H. Memorandum in Opposition, [Filing No. 83 at ECF p. 17](#). Therefore, Plaintiffs have met the redressability requirement.

Defendants argue that the birth certificate and the presumption of parenthood have no connection. Memorandum in Opposition, [Filing No. 83 at](#)

[ECF p. 11-12](#). However, the birth certificate is the first, and often only, reflection of parenthood. The Certificate of Live Birth Worksheet itself states, "The birth certificate is a document that will be used for legal purposes to prove your child's...parentage." [Filing No. 78-4 at ECF p. 1](#). Plaintiffs agree that the issuance of a birth certificate is a ministerial act by the State Board of Health. See, *Burnett v. Camden*, 254 N.E.2d 199, 201 (1970) (but eliding issue of the "legal efficacy of the birth certificate in determining paternity"). However, at the very minimum, being listed on the birth certificate raises a strong presumption of parenthood which can only be rebutted by "direct, clear and convincing evidence." *Fairrow v. Fairrow*, 559 N.E.2d 597, 600 (Ind. 1990) (*internal citations omitted*); *Myers v. Myers*, 13 N.E.3d 478, 483 (Ind. Ct. App. 2014) (holding mother estopped from challenging father's parenthood even though father was not child's biological parent, noting father was identified in and had signed the child's birth certificate); *Ohning v. Driskill*, 739 N.E.2d 161 (Ind. Ct. App. 2000) (because mother listed child's father on birth certificate, she was estopped from disputing child's paternity). In this regard being listed as a parent on a child's birth certificate operates in the same way as [IC § 31-14-7-1\(1\)](#), which statutorily confers the rebuttable presumption of parenthood.

The birth certificate's reflection of parenthood makes it the document most often utilized by parents seeking to exercise and meet the rights and responsibilities associated with parenthood. For example, a parent wanting to travel outside of the U.S. with a minor child must secure a passport for the child and this requires the parent to provide "evidence of Parental

Relationship." 22 C.F.R. 51.28;
<https://travel.state.gov/content/passports/en/passports/under-16.html> (Last visited Jan. 18, 2016). School districts require a parent to present the child's birth certificate when enrolling the child. See, I.C. § 20-33-2-10 (requires proof of date of birth to enroll in school and if parent lacks birth certificate or other reliable proof, school must notify Indiana clearinghouse on missing children); 470 IAC 3-4.7-36(1); and, <http://www.myips.org/ENROLL> (Last visited Jan. 18, 2016). Enrolling a child in organized sports also requires presenting a birth certificate. See, e.g., http://www.littleleague.org/assets/forms_pubs/tournaments/proof-of-age-requirement.pdf?pip=false (Last visited Jan. 18, 2016). The state utilizes birth certificates to process numerous government benefits, particularly when citizenship must be proven. See, e.g., http://www.in.gov/fssa/files/BCC_CCDF_State_Plan_2014-2015.pdf (childcare assistance) (Last visited Jan. 18, 2016); <http://www.in.gov/fssa/ompp/3002.htm> (Hoosier Healthwise) (Last visited Jan. 18, 2016).

II THE HENDERSON PLAINTIFFS JOIN IN THE REPLY AND RESPONSE OF THE PLAINTIFFS TO THE STATE'S BRIEF IN OPPOSITION AND IN SUPPORT OF THE STATE'S MOTION FOR SUMMARY JUDGMENT

The Tippecanoe County Defendants incorporated the State's Brief in Opposition and in Support of Their Motion for Summary Judgment as to the constitutionality arguments. Similarly, the Henderson Plaintiffs incorporate by reference the Reply and Response of Plaintiffs to such brief.

CONCLUSION

Plaintiffs have met the requirements to have standing under Article III of the United States Constitution. Plaintiffs' alleged injuries are fairly traceable to the Tippecanoe Defendants and a favorable ruling by this Court against the Tippecanoe Defendants will provide redress to the Plaintiffs.

WHEREFORE, and for the foregoing reasons, Plaintiffs respectfully request this Court enter judgment against the Tippecanoe Defendants and all proper relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *Plaintiffs' Memorandum of Law in Reply to Tippecanoe County Defendants' Opposition and Response to Tippecanoe County Defendants' Cross-Motion for Summary Judgment* was filed electronically on February 9, 2016. Notice of this filing will be sent to all counsel of record by operation of the Court's electronic filing system.

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