

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ASHLEE HENDERSON, et al.)	
Plaintiffs,)	
)	
)	
v.)	CAUSE NO. 1:15-CV-220-TWP-MJD
)	
DR. JEROME ADAMS, et al.)	
Defendants,)	

TIPPECANOE COUNTY DEFENDANTS'
REPLY IN SUPPORT OF CROSS-MOTION FOR
SUMMARY JUDGMENT

Come now Defendants, 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 (hereinafter "Defendants" or "Tippecanoe County Defendants") and submit this reply in support of their motion for summary judgment.

The Tippecanoe County Defendants have challenged the standing of the Plaintiffs to sue the Tippecanoe County Defendants because there is not a sufficient causal connection between those defendants and the injuries asserted by the Plaintiffs and because a favorable decision against these defendants is unlikely to remedy those injuries.

A. There is an insufficient causal connection between the Plaintiff's injury and the conduct of the Tippecanoe County Defendants.

The Plaintiffs cite *Banks v. Secretary of Indiana Family and Social Services Admin.*, 997 F.2d 231, 239 (7th Cir. 1993) for the proposition that standing can be found where the causal connection between the defendant and the action or inaction complained of is weak. (R. Doc. 101 Plaintiff's Response in Opposition to Tippecanoe County's Cross-Motion for Summary Judgment

at 3). However, in *Banks*, the causal connection (which the 7th Circuit characterized as being a "close call") was stronger than the connection in this case. In *Banks*, the Secretary of the United States Department of Health and Human Services challenged standing where the plaintiff complained that "Indiana's Medicaid agency had failed to give notice and an administrative hearing to Medicaid recipients whose health care providers' claims for reimbursement were denied by the state." *Banks*, 997 F.2d at 234. The District Court had dismissed the claim against the Secretary for lack of standing. However, the 7th Circuit reversed and found that standing existed because the Secretary of the federal program had allegedly failed to use its authority to ensure compliance by state Medicaid programs with federal regulations concerning hearing and notice to patients. *Id.* at 240.

As *Banks* recognizes, even if it is permissible for a causal connection to be weak, "a nexus sufficiently strong between the plaintiffs' injury and the defendant's putatively illegal conduct must be present to assure this court that granting relief will personally benefit the plaintiffs." *Id.* at 239. There is not a sufficiently strong nexus between the actions of the Tippecanoe County Health Department (TCHD) and the Plaintiffs such that granting relief against TCHD will personally benefit the plaintiffs. Plaintiffs are incorrect when they say that TCHD "readily admits" that it is "responsible for the information submitted to ISDH." *See* R. Doc. 101 Plaintiff's Memorandum at p. 4 (*citing* R. Doc. 83, Tippecanoe County Defendants' Memorandum at p. 4). The Plaintiffs further contend that "the Tippecanoe County Defendants are charged with the authority to submit the records of birth by state law." R. Doc. 101 Plaintiff's Memorandum at p.5 (*citing* IC 16-37-1-3.1).

In this case, it was the hospital and not TCHD that provided L.W.C.H.'s information to the State. As the Tippecanoe County Defendants stated in their initial brief, "[w]ith respect to the

Tippecanoe County Health Department (TCHD), the procedure for processing the birth certificates of newborns begins with the hospital having the birth mother complete the State's Certificate of Live Birth Worksheet. *See* IC 16-37-1-3.1." *Id.* And, in fact, this was the process followed in the Hendersons' particular case. *See* R. Doc. 83, Tippecanoe County Defendants' Memorandum at p. 3 (establishing that L.W.C.H.'s birth information was obtained and uploaded by staff at I.U. Arnett Hospital.)

Additionally, the Plaintiffs argue that the acts of TCHD in receiving information of the Certificate of Live Birth Worksheet and issuing a notification letter to the mother are actionable. However, the Plaintiffs do not elaborate on how they are harmed by TCHD receiving Worksheet information (after passing through IU Arnett and the state database in this case) or by TCHD generating a state form letter to the mother that the information has been received. R. Doc. 101 Plaintiff's Memorandum at 5.

Unlike the *Banks* case, where the federal government had authority over the state government, the County does not have authority to alter the State's birth certificate process. TCHD processed the birth certificate paperwork on state forms based on information uploaded to the state database by the hospital. Ashlee Henderson's information was not uploaded to the state database and was, therefore, not used by TCHD when it processed the birth certificate paperwork.

Finally, the Plaintiffs assert that the Tippecanoe County Defendants are implementing and enforcing the Parenthood Statutes, and that the Hendersons will continue to suffer harm if the Tippecanoe County Defendants are not enjoined from enforcing those statutes. However, when TCHD issues a birth certificate, it does so in compliance with Title 16 of the Indiana Code, specifically IC 16-37 concerning vital statistics. To the extent there is a connection between the

"Parenthood Statutes"¹ found in Title 31 and the vital records provisions under IC 16-37, it would be a connection made by the General Assembly or the State Department of Health and not one created or enforced by the Tippecanoe County Health Department. The causal connection between the acts or omissions of the Tippecanoe County Health Department and the harms alleged by the Plaintiffs is too tenuous to support a finding that the Plaintiffs have Article III standing to sue the Tippecanoe County Defendants.

B. It is unlikely that the Plaintiffs' injuries will be redressed by a favorable decision against the Tippecanoe County Defendants.

A favorable decision against the Tippecanoe County Defendants without a favorable decision against the State would not redress Plaintiffs' injuries. A favorable decision against the State would be effective even without a favorable decision against the Tippecanoe County Defendants.

The Plaintiffs assert that they have met the redressability prong of the standing requirement because the Tippecanoe County Defendants have indicated that, if one issued, TCHD would comply with a court order to add Ashlee Henderson to L.W.C.H.'s birth certificate. R. Doc. 101 Plaintiff's Memorandum in Opposition to Tippecanoe County at p. 5 (citing R.Doc. 83 Tippecanoe County's Memorandum at p. 17). However, Plaintiffs do not address the larger point raised in that portion of Tippecanoe County's Memorandum. A birth certificate altered by TCHD in compliance with a court order would not do what the Plaintiffs would like it to do. As the Tippecanoe County Defendants observed, if TCHD went outside the state's regulatory scheme for birth certificates and took it upon itself to list Ashlee Henderson despite the State's procedures, such an action would be *ultra vires* and

¹ "Parenthood Statutes" is the name the Plaintiffs give to the combination of IC 31-9-2-15 (definition of "child born in wedlock"), IC 31-9-2-16 (definition of "child born out of wedlock"), and IC 31-14-7-1 (presumption of biological fatherhood). The Tippecanoe County Health Department does not enforce these statutes under Title 31 of the Indiana Code.

void. Without a change to the State's underlying regulatory structure, by the Court or otherwise, the County issued document would lack the value of a birth certificate issued in compliance with that regulatory structure.

In the alternate scenario, if the Court issued a mandate altering the State's regulatory scheme for issuing birth certificates, TCHD would be bound to comply with the new state system even in the absence of an order directed at TCHD. The Plaintiffs do not appear to challenge that assertion.

The birth certificate is evidence of a parent-child relationship. It does not create that relationship nor does it create the legal rights associated with that relationship. If the Court ordered the County to issue a certificate outside of the underlying state regulatory structure, such a certificate would not create parental rights. Rather the evidentiary value of the certificate would be weakened.

C. The Tippecanoe County Defendants continue to join in the State's arguments with respect to the Plaintiffs' substantive concerns.

As the Tippecanoe County Defendants stated in their initial brief, because the Tippecanoe County Defendants believe that the question of the constitutionality of the State's laws and practices concerning birth records and the challenged statutes are matters for the State to address and defend, the Tippecanoe County Defendants hereby continue to defer to the State's arguments on the matter. Furthermore, to the extent necessary to resist judgment against them and in favor of the Plaintiffs, the Tippecanoe County Defendants hereby incorporate those arguments by reference.

CONCLUSION

Plaintiffs lack standing under Article III of the United States Constitution to sue the Tippecanoe County Defendants because the injuries alleged by the Plaintiffs are not fairly traceable to the challenged action of the Tippecanoe County Defendants, and their alleged injuries will not be redressed by a favorable decision against the Tippecanoe County Defendants. Also, as stated in the

Tippecanoe County Defendants' initial brief, a question of material fact exists to the extent a judgment in favor of the Plaintiffs would be premised on a factual conclusion that male spouses who are not biological fathers of children conceived through artificial conception are named on the children's birth certificates under circumstances where similarly situated female spouses would not be listed. The Tippecanoe County Defendants further incorporate the arguments of the State by reference.

WHEREFORE, the Tippecanoe County Defendants hereby request judgment in their favor and against the Plaintiffs and for all other appropriate relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

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