

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' NOTICE OF SUPPLEMENTAL AUTHORITY
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Plaintiffs, by counsel, hereby notify the Court of the following supplemental authority, and in connection therewith state as follows:

1. This matter is pending before the Court on cross motions for summary judgment. Plaintiffs filed their final brief in connection with those cross motions on February 9, 2016.

2. This Court subsequently scheduled oral argument on the cross motions for summary judgment on April 8, 2016, at 10:00 a.m.

3. On March 31, 2016, the United States District Court for the Southern District of Mississippi, Northern Division, handed down its decision in *Campaign for Southern Equality v. Mississippi Department of Human Services*, 2016 U.S. Dist. LEXIS 43897 (Jordan, III, J.), preliminary enjoining enforcement of Mississippi's ban on same-sex adoptions after holding that the plaintiffs therein were likely to succeed on the merits of their claims under the Equal

Protection Clause of the Fourteenth Amendment.

4. In so holding, the district court construed the holding of *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), to require “sweeping change” by extending to same-sex married couples *all* benefits afforded to opposite-sex married couples. *Campaign for Southern Equality*, *supra*, at p. 35. The district court also noted that *Obergefell* had examined the various benefits of marriage and concluded that those various rights associated with marriage, including the related rights of childrearing, precreation, and education, are recognized as a “unified whole,” (quoting *Obergefell*, 135 S. Ct. at 2600).

5. Based upon the breadth of *Obergefell*'s ruling, and particularly after analyzing Chief Justice Roberts' dissent, the district court concluded that the majority opinion in *Obergefell* had foreclosed any future contention that ancillary legal benefits that accompany marriage could henceforth be denied to same-sex married couples, including the “recognition of spousal status on official documents.” *Campaign for Southern Equality*, at p. 37 (quoting *Obergefell*, 135 S. Ct. at 2623-24 (Roberts, C.J., dissenting) (predicting that these “more selective claims” over the ancillary legal benefits that accompany marriage would not arise because the majority had “taken the drastic step of requiring every State to license and recognize marriages between same-sex couples”).

6. Lastly, the district court noted that *Obergefell* reflected “conflicting judicial philosophies,” and concluded that it was thus “highly unlikely that the same Court that held a State cannot ban gay marriage because it would deny benefits...would then conclude that married gay couples can be denied that very same benefit.” *Id.* at pp. 37-38.

Plaintiffs respectfully request that the Court take judicial notice of this supplemental authority which, although not binding on this Court, supports Plaintiffs' Equal Protection and Due Process contentions in the case *sub judice*.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 5, 2016, a copy of the foregoing Plaintiffs' Notice of Supplemental Authority in Support of Motion for Summary Judgment was filed electronically. Service of this filing will be made on all ECF-registered counsel by operation of the court's electronic filing system. Parties may access this filing through the court's system.

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