

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

ASHLEE and RUBY HENDERSON, a married couple and L.W.C.H., *et al.*, )  
)

Plaintiffs, )

vs. )

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

Defendants. )

\_\_\_\_\_ )

No. 1:15-cv-220-TWP-MJD

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. )

**STATE DEFENDANT’S RESPONSE TO PLAINTIFFS’ NOTICE OF SUPPLEMENTAL  
AUTHORITY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Defendant Dr. Jerome M. Adams (“State Defendant”), by counsel, respectfully submits this Response to Plaintiffs’ Notice of Supplemental Authority in Support of Motion for Summary Judgment (ECF No. 109) (“Notice”).

Plaintiffs’ Notice cites *Campaign for Southern Equality, et al. v. Mississippi Department of Human Services, et al.*, No. 3:15-cv-578-DPJ-FKB, 2016 WL 1306202 (S.D. Miss. Mar. 31, 2016) and then presents several paragraphs of argument based upon that case. As a threshold matter, although a party need not obtain leave of court before submitting supplemental *authority*,

it must obtain such leave before submitting supplemental *argument*. See, e.g., *Eli Lilly & Co. v. Crabtree*, 485 F. Supp. 2d 982, 997 (S.D. Ind. 2006) (denying motion to strike supplemental authority but granting motion to strike accompanying argument because submitting party “err[ed] when it sought to argue its position further along with its submission before seeking leave of the Court to further brief the issue already before it.”). State Defendant therefore believes there is good cause for this Court to strike the argumentative portions of Plaintiffs’ Notice. But because motions to strike are disfavored, see Local Rule 56-1(i), State Defendant has instead prepared the following short response.

In *Campaign for Southern Equality*, plaintiffs sought to preliminarily enjoin enforcement of a Mississippi state statute providing: “Adoption by couples of the same gender is prohibited.” 2016 WL 1306202 at \*1 (quoting Miss. Code § 93-17-3(5)). Mississippi law otherwise permits adoption “by an unmarried adult or by a married person whose spouse joins in the petition.” Miss. Code § 93-17-3(4). The district court granted plaintiffs’ motion, reasoning that the Supreme Court’s ruling in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), “foreclosed litigation over laws interfering with the right to marry and ‘rights and responsibilities intertwined with marriage.’” *Campaign for Southern Equality*, 2016 WL 1306202 at \*13 (quoting *Obergefell*, 135 S. Ct. at 2606). Thus, the district court concluded that under *Obergefell*, if Mississippi permits opposite-sex married couples to adopt children, it must also permit same-sex married couples to adopt children.

*Campaign for Southern Equality* does nothing to advance Plaintiffs’ arguments here. First, even before *Obergefell* was decided, Indiana permitted same-sex couples to adopt children. *In re K.S.P.*, 804 N.E.2d 1253, 1259 (Ind. Ct. App. 2004) (permitting petitioner to adopt her same-sex partner’s biological children); *In re Infant Girl W.*, 845 N.E.2d 229, 247 (Ind. Ct. App. 2006)

(construing Indiana law to permit unmarried same-sex couple to file joint petition to adopt child). Indeed, Plaintiffs in this case freely admit they could adopt, but seek to avoid that process based on their misunderstanding of the significance of Indiana Code section 31-14-7-1(1), which creates a *rebuttable factual* presumption that a woman's husband is the biological father of her child. Plaintiffs seek to use Indiana Code section 31-14-7-1(1) to create an *irrebuttable legal* presumption that a woman's wife is the legal second parent of her child. But that would introduce an inequality into Indiana parental rights law that does not currently exist.

More importantly, however, in Indiana, parental rights are not "intertwined with marriage." Rather, as State Defendant has explained fully in its prior briefing, Indiana confers parental rights *only* upon biological or adoptive parents. *See* ECF No. 85 at 3–10, 16–20. Those rights are not contingent upon a person's marital status; both married and unmarried persons may produce biological children, and both married and unmarried persons may petition to adopt children. In sum, this case is not about adoption or marital rights; therefore, this Court should disregard Plaintiffs' citation of, and argument regarding, *Campaign for Southern Equality*.

Respectfully submitted,

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*Dr. Jerome Adams, in his official capacity as ISDH*  
*Commissioner*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 8th day of April, 2016, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system which sent notification of such filing to all counsel of record.

*s/ Thomas M. Fisher* \_\_\_\_\_

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