

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; )  
NICOLE and JENNIFER SINGLEY, )  
a married couple and UNBORN BABY DOE, )  
by his expectant mother and next friend, )  
Jennifer Singley; and, )  
ELIZABETH "NICKI" and TONYA BUSH-SAWYER, )  
a married couple and I.J.B. a/k/a I.J.B-S )  
by his parent and next friend Nicki Bush-Sawyer )

Plaintiffs, )

-vs- )

DR. JEROME M. ADAMS, in his official capacity as )  
Indiana State Health Commissioner; )  
DR. JEREMY P. ADLER, in his official capacity as )  
Health Officer for the Tippecanoe County Health )  
Department; CRAIG RICH, in his official capacity as )  
Administrator of the Tippecanoe County Health )  
Department; GLENDA ROBINETTE, Vital Records )  
Registrar, Tippecanoe County Health Department )  
PAM AALTONEN, RN, DR. THOMAS C. PADGETT, )  
THOMETRA FOSTER, KAREN COMBS, )  
KATE NAIL, RN, DR. JOHN THOMAS and )  
DR. HSIN-YI WENG, all in their official capacities )  
as members of the Tippecanoe County )  
Board of Health; DR. VIRGINIA A. CAINE, in her )  
official capacity as Director and Health Officer )  
of the Marion County Health Department; )  
DARREN KLINGLER, Adminstrator, Vital Records, )  
Marion County Health Department; )  
DR. JAMES MINER, GREGORY S. FEHRIBACH, )  
LACY M. JOHNSON, CHARLES S. EBERHARDT II, )  
DEBORAH J. DANIELS, DR. DAVID F. CANAL, and )  
JOYCE Q. ROGERS, all in their official capacities )  
as Trustees, Health & Hospital Corporation )  
of Marion County )

Defendants. )

Cause No:  
1:15-CV-220 TWP/MJD

**FIRST AMENDED COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

Plaintiffs Ashlee and Ruby Henderson, a married couple and L.W.C.H., by his parent and next friend Ruby Henderson; Nicole and Jennifer Singley and unborn baby Doe by his expectant mother and next friend, Jennifer Singley; and, Nicki and Tonya Bush-Sawyer and I.J.B-S by his mother and next friend Nicki Bush-Sawyer, by counsel, hereby allege as follows:

**INTRODUCTION**

1. Plaintiffs bring this action to challenge the constitutionality under the United States Constitution of Indiana Code provisions § 31-9-2-15 ("Child born in wedlock"), § 31-9-2-16 ("Child born out of wedlock") and § 31-14-7-1 ("Presumption of Paternity") ("Statutes"). These statutes bastardize L.W.C.H., I.J.B-S and Unborn Baby Doe (a/k/a "Children") by refusing to recognize that the Children were or will be born in wedlock to two lawfully married same-sex spouses; deny to the Children the benefits and stability of presuming two parents obligated and responsible for the Children upon their birth; and deny a presumption of parenthood and all the rights and responsibilities which are attendant to such a presumption to Ashlee Henderson, Captain Nicole Singley and Tonya Bush-Sawyer because they are female spouses respectively married to the Children's

birth mothers. Said challenge to the Statutes is both facial and as applied to plaintiffs.

2. Indiana Code § 31-9-2-15 provides as follows:

"Child born in wedlock", for purposes of IC 31-19-9 [Consent to Adoption], means a child born to:

- (1) a woman; and
- (2) a man who is presumed to be the child's father under IC 31-14-7-1(1) [Presumption of Paternity] or IC 31-14-7-1(2) unless the presumption is rebutted.

3. Indiana Code § 31-9-2-16 provides as follows:

"Child born out of wedlock", for purposes of IC 31-19-3, IC 31-19-4-4, and IC 31-19-9, means a child who is born to:

- (1) a woman; and
- (2) a man who is not presumed to be the child's father under IC 31-14-7-1(1) or IC 31-14-7-1(2).

4. Indiana Code § 31-14-7-1(1) provides as follows:

A man is presumed to be a child's biological father if:

- (1) the:
  - (A) man and the child's biological mother are or have been married to each other; and
  - (B) child is born during the marriage or not later than three hundred (300) days after the marriage is terminated by death, annulment, or dissolution

5. Indiana Code § 31-9-2-15 and § 31-9-2-16, which define a

child born in and out of wedlock, bastardize the Children because by statute, they were/will not born to a woman married to a man but instead were/will be born to a woman married to another woman, despite the fact that Indiana now recognizes same-sex marriage.

6. To establish whether a baby born to two women who are married to each other is a baby born in wedlock, the couple must bear the additional cost and stigma of petitioning a court to determine whether the child was born in wedlock. *See*, I.C. § 31-13-2-1.

7. The only means by which parenthood will be granted to the female spouse of the birth mother is through adoption of the baby that she planned for with her spouse.

8. In contrast, under I.C. § 31-14-7-1(1), a man is granted the presumption of parenthood by virtue of the fact that he is married to the biological mother of the child, regardless of whether the husband is biologically related to the child. For example, a third person can serve as sperm donor and the husband is still presumed to be the father of the child even though he is not biologically related to the child.

9. Opposite-sex couples to whom a baby is born during the course of the marriage do not have to bear the stigma and cost of having their baby declared to have been born in wedlock nor do they have to bear the stigma and cost of having the male spouse of a female declared the parent of the

child as he is presumed to be the parent unless or until otherwise challenged.

10. Indiana's law restricting the presumption of parenthood to men and bastardizing children born to women in same-sex marriages publicly stigmatizes persons in a same-sex marriage and sends a hideous message to their children by implying that these children are somehow less deserving of the presumption of two parents and legitimacy.

11. Defendants' refusal to recognize Ashlee Henderson, Captain Singley and Tonya Bush-Sawyer on the respective birth certificates of the Children harms the Children because a birth certificate is the official document that establishes a person's identity. A birth certificate also establishes a baby's family. As the Seventh Circuit Court of Appeals has stated: "The [S]tate [of Indiana] recognizes that family is about raising children and not just about producing them." *Baskin v. Bogan*, 766 F.3d 648, 663 (7th Cir. 2014), *cert. den. Bogan v. Baskin*, 135 S. Ct. 316, 190 L. Ed. 2d 142, 2014 U.S. LEXIS 5797, 83 U.S.L.W. 3189 (U.S. 2014) (holding unconstitutional Indiana statute that prohibited and refused to recognize same-sex marriage).

### **JURISDICTION AND VENUE**

12. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1343 because this suit raises federal questions pursuant to 42 U.S.C. § 1983. Plaintiffs seek both injunctive relief and a

declaratory judgment pursuant to 42 U.S.C. § 2201.

13. Venue is proper in the Indianapolis Division of the Southern District of Indiana under 28 U.S.C. § 139 1(b) because more than one defendant has a principal office in this district.

**ALL DEFENDANTS**

14. Defendant Dr. Jeremy P. Adler is the Health Officer for the Tippecanoe County Health Department. Pursuant to I.C. § 16-20-1-16(b), "The local health officer shall be the registrar of births" and "[a]fter making a birth . . . record, the local health officer shall, by the fourth day of each month, forward the original record to the state department." Defendant Craig Rich is the Administrator of the Tippecanoe County Health Department. Defendant Glenda Robinette is the Vital Records Registrar for the Tippecanoe County Health Department. Defendants Pam Aaltonen, RN, Dr. Thomas C. Padgett, Thometra Foster, Karen Combs, Kate Nail, RN, Dr. John Thomas and Dr. Hsin-Yi Weng are all members of the Board of Health of Tippecanoe County, Indiana. Pursuant to I.C. § 16-20-1-19, "Local health officers shall enforce the health laws, ordinances, orders, rules, and regulations of the officer's own and superior boards of health." Pursuant to I.C. § 16-20-2-3, the Tippecanoe Board of Health is charged with managing the Tippecanoe County Health Department. All of these defendants are persons within the meaning of 42 U.S.C. § 1983 who were acting under color of state

law at all times relevant to this complaint.

15. Dr. Virginia A. Caine is the director and health officer of the Marion County Health Department, a division of the Health and Hospital Corporation of Marion County. Pursuant to I.C. § 16-20-1-16(b), "The local health officer shall be the registrar of births" and "[a]fter making a birth . . . record, the local health officer shall, by the fourth day of each month, forward the original record to the state department." Dr. James D. Miner, Gregory S. Fehribach, Lacy M. Johnson, Charles S. Eberhardt, II, Deborah J. Daniels, Dr. David F. Canal and Joyce Q. Rogers are all trustees of the Health and Hospital Corporation of Marion County. Pursuant to I.C. § 16-22-8-34(a)(23), the board of the HHC and the HHC has the authority to "do all acts necessary or reasonably incident to carrying out the purposes of this chapter, including the following: . . . (23) To enforce Indiana laws, administrative rules, ordinances, and the code of the health and hospital corporation of the county." All of these defendants are persons within the meaning of 42 U.S.C. § 1983 who were acting under color of state law at all times relevant to this complaint.

16. Dr. Jerome M. Adams is the commissioner of the Indiana State Department of Health ("ISDH"). ISDH maintains the Indiana Birth Registration System and authors the affiliated forms including, among other things, the Indiana Birth Worksheet used to capture information

for the birth registry, all pursuant to I.C. § 16-37-1, *et seq.* Dr. Adams is a person within the meaning of 42 U.S.C. § 1983 who was acting under color of state law at all times relevant to this complaint.

17. All defendants named herein are sued in their official capacities. Each of the defendants, and those subject to their supervision, direction, and control, intentionally performed, participated in, aided and/or abetted in some manner the acts alleged herein, proximately caused the harm alleged herein, and will continue to injure plaintiffs irreparably if not enjoined from enforcing I. C. §§ 31-9-2-15 and -16.

### **FACTUAL ALLEGATIONS**

#### **ASHLEE AND RUBY HENDERSON AND L.W.C.H.**

18. On November 11, 2014, plaintiffs Ashlee and Ruby Henderson were lawfully married in Tippecanoe County, Indiana. Prior to their marriage, the couple had been together for over eight years and decided they wanted a child in their family. Subsequent to the conception of L.W.C.H., the Indiana statute prohibiting same-sex marriage was declared unconstitutional and Ashlee and Ruby Henderson married, desiring that their child be born to a wedded couple.

19. During the week of November 2, 2014, the couple contacted IU Health Arnett Hospital where it was anticipated that L.W.C.H. will be born, to ask if both spouses would be listed on the birth certificate as parents of

L.W.C.H., once they were married. The couple was informed that they would need to contact the Tippecanoe County Health Department.

20. On the same day, the couple contacted the Tippecanoe Department of Health and were told that Ashlee Henderson would not be listed on the birth certificate as a parent of L.W.C.H. without a court order.

21. On or about December 2, 2014, Glenda Robinette, Vital Records Registrar, Tippecanoe County Health Department, informed Ashlee Henderson that only Ruby Henderson would be listed on the birth certificate of L.W.C.H. Attached as Exhibit A is the explanation of why Ashlee Henderson would not be presumed to be the parent of L.W.C.H. that was forwarded by Ms. Robinette.

22. L.W.C.H. was born at I.U. Health Arnett Hospital in Lafayette, Indiana. Subsequent to his birth, Ruby Henderson was asked to complete the Indiana Birth Worksheet, version 27, 05/25/12. See, Exhibit B, pertinent pages included. The couple marked through each question asking for information regarding the father and in lieu of the word "father" inserted the term "Mother #2". All information provided regarding "Mother #2" related to Ashlee Henderson, the legal spouse of the birth mother.

23. I.U. Health Arnett informed the couple that the software they were required by the State of Indiana to use regarding birth certificates would not allow the entry of information regarding Ashlee Henderson as a parent of L.W.C.H.

24. On January 22, 2015, the Tippecanoe County Health Department issued the certificate of birth, a redacted copy of which is attached hereto as Exhibit C. On the birth certificate, L.W.C.H. is listed as the child of Ruby L. Henderson.

**CAPTAIN NICOLE AND JENNIFER SINGLEY  
AND UNBORN BABY DOE**

25. Captain Nicole Singley and her wife, Jennifer Singley, were married in January of 2014. Jennifer Singley is currently expecting the couple's first child at the end of March 2015.

26. The Singley's baby was artificially conceived. Both Captain Singley and Jennifer Singley are students pursuing law degrees. Captain Singley recently transitioned from her position of assisting returning veterans with integration into the Veteran's Affairs office and now oversees a Department of Defense ("DOD") initiative that provides for the procurement of active duty orders for guard/reserve personnel in order to augment the staff of various DOD agencies.

27. Captain Singley is an active duty member of the U.S. Army and is entitled to all the benefits available to members of the Army including health insurance. Currently, her family is covered by military health insurance. Baby Doe will be eligible for healthcare coverage under the military insurance program because Baby Doe will be considered to be the stepchild of Captain Singley; however, if Jennifer Singley should predecease Baby Doe then he will no longer be considered eligible for Captain Singley's

health insurance because she will no longer be considered a stepparent and will not be listed as his parent on the birth certificate. Baby Doe will not be eligible for all military benefits available to the families of U.S. Army enlisted personnel unless and until he is legally adopted by Captain Singley.

**NICKI AND TONYA BUSH-SAWYER AND I.J.B-S**

28. Nicki and Tonya Bush-Sawyer were married in Washington, D.C. in 2010. Nicki is a research scientist at Eli Lilly and Tonya is a stay-at-home mother.

29. I.J.B-S was artificially conceived and was born on January 10, 2014. Nicki completed a document similar to the Indiana Birth Worksheet attached hereto as Ex. B. Wherever information was requested regarding the "father", Nicki inserted information regarding Tonya. A few weeks after their son's birth, the couple received the hospital's confirmation of birth with all names listed as parents. Shortly thereafter, they also received a social security card for their son.

30. In approximately March or April of 2014, Nicki went to the health department to pick-up her son's official birth certificate. She was told there was a problem and to return the following week. When she returned, she discovered that only her name was listed as parent of the couple's son and his name had been changed from I.J.B-S to I.J.B. Additionally, a second social security card was received in the mail with a new social security number for their son and in his "new" name of I.J.B.

**INDIANA'S BIRTH REGISTRATION SYSTEM**

31. "The goal of the Indiana Birth Registration System is to enable the participants of the birth registration process to electronically file birth records with local and state registrars." <http://www.state.in.us/isdh/23575.htm> (Last visited Jan. 26, 2015). The Indiana Birth Worksheet was created by the State of Indiana as part of the Indiana Birth Registration System. *Id.* Mothers are asked if they are married and then asked, "Are you married to the father of your child?" (Ex. B, Indiana Birth Worksheet, questions 35 and 37). Under Indiana law, as the birth mother's husband is presumed to be the father of her child, even if he is not the actual biological father of the child by her own admission, the husband remains the presumed father of the child.

**COUNT I**

**Defendants' Refusal to Recognize The Children as born in Wedlock  
Violates the Equal Protection Clause  
of the Fourteenth Amendment to the United States Constitution**

32. Plaintiffs incorporate by reference the allegations of paragraphs 1- 31.

33. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that "no State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

34. By refusing to recognize that the Children were/will be born in wedlock, Defendants bastardize the Children for because they are born

to a married couple consisting of two women. Such bastardization stigmatizes children born to two women who are married.

35. Defendants' refusal to recognize the marriage of Ashlee and Ruby Henderson, Captain Nicole and Jennifer Singley and Nicki and Tonya Bush-Sawyer for purposes of presuming that the Children were/will be was born to a marriage infringes on protections offered by the Equal Protection Clause of the Fourteenth Amendment and treats the Children differently solely because their married parents are of the same-sex instead of the opposite-sex.

36. Defendants' refusal to recognize the lawful marriage of Ruby and Ashlee Henderson, Captain Nicole and Jennifer Singley and Nicki and Tonya Bush-Sawyer pursuant to I.C. § 31-9-2-15 and I.C. § 31-10-2-1, disadvantages, harms and stigmatizes their respective Children solely because the Children's family is headed by two women versus a family headed by a man and a woman.

37. I. C. § 31-9-2-15 and § 31-9-2-16 tells the Children that their families are not valued in the same manner as families headed by two persons of the opposite-sex.

38. To ensure that the Children are recognized as children born in wedlock, Ashlee and Ruby Henderson, Captain Nicole and Jennifer Singley and Nicki and Tonya Bush-Sawyer will be required to spend additional dollars securing a court order formally recognizing that their

child was born to a married couple.

39. A child born during the course of a marriage between a married man and woman is defined as being a child born in wedlock and the opposite-sex parents are not required to seek a court order declaring their child as having been born during the course of their marriage.

40. If another party seeks to adopt a child born in wedlock, Indiana law protects the man who is presumed to be the father even if he is not biologically related to the child through notice and other requirements. *See, e.g.*, I.C. § 31-19-9-1(a)(1) (adoption petition can only be granted if written consent is given by the "man who is presumed to be the child's biological father"). If the child is born out of wedlock, then there are other requirements to be satisfied. *See, e.g.*, I.C. § 31-19-9-1(a)(2) (consent for adoption of child born out of wedlock must be given by man for whom paternity is established). Indiana statutes do not address what is required if a child is born to two women married to each other. The Children's parental relationship with Ashlee Henderson, Captain Nicole Singley and Tonya Bush-Sawyer is not protected by the requirements of I.C. § 31-19-9-1, should something happen to Ruby Henderson, Jennifer Singley and Nicki Bush-Sawyer and someone other than Ashlee Henderson, Captain Singley and/or Tonya Bush-Sawyer should seek to adopt one of the Children. Children born to a married

man and woman are afforded such protections should a third party seek to adopt the child under similar circumstances, even if the father is not biologically related to the child.

41. By refusing to recognize the marriage of Ashlee and Ruby Henderson, Captain Nicole and Jennifer Singley and Nicki and Tonya Bush-Sawyer, defendants, acting under color of I. C. § 31-9-2-15 and § 31-9-2-16, deprive the Children of the rights secured by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

**COUNT II**  
**Indiana's Refusal to Grant The Presumption Of Parenthood to**  
**Ashlee Henderson, Captain Singley and Tonya Bush-Sawyer**  
**Violates the Equal Protection Clause**  
**of the Fourteenth Amendment to the United States Constitution**

42. Plaintiffs incorporate by reference the allegations of paragraphs 1- 41.

43. By refusing to grant the presumption of parenthood to Ashlee Henderson, Captain Singley and Tonya Bush-Sawyer upon the birth of L.W.C.H., Unborn Baby Doe and I.J.B-S, Defendants are depriving the Children of the numerous legal protections afforded by having a second parent. These protections include but are not limited to:

- a. Having two people obligated to financially and emotionally provide and care for the Children, *See, e.g.*, I.C. §31-16-6-1, *Matter of S.T.*, 621 N.E.2d 371, 373

(Ind. Ct. App. 1993);

- b. Right of inheritance (I.C. § 29-1-2-1); and,
- d. The Children's right to have their parental relationship with Ashlee Henderson, Captain Singley, and Tonya Bush-Sawyer protected by law.

44. By refusing to grant the presumption of parenthood to Ashlee Henderson, Captain Singley and Tonya Bush-Sawyer upon the birth of the Children, Defendants are depriving Ashlee Henderson, Captain Singley and Tonya Bush-Sawyer of the legal protections afforded a person presumed to be a parent of a child. These protections include the right to:

- a. Make decisions regarding the medical care of the Children, *See, e.g.*, I.C. § 31-17-2-17;
- b. Visitation by and custody of the Children in the event of divorce, *See, e.g.*, I.C. § 37-17-4-1; and,
- c. Make personal and private decisions regarding the raising of the Children, *See, e.g., Troxel v. Granville*, 530 U.S. 57, 65 (2000) ("The interest of parents in the care custody and control of their children [is] perhaps the oldest of the fundamental liberty interest recognized by the court").

45. Regarding children, the ultimate objective of Indiana's laws is to do what is in the best interest of the child. Maintaining a biological

relationship over a familial relationship is not always in the best interest of the child. For example, the State will seek to terminate a biological parent's rights if it is in the best interests of the child. (*See e.g.*, I.C. § 31-35-12, *et seq.*) If a man who was presumed to be the father of a child subsequently tests the child and discovers that he is not the biological father of the child, the State will not necessarily allow him to be released from his obligations and responsibilities as parent of the child. *In re Paternity of M.M.B. and A.W.T.*, 877 N.E.2d 1239 (Ind. Ct. App. 2007).

46. Defendants' refusal to recognize the marriage of Ashlee and Ruby Henderson, Captain Nicole and Jennifer Singley and Nicki and Tonya Bush-Sawyer for purposes of presuming that their children were/are born to a marriage infringes on protections offered by the Equal Protection Clause of the Fourteenth Amendment and treats the Children differently because their married parents are of the same-sex instead of the opposite-sex.

47. By refusing to recognize the marriages of Ashlee and Ruby Henderson, Captain Nicole and Jennifer Singley and Nicki and Tonya Bush-Sawyer and grant the presumption of parenthood to Ashlee Henderson, Captain Singley and Tonya Bush-Sawyer, defendants, acting under color of Indiana law, deprive the Children of the rights secured by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

48. The granting of a presumption of parenthood to male spouses who are not biologically related to the offspring of their wives who were artificially inseminated and refusing to grant the same presumption of parenthood to the female spouses of birth mothers who are not biologically related to the child, is also gender-based discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment.

### **COUNT III**

**Indiana's Refusal to Recognize that L.W.C.H., Unborn Baby Doe and I.J.B-S were/will be Born in Wedlock and to Grant the Presumption of Parenthood to Ashlee Henderson, Captain Singley and Tonya Bush-Sawyer Violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution**

49. Plaintiffs incorporate by reference the allegations of paragraphs 1- 48.

50. The Fourteenth Amendment to the United States Constitution guarantees to all citizens due process of law.

51. Decision-making regarding child rearing is a central part of the liberty protected by the Due Process Clause.

52. As the spouses of the birth mothers, Ashlee Henderson, Captain Singley and Tonya Bush-Sawyer have the fundamental right to the care, custody and control of the Children born to their marriages, just like the same parental rights accorded to male spouses who are not biologically related to children born in the marriage.

53. The Children have the fundamental familial right to be raised and nurtured by both of their parents. See, e.g., *Berman v. Young*, 291 F.3d 976, 983 (7th Cir. 2002) (citing *Troxel*, 530 U.S. at 65-66 (2008)).

54. All plaintiffs have a protected property interest in maintaining their lawful familial status and the comprehensive protections and mutual obligations that are provided to families under Indiana law.

55. The failure of Indiana's laws to recognize the Children as children born in wedlock to a married couple denies the Children the same right accorded to children born to a married man and woman.

56. The failure of Indiana's laws to presume parenthood for Ashlee Henderson, Captain Singley and Tonya Bush-Sawyer, at the time of the Children's birth, denies the plaintiffs their fundamental right to live as a legal familial unit and denies them due process and the myriad benefits, privileges and rights accorded to parents and children under Indiana law.

57. Defendants' refusal to recognize the marriage of Ashlee and Ruby Henderson, Captain Nicole and Jennifer Singley and Nicki and Tonya Bush-Sawyer for purposes of determining whether the Children were born in or out of wedlock and their refusal to presume parenthood for Ashlee Henderson, Captain Singley and Tonya Bush-Sawyer while presuming parenthood for men who are not biologically related to the

children born to their wives, violates the Due Process Clause of the U.S. Constitution.

**DECLARATORY AND INJUNCTIVE RELIEF**  
**28 U.S.C. §§ 2201 and 2202;**  
**Federal Rules of Civil Procedure, Rules 57 and 65**

58. Plaintiffs incorporate by reference the allegations of paragraphs 1- 57.

59. This case presents an actual controversy because defendants' present and ongoing denial of equal treatment to plaintiffs; the infringement of plaintiffs' fundamental rights; and the denial of due process to plaintiffs, subjects them to serious and immediate harms, including ongoing emotional distress and stigma, warranting the issuance of a judgment declaring that I. C. § 31-9-2-15, § 31-9-2-16 and § 31-14-7-1 violate the Equal Protection Clause and/or the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

60. A favorable decision enjoining defendants from further constitutional violations, and mandating them to recognize the marriage of Ashlee and Ruby Henderson, Captain Nicole and Jennifer Singley, and Nicki and Tonya Bush-Sawyer, would redress and prevent the irreparable injuries to plaintiffs which they have identified, and for which they have no adequate remedy at law or in equity.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiffs respectfully request that this Court:

a. Enter a declaratory judgment that § I. C. § 31-9-2-15, § 31-9-2-16 and § 31-14-7-1 on their face and as applied to plaintiffs violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution;

b. Enter a declaratory judgment that I. C. § 31-9-2-15, § 31-9-2-16 and § 31-14-7-1 on their face and as applied to plaintiffs violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution;

c. Enter a permanent injunction directing defendants to recognize L.W.C.H., Unborn Baby Doe and I.J.B-S as children born in wedlock within the State of Indiana;

d. Enter a permanent injunction directing defendants to presume that Ashlee Henderson, Captain Singley and Tonya Bush-Sawyer are the respective parents of L.W.C.H., Unborn Baby Doe and I.J.B-S by identifying them as parents on the birth certificate;

e. Award plaintiffs the costs of suit, including reasonable attorneys' fees under 42 U.S.C. § 1988; and,

f. Enter all further relief to which plaintiffs may be justly entitled.

Respectfully submitted,

/s/ Karen Celestino-Horseman

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing *First Amended Complaint* was filed electronically on March 10, 2014. Notice of this filing will be sent to the following counsel by operation of the Court's electronic filing system.

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**EXHIBIT A**

## Same Sex Marriage and the Filing of Birth Certificates

The same sex marriage ruling does not change the way a birth is filed. In order for a non-biological parent to be placed on the birth certificate, an adoption must take place. The Indiana Codes below are evidence to this fact.

A parent is defined as either *biological* or *adoptive*, it is impossible for two be people of the same sex to be biological parents of the same child.

### IC 31-9-2-88 "Parent"

Sec. 88. (a) "Parent", for purposes of the juvenile law, means a biological or an adoptive parent. Unless otherwise specified, the term includes both parents, regardless of their marital status.

(b) "Parent", for purposes of IC 31-34-1, IC 31-34-8, IC 31-34-16, IC 31-34-19, IC 31-34-20 and IC 31-35-2, includes an alleged father. *As added by P.L.1-1997, SEC.1. Amended by P.L.162-2011, SEC.8.*

Some will argue that they are married there is a presumption of parenthood, however below it is very clear that a "man" is married to the "biological mother" this specifically excludes two people of the same gender using marriage as an automatic presumption of parenthood.

### IC 31-14-7-1

#### Presumptions; child's biological father

Sec. 1. A man is presumed to be a child's biological father if:

- (1) the:
  - (A) man and the child's biological mother are or have been married to each other; and
  - (B) child is born during the marriage or not later than three hundred (300) days after the marriage is terminated by death, annulment, or dissolution;
- (2) the:
  - (A) man and the child's biological mother attempted to marry each other by a marriage solemnized in apparent compliance with the law, even though the marriage:
    - (i) is void under IC 31-11-8-2, IC 31-11-8-3, IC 31-11-8-4, or IC 31-11-8-6; or
    - (ii) is voidable under IC 31-11-9; and
  - (B) child is born during the attempted marriage or not later than three hundred (300) days after the attempted marriage is terminated by death, annulment, or dissolution; or
- (3) the man undergoes a genetic test that indicates with at least a ninety-nine percent (99%) probability that the man is the child's biological father.

*As added by P.L.1-1997, SEC.6. Amended by P.L.138-2001, SEC.6.*

Finally, only a "man" who could reasonably be the biological father can execute a Paternity Affidavit.

### IC 16-37-2-2.1

#### Paternity affidavits; requirements; forms; joint legal custody agreement; penalty; effect of paternity affidavit; genetic test; opportunity to consult

Sec. 2.1. (a) A paternity affidavit may be executed as provided in this section through:

- (1) a hospital; or
- (2) a local health department.

(b) Immediately before or after the birth of a child who is born out of wedlock, a person who attends or plans to attend the birth, including personnel of all public or private birthing hospitals, shall:

- (1) provide an opportunity for:
    - (A) the child's mother; and
    - (B) a man who reasonably appears to be the child's biological father;
- to execute an affidavit acknowledging paternity of the child;

**EXHIBIT B**

Mother's Name _____ Mother's Medical Record # _____
--

## CERTIFICATE OF LIVE BIRTH WORKSHEET

The information you provide below will be used to create your child's birth certificate. The birth certificate is a document that will be used for legal purposes to prove your child's age, citizenship and parentage. This document will be used by your child throughout his/her life. State laws provide protection against the unauthorized release of identifying information from the birth certificates to ensure the confidentiality of the parents and their child.

It is very important that you provide complete and accurate information to all of the questions. In addition to information used for legal purposes, other information from the birth certificate is used by health and medical researchers to study and improve the health of mothers and newborn infants. Items such as parent's education, race, and smoking will be used for studies but will not appear on copies of the birth certificate issued to you or your child.

### TYPE OF BIRTH - PICK ONE:

- Born at Facility     
  Born En-Route to Facility     
  Born at Non Participating Facility  
 Born En-Route to Non Participating Facility     
  Home Birth     
  Foundling

1. Facility name:\* \_\_\_\_\_

(If not institution, give street and number)

2. City, Town or Location of birth: \_\_\_\_\_

3. County of birth: \_\_\_\_\_

### 4. Place of birth:

Hospital   
  Freestanding birthing center ( freestanding birthing center is one that has no direct physical connection to a hospital)

Home birth     
 Planned to deliver at home?   
 Yes     
 No

Clinic/ Doctor's Office   
 Other (specify, e.g., taxi cab, train, plane \_\_\_\_\_)

\*Facilities may wish to have pre-set responses (hard-copy and/or electronic) to questions 1-5 for births which occur at their institutions.

5. Time of birth: \_\_\_\_\_

- AM   
 PM   
 NOON   
 MIDNIGHT

6. Date of birth: \_\_\_\_/\_\_\_\_/\_\_\_\_ M M D D Y Y Y Y

7. Plurality (Specify SINGLE, TWIN, TRIPLET, QUADRUPLET, QUINTUPLET, SEXTUPLET, SEPTUPLET, or OCTUPLET for 8 or more. (Include all live births and fetal losses resulting from this pregnancy.): \_\_\_\_\_

8. If not single birth (Order delivered in the pregnancy, specify 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, etc.) (Include all live births and fetal losses resulting from this pregnancy): \_\_\_\_\_

9. If not single birth, specify number of infants in this delivery born alive: \_\_\_\_\_

10. Sex (Male, Female, or Not yet determined): \_\_\_\_\_

**11. What will be your BABY'S legal name (as it should appear on the birth certificate)?**

\_\_\_\_\_  
First Middle Last Suffix (Jr., III, etc.)

**12. MOTHER: What is your current legal name?**

\_\_\_\_\_  
First Middle Last Suffix (Jr., III, etc.)

**13. MOTHER: Where do you usually live--that is--where is your household/residence located?**

Building number: \_\_\_\_\_ Pre-directional \_\_\_\_\_  
Name of street \_\_\_\_\_  
Street Designator, eg Street, Avenue, etc. \_\_\_\_\_  
Post Directional \_\_\_\_\_ Apartment Number \_\_\_\_\_  
State: \_\_\_\_\_ (or U.S Territory, Canadian Province)  
If not United States, Country \_\_\_\_\_  
City, Town, or Location: \_\_\_\_\_ County: \_\_\_\_\_ Zip: \_\_\_\_\_

**14. Is this household inside city limits (inside the incorporated limits of the city, town or location where you live)?**  Yes  No  Don't know

**15. MOTHER: What is your mailing address?**  Same as residence [Go to next question]

Building number: \_\_\_\_\_ Pre-directional \_\_\_\_\_  
Name of street \_\_\_\_\_  
Street Designator, eg Street, Avenue, etc. \_\_\_\_\_  
Post Directional \_\_\_\_\_ Apartment Number \_\_\_\_\_  
State: \_\_\_\_\_ (or U.S Territory, Canadian Province)  
If not United States, Country \_\_\_\_\_  
City, Town, or Location: \_\_\_\_\_ County: \_\_\_\_\_ Zip: \_\_\_\_\_

**16. MOTHER: What is your date of birth? (Example: 03-04-1977)**

\_\_\_\_/\_\_\_\_/\_\_\_\_ M M D D Y Y Y Y AGE: \_\_\_\_\_

**17. MOTHER: In what State, U.S. territory, or foreign country were you born? Please specify one of the following:**

State \_\_\_\_\_ County \_\_\_\_\_ City \_\_\_\_\_  
OR U.S territory, i.e., Puerto Rico, U.S Virgin Islands, Guam, American Samoa or Northern Marianas  
\_\_\_\_\_ OR Foreign country \_\_\_\_\_  
 UNKNOWN

**18. MOTHER: What is your Social Security Number?**

\_\_\_\_-\_\_\_\_-\_\_\_\_-\_\_\_\_-\_\_\_\_-\_\_\_\_

**19. Do you want a Social Security Number issued for your baby?**

Yes (Please sign request below)  No (Continue)

I request that the Social Security Administration assign a Social Security number to the child named on this form and authorize the State to provide the Social Security Administration with the information from this form which is needed to assign a number. (Either parent, or the legal guardian, may sign.)

Signature of infant's mother or father \_\_\_\_\_  
Date: \_\_\_\_/\_\_\_\_/\_\_\_\_ M M D D Y Y Y Y

**20. Will infant be placed for Adoption?**

- Yes  No

**21. MOTHER: What is the highest level of schooling that you will have completed at the time of delivery? (Check the box that best describes your education. If you are currently enrolled, check the box that indicates the previous grade or highest degree received).**

- 8th grade or less  9th - 12th grade, no diploma  
 High school graduate or GED completed  Some college credit but no degree  
 Associate degree (e.g. AA, AS)  Bachelor's degree (e.g. BA, AB, BS)  
 Master's degree (e.g. MA, MS, MEng, MEd, MSW, MBA)  
 Doctorate (e.g. PhD, EdD) or Professional degree (e.g. MD, DDS, DVM, LLB, JD)

**22. MOTHER: What is your usual occupation or industry in which you work? Please fill in below. For example your occupation is Teacher, CPA, Waitress, Clerk, etc., and the industry in which you work is Department Store, Law Firm, Hospital, Factory, etc.**

Usual Occupation: \_\_\_\_\_

Usual Industry: \_\_\_\_\_

- Unemployed  Unknown

**23. MOTHER: Are you Spanish/Hispanic/Latina? If not Spanish/Hispanic/Latina, check the "No" box. If Spanish/Hispanic/Latina, check the appropriate box.**

- No, not Spanish/ Hispanic/ Latina  
 Yes, Mexican, Mexican American, Chicana  
 Yes, Puerto Rican  
 Yes, Cuban  
 Yes, other Spanish/ Hispanic/ Latina (e.g. Spaniard, Salvadoran, Dominican, Columbian)  
 (specify) \_\_\_\_\_

**24. MOTHER: What is your race? (Please check all that apply).**

- White  Black or Af rican American  
 American Indian or Alaska Native (name of enrolled or principal tribe(s))  
 \_\_\_\_\_  
 Asian Indian  Chinese  Filipino  
 Japanese  Korean  Vietnamese  
 Other Asian (specify) \_\_\_\_\_  
 Native Hawaiian  Guamanian or Chamorro  Samoan  
 Other Pacific Islander (specify) \_\_\_\_\_  
 Other (specify) \_\_\_\_\_

**MOTHER: Additional Information To Be Filled In I A PATERNITY AFFIDAVIT IS TO BE FILED FOR THIS BIRTH If Not Filing Paternity Affidavit skip to question 30.**

**25. What is Your Phone Number? Required** \_\_\_\_\_

**26. What is the name of your Employer (Company name)? Optional**  
 \_\_\_\_\_

**27. What is your Employer's address? Optional**  
 \_\_\_\_\_

**28. What is the name of your Medical Insurance Company? Optional**  
 \_\_\_\_\_

**29. What is your Medical Insurance Policy number? Optional**  
 \_\_\_\_\_



**41. FATHER:** In what State, U.S. territory, or foreign country was he born? Please specify one of the following:

State \_\_\_\_\_ County \_\_\_\_\_ City \_\_\_\_\_  
 OR U.S. territory, i.e., Puerto Rico, U.S. Virgin Islands, Guam, American Samoa or Northern Marianas  
 \_\_\_\_\_ OR Foreign country \_\_\_\_\_  
 UNKNOWN

**42. What is the father's Social Security Number? If you are not married, or if a paternity acknowledgment has not been completed, leave this item blank.**

\_\_\_\_\_

**43. What is the highest level of schooling that the FATHER will have completed at the time of delivery? (Check the box that best describes his education. If he is currently enrolled, check the box that indicates the previous grade or highest degree received).**

- 8th grade or less
- High school graduate or GED completed
- Associate degree (e.g. AA, AS)
- Master's degree (e.g. MA, MS, MEng, MEd, MSW, MBA)
- Doctorate (e.g. PhD, EdD) or Professional degree (e.g. MD, DDS, DVM, LLB, JD)
- 9th - 12th grade, no diploma
- Some college credit but no degree
- Bachelor's degree (e.g. BA, AB, BS)

**44. What is the father's usual occupation or industry. Please fill in below. For example his occupation is Photographer, Farmer, Nurse, etc., and the industry in which he works is Factory, Skating Rink, Army, etc.**

Usual Occupation: \_\_\_\_\_

Usual Industry: \_\_\_\_\_

- Unemployed
- Unknown

**45. Is the father Spanish/Hispanic/Latino? If not Spanish/Hispanic/Latino, check the "No" box. If Spanish/Hispanic/Latino, check all that apply.**

- No, not Spanish/ Hispanic/ Latino
- Yes, Mexican, Mexican American, Chicano
- Yes, Puerto Rican
- Yes, Cuban
- Yes, other Spanish/ Hispanic/ Latino (e.g. Spaniard, Salvadoran, Dominican, Columbian)  
 (specify) \_\_\_\_\_

**46. What is the father's race? Please check one or more races to indicate what he considers himself to be.**

- White
- American Indian or Alaska Native (name of enrolled or principal tribe) \_\_\_\_\_
- Asian Indian
- Japanese
- Other Asian (specify) \_\_\_\_\_
- Native Hawaiian
- Other Pacific Islander (specify) \_\_\_\_\_
- Other (specify) \_\_\_\_\_
- Black or African American
- Chinese
- Korean
- Filipino
- Vietnamese
- Guamanian or Chamorro
- Samoan

**FATHER Additional Information To Be Filled In If A PATERNITY AFFIDAVIT IS TO BE FILED FOR THIS BIRTH If Not Filing Paternity Affidavit skip to question 53**

47. What is Your Phone Number? Information is required \_\_\_\_\_

48. What is Your Current Address Number, Street, City, State and Zip Information is required  
\_\_\_\_\_

49. What is the name of your Employer (Company name)? Information is optional  
\_\_\_\_\_

50. What is your Employer's address? Information is optional  
\_\_\_\_\_

51. What is the name of your Medical Insurance Company? Information is optional  
\_\_\_\_\_

52. FATHER What is your Medical Insurance Policy Number Information is optional  
\_\_\_\_\_

53. DID MOTHER RECEIVE PRENATAL CARE?

- YES  NO  UNKNOWN

54. Date of first prenatal care visit (prenatal care begins when a Physician or other health professional first examines and/ or counsels the pregnant woman as part of an ongoing program of care for the pregnancy) \_\_\_\_\_  
\_\_\_\_ M M D D Y Y Y Y

55. Date of last prenatal care visit (Enter the date of the last visit recorded in the mother's prenatal records)  
\_\_\_\_\_ M M D D Y Y Y Y

56. Source of pre-natal care?

- MD  DO  Clinic  Other, Specify: \_\_\_\_\_

57. Total number of prenatal care visits for this pregnancy (Count only those visits recorded in the record. If none enter "0"): \_\_\_\_\_

58. Date last normal menses began: \_\_\_\_\_ M M D D Y Y Y Y

59. Number of previous live births now living (Do not include this child. For multiple deliveries, do not include the 1st born in the set if completing this worksheet for that child): Enter number or 0 for none.  
\_\_\_\_\_

60. Number of previous live births now dead (Do not include this child. For multiple deliveries, do not include the 1st born in the set if completing this worksheet for that child):  
Enter number or 0 for none. \_\_\_\_\_

61. Date of last live birth \_\_\_\_\_ / \_\_\_\_\_ M M Y Y Y Y

62. Total number of other pregnancy outcomes (Include fetal losses of any gestational age-spontaneous losses, induced losses, and/ or ectopic pregnancies. If this was a multiple delivery, include all fetal losses delivered before this infant in the pregnancy) .)  
Enter number or 0 for none.: \_\_\_\_\_

63. Date of last other pregnancy outcome (Date when last pregnancy which did not result in a live birth ended):

\_\_\_\_/\_\_\_\_ M M Y Y Y Y

**EXHIBIT C**

# TIPPECANOE COUNTY HEALTH DEPARTMENT

LAFAYETTE, TIPPECANOE COUNTY, INDIANA 47901

## CERTIFICATE OF BIRTH

**This Certifies,** that according to the records of the **HEALTH DEPARTMENT**

Name:

Gender: **MALE**

Was born in: **TIPPECANOE COUNTY, INDIANA**

On:

Child of: **RUBY L. HENDERSON**

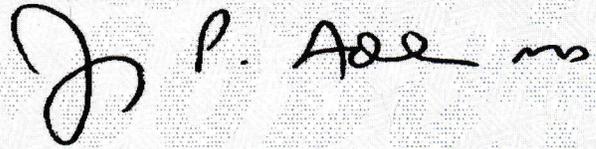
Birthplace of Mother: **MARYLAND**

Birthplace of Father: **NOT STATED**

Recorded Locally:

Date filed: **December 29, 2014**

Date issued: **January 22, 2015**



Health Officer

**WARNING:** ORIGINAL DOCUMENT HAS A MULTICOLORED BACKGROUND ON SPECIAL WHITE SECURITY PAPER AND THE GREAT SEAL OF THE STATE OF INDIANA ON BACK THAT TURNS FROM ORANGE TO YELLOW WHEN RUBBED. ORIGINAL DOCUMENT HAS HIDDEN VOID ON FRONT THAT APPEARS WHEN PHOTOCOPIED.

VOID IF ALTERED OR ERASED

VOID IF ALTERED OR ERASED