

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

ASHLEE HENDERSON, et al.

Plaintiffs,

v.

DR. JEROME ADAMS, et al.

Defendants,

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CAUSE NO. 1:15-CV-220-TWP-MJD

TIPPECANOE COUNTY DEFENDANTS' ANSWER TO AMENDED COMPLAINT

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 for their answer to the Plaintiffs' Amended Complaint state as follows:

1. **ALLEGATION:** 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.

RESPONSE: Defendants admit that Plaintiffs are bringing an action to challenge the constitutionality of the specified statutes, lack information sufficient to admit the biographical facts alleged and request proof thereof, and deny the legal conclusions alleged by plaintiff.

2. ALLEGATION: 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.

RESPONSE: Defendants admit that Plaintiffs have accurately quoted IC 31-9-2-15 and that the parenthetical descriptions are accurate as to the statutes described. Defendants would expand upon that to note that IC 31-14-7-1(1) addresses a presumption of biological fatherhood where the child is born during the marriage of the man and the child's biological mother and 300 days after the termination of the marriage while IC 31-14-7-1(2) addresses the presumption of biological fatherhood where the child is born during an apparent but void or voidable marriage.

3. ALLEGATION: 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).

RESPONSE: Defendants admit that Plaintiffs have accurately quoted IC 31-9-2-16.

4. ALLEGATION: 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.

RESPONSE: Defendants admit that Plaintiffs have accurately quoted IC 31-14-7-1(1).

5. **ALLEGATION:** 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.

RESPONSE: Defendants deny that the statutes "bastardized" the children. The cited statutes are statutory definitions and, as such, have no effect by themselves but rather inform the interpretation and application of other statutes; of particular relevance to this litigation is IC 31-14-7-1(1) and (2) which create a presumption of biological fatherhood based on marital status or apparent marital status.

6. **ALLEGATION:** 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.

RESPONSE: Defendants admit that IC 31-13-2 provides a process for petitioning for a determination as to whether a child was born in wedlock and acknowledge that there is likely a cost associated with the process. Defendants lack knowledge as to whether filing such a petition would impose a stigma upon the plaintiffs and, therefore, request proof thereof. Defendants further lack knowledge as to whether a successful petition under IC 31-13-2 would create a presumption of biological fatherhood under IC 31-14-7-1(1) for the same sex spouse of the biological mother and, therefore, request proof thereof to the extent material to Plaintiff's complaint.

7. **ALLEGATION:** 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.

RESPONSE: Defendants admit that adoption is a means available to Plaintiffs to accomplish their goals with respect to establishing legal rights and duties as between the child and the same sex spouse of the biological mother. Defendants lack knowledge as to whether it is the only means and, therefore, request proof thereof.

8. **ALLEGATION:** 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.

RESPONSE: Defendant denies this allegation. IC 31-14-7-1 does not create "a presumption of parenthood." Rather, it creates a presumption that the man is a child's biological father. The presumption is rebuttable. "Parenthood," as defined in the Indiana code can be biological or adoptive. *See* IC 31-9-2-88. Defendant lacks sufficient information to admit the remainder of the allegation, and requests proof thereof. For example, Plaintiff's allegation may not be accurate if the biological mother executes a paternity affidavit indicating that her husband is not the child's biological father.

9. **ALLEGATION:** 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.

RESPONSE: Defendants lack knowledge sufficient to admit this allegation and request proof thereof. For example, if the biological mother is married but answers "no, she is not married to the father of her child" to question 38 on Exhibit B, Indiana's birth worksheet directs the biological mother to then

answer the same questions as a an unmarried woman.

10. **ALLEGATION:** 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.

RESPONSE: Defendant states that the presumption in IC 31-14-7-1(1) is a presumption of biological fatherhood and, with that clarification, admit that this presumption of biological fatherhood is not granted to the same sex partner of a biological mother. Defendants lack information as to the remainder of this allegation and request proof thereof.

11. **ALLEGATION:** 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).

RESPONSE: Defendants lack information as to the nature or extent of harm to the children, if any, and therefore request proof thereof. Defendants deny that they caused any such harm. Defendants lack information sufficient to admit that a birth certificate is necessary to establish a family or an identity for the children and therefore request proof thereof. Defendants admit that *Baskin v. Bogan*, 766 F.3d 648 (7th Cir. 2014) contained the quoted statement.

12. **ALLEGATION:** 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.

RESPONSE: Defendants admit this allegation with the caveat that Defendants assume Plaintiffs intended to reference 28 USC 2201 rather than 42 USC 2201.

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

RESPONSE: Defendants admit this allegation. Defendants reserve the right to argue, upon proper application to the court, that the Northern District of Indiana is a proper venue that is more convenient to the parties and witnesses within the meaning of 28 U.S.C. 1404(a).

14. **ALLEGATION:** Defendant Dr. Jeremy P. Adler is the Health Officer for the Tippecanoe County Health 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. § 16-20-1-16(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." 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.

RESPONSE: Defendants admit this allegation except to note that the language attributed to IC 16-20-1-16(b) is found in IC 16-20-1-17(b).

15. **ALLEGATION:** 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.

RESPONSE: The Tippecanoe County Defendants lack information sufficient to form a belief as to this allegation and request proof thereof.

16. **ALLEGATION:** 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.

RESPONSE: Defendants admit this allegation.

17. **ALLEGATION:** 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.

RESPONSE: Defendants admit that they are being sued in their official capacities. Tippecanoe County Defendants deny they, or those for whose actions they are responsible, harmed or are harming Plaintiffs. Defendants state that the remainder of the allegation is too ambiguous for them to admit and, therefore, deny same and request proof thereof. Defendants further observe that IC 31-9-2-15 and 16 are statutory definitions and, as such, are not "enforced" but rather may inform the enforcement of statutes that use those definitions.

18. **ALLEGATION:** 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.

RESPONSE: Defendants lack information sufficient to admit this allegation and, therefore request proof thereof.

19. **ALLEGATION:** 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.

RESPONSE: Defendants lack information sufficient to admit this allegation and, therefore, request proof thereof.

20. **ALLEGATION:** 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.

RESPONSE: Defendants admit that a court order following adoption is part of the process by which non-biological parents are listed in the birth record and that this information was communicated to Ashlee Henderson.

21. **ALLEGATION:** 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.

RESPONSE: Defendants admit that the document attached as Exhibit A was provided to Ashlee Henderson and that, in the absence of an order concerning the status of the non-biological mother, Ashlee Henderson could not be listed in the birth record by the Tippecanoe County Health Department.

22. **ALLEGATION:** 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.

RESPONSE: Defendants lack information sufficient to admit this allegation and therefore request proof thereof.

23. **ALLEGATION:** 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.

RESPONSE: Defendants lack information sufficient to admit this allegation and therefore request proof thereof.

24. **ALLEGATION:** 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.

RESPONSE: Defendants admit this allegation.

25. **ALLEGATION:** 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.

RESPONSE: The Tippecanoe County Defendants lack information sufficient to admit this allegation and request proof thereof to the extent it is relevant to Plaintiffs' claims against the Tippecanoe County Defendants.

26. **ALLEGATION:** 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.

RESPONSE: The Tippecanoe County Defendants lack information sufficient to admit this

allegation and request proof thereof to the extent it is relevant to Plaintiffs' claims against the Tippecanoe County Defendants.

27. **ALLEGATION:** 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.

RESPONSE: The Tippecanoe County Defendants lack information sufficient to admit this allegation and request proof thereof to the extent it is relevant to Plaintiffs' claims against the Tippecanoe County Defendants.

28. **ALLEGATION:** 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.

RESPONSE: The Tippecanoe County Defendants lack information sufficient to admit this allegation and request proof thereof to the extent it is relevant to Plaintiffs' claims against the Tippecanoe County Defendants.

29. **ALLEGATION:** 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.

RESPONSE: The Tippecanoe County Defendants lack information sufficient to admit this allegation and request proof thereof to the extent it is relevant to Plaintiffs' claims against the Tippecanoe County Defendants.

30. **ALLEGATION:** 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.

RESPONSE: The Tippecanoe County Defendants lack information sufficient to admit this allegation and request proof thereof to the extent it is relevant to Plaintiffs' claims against the Tippecanoe County Defendants.

31. **ALLEGATION:** "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.

RESPONSE: Defendants admit that the cited web page contains the quoted language. Defendants admit that question 35 of Exhibit B asks about the mother's marital status but would expand upon that to note that the question asks "Current Marital Status" and offers as choices "never married, widowed, divorced, currently married, married, but refusing father's information, and unknown." Defendants admit that question 37 of Exhibit B asks if the mother is married to the father of her child but would further note that, if the mother is married to someone other than the father of her child (or is unmarried), the worksheet directs her to go to question 38 which asks whether a paternity affidavit has been completed and, if not, directs her to skip questions 39 through 52. Defendant admits that the presumption in IC 31-14-7-1 is available to husbands who are not, in fact, biological fathers but would further state that the presumption is rebuttable and that if, as alleged, the mother declared that her husband was not the biological father, that declaration would contribute to a rebuttal. *See Green v. Estate of Green*, 724 N.E.2d 260, 264-265 (Ind. Ct. App. 2000).

32. **ALLEGATION:** Plaintiffs incorporate by reference the allegations of paragraphs 1- 24.

RESPONSE: Defendants incorporate their corresponding responses thereto.

33. **ALLEGATION:** 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."

RESPONSE: Defendants admit this allegation.

34. **ALLEGATION:** By refusing to recognize that the Children were/will be born in wedlock, Defendants bastardize the children born to a married couple consisting of two women, including L.W.C.H. Such bastardization stigmatizes children born to two women who are married.

RESPONSE: Defendants deny they "bastardized" anyone. Defendants lack information as to the existence, nature, and extent of the alleged stigma and request proof thereof.

35. **ALLEGATION:** 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.

RESPONSE: Defendants deny that they violated the Equal Protection Clause. The Tippecanoe County Defendants did not refuse to recognize the Hendersons' marriage. Furthermore, recognition by the Tippecanoe County Defendants of the Hendersons' marriage would not have created the statutory presumption they are seeking. Defendants therefore deny this allegation.

36. **ALLEGATION:** 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.

RESPONSE: Defendants deny this allegation and further observe that IC 31-9-2-15 is a definition section. Defendants do not understand the reference to IC 31-10-2-1 in this context but note that the corresponding allegation in the original complaint referenced IC 31-9-2-16. IC 31-9-2-15 and 16 have no operative effect on their own but rather inform the interpretation of other statutes, in particular IC 31-19-3 (Notice of adoption before birth of child), IC 31-19-4-4 (Notice to unnamed father), and 31-19-9 (Consent to adoption).

37. **ALLEGATION:** 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.

RESPONSE: Defendants lack information sufficient to admit this allegation, request proof thereof, and further observe that IC 31-9-2-15 and 16 are definition sections. Those sections have no operative effect on their own but rather inform the interpretation of other statutes, particularly IC 31-19-3 (Notice of adoption before birth of child), IC 31-19-4-4 (Notice to unnamed father), and 31-19-9 (Consent to adoption).

38. **ALLEGATION:** 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.

RESPONSE: This is an incomplete hypothetical, the answer to which depends on, at a minimum, details as to recognition by whom and for what purpose. Defendants therefore lack information sufficient to admit this allegation and request proof thereof.

39. **ALLEGATION:** 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.

RESPONSE: Defendants admit this allegation to the extent that, for purposes of 31-19-9 (Consent to adoption), IC 31-9-2-15 defines "child born in wedlock" as meaning "a man who is presumed to be the child's father under IC 31-14-7-1(1) or IC 31-14-7-1(2) unless the presumption is rebutted." Defendants lack information sufficient to admit the remainder of this allegation and, therefore, request proof thereof.

40. **ALLEGATION:** 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.

RESPONSE: Defendants admit that IC 31-19-9-1(a) requires that for a petition for adoption to be granted as to a child less than eighteen years of age, among other things, a consent to adoption must be executed by "each living parent of a child born in wedlock, including a man who is presumed to be the child's biological father under IC 31-14-7-1(1) if the man is the biological or adoptive parent of the child." Defendants further admit that, in the case of a "child born out of wedlock," the father whose paternity has been established by affidavit or a court proceeding must execute a consent (with exceptions under, *inter alia*, IC 31-14-20-2, IC 31-19-9-8, and IC 31-19-9-15). Defendants further admit that, under those statutes, a consent is not required to be executed by a woman who is the spouse of the child's biological mother. To the extent the allegation is inconsistent with or goes beyond these admissions, Defendants lack sufficient information to admit the remainder of the allegation and, therefore, request

proof thereof.

41. **ALLEGATION:** 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.

RESPONSE: Defendants deny that they refused to recognize the Plaintiffs' marriage, deny the remainder of this allegation and further note that IC 31-9-2-15 and 16 are definition sections which have no operative effect on their own but rather inform the interpretation of other statutes.

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

RESPONSE: Defendants incorporate their responses thereto.

43. **ALLEGATION:** 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) (sic) The Children's right to have their parental relationship with Ashlee Henderson, Captain Singley, and Tonya Bush-Sawyer protected by law.

RESPONSE: Defendants deny that they deprived the Children of any legal protections and further deny that it is within their power to grant a presumption of parenthood to Ashlee Henderson. Defendants lack sufficient information to admit the remainder of this allegation and, therefore, request proof thereof.

44. **ALLEGATION:** 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,;
- 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").

RESPONSE: Defendants deny that they deprived Ashlee Henderson of any legal protections and further deny that it is within their power to grant a presumption of parenthood to Ashlee Henderson. Defendants lack sufficient information to admit the remainder of this allegation and, therefore, request proof thereof.

45. **ALLEGATION:** 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).

RESPONSE: Defendants acknowledge these propositions as generally valid, however, within the context of this case, Defendants lack information sufficient to form an opinion as to their applicability to this matter and, therefore, request proof thereof.

46. **ALLEGATION:** 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.

RESPONSE: Defendants deny the allegation generally, but specifically deny that they refused to recognize the marriage of Ashlee and Ruby Henderson and further deny that they had the power to grant or deny the statutory presumption requested.

47. **ALLEGATION:** 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.

RESPONSE: Defendants deny the allegation generally, but specifically deny that they refused to recognize the marriage of Ashlee and Ruby Henderson and further deny that they had the power to grant or deny the statutory presumption requested.

48. **ALLEGATION:** 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.

RESPONSE: Defendants deny that they granted or denied a presumption of parenthood to anyone and deny that they engaged in gender-based discrimination.

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

RESPONSE: Defendants incorporate their responses thereto.

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

RESPONSE: Defendants admit this allegation.

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

RESPONSE: Defendants admit that a parent's ability to make decisions about the care, custody, and control of the parent's child is a protected liberty interest. To the extent this allegation goes beyond that proposition, Defendants lack information sufficient to admit the allegation and request proof thereof.

52. **ALLEGATION:** 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.

RESPONSE: Defendants deny that, solely by virtue of being married to Ruby Henderson, Ashlee Henderson acquired a right to direct the care, custody, and control of a child born to Ruby Henderson. For example, if Ruby Henderson objected to Ashlee Henderson making decisions about the

child's care, custody, and control, such an objection would likely override any claims made by Ashlee Henderson. Similarly, if the biological father of the child objected to such care, custody, and control, such a right might not be recognized on the part of Ashlee Henderson. Defendants therefore lack information sufficient to admit this allegation.

53. ALLEGATION: 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)).

RESPONSE: Defendants admit that parents have a due process right to care for and raise their children, and children enjoy the corresponding familial right to be raised and nurtured by their parents. To the extent this allegation goes beyond that proposition, Defendants lack information sufficient to admit the allegation and request proof thereof.

54. ALLEGATION: 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.

RESPONSE: Defendants lack information sufficient to admit this allegation and request proof thereof.

55. ALLEGATION: 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.

RESPONSE: Defendants lack information sufficient to admit this allegation and request proof thereof.

56. ALLEGATION: 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.

RESPONSE: Defendants deny this allegation.

57. **ALLEGATION:** 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.

RESPONSE: Defendants deny that they refused to recognize the Hendersons' marriage. Defendants further deny that the presumption set forth in the Indiana Code is a "presumption of parenthood," rather it is a presumption of "biological fatherhood." Defendants deny that their actions violate the Constitution.

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

RESPONSE: Defendants incorporate their corresponding responses.

59. **ALLEGATION:** 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.

RESPONSE: Defendants lack information sufficient to admit this allegation and, therefore, request proof thereof.

60. **ALLEGATION:** 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.

RESPONSE: Defendants deny that they have violated the constitution. The Tippecanoe County Defendants deny that action or inaction on their part caused any injury to the Plaintiffs. Defendants lack information as to the existence, nature, and extent of Plaintiffs' injuries and, therefore, request proof thereof.

ADDITIONAL DEFENSES

61. All allegations not explicitly admitted are hereby denied.

62. Plaintiffs fail to state a claim upon which relief may be granted as to these Defendants. With respect to Tippecanoe County Health Department and its employees, the Complaint alleges only that the Health Department indicated that Ashlee Henderson would not be listed on the birth certificate in the absence of a court order directing that she be placed on the birth certificate and that it issued a birth certificate without Ashlee Henderson listed on the certificate. (Complaint at ¶¶19, 20, and 23). There is no constitutional right to have a particular name appear on a birth certificate, and the presence or absence of such information on a birth

certificate does not, itself, confer or deny the rights and duties sought by the Plaintiffs.

63. Plaintiffs claims for equitable relief are moot with respect to the Tippecanoe County Defendants.

64. Plaintiffs have failed to join all necessary parties, in particular the biological father of L.W.C.H., to speak to his parental interests, if any.

65. Defendants reserve the right to raise additional defenses as they become known upon proper application to the court.

WHEREFORE, Defendants request judgment be entered in their favor and against the Plaintiff and for all other appropriate relief.

Respectfully submitted,

HOFFMAN, LUHMAN & MASSON, PC

By: /s/Douglas J. Masson
Douglas J. Masson #19474-53
Attorney for Defendants
200 Ferry Street, Suite C
P.O. Box 99
Lafayette, IN 47902
Telephone: (765) 423-5404

CERTIFICATE OF SERVICE

I hereby certify that April 16, 2015, 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:

Raymond L. Faust
rfaust@houseynoldsfaust.com

William R. Groth
wgroth@fdgtlaborlaw.com

Lara K. Langeneckert
lara.langeneckert@atg.in.gov

Anna M. Konradi
anna.konradi@Faegrebd.com

Anthony Scott Chinn
scott.chinn@faegrebd.com

Richard A. Mann
rmann@mannlaw.us

Karen Celestino-Horseman
karen@kchorseman.com

Thomas M. Fisher
tom.fisher@atg.in.gov

Anne Kramer Ricchiuto
anne.ricchiuto@FaegreBD.com

/s/Douglas J. Masson
Douglas J. Masson