

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, Administrator, 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 and Hospital Corporation)
of Marion County)

Defendants.)

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

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

Defendants Dr. Virginia Caine, in her official capacity as Director of Health Officer of the Marion County Health Department, Darren Klingler, in his official capacity as Administrator of Vital Records for the Marion County Health Department, Dr. James Miner, Gregory Fehribach, Lacy Johnson, Charles Eberhardt II, Deborah Daniels, Dr. David Canal, and Joyce Rogers, in their official capacities as Trustees for the Health and Hospital Corporation of Marion County (collectively, the "Marion County Defendants"), by counsel, for their Answer to the First Amended Complaint for Declaratory and Injunctive Relief, state 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.

ANSWER: The Marion County Defendants admit that Plaintiffs have brought an action to challenge the constitutionality of Indiana Code §§ 31-9-2-15, 31-9-2-16, and 31-14-

7-1. The Marion County Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 1.

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.

ANSWER: Paragraph 2 is a recitation of Indiana Code § 31-9-2-15, which statute speaks for itself, and makes no factual allegations to which a response is required from the Marion County Defendants.

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).

ANSWER: Paragraph 3 is a recitation of Indiana Code § 31-9-2-16, which statute speaks for itself, and makes no factual allegations to which a response is required from the Marion County Defendants.

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.

ANSWER: Paragraph 4 is a recitation of Indiana Code § 31-14-7-1, which statute speaks for itself, and makes no factual allegations to which a response is required from the Marion County Defendants.

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.

ANSWER: The Marion County Defendants admit that the cited statutes provide definitions for children born in and out of wedlock. The Marion County Defendants deny Plaintiffs' characterization that the statutes "bastardize" children born to a biological mother who is married to another woman.

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.

ANSWER: The Marion County Defendants admit that the Indiana Code ch. 31-13-2 provides a procedure for non-biological parents to petition the court for a determination

of whether a child was born out of wedlock, and acknowledge that there is likely a cost associated with that process. The Marion County Defendants deny that filing such a petition imposes a "stigma" on Plaintiffs.

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.

ANSWER: The Marion County Defendants admit that adoption is a means by which a female spouse of a biological mother could establish her legal rights and duties as to the child born to her wife. The Marion County Defendants deny the allegations of Paragraph 7 to the extent they are vague, ambiguous, and call for a legal conclusion.

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.

ANSWER: Indiana Code § 31-14-7-1(1) speaks for itself. The Marion County Defendants deny the remaining allegations of Paragraph 8 because they call for legal conclusions.

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.

ANSWER: The Marion County Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 9.

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.

ANSWER: The Marion County Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 10.

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).

ANSWER: *Baskin v. Bogan*, 766 F.3d 648, 663 (7th Cir. 2014), cert. denied 135 S. Ct. 316 (2014) and cert. denied sub nom. *Walker v. Wolf*, 135 S. Ct. 316(2014) speaks for itself. The Marion County Defendants deny the remaining allegations of Paragraph 11.

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.

ANSWER: The Marion County Defendants admit that Plaintiffs' Complaint describes at least one claim over which the Court would have federal question jurisdiction, and that Plaintiffs bring this action under 42 U.S.C. § 1983. The Marion County Defendants deny that Plaintiffs are entitled to relief under 42 U.S.C. § 1983. The Marion County Defendants deny that 42 U.S.C. § 2201 is applicable to this matter.

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.

ANSWER: The Marion County Defendants admit the allegations of Paragraph 13.

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.

ANSWER: Indiana Code §§ 16-20-1-16(b), -19, and -2-3, and 42 U.S.C. § 1983 speak for themselves. The Marion County Defendants are without knowledge or information sufficient to admit or deny the remaining allegations set forth in Paragraph 14.

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.

ANSWER: Indiana Code §§ 16-20-1-16(b), -22-8-34(a)(23), and 42 U.S.C. § 1983 speak for themselves. The Marion County Defendants admit that Dr. Virginia A. Caine is the Director and Health Officer of the Marion County Health Department, and that Dr. James Miner, Gregory S. Fehribach, Lacy M. Johnson, Charles S. Eberhardt II, Deborah J. Daniels, Dr. David F. Canal, and Joyce Q. Rogers are trustees of the Health and Hospital Corporation of Marion County. To the extent the Complaint seeks injunctive relief against the Marion County Defendants, the Marion County Defendants admit that they are "persons" within the meaning of 42 U.S.C. § 1983. To the extent the Complaint seeks other types of relief against the Marion County Defendants, the Marion County Defendants deny that they are "persons" within the meaning of 42 U.S.C. § 1983.

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.

ANSWER: Indiana Code ch. 16-37-1 and 42 U.S.C. § 1983 speak for themselves. The Marion County Defendants are without knowledge or information sufficient to admit or deny the remaining allegations of Paragraph 16.

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.

ANSWER: The Marion County Defendants admit that Plaintiffs have sued all Defendants in their official capacities. The Marion County Defendants deny the remaining allegations in Paragraph 17.

**FACTUAL ALLEGATIONS
ASHLEY 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.

ANSWER: The State admits that Indiana Code § 31-11-1-1, which provides that "[o]nly a female may marry a male[,]" "[o]nly a male may marry a female," and "[a] marriage between persons of the same gender is void in Indiana even if the marriage is lawful in the place where it is solemnized[,]" has been declared unconstitutional. *Baskin v. Bogan*, No. 1:14-CV-00355-RLY (S.D. Ind. June 25, 2014); *Bowling v. Pence*, No. 1:14-CV-00405-RLY (S.D. Ind. Aug. 19, 2014). The Marion County Defendants are without knowledge or information sufficient to admit or deny the remaining allegations in Paragraph 18.

19. During the week of November 2, 2014, the couple contacted IU Health Amett 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.

ANSWER: The Marion County Defendants are without knowledge or information sufficient to admit or deny the allegations in Paragraph 19.

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.

ANSWER: The Marion County Defendants are without knowledge or information sufficient to admit or deny the allegations in Paragraph 20.

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.

ANSWER: The Marion County Defendants admit that Exhibit A purports to be an explanation of why Plaintiff Ashlee Henderson would not be a presumed parent of L.W.C.H. The Marion County Defendants are without knowledge or information sufficient to admit or deny the allegations in Paragraph 21.

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.

ANSWER: The Marion County Defendants admit that Exhibit B purports to be the Indiana Birth Worksheet, version 27, 05/25/2012. The Marion County Defendants are without knowledge or information sufficient to admit or deny the remaining allegations in Paragraph 22.

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.

ANSWER: The Marion County Defendants are without knowledge or information sufficient to admit or deny the allegations in Paragraph 23.

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.

ANSWER: The Marion County Defendants admit that Exhibit C purports to be a certificate of birth. The Marion County Defendants are without knowledge or information sufficient to admit or deny the remaining allegations in Paragraph 24.

**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.

ANSWER: The Marion County Defendants are without knowledge or information sufficient to admit or deny the allegations in Paragraph 25.

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.

ANSWER: The Marion County Defendants are without knowledge or information sufficient to admit or deny the allegations in Paragraph 26.

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.

ANSWER: The Marion County Defendants are without knowledge or information sufficient to admit or deny the allegations in Paragraph 27.

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.

ANSWER: The Marion County Defendants are without knowledge or information sufficient to admit or deny the allegations in Paragraph 28.

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.

ANSWER: The Marion County Defendants are without knowledge or information sufficient to admit or deny the allegations in Paragraph 29.

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.

ANSWER: The Marion County Defendants deny that Nicki came to the hospital to pick up the child's birth certificate in March or April 2014, and "was told there was a problem and to return the following week." The Marion County Defendants are without knowledge or information sufficient to admit or deny the remaining allegations in Paragraph 30.

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://jwww.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.

ANSWER: The website cited by Plaintiffs in Paragraph 31 speaks for itself. The Marion County Defendants admit that the version of the birth worksheet attached to this Complaint as Exhibit B includes the questions described and quoted in Paragraph 31. The Marion County Defendants deny the remaining allegations of Paragraph 31 because they are vague, ambiguous, and call for legal conclusions.

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

ANSWER: The Marion County Defendants incorporate by reference their responses to the allegations in 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."

ANSWER: The Fourteenth Amendment of the United States Constitution speaks for itself.

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.

ANSWER: The Marion County Defendants deny the allegations in Paragraph 34.

35. Defendants' refusal to recognize the marriage of Ashlee and Ruby Henderson, Captain Nicole and Jennifer Singley and Nicki and Tanya 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.

ANSWER: The Marion County Defendants deny the allegations in Paragraph 35.

36. Defendants' refusal to recognize the lawful marriage of Ruby and Ashlee Henderson, Captain Nicole and Jennifer Singley and Nicki and Tanya 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.

ANSWER: Indiana Code §§ 31-9-2-15 and -10-2-1 speak for themselves. The Marion County Defendants deny the remaining allegations in Paragraph 36.

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.

ANSWER: Indiana Code §§ 31-9-2-15 and -16 speak for themselves. The Marion County Defendants deny the remaining allegations in Paragraph 37.

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 Tanya Bush-Sawyer will be required to spend additional dollars securing a court order formally recognizing that their child was born to a married couple.

ANSWER: The Marion County Defendants admit that Indiana Code ch. 31-13-2 provides a procedure for non-biological persons to adopt children, and acknowledge that there are likely costs associated with this process. The Marion County Defendants deny the remaining allegations in Paragraph 38 because they are vague, ambiguous, and call for legal conclusions.

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.

ANSWER: The Marion County Defendants deny the allegations in Paragraph 39 because they are vague and ambiguous.

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.

ANSWER: Indiana Code § 31-19-9-1 speaks for itself. The Marion County Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 40.

41. By refusing to recognize the marriage of Ashlee and Ruby Henderson, Captain Nicole and Jennifer Singley and Nicki and Tanya 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.

ANSWER: The Marion County Defendants deny the allegations in Paragraph 41 of the Complaint.

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.

ANSWER: The Marion County Defendants incorporate by reference their responses to Paragraph 1-41.

43. By refusing to grant the presumption of parenthood to Ashlee Henderson, Captain Singley and Tanya 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.

ANSWER: Indiana Code §§ 29-1-2-1 and 31-16-6-1 and *Matter of S.T.*, 621 N.E.2d 371 (Ind. Ct. App. 1993) speak for themselves. The Marion County Defendants deny the remaining allegations in Paragraph 43.

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").

ANSWER: Indiana Code §§ 31-17-2-17 and 37-17-4-1 and *Troxel v.*

Granville, 530 U.S. 57 (2000) speak for themselves. The Marion County Defendants deny the remaining allegations in Paragraph 44.

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).

ANSWER: Indiana Code ch. 31-35-12 and *In re Paternity of M.M.B. and A.W.T.*, 877 N.E.2d 1239 (Ind. Ct. App. 2007) speak for themselves. The Marion County Defendants deny the remaining allegations of Paragraph 45 because they are vague, ambiguous, and call for legal conclusions.

46. Defendants' refusal to recognize the marriage of Ashlee and Ruby Henderson, Captain Nicole and Jennifer Singley and Nicki and Tanya 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.

ANSWER: The Marion County Defendants deny the allegations in Paragraph 46.

47. By refusing to recognize the marriages of Ashlee and Ruby Henderson, Captain Nicole and Jennifer Singley and Nicki and Tanya Bush-Sawyer and grant the presumption of parenthood to Ashlee Henderson, Captain Singley and Tanya 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.

ANSWER: The Marion County Defendants deny the allegations in Paragraph 47.

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.

ANSWER: The Marion County Defendants deny the allegations in Paragraph 48.

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 Equal Protection Clause of the Fourteenth Amendment to the United States Constitution

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

ANSWER: The Marion County Defendants incorporate by reference their responses to Paragraphs 1-48.

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

ANSWER: The Fourteenth Amendment to the United States Constitution speaks for itself.

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

ANSWER: The Marion County Defendants deny the allegations in Paragraph 51 because they call for legal conclusions.

52. As the spouses of the birth mothers, Ashlee Henderson, Captain Singley and Tanya 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.

ANSWER: The Marion County Defendants deny the allegations in Paragraph 52 because they call for legal conclusions.

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)).

ANSWER: *Berman v. Young*, 291 F.3d 976 (7th Cir. 2002) and *Troxel v. Granville*, 530 U.S. 57 (2000) speak for themselves. The Marion County Defendants deny the remaining allegations in Paragraph 53.

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.

ANSWER: The Marion County Defendants deny the allegations in Paragraph 54 because they call for legal conclusions.

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.

ANSWER: The Marion County Defendants deny the allegations in Paragraph 55 because they call for legal conclusions.

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.

ANSWER: The Marion County Defendants deny the allegations in Paragraph 56 because they call for legal conclusions.

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.

ANSWER: The Marion County Defendants deny the allegations in Paragraph 57 because they call for legal conclusions.

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.

ANSWER: The Marion County Defendants incorporate by reference their responses to 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.

ANSWER: The Marion County Defendants deny the allegations in Paragraph 59.

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 Tanya 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.

ANSWER: The Marion County Defendants deny the allegations in Paragraph 60.

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.

ANSWER: The Marion County Defendants deny the allegations in Paragraphs (a) through (f) of Plaintiffs' "Prayer for Relief" and deny that Plaintiffs are entitled to the relief requested therein.

Affirmative Defenses

1. The Court lacks jurisdiction over one or more of Plaintiffs' claims for lack of suitable defendants under Article III, the Eleventh Amendment of the United States Constitution, and principles of sovereign immunity.

2. One or more of Plaintiffs' claims fail to state a claim on which relief can be granted.

3. Plaintiffs' rights, privileges, and immunities secured under the United States Constitution or laws of the United States have not been violated by any alleged action, inaction, or omission of the Marion County Defendants, all of whom have acted in compliance with the United States Constitution and with the laws of the United States and of the State of Indiana.

4. The challenged statutes, rules, and policies are not discriminatory and advance legitimate and compelling public purposes.

5. The challenged statutes, rules, and policies are constitutional.

6. The Marion County Defendants' acts and obligations with respect to the statute in question are ministerial in nature and afford Marion County Defendants no discretion to deviate therefrom.

7. The Marion County Defendants reserve the right to assert additional affirmative defenses in the future as needed or as warranted by investigation.

WHEREFORE, the Marion County Defendants pray the Plaintiffs take nothing by way of their complaint and for all other just and appropriate relief.

Dated: May 4, 2015

/s/ Anna M. Konradi

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CERTIFICATE OF SERVICE

I hereby certify that on May 4, 2015, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following counsel by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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