

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, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
vs.)	No. 1:15-cv-220-TWP-MJD
)	
DR. JEROME M. ADAMS, in his official capacity)	
as Indiana State Health Commissioner, <i>et al.</i> ,)	
)	
Defendants.)	

PLAINTIFFS' STATEMENT OF CLAIMS

Pursuant to the existing Case Management Plan in this cause, 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; Lyndsey and Cathy Bannick, a married couple and H.B. by his parent and next friend, Lyndsey Bannick; Calle and Sarah Janson and Unborn Baby Doe by his/her next friend and mother-to-be Calle Janson; Nikkole McKinley-Barrett and Donnica Barrett, a married couple and G.R.M.B., by his mother and next friend, Nikkole McKinley-Barrett, by counsel, hereby submit Plaintiffs' Statement of Claims:

1. Plaintiffs intend to prove at trial that they have been denied equal protection and due process under the U.S. Constitution as the Defendants refuse to presume parenthood for the same-sex spouse of the birth mother who was artificially inseminated by a third-party sperm donor, but will presume parenthood for an opposite-sex spouse of the birth mother who was artificially inseminated by a third-party sperm donor. Indiana Code provisions § 31-9-2-15, § 31-9-2-16, and § 31-14-7-1 create such disparate treatment and are unconstitutional pursuant to the Fourteenth Amendment of the U.S. Constitution.

2. Defendants' refusal to apply the presumption of parenthood to the same-sex spouse of the birth mother violates the Equal Protection Clause of the Fourteenth Amendment. This creates a classification based on gender but fails to meet the heightened standard of review. Defendants have the burden to show the classification serves an important government interest and that the application of the classification is substantially related to that interest, but Plaintiffs contend that Defendants cannot meet such burden. Furthermore, this different treatment creates a classification based on sexual orientation. Heightened scrutiny also applies to the classification based on sexual orientation, but the Defendants' varying treatment fails to meet even a rational basis standard as it is not rationally related to a legitimate government interest. Finally, the disparate treatment infringes on the fundamental right of parenthood and there is no compelling state interest to which the law is narrowly tailored to address justifying such an infringement.

3. Defendants' refusal to apply the presumption of parenthood to the same-sex spouse of the birth mother also violates the children's rights under the Equal Protection Clause and Due process Clause of the Fourteenth Amendment. The children born to same-sex married parents are treated differently than the children born to opposite-sex married parents, creating a classification based on gender and sexual orientation. Defendants cannot meet their burden that the classification serves an important government interest and that the application of the classification is substantially related to that interest. Such disparate treatment denies the children equal protection under Indiana law to be supported and cared for by two parents. Defendants application of the law requires that such children only have one parent.

4. Defendants' refusal to apply the presumption of parenthood to the same-sex spouse of the birth mother also violates the Due Process Clause of the Fourteenth Amendment. The same-sex spouses are denied a fundamental right to the care, custody, and control of the children born to their marriages. As such parenthood rights are fundamental, any interference with the exercise of those rights must be supported by a compelling state interest and the statute must be narrowly tailored to effectuate that interest. Defendants cannot meet such a burden. Furthermore, Plaintiffs have a protected property interest in their legal familial status and the protections and obligations provided to families under Indiana law. Defendants' refusal to apply the presumption of parenthood to Plaintiffs denies the Plaintiffs of these protected rights and obligations without due process.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 11, 2015, a copy of the foregoing Plaintiffs' Statement of Claims was filed electronically. Service of this filing will be made on all ECF-registered counsel by operation of the court's electronic filing system. Parties may access this filing through the court's system.

I further certify that on November 11, 2015, a copy of the foregoing Plaintiffs' Statement of Claims was mailed, by first-class U.S. Mail, postage prepaid and properly addressed to the following:

NONE

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