

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.)	

JOINT MOTION TO VACATE SETTLEMENT CONFERENCE

Plaintiffs, Cathy and Lyndsey Bannick and H.N.B., Donnica Barrett and Nikkole McKinley-Barrett and G.R.M.B., Elizabeth and Tonya Bush-Sawyer and I.J.B.-S., Ashlee and Ruby Henderson and L.W.C.H., Calle and Sarah Janson and Unborn Baby Doe, and Jennifer and Nicole Singley and H.S., and Defendants, Dr. Jerome M. Adams (“State Defendant”), Pam Aaltonen, Dr. Jeremy P. Adler, Craig Rich, Glenda Robinette, Dr. Thomas C. Padgett, Karen Combs, Kate Nail, Dr. John Thomas, Hsin-Yi Weng, Thometra Foster, Dr. Virginia Caine, Darren Klingler, Dr. James Miner, Gregory S. Fehribach, Deborah J. Daniels, Lacy M. Johnson, Charles S. Eberhardt, II, Dr. David F. Canal, Joyce Q. Rodgers, Dr. Brian Niedbalski, Collis Mayfield, Beth Lewis, Dennis Stark, Dr. Michael Chadwick, Dr. Susan Sawin-Johnson, Michael Meyer, Dr. Charles Hatcher, Dr. Brooke F. Case, Cindy Boll, Jim Reed, Dr. Darren Brucken, Joni Wise, Terri Manning, Jeffery DePasse, Dora Abel, Dr. Irving Haber, Brian Garcia, Michael Eldred, Dr. James Turner, and Dr. Robert

Burkle, (collectively “County Defendants”), by their respective counsel, respectfully request that this Court vacate the settlement conference currently scheduled for March 11, 2016, at 9:00 a.m. In support of this motion, parties state as follows:

1. This case concerns the legal basis of parental rights in Indiana. Plaintiffs challenge three Indiana statutes, arguing that each violates the Equal Protection and Due Process Clauses of the Fourteenth Amendment: First, under Indiana Code section 31-14-7-1(1) (the “Paternity Presumption Statute”), a “man is presumed to be a child’s biological father if” (A) he “and the child’s biological mother are or have been married to each other”; and (B) the “child is born during the marriage or not later than three hundred (300) days after the marriage is terminated by death, annulment, or dissolution[.]” Second, under Indiana Code section 31-9-2-15 (the “Child Born in Wedlock Statute”), a “Child born in wedlock”, for purposes of 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) or IC 31-14-7-1(2) unless the presumption is rebutted.” Finally, under Indiana Code section 31-9-2-16 (the “Child Born Out of Wedlock Statute”), a “Child born out of wedlock”, likewise for consent to adoption purposes, “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).”

2. Plaintiffs claim that Indiana Code sections 31-14-7-1, 31-9-2-15, and 31-9-2-16 are unconstitutional on their faces and as applied to Plaintiffs. They seek a declaratory judgment to that effect as well as a permanent injunction directing

Defendants to presume that Ashlee Henderson, Nicole Singley, Tonya Bush-Sawyer, Cathy Bannick, Sarah Janson, and Nikkole McKinley-Barrett are the parents of L.W.C.H., H.S., I.J.B.-S., H.N.B., Unborn Baby Doe, and G.R.M.B., respectively, and to so identify them on the children's birth certificates. In their facial challenge, plaintiffs also seek a like declaratory judgment and permanent injunction on behalf of all similarly situated same sex spouses and the children born to same sex marriages. They also seek attorney's fees and costs. (ECF No. 38 at 22–23).

3. A settlement conference is currently scheduled for March 25, 2016, at 9:00 a.m. (Dkt. No. 33). It would be in the interest of judicial resources and economy to vacate the settlement conference. State Defendant has an obligation to defend Indiana statutes as enacted by the peoples' duly elected representatives, and County Defendants have an obligation to act in accordance with those statutes. And for their part, Plaintiffs are not willing to accept any settlement offer short of the full relief they demand in their Second Amended Complaint. In short, because this is a constitutional challenge, it is not susceptible to resolution by compromise, which makes settlement unlikely.

4. What is more, the parties' cross-motions for summary judgment will be fully briefed by February 22, 2016, at which point the case will be ready for final judgment. Accordingly, given the advanced stage of the case, a settlement conference is unlikely to narrow the issues or shorten the litigation.

5. This Motion is made for good cause and made out of respect for the Court's time and resources.

WHEREFORE, parties, by counsel, respectfully request the Court vacate the settlement conference scheduled for March 11, 2016, at 9:00 a.m., and for all other just and proper relief.

Respectfully submitted,

GREGORY F. ZOELLER
Attorney General of Indiana

By: s/ Thomas M. Fisher
Thomas M. Fisher
Solicitor General

Lara Langeneckert
Deputy Attorney General

*Counsel for State Defendant
Dr. Jerome Adams, in his official capacity as
ISDH Commissioner*

s/Douglas J. Masson
Douglas J. Masson
Hoffman Luhman & Masson PC
200 Ferry Street, Suite C
P.O. Box 99
Lafayette, Indiana 47902
Phone: (765) 423-5404
Fax: (765) 742-6448
Email: djm@hlblaw.com

*Counsel for Tippecanoe County
Defendants*

s/Anne K. Ricchiuto
Anne K. Ricchiuto
Faegre Baker Daniels LLP
300 North Meridian Street Ste. 2700
Indianapolis, Indiana 46204
Phone: (317) 237-1420
Fax: (317) 237-1000
Email: anne.ricchiuto@FaegreBD.com

Counsel for Marion County Defendants

s/ Michael J. Wright

Michael J. Wright
Wright, Shagley & Lowery, P.C.
500 Ohio Street
P.O. Box 9849
Terre Haute, Indiana 47807-3517
Phone: (812) 232-3388
Fax: (812) 232-8817
Email: mwright@wslfirm.com

Counsel for Vigo County Defendants

s/ J. Grant Tucker

J. Grant Tucker
Jones Patterson & Tucker
P.O. Box 67
330 Franklin St.
Columbus, Indiana 47202-0067
Phone: (812) 376-8266
Fax: (812) 376-0981
Email: gtucker_2004@yahoo.com

Counsel for Bartholomew County Defendants

s/ Karen Celestino-Horseman

Karen Celestino-Horseman
Austin & Jones, P.C.
One N. Pennsylvania St. Ste. 220
Indianapolis, Indiana 46204
Phone: (317) 632-5633
Fax: (317) 630-1040
Email: Karen@kchorseman.com

s/ Raymond L. Faust

Raymond L. Faust
House Reynolds & Faust LLP
11711 North Pennsylvania St. Ste. 190
Carmel, Indiana 46032
Phone: (317) 564-8490
Fax: (317) 564-8499
Email: rfaust@housereynoldsfaust.com

s/ William R. Groth

William R. Groth
Fillenwarth Dennerline Groth & Towe,
LLP
429 E. Vermont St.
Indianapolis, Indiana 46202
Phone: (317) 353-9363
Fax: (317) 351-7232
Email: wgroth@fdgtlaborlaw.com

/s Richard A. Mann

Richard A. Mann
Megan L. Gehring
Richard A. Mann, P.C.
3750 Kentucky Ave.
Indianapolis, Indiana 46221
Phone: (317) 388-5600
Fax: (317) 388-5630
Email: RMann@mannlaw.us
Email: mgehring@mannlaw.us

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of January, 2016, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

Karen Celestino-Horseman
AUSTIN & JONES PC
karen@kchorseman.com

William R. Groth
FILLENWARTH DENNERLINE
GROTH & TOWE, LLP
wgroth@fdgtlaborlaw.com

Anne K. Ricchiuto
Anthony Scott Chinn
Anna M. Konradi
FAEGRE BAKER DANIELS LLP
anne.ricchiuto@FaegreBD.com
scott.chinn@FaegreBD.com
anna.konradi@FaegreBD.com

J. Grant Tucker
JONES PATTERSON & TUCKER
gtucker_2004@yahoo.com

Richard A. Mann
Megan L. Gehring
RICHARD A. MANN PC
rmann@mannlaw.us
mgehring@mannlaw.us

Raymond L. Faust
HOUSE REYNOLDS & FAUST LLP
rfaust@housereynoldsfaust.com

Douglas J. Masson
HOFFMAN, LUHMAN & MASSON, PC
djm@hlblaw.com

Michael J. Wright
WRIGHT, SHAGLEY & LOWERY, PC
mwright@wslfirm.com

s/ Thomas M. Fisher

Thomas M. Fisher
Solicitor General

Office of the Attorney General
Indiana Government Center South, Fifth Floor
302 West Washington Street
Indianapolis, Indiana 46204-2770
Telephone: (317) 232-6255
Fax: (317) 232-7979
Email: Tom.Fisher@atg.in.gov

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.)	

**PROPOSED ORDER GRANTING DEFENDANTS' MOTION
TO VACATE SETTLEMENT CONFERENCE**

All parties, by counsel, moved to vacate the settlement conference currently set for March 11, 2016, at 9:00 a.m.

And the Court, being duly advised, now FINDS and ORDERS that the Motion is GRANTED.

SO ORDERED this _____ day of _____, 2016.

Hon. Mark J. Dinsmore
Magistrate Judge
United States District Court
Southern District of Indiana

DISTRIBUTION:

All counsel of record