

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

ASHLEE and RUBY HENDERSON, a married couple and L.W.C.H., *et al.*,)
)

Plaintiffs,)

vs.)

DR. JEROME M. ADAMS, in his official capacity as Indiana State Health Commissioner, *et al.*,)
)

Defendants.)

No. 1:15-cv-220-TWP-MJD

NOELL and CRYSTAL ALLEN, a married couple, *et al.*,)
)

Plaintiffs,)

vs.)

DR. JEROME M. ADAMS, in his official capacity as Indiana State Health Commissioner, *et al.*,)
)

Defendants.)

**ANSWER OF MARION COUNTY DEFENDANTS TO 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 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 § 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 r L.J.P-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 Noell Allen and Jackie Phillips-Stackman ("Same-Sex Non-Birth Parent"), because they are female spouses respectively married to the Children's birth mothers.

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 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:

- a. a woman; and
- b. 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:
 - (i) man and the child's biological mother are or have been married to each other; and
 - (ii) 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(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, and such statutes speak for themselves. The Marion County Defendants deny Plaintiffs' characterization that the statutes "bastardize" children born to a biological mother who is married to another woman.

6. 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 6 to the extent they are vague, ambiguous, and call for legal conclusions.

7. By 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 7 because they call for legal conclusions.

8. Defendants' refusal to recognize Same-Sex Non-Birth Parents 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. denied. 135 S.Ct. 316, 190 L.Ed. 2d 142, (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 8.

JURISDICTION AND VENUE

9. 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 28 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.

10. Venue is proper in the Indianapolis Division of the Southern District of Indiana under 28 U.S.C. § 1391(b) because more than one defendant has a principal office in this district.

ANSWER: The Marion County Defendants admit the allegations of Paragraph 10.

Marion County

11. 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. Darren Klingler is the Administrator of Vital Records for the Marion County Health 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.

ANSWER: The Marion County Defendants admit the allegations of Paragraph 11.

12. Pursuant to I.C. § 16-20-1-17(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."

ANSWER: Paragraph 12 is a recitation of Indiana Code §§ 16-20-1-17(b) and -19, which statutes speak for themselves, and make no factual allegations to which a response is required from the Marion County Defendants.

13. Pursuant to I.C. § 16-20-2-3, the county Board of Health is charged with managing the County Health Department. 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."

ANSWER: Indiana Code §§ 16-20-2-3 and 16-22-8-34(a)(23) speak for themselves.

14. All of the Defendants affiliated with the Health and Hospital Corporation of Marion County 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: 42 U.S.C. § 1983 speaks for itself. The Marion County Defendants deny the remaining allegations of Paragraph 14 because they call for legal conclusions.

State of Indiana

15. 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: The Marion County Defendants are without knowledge or information sufficient to admit or deny the allegations in Paragraph 15.

All Defendants

16. 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 and 31-14-7-1 in a gender-exclusionary manner.

ANSWER: The Marion County Defendants admit that they have each been sued in their official capacities. They deny the remaining allegations of Paragraph 16.

FACTUAL ALLEGATIONS
NOELL AND CRYSTAL ALLEN MARION COUNTY

17. Noell and Crystal Allen were lawfully married in New York City, New York on November 22, 2013. At the time of their marriage, they had already been together 14 years. Currently, they have a five year old daughter, E.A. who was conceived through artificial insemination and delivered by Noell. Crystal subsequently adopted E.A. and both Noelle and Crystal are legal parents of E.A.

ANSWER: The Marion County Defendants are without knowledge or information sufficient to admit or deny the allegations in Paragraph 17.

18. Noell is an administrative law judge with the Indiana Civil Rights Commission and Crystal is a certified public accountant with the Department of Defense.

ANSWER: The Marion County Defendants are without knowledge or information sufficient to admit or deny the allegations in Paragraph 18.

19. The couple decided together that they wanted to add to their family, as Crystal also wanted to share in the joy of giving birth. She eventually became pregnant with the aid of intra-uterine insemination.

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

20. Their twins, Ashton David Allen and Alivea Deon Allen, were born prematurely on November 21, 2015 and died the same day.

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

21. On November 22, 2015, the day of their wedding anniversary and in the midst of their grief, the hospital informed them that despite being a lawfully married couple, Noell would not be listed on the twins' birth certificates.

ANSWER: The Marion County Defendants are without knowledge or information sufficient to admit or deny the allegations in Paragraph 21.

22. Noelle was later informed by the Indiana State Department of Health that the State was unwilling to add Noell to a birth certificate in the absence of a court order. The Allens have not yet received the death certificate for the twins.

ANSWER: The Marion County Defendants are without knowledge or information sufficient to admit or deny the allegations in Paragraph 22.

JACKIE AND LISA PHILLIPS STACKMAN MARION COUNTY

23. Jackie and Lisa Phillips-Stackman were married on October 5, 2015. Jackie is a homicide/robbery detective with the Indianapolis Metropolitan Police Department and Lisa is a hair stylist.

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

24. Together they decided to have a child with the assistance of in vitro fertilization. Jackie's egg was paired with the sperm of a donor and implanted in Lisa.

ANSWER: The Marion County Defendants are without knowledge or information sufficient to admit or deny the allegations in Paragraph 24.

25. On October 21, 2015, L.J.P-S was born with hydrocephalus, a brain condition that is caused when cerebrospinal fluid pools in the skull and cannot drain. She

only recently was discharged from the hospital and now faces an unknown future that, at a minimum, will likely require much medical care in her early years.

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

26. The MCHD refused to list Jackie on the birth certificate of L.J.P-S. Lisa received notice from the MCHD that L.J.P-S is a child born out-of-wedlock.

ANSWER: The Marion County Defendants admit that Indiana law and forms provided by the Indiana State Department of Health prohibit the Marion County Defendants from listing two parents of the same gender on a birth certificate absent a court order. The Marion County Defendants deny the remaining allegations in Paragraph 26.

27. Jackie's health insurance is paying for L.J.P-S, who is considered to be a stepchild. If anything should happen to Lisa, because Jackie is not legally recognized as the parent of L.J.P-S, not only does Jackie have no legal right to claim the child or make medical decisions for her, but L.J.P-S would no longer qualify for health care under Jackie's insurance.

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

INDIANA'S BIRTH REGISTRATION SYSTEM

28. The Indiana Birth Work Sheet was created by the State of Indiana as part of the Indiana Birth Registration System. The Indiana Birth Worksheet asks mothers if they are married and then asks, "Are you married to the father of your child?"

<http://www.state.in.us/isdh/23575.htm> (Page 4) (Last visited Dec. 7, 2015) As the husband is presumed to be the father of the birth mother's child, the birth mother can affirmatively

answer the question and the husband will be listed on the birth certificate as father of the child, even if he is not the actual biological father of the child.

ANSWER: The website cited by Plaintiffs in Paragraph 28 speaks for itself. The Marion County Defendants admit that the version of the birth worksheet currently available through the Indiana State Department of Health includes the questions described and quoted in Paragraph 28. The Marion County Defendants deny the remaining allegations of Paragraph 28 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

29. Plaintiffs incorporate by reference the allegations of paragraphs 1- 28.

ANSWER: The Marion County Defendants incorporate by reference their responses to the allegations in Paragraphs 1–28.

30. 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.

31. Indiana law expressly provides that a child born to a lawfully married man and woman is a child born in wedlock. I.C. § 31-9-2-15. A child born to a woman and a man who is not presumed to be the child's father is a child born out of wedlock. I.C. § 31-9-2-16. A man married to the birth mother is presumed to be the father of the child. I.C. § 31-14-7-1(1).

ANSWER: Indiana Code § 31-9-2-15, 31-9-2-16 and 31-14-7-1(1) speak for themselves and do not require a response from the Marion County Defendants.

32. "'Bastard child' and 'child born out of wedlock' are synonymous." *Curry v. Maynard*, 227 Ind. 46, 83 N.E.2d 782, 783 (Ind.1949).

ANSWER: *Curry v. Maynard*, 227 Ind. 46, 83 N.E.2d 782, 783 (Ind. 1949) speaks for itself.

33. "Bastard" is most commonly used as a slur. BLACK'S LAW DICTIONARY, 172 (9th ed. 2009).

An "adulterine bastard" is defined as follows:

A child born to a married woman whose husband is not the father of the child. The rebuttable presumption is generally that a child born of the marriage is the husband's child. A child born to a woman by means of artificial insemination may be termed an adulterine bastard, but most jurisdictions prohibit a husband who has consented to the artificial insemination from denying paternity and responsibility for the child.

BLACK'S LAW DICTIONARY 172 (9th Ed. 2009).

ANSWER: The entries for "bastard" and "adulterine bastard" in Black's Law Dictionary speak for themselves. The Marion County Defendants deny that the remaining allegations of Paragraph 33 as vague and ambiguous.

34. Indiana law does not recognize that children born to a woman married to another woman are children born in wedlock. Defendants' refusal to recognize that the Children were/will be born in wedlock following the same-sex marriages of the birth mothers infringes on protections offered by the Equal Protection Clause of the Fourteenth Amendment and treats the Children differently solely because both of their married parents are females and of the same-sex instead of the opposite-sex.

ANSWER: The Marion County Defendants deny the allegations set forth in Paragraph 34 of the Complaint because they are vague and ambiguous and call for legal conclusions.

35. Indiana law provides different protections for children born in and out of wedlock. For example, 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 biological father, adoptive father or the "man who is presumed to be the child's biological father" pursuant to I.C. § 31-14-7-1(1)).

ANSWER: Indiana Code § 31-14-7-1(1) speaks for itself. The Marion County Defendants deny the remaining allegations set forth in Paragraph 35 of the Complaint because they are vague and ambiguous and call for legal conclusions.

36. The Children's parental relationship with the Same-Sex Non- Birth Parents is not protected by the requirements of I.C. § 31-19-9-1, should something happen to the birth mothers.

ANSWER: Indiana Code § 31-19-9-1 speaks for itself. The Marion County Defendants deny the allegations set forth in Paragraph 36 of the Complaint because they are vague and ambiguous and call for legal conclusions.

37. By refusing to recognize the marriage of the plaintiff couples for purposes of determining the children were born in-wedlock, 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 37.

COUNT II

Indiana's Refusal to Grant The Presumption Of Parenthood to Noell Allen and Jackie Phillips-Stackman Violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution

38. Plaintiffs incorporate by reference the allegations of paragraphs 1-37.

ANSWER: The Marion County Defendants incorporate by reference their responses to the allegations in Paragraphs 1–37.

39. By refusing to recognize the Same-Sex Non-birth Parents as parents on the birth certificate, the defendants are refusing to legally recognize lawful families.

ANSWER: The Marion County Defendants deny the allegations in Paragraph 39 because they call for legal conclusions.

40. By refusing to grant the presumption of parenthood to the Same-Sex Non-Birth Parents, Defendants are depriving the Children of the numerous legal protections afforded by having a legally recognized 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,
- c. L.J.P-S' right to have a parental relationship with Jackie Phillips-Stackman that is protected by law.

ANSWER: Indiana Code §§ 31-16-6-1 and 29-1-2-1, and *Matter of S.T.*, 621 N.E.2d 371 (Ind. Ct. App.) speak for themselves. The Marion County Defendants deny the remaining allegations in Paragraph 40 because they call for legal conclusions.

41. By refusing to grant the presumption of parenthood to Same- Sex Non-Birth Parents upon the birth of the Children, Defendants are depriving the Same-Sex Non-Birth Parents 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 41 because they call for legal conclusions.

42. Defendants' refusal to recognize the Plaintiffs' marriages for purposes of presuming that the Same-Sex Non-Birth Parents of the Children are the legally presumed parents of the Children infringes on protections offered by the Equal Protection Clause of the Fourteenth Amendment and treats the Children differently because their married parents are female and of the same-sex.

ANSWER: The Marion County Defendants deny the allegations in Paragraph 42 because they call for legal conclusions.

43. By refusing to presume parenthood for the Same-Sex Non- Birth Parents of the Children, 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 43 because they call for legal conclusions.

44. 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 were also artificially inseminated is gender-based discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment.

ANSWER: The Marion County Defendants deny the allegations in Paragraph 44 because they call for legal conclusions.

COUNT III

**Indiana's Refusal to Recognize that
L.J.P-S and Ashton and Alivea were Born in Wedlock and to
Grant the Presumption of Parenthood to
Noell Allen and Jackie Phillips-Stackman
Violates the Due Process Clause of the Fourteenth Amendment to the United States
Constitution**

45. Plaintiffs incorporate by reference the allegations of paragraphs 1- 44.

ANSWER: The Marion County Defendants incorporate by reference their responses to the allegations in Paragraphs 1–44.

46. 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 46 because they call for legal conclusions.

47. As the spouses of the birth mothers, the Same-Sex Non- Birth Parents have the fundamental right to be recognized as parents and to have 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 but who are presumed to be the parent of the child.

ANSWER: The Marion County Defendants deny the allegations in Paragraph 47 because they call for legal conclusions.

48. The Same-Sex Non-Birth Parents have the right to determine how the remains of their children shall be treated and handled upon the death of the child and have the right to address any issues which might arise regarding the child's estate.

ANSWER: The Marion County Defendants deny the allegations in Paragraph 48 because they call for legal conclusions.

49. 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) (citation omitted).

ANSWER: *Berman v. Young*, 291 F.3d 976 (7th Cir. 2002) speaks for itself. The Marion County Defendants deny the remaining allegations in Paragraph 49 because they call for legal conclusions.

50. 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 50 because they call for legal conclusions.

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

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

52. The failure of Indiana's laws to presume parenthood for the Same-Sex Non-Birth Parents 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 52 because they call for legal conclusions.

53. Defendants' refusal to recognize the marriages of the plaintiff couples for purposes of determining whether the Children were born in or out of wedlock and their refusal to presume parenthood for Same-Sex Non-Birth Parents 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.

ANSWER: The Marion County Defendants deny the allegations in Paragraph 53 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

54. Plaintiffs incorporate by reference the allegations of paragraphs 1- 53.

ANSWER: The Marion County Defendants incorporate by reference their responses to the allegations in Paragraphs 1–53.

55. 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 the refusal to recognize them as parents and loving, lawfully married families, 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 55.

56. A favorable decision enjoining Defendants from further constitutional violations, and mandating them to recognize the marriage and presumed parenthood of Noell and Crystal Allen and Jackie and Lisa Phillips-Stackman would redress and prevent the irreparable injuries to all 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 56.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

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

c. a permanent injunction enjoining Defendants to recognize L.J.P-S and Ashton and Alivea Allen as children born in wedlock;

d. Enter a permanent injunction enjoining Defendants to identify Noell Allen as a parent of Ashton and Alivea Allen and Jackie Phillips-Stackman as a parent of L.J.P-S and to so reflect on the birth certificates;

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: February 8, 2016

/s/ Anna M. Konradi
A. Scott Chinn (No. 17903-49)
Anne K. Ricchiuto (No. 25760-49)
Anna M. Konradi (No. 30714-06)
FAEGRE BAKER DANIELS LLP
300 North Meridian Street, Suite 2700
Indianapolis, Indiana 46204
Telephone: 317.237.0300
Facsimile: 317.237.1000
Email: scott.chinn@faegrebd.com
Email: anne.ricchiuto@faegrebd.com
E-mail:anna.konradi@faegrebd.com

CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2016, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the parties of record by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Anna Konradi