

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, *et al.*,

Plaintiffs, )

vs. )

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

KRISTINA BOX, in her official capacity )  
as Indiana State Health Commissioner, )

Defendant. )

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

vs. )

KRISTINA BOX, in her official capacity )  
as Indiana State Health Commissioner )

Defendant. )

**JOINT STATEMENT OF POSITION AND**  
**PROPOSED AGREED MODIFICATION OF JUDGMENT**

The Court on February 12, 2020, issued its Entry Following  
Mandate, ECF No. 150, requiring the parties to file “a statement of position  
as to what action the court should take in the case.” While the defendant  
reserves the right to file a petition for writ of certiorari, the parties agree

that judgment and injunction should be modified in accordance with the Seventh Circuit's decision.

In accordance with Local Rule 16-2, the plaintiffs, Ashlee and Ruby Henderson, *et al*, and defendant, Kristina Box in her official capacity as Indiana State Health Commissioner, by counsel, hereby submit the following proposed modification of the Court's judgment of December 30, 2016:

For the reasons set forth in its June 30, 2016 opinion, 209 F. Supp. 3d 1059, as clarified in its December 30, 2016 order, 2016 WL 7492478, and pursuant to the January 17, 2020, opinion of the Seventh Circuit Court of Appeals in *Henderson v. Box*, 947 F.3d 482, affirming in part and vacating in part, the Court modifies the portion of its Entry on Cross-Motions for Summary Judgment, ECF. No. 116, of June 30, 2016, extending from the second full paragraph on page 30 through the last full paragraph on page 32 as follows:

For the reasons set forth above, the Court **DECLARES** that Indiana Code §§ 31-9-2-15, 31-9-2-16, and 31-14-7-1(1) violate the Equal Protection Clause and Due Process Clause of the Fourteenth Amendment to the United States Constitution insofar as those statutes, either individually or in combination, prevent the presumption of parenthood from being granted to female, same-sex spouses of birth mothers.

The State Defendant and its officers, agents, servants, employees, and attorneys, and those acting in concert with them, including political subdivisions of the State of Indiana, are **ENJOINED** from enforcing Indiana Code §§ 31-9-2-15, 31-9-2-16, and 31-14-7-1(1) in a manner that prevents the presumption of parenthood to be granted to female, same-sex spouses of birth mothers.

The State Defendant and its officers, agents, servants, employees, and attorneys, and those acting in concert with them, including political subdivisions of the State of Indiana, are **ENJOINED** to recognize children born to a birth mother who is legally married to a same-sex spouse as a child born in wedlock.

The State Defendant and its officers, agents, servants, employees, and attorneys, and those acting in concert with them, including political subdivisions of the State of Indiana, are **ENJOINED** to recognize the Plaintiff Children in this matter as a child born in wedlock.

The State Defendant and its officers, agents, servants, employees, and attorneys, and those acting in concert with them, including political subdivisions of the State of Indiana, are **ENJOINED** to recognize the Plaintiff Spouses in this matter as a parent to their respective Plaintiff Child and to identify both Plaintiff Spouses as parents on their respective Plaintiff Child's birth certificate.

The Court notes that the proper treatment of children born during male-male marriages is expressly left open for resolution by the Indiana General Assembly or in some future lawsuit.

Final judgment will issue under separate order. A separate Permanent Injunction will also be issued as required by Rule 65(d) of the Federal Rules of Civil Procedure.

The Plaintiffs who have prevailed in securing relief may file a petition to recover attorneys' fees and costs.

The Court also modifies the first bulleted paragraph on page 1 of its June 30, 2016, Permanent Injunction, ECF No. 117, to read:

- **ENJOINED** from enforcing Indiana Code §§ 31-9-2-15, 31-9-2-16, and 31-14-7-1(1) in a manner that prevents the presumption of parenthood to be granted to female, same-sex spouses of birth mothers as to any child born during their marriage;

Finally, the Court modifies the first two paragraphs on page 3 of its June 30, 2016, Final Judgment, ECF No. 118, to read as follows:

It is **DECLARED** that Indiana Code §§ 31-9-2-15, 31-9-2-16, and 31-14-7-1(1) violate the Equal Protection Clause and Due Process Clause of the Fourteenth Amendment to the United States Constitution insofar as those statutes, either individually or in combination, prevent the presumption of parenthood from being granted to female, same-sex spouses of birth mothers.

The State Defendant and its officers, agents, servants, employees, and attorneys, including political subdivisions of the State of Indiana, and those acting in concert with them are **ENJOINED** from enforcing Indiana Code §§ 31-9-2-15, 31-9-2-16, and 31-14-7-1(1) in a manner that prevents the presumption of parenthood to be granted to female, same-sex spouses of birth mothers as to any child born during their marriage.

Respectfully submitted,

FOR THE PLAINTIFFS

/s/ Karen Celestino-Horseman  
Karen Celestino-Horseman  
Of Counsel, Austin & Jones, P.C.  
22 E. Washington St.  
Suite 620  
Indianapolis, IN 46204  
Tel: (317) 632-5633  
Fax: (317) 630-1040  
E-mail: [karen@kchorseman.com](mailto:karen@kchorseman.com)

/s/ William R. Groth  
William R. Groth  
Macey Swanson LLP  
1445 N. Pennsylvania St.  
Suite 401  
Indianapolis, IN 46204  
Tel: (317) 637-2345  
E-mail: [wgroth@fdgtlaborlaw.com](mailto:wgroth@fdgtlaborlaw.com)

/s/ Raymond L. Faust  
Raymond L. Faust  
Norris Chopling Schroeder LLP  
101 W. Ohio St.  
Ninth Floor  
Indianapolis, IN 46204  
Tel: (317) 269-9330  
Fax: (317) 269-9338

/s/ Richard A. Mann  
Richard A. Mann  
Richard A. Mann, P.C.  
3750 Kentucky Ave.  
Indianapolis, IN 46221  
Tel: (317) 388-5600  
Fax: (317) 388-5630  
E-mail: [RMann@mannlaw.us](mailto:RMann@mannlaw.us)

Email: [rfaust@ncs-law.com](mailto:rfaust@ncs-law.com)

/s/ Megan Gehring  
Megan Gehring  
Richard A. Mann, P.C.  
3750 Kentucky Ave.  
Indianapolis, IN 46221  
Tel: (317) 388-5600  
Fax: (317) 388-5630  
E-mail: [MGehring@mannlaw.us](mailto:MGehring@mannlaw.us)

FOR THE STATE OF INDIANA

/s/ Thomas M. Fisher

Solicitor General

Office of the Attorney General

IGC South, Fifth Floor

302 W. Washington Street

Indianapolis, IN 46204

Phone: (317) 232-6255

Fax: (317) 232-7979

Email: Tom.Fisher@arg.in.gov