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

PLAINTIFFS' BRIEF IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

Karen Celestino-Horseman
Of Counsel, Austin & Jones, P.C.
One N. Pennsylvania St.
Suite 220
Indianapolis, IN 46204
Tel: (317) 632-5633
Fax: (317) 630-1040
E-mail: karen@kchorseman.com

William R. Groth
Fillenwarth Dennerline Groth & Towe, LLP
429 E. Vermont St.
Suite 200
Indianapolis, IN 46202
Tel: (317) 353-9363
Fax: (317) 351-7232
E-mail: wgroth@fdgtlaborlaw.com

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

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

U.S. Constitution

Indiana Code

FEDERAL RULES OF CIVIL PROCEDURE

Secondary Authority

PLAINTIFF'S BRIEF IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

Pursuant to Fed.R.Civ.Pro. 56, 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, a married couple, and H.S. by his parent and next friend, Jennifer Singley; Elizabeth and Tonya Bush-Sawyer, a married couple, and I.J.B-S by his mother and next friend Elizabeth Bush-Sawyer; Lyndsey and Cathy Bannick, a married couple, and H.B. by his parent and next friend, Lyndsey Bannick; Calle and Sarah Janson, a married couple, 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 state as follows in support of their motion for summary judgment:

STATEMENT OF MATERIAL FACTS

Ashlee and Ruby Henderson, Nicole and Jennifer Singley, Elizabeth and Tonya Bush-Sawyer, Lyndsey and Cathy Bannick, Calle and Sarah Janson and Nikkole McKinley-Barrett and Donnica Barrett are lawfully married same-sex couples who conceived children with the aid of a third-party sperm donor. L.W.C.H., H.S., I.J.B-S, H.B., G.R.M.B. were children born to these couples as of the date of filing of Plaintiffs' complaint. On December 1, 2015, F.G.J. was born to Calle and Sarah Janson.[1]

[1] A Motion to Substitute F.G.J. for Unborn Baby Doe will be filed.

Following the birth of their respective children and while still at the hospital, Ruby, Jennifer, Elizabeth, Lyndsey, Calle and Donnica ("Birth Mothers") were each asked to either complete a Certificate of Live Birth Worksheet ("Worksheet") or were asked to provide information to hospital personnel who then filled-out the Worksheet. (Aff. of Captain Nicole and Jennifer Singley, ¶ 7; Aff. of Cathy & Lyndsey Bannick, ¶2;). The Worksheet seeks medical and personal information, including information regarding parentage. (Ex. D) (http://www.in.gov/isdh/23575.htm) (Last visited Nov. 28, 2015). As regards parentage, the form specifically inquires, "Are you married to the father of your child?" (Ex. 4, p. 4). If the birth mother answers yes, then she is asked to provide information about the father. *Id.* There is no regulation or law requiring paternity testing in such cases. In the present case, none of the Birth Mothers answered affirmatively.

The birth mother is also asked, "If not married, has a Paternity Affidavit been completed for this child?" (Ex. 4, p. 5). If the mother answers "no" she is then directed to answering the remaining questions, none of which are about the father. (Ex. 4, p.p. 6-12). Again, none of the birth mothers answered this question affirmatively.

Once the hospital gathers information from the birth mother, it is entered into a data system maintained by the State. (Ex. 1). The local health department accepts the information and it then passes onto the Indiana State Health Department. *Id.*

Each of these couples made the decision to have a child together. (Ex. E, Henderson Aff., ¶4; Ex. F, Singley Aff., ¶5; Ex. G, Barrett, ¶3; Ex. H, Bush-Sawyer Aff., ¶4; Ex. I, Janson Aff., ¶4; Ex. J, Bannick Aff., ¶4). Even though they were married to the birth mothers at the time the children were born, Ashlee, Captain Singley, Cathy, Elizabeth, Sarah and Nikkole ("Spouses") were not listed on the birth certificate as the parent of their child. Both the Bannicks and the Singleys received a notice from the Bartholomew ("BCHD") and Marion County Health Departments ("MCHD" respectively that informed them as follows:

> INDIANA LAW REQUIRES THAT A CHILD BORN OUT-OF-WEDLOCK BE RECORDED UNDER THE NAME OF THE MOTHER.
>
> THE FATHER'S NAME MAY BE ADDED TO THE RECORD IN ONE OF THREE WAYS:
>
> 1) THROUGH AN ORDER OF THE COURT . . .
>
> 2) BY MARRIAGE TO THE NATURAL FATHER . . .
>
> 3) BY VOLUNTARY PATERNITY . . .

(Ex. F, Singley Aff., Attach. 2; Ex. J, Bannick Aff., Attach. 4).

Elizabeth Bush-Sawyer completed the Worksheet, filling in her spouse's information to all the questions that asked about the father. (Ex. H, Bush-Sawyer Aff., ¶6, Attach. 1). After returning home from the hospital in January 2014 with I.J.B-S, the couple received a birth confirmation letter that listed both women as the parents of I.J.B-S and which also stated that his name was a hyphenated version of both of their last names. (Ex. H, Bush-Sawyer Aff., ¶7, Attach. 2). In either March 2014, Elizabeth went to

the MCHD to pick-up a copy of her child's birth certificate. (Ex. H, Bush-Sawyer Aff., ¶8). At that time she was told that there was something wrong and she would need to return the next day. *Id.* When Elizabeth returned, she was presented with a birth certificate that listed only her as the parent of the couple's child. (Ex. H, Bush-Sawyer Aff., ¶9, Attach. 3). Further, the child's name had been changed from I.J.B-S to I.J.B. *Id.* Shortly thereafter, Elizabeth and Tonya received a new social security card for I.J.B-S and which was in the name of I.J.B. *Id.*

STATEMENT OF ISSUES

1. Whether I.C. § 31-14-7-1(1), which presumes a man to be a child's biological father but which does not extend that same presumption of parenthood to the lawful female spouse of an artificially-inseminated birth mother, violates the Equal Protection and/or Due Process Clauses of the Fourteenth Amendment as applied to the Plaintiffs.

2. Whether I.C. § 31-9-2-15 and -16, which define a "child born in wedlock" as a child born to a woman and a man presumed to be the child's father under I.C. § 31-14-7-1(1), but which deny this designation to a child conceived by artificial insemination and born into a marriage between two female spouses, violate the Equal Protection and/or Due Process Clauses of the Fourteenth Amendment as applied to the Plaintiffs.

ARGUMENT

" We jumped through all these hoops to have our child, making the decision together, committing ourselves to each other and our family. We used our joint resources and were together in the delivery room. Then the State of Indiana tells us that our family is not really a family and that if we want to be legally recognized as a family, we must incur the extra cost of Cathy adopting our own child. If the State of Indiana has to recognize us as a legally married couple then it should also have to recognize our parental rights regarding the children born to our marriage."

-- Lyndsey Bannick, Ex. J, Bannick Aff., ¶6

I INDIANA'S REFUSAL TO GRANT PARENTHOOD TO FEMALE SPOUSES OF ARTIFICALLY-INSEMINATED BIRTH MOTHERS WHILE GRANTING PARENTHOOD TO MALE SPOUSES OF ARTIFICALLY-INSEMINATED BIRTH MOTHERS IS A DENIAL OF PLAINTIFFS' RIGHT TO EQUAL PROTECTION

When the U.S. Supreme Court upheld the recognition of same-sex marriage, it specifically noted:

> Indeed, while the States are in general free to vary the benefits they confer on all married couples, they have throughout our history made marriage the basis for an expanding list of governmental rights, benefits, and responsibilities. These aspects of marital status include: . . . birth and death certificates . . . child custody, support and visitation rules.

Obergefell v. Hodges, 135 S. Ct. 2582, 2601 (2015).

Indiana is required to recognize same-sex marriage. *Baskin v. Bogan,* 766 F.3d 648 (7th Cir. 2014), *cert. denied* 135 S. Ct. 316 (2014) (declaring unconstitutional Indiana statute that prohibited recognition of same-sex marriages). In the district court opinion that was affirmed by the Seventh Circuit Court of Appeals, Judge Young permanently enjoined the Indiana Attorney General (who is defending in this action) along with

other state actors from denying "married same-sex couples any of the rights, benefits, privileges, obligations, responsibilities, and immunities that accompany marriage in Indiana." *Baskin v. Bogan,* 12 F. Supp. 2d 1144, 1165 (S. D. Ind. 2014). Despite *Baskin* and despite the recognition by the U.S. Supreme Court that same sex couples are entitled to be recognized on birth certificates, Indiana same-sex married couples and their children continue to be the subject of discrimination due to the State's refusal to list same sex couples on the birth certificates of children born to the couples.

When a child is born to a married man and woman as a result of the wife being artificially inseminated by a man other than her husband, the Defendants allow the couple to engage in a legal fiction that presumes the husband is the child's legal parent even though the child's family, medical provider and others know that the husband is not the biological father of the child. *See,* I.C. § 31-14-7-1(1). This statute provides:

> Sec. 1. 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;

I.C. § 31-14-7-1(1).

"A child conceived through artificial insemination, with the consent of both parties, is correctly classified as a child of the marriage." *Levin v. Levin*, 645 N.E.2d 601, 605 (Ind. 1994); *Engelking v. Engelking,* 982 N.E.2d 326, 328 (Ind. Ct. App. 2013) (where husband knew wife was artificially inseminated both presumed to be legal parents with obligation to support).[2] In *Levin,* the child had been conceived by a married couple with the aid of artificial insemination and a third party sperm donor. The issue before the *Levin* court was whether "the Child [was] a Child of the Marriage Under the Dissolution Act." *Levin*, 645 N.E.2d at 605. In holding that the child was indeed a child of the marriage, the *Levin* court specifically relied upon the I.C. 31-1-11.5-2(c) which defined "Child" as meaning "a child or children of both parties to the marriage and includes children born out of wedlock to the parties as well as children born or adopted during the marriage of the parties.'" *Levin*, 645 N.E.2d at 605 (Ind. 1994) (citing I.C. 31-1-11.5-2(c), repealed 1997 and replaced by I.C. 31-9-2-13)). Thus it has been settled law for the last two decades that a child born through artificial insemination to a married couple who had knowledge and consented to the process is a child born to that marriage.

However, despite this public policy and the settled law that a child born by artificial insemination is a child born of the marriage, if the

[2] The Indiana legislature has never addressed parental obligations and rights when a child is conceived through assisted means such as artificial insemination. By failing to grapple with these issues, the Indiana legislature has left to the courts the delicate task of sorting out the complicated web of rights and duties that arise when artificial insemination results in a child born to a married couple.

birth mother is married to a woman at the time the child is born, Defendants refuse to apply the same presumption that the same sex spouse is the parent of the newborn. Thus, the presumption of full parental rights and responsibilities for men married to women artificially inseminated by a third party is not granted to otherwise similarly situated female spouses. In other words, for purposes of divorce, the child of same sex parents can be a child of the marriage but for purposes of joining a family together at the time of birth, the child is not considered to be a child of the marriage because it was not born to a man and a woman as expressly required by I.C. § 31-14-7-1(1). As the Plaintiffs learned, even though the married same-sex couple jointly decided to have a child together and even though the same-sex spouse was married to the birth mother at the time the child was born, the State of Indiana requires the same-sex spouse to adopt her child before the same-sex spouse will have any recognized legal parental rights or responsibilities, so long as the couple remains together as a same sex couple.

In essence this creates a contradiction where a non-birth mother female spouse is currently not listed on the birth certificate and is deprived of the rights and responsibilities of a parent during the marriage; however, based on the current case law in Indiana the wife who is not the birth mother could be awarded custody and/or be ordered to pay child support in the event of a divorce per cases such as *Levin* and

Engelking.[3]

Additionally, when a child is born to a married man and woman, regardless of how the child is conceived, the child is legally recognized as a child born in wedlock. I.C. § 31-9-2-15 provides:

> "Child born in wedlock", for purposes of IC 31-19-9, 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.

I.C. § 31-9-2-16 provides:

> "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).

Because the Plaintiffs' marriages do not consist of a man and woman, Defendants claim that the Plaintiff Children were born out of wedlock. *See,* Ex. F, Singley Aff., ¶9, Attach. 2; Ex. J, Bannick Aff., ¶2 Attach. 4. But the discrimination does not stop here.

The issue of how same-sex parents are to be recognized is one with

---

[3] Under *Baskin*, Indiana was required to start recognizing same sex marriage in October 2014, over one year ago. As a lawyer for the Tippecanoe Health Department observed, the State needs to consider changing its system to catch-up with the recognition of same sex marriage. "The administration hasn't caught up with the times" so "[t]he system isn't set-up to accommodate same-sex marriages." http://www.huffingtonpost.com/2015/02/14/ashlee-ruby-henderson-lawsuit_n_6681426.html (Last visited Dec. 3, 2015).

which the Indiana state courts have been grappling since before Indiana was required to recognize same-sex marriage. Over 10 years ago, the Indiana Court of Appeals recognized that "no [legitimate] reason exists to provide the children born to lesbian parents through the use of reproductive technology with less security and protection than that given to children born to heterosexual parents through artificial insemination." *In re A.B.,* 818 N.E.2d 126, 131 (Ind. Ct. App. 2004) (former domestic same-sex partner sought to be named co-parent following split from birth mother). In *In re A.B.,* the issue was whether the trial court had properly dismissed the petition of the former domestic partner seeking parental rights over a child conceived through artificial insemination following a joint decision by her and the birth mother. Interestingly, the appellate decision was vacated, the trial court decision was reversed and the case was remanded back to the trial court which the Supreme Court held had the discretion to award parental rights, if it thought it was in the child's best interests. *King v. S.B.,* 837 N.E.2d 965, 967 (Ind. 2005).[4]

---

[4] In his dissent, Justice Dickson argued against allowing trial courts to grant parental rights to same-sex domestic partners because "not only is Indiana public opinion deeply fractured, but also a significant majority of Indiana citizens favor a public policy that does not promote same-sex families." *King,* 837 N.E.2d at 971. Recent studies show that a majority of persons now support same sex marriage. *See,* http://www.pewforum.org/2015/07/29/graphics-slideshow-changing-attitudes-on-gay-marriage/ (Last visited Nov. 24, 2015) ("in 2001, Americans opposed same-sex marriage by a 57% to 35% margin" while in 2015 "a majority of Americans (55%) support same-sex marriage, compared with 39% who oppose it"); http://www.indystar.com/story/news/politics/2013/11/13/poll-majority-of-hoosiers-oppose-same-sex-marriage-amendment/3523171/ (Last visited Nov. 24, 2015) (in 2013,

A year before same-sex marriage was ordered to be recognized, the Indiana courts once again expressed their dissatisfaction in the lack of recognition for same-sex parents. In *In re A.C.,* 1 N.E.3d 685 (Ind. Ct. App. 2013) , the couple decided to have a child with the aid of artificial insemination. The family lived together for over two years after the child was born before the couple split-up. *Id.* at 687. The non-birth parent filed a petition seeking visitation and joint custody that was denied by the trial court. The appellate court noted:

> Since *King*, the status of the law surrounding a lesbian partner's right, if any, to enjoy the rights of a legal parent of a child born to her partner under the circumstances presented here remains uncertain. When this court decided *In re A.B.*, we solicited guidance from the General Assembly on this issue. In the years that have passed since then, none has been forthcoming. The existing statutory framework does not contemplate the increased use of assisted reproductive technologies. Accordingly, it provides no guidance in situations where an intended parent lacks a genetic connection to the child. That deficiency is exacerbated by the growing recognition of less traditional family structures. Our system of government entrusts the General Assembly, not the courts, to fashion a framework for deciding matters as tethered to social mores and sensibilities as this subject is. We feel the vacuum of such guidance even more acutely now than we did eight years ago, when *King* was decided. Indeed, what began as a trickle is rapidly becoming a torrent, and the number of children whose lives are impacted by rules that have yet to be written only increases with the passage of time. They, and we, would welcome a legislative roadmap to help navigate the novel legal landscape in which we have arrived.

Id. at 692. In *In re A.C.* the court specifically cited the fact that the same-sex partners were not and could not be legally recognized as

---

48% of Hoosiers supported legalization of same-sex marriage while 46% said they opposed same sex marriage).

married in Indiana as the reason it was unable to grant the same parental rights as are granted to men who are presumed to be the parent of a child born to the marriage despite not being the biological father. *In re A.C.*, 1 N.E.3d at 692. However, this reasoning no longer applies as same-sex marriage is now recognized in Indiana.

Because the State is refusing to grant the same parental rights to female spouses of artificially-inseminated birth mothers and the Child Plaintiffs as it is granting to male spouses of artificially-inseminated birth mothers and their children, Defendants are infringing upon Plaintiffs' rights to Equal Protection as guaranteed by the Fourteenth Amendment to the United States Constitution.

A. STANDARD OF REVIEW

1. Summary Judgment

Summary judgment may be granted only if there are no disputed genuine issues of material fact. A court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from the facts. *Payne v. Pauley,* 337 F.3d 767, 770 (7th Cir. 2003) (citing *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 255 (1986)). The court's only task on summary judgment is to decide, based on the evidence of record, whether there is any material dispute of fact that requires a trial, construing the record in the light most favorable to the nonmoving party. *Id.* (quoting *Anderson,* 477 U.S. at 248); *Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corp.,* 475 U.S. 574, 587 (1986). However, a

party opposing summary judgment may not rest on the pleadings, but must affirmatively demonstrate that there is a genuine issue of material fact for trial. *Id.* (citing *Celotex Corp. v. Catrett,* 477 U.S. 317, 324 (1986)). A material fact is one that under applicable substantive law "might affect the outcome of the suit." *Anderson,* 477 U.S. at 248. Fed. R. Civ. P. 56 (c) mandates the entry of summary judgment against a party "who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and in which that party will bear the burden of proof at trial." *Celotex,* 477 U.S. at 323.

2. Under An Equal Protection Analysis, The Standard Of Review Is Heightened Scrutiny

Because the plain language of Indiana's presumption-of-parenthood statute is a gender-exclusive classification which affords a right and benefit that is available only to males but not to females, this Court is required to apply an elevated level of scrutiny known as intermediate scrutiny. *Hayden v. Greensburg Cmty. Sch. Corp.,* 743 F.3d 569, 577 (7th Cir. 2014) ("Gender is a quasi-suspect class that triggers intermediate scrutiny in the equal protection context"); *see also Morales-Santana v. Lynch,* 792 F.3d 256, 263-64 (2d Cir. 2015) ("We apply intermediate, "heightened" scrutiny to laws that discriminate on the basis of gender"). Additionally, because the presumption-of-parenthood statute by its own terms only applies to opposite-sex married couples, the statute also denies equal protection to females with a same-sex

orientation who are in a marital relationship. The Seventh, Second and Ninth Circuits have applied intermediate scrutiny to a statute, which on its face denies equal protection on the basis of sexual orientation. *Baskin,* 766 F.3d at 671; *Windsor v. United States,* 699 F.3d 169, 181-82 (2d Cir. 2012); *SmithKline Beecham Corp. v. Abbott Labs.,* 740 F.3d 471, 481 (9th Cir. 2014. The Supreme Court's subsequent decision in *Obergefell* gives added support to that view (same-sex couples have fundamental right to marry under Due Process and Equal Protection Clauses). Further, heightened scrutiny is applied where, as here, a child is cast as illegitimate by a governmental actor. *See, Matthews v. Lucas,* 427 U.S. 495, 505 (1976) ("visiting condemnation upon the child to express society's disapproval of the parents' liasons 'is illogical and unjust'" and triggers heightened scrutiny); *Pickett v. Brown,* 462 U.S. 1, 7-8 (1983) ("we have subjected statutory classifications based on illegitimacy to a heightened level of scrutiny").

Under the heightened standard of review, a challenged statute can survive intermediate scrutiny only if the Defendants can show that it "serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives." *Baskin*, 766 F.3d at 656 (citing *United States v. Virginia, supra,* 518 U.S. 515, 524 (1996), quoting *Mississippi University for Women v. Hogan,* 458 U.S. 718, 724 (1982)). These justifications must be genuine, not hypothesized or invented *post hoc* in response to litigation,

U.S. v. Virginia, 518 U.S. 515, 533 (1996), and they must be "exceedingly persuasive." *Varner v. Illinois State Univ.*, 226 F.3d 927, 934 (7th Cir. 2000) (quoting *U.S. v. Virginia,* 518 U.S. at 531). Under intermediate scrutiny, there are primarily two questions to be resolved:

> [1] Does the discrimination, even if based on an immutable characteristic, nevertheless confer an important offsetting benefit on society as a whole? Age is an immutable characteristic, but a rule prohibiting persons over 70 to pilot airliners might reasonably be thought to confer an essential benefit in the form of improved airline safety.
>
> [2] Though it does confer an offsetting benefit, is the discriminatory policy overinclusive because the benefit it confers on society could be achieved in a way less harmful to the discriminated-against group, or underinclusive because the government's purported rationale for the policy implies that it should equally apply to other groups as well?

Baskin, 766 F.3d at 655.

Because these statutes are unconstitutional, Defendants should be permanently enjoined from refusing to grant a presumption of parenthood to same-sex spouses of the Plaintiff birth mothers and from casting these Plaintiff Children as children born out-of-wedlock.

B. THE CHALLENGED STATUTES ARE CAUSING HARM TO PLAINTIFFS

The statutes at issue injure the Plaintiff Families, Spouses and Children in two ways. I.C. § 31-14-7-1(1) denies these children the same security and protections as those granted children born to a married man and woman where the man is not biologically related to the child. I.C. §§ 31-9-2-15 and -16 compound the insult and classify the Plaintiff Children as being born out of wedlock

Because of I.C. § 31-14-7-1(1), Defendants refuse to list the Spouses of Plaintiff birth mothers on the birth certificates of the Plaintiff Children. Birth certificates are a legal document that set forth a person's name, date of birth, sex and the name of his/her parents.

> Identification on the child's birth certificate is the basic currency by which parents can freely exercise these protected parental rights and responsibilities. It is also the only common governmentally-conferred, uniformly-recognized, readily-accepted record that establishes identity, parentage, and citizenship, and it is required in an array of legal contexts. Obtaining a birth certificate that accurately identifies both parents of a child born using anonymous donor insemination or adopted by those parents is vitally important for multiple purposes. The birth certificate can be critical to registering the child in school; determining the parents' (and child's) right to make medical decisions at critical moments; obtaining a social security card for the child; obtaining social security survivor benefits for the child in the event of a parent's death; establishing a legal parent-child relationship for inheritance purposes in the event of a parent's death; claiming the child as a dependent on the parent's insurance plan; claiming the child as a dependent for purposes of federal income taxes; and obtaining a passport for the child and traveling internationally. The inability to obtain an accurate birth certificate saddles the child with the life-long disability of a government identity document that does not reflect the child's parentage and burdens the ability of the child's parents to exercise their parental rights and responsibilities.

Henry v. Himes, 14 F.Supp. 3d 1036, 1050 (S.D. Oh. 2014), *rev'd sub nom. Deboer v. Snyder,* 772 F.3d 388 (6th Cir. 2014), *rev'd sub nom. Obergefell v. Hodges,* 135 S. Ct. 2584 (2015). The Plaintiffs in the present case do not get to claim any of these advantages because both spouses of the couple to which the child is born are not named on the birth certificate.

It is not as if Indiana does not know the importance of the birth certificate. Before a birth mother completes the Worksheet, she is advised:

> The information you provide below will be used to create your child's birth certificate. The birth certificate is a document that will be used for legal purposes to prove your child's age, citizenship and parentage. This document will be used by your child throughout his/her life. State laws provide protection against the unauthorized release of identifying information from the birth certificates to ensure the confidentiality of the parents and their child.

Id. The birth certificate serves as a child's written introduction to the world and remains with that child throughout his/her life. The rest of the world shares Indiana's view on the importance of having an accurate birth certificate. *See, e.g.,* United Nations Children's Fund, *Birth Registration Right from the Start,* Innocenti Digest No. 9, at 2 (Mar. 2002) (accurate birth certificate for children is a "fundamental human right") (http://www.unicef-irc.org/publications/series/1/) (Last visited Nov. 28, 2015).

I.C. § 31-14-7-1(1) denies the Plaintiff Children the security of knowing that they have two parents obligated by law to provide for their care, support and education in the event of a dissolution of their parent's marriage. A husband presumed to be the legal parent of a child holds the right to make decisions regarding his child's medical and emotional healthcare, I.C. § 31-17-2-17; parenting time or custodial rights in the event of divorce, I.C. § 31-17-4-1; and the fundamental due process right to make decisions regarding the care, custody and control of the child

born to the marriage, regardless of whether the husband is biologically related to the child. *See, Troxel v. Granville,* 530 U.S. 57, 75 (2000) (parents have fundamental right to make decisions concerning care, custody, control and welfare of their children); *Doe v. Heck,* 327 F.3d 492, 517-18 (7th Cir. 2003) (children have a fundamental right to be raised and nurtured by his/her parents) (citing *Santosky v. Kramer,* 455 U.S. 745, 760 (1982)). Like male spouses, Ashley, Elizabeth, Tonya, Cathy, Sarah and Nicole made the same decision to have a child with their spouse but because they are same-sex, female spouses, they are not granted the presumption of parenthood and are not accorded these same rights, to the disadvantage of both the children and their parents.

Another purpose of statutes granting a presumption of parenthood is to protect children from a declaration of illegitimacy. *Michael H. v. Gerald D.,* 491 U.S. 110, 124 (1989) (Scalia, J., plurality opinion). Although bastardy is no longer a legally recognized doctrine, "bastard" is still a term of derision used in the everyday world in which these families, live. A '[b]astard child' and 'child born out of wedlock' are synonymous." *Curry v. Maynard*, 227 Ind. 46, 50, 83 N.E.2d 782, 783 (1949). "Bastard" is defined as "a child begotten and born out of wedlock; an illegitimate child; one born of an illicit union." *Id.* (citing Webster's New International Dictionary, Second Edition). *See also,* Ex. F, Singley Aff., ¶10 ("There are pejorative connotations to children born out-of-wedlock and this is why society places such emphasis on marriage" as

"Marriage lends respectability to a family"). Thus, under I.C. § 31-9-2-15 and -16, the Plaintiff Children are forced to bear the stigma of being treated as having been born out of wedlock and made illegitimate by Indiana law even though they are children born into a lawful marriage.

Keeping in mind that the purpose of Title 31 is to promote, protect and preserve families, the law will go to great lengths to make certain that children are protected even if the marriage to which the child was born is illegal. *See, e.g.,* I.C. § 31-13-1-1 (if marriage void because spouses are first cousins or more closely related, children born of marriage will be treated as if marriage was valid); I.C. § 31-13-1-2 (child born of bigamous marriage will be treated as if marriage valid); I.C. § 31-13-1-3 (child conceived before marriage annulled will be treated as if marriage valid). Here are six loving, committed couples who were legally married at the time their children were born yet they and their children are accorded fewer rights and less protection than children born to incestuous or bigamous marriages and the parents who participated in the illegal marriage. In other words, the law says that these families headed by female same sex couples are unions that fall below those founded in bigamy, incest and illegality.

By withholding the presumption of parenthood from Ashlee, Elizabeth, Tonya, Cathy, Sarah and Nikkole and the other similarly situated parents, each must undergo an expensive, cumbersome, emotionally draining, and time-consuming stepparent adoption process

in order to legally establish her status as a co-parent of the child born into her marriage. Similarly situated males simply have their name entered on the birth certificate by operation of law, without having to go through the burdensome adoption process. Although Indiana courts have permitted same-sex couples to adopt children for more than a decade, *see, In re K.S.P.,* 804 N.E.2d 1253, 1259 (Ind. Ct. App. 2004) (not allowing same-sex partner to adopt children denied children the security of legally recognized relationship with second parent), adoption is a process that is expensive, time-consuming and debilitating.

To initiate an adoption an individual must hire an attorney to file a petition for adoption with the clerk of the court having probate jurisdiction in an appropriate venue. I. C. § 31-19-2-2. She must also pay the filing fee, which varies from county to county. In Marion County, the filing fee is $156.00. http://www.indy.gov/eGov/County/Clerk/civil/Pages/Filing-Fees.aspx. (Last visited Nov. 16, 2015). A medical report containing the health status and medical history of the child sought to be adopted must accompany the petition, I. C. § 31-19-2-7, and the petitioner must pay all the fees and other costs to undergo a criminal history check. I. C. § 31-19-2-7.5. Unless waived by the trial court, a home study is also required at an additional cost to the petitioners. I.C. § 31-19-8-1.

The home study costs around $800.00. (Ex. H, Bush-Sawyer Aff., ¶11, Attach. 4, p. 5). It will require Tonya, as the "stepparent" to also pay

all the costs incurred in gathering the supporting documentation and she is required to present the following:

> Completed Local Criminal History Check
> Completed Criminal Conviction Disclosure
> Completed Notarized Criminal History Disclosure
> Completed Inkless prints for State (Criminal Record Review/Challenge) and FBI
> Completed Child Protection Services History Request for everyone residing in the home
> Official Driver Record
> Autobiography in narrative form
> Completed Physical Examination form
> Financial Profile
> Copy of Driver's License
> Copy of Birth Certificate for everyone residing in the home
> Copy of Marriage Certificate
> Copy of Divorce Decrees (if applicable)
> Copy of Veterinary records for all animals residing in the home
> Employment Verification Letter
> IRS 1040 summary pages for last two (2) years

Id.

The petitioner must wait until a judge schedules a hearing and then must appear in person at the hearing to obtain the judge's approval for the adoption. A married man and woman who conceive through third-party donor insemination are not required to go through the expense, scrutiny, and delay of adoption proceedings to have their parent-child relationship recognized by the State of Indiana as the husband is granted the presumption of parenthood.

C. THE CHALLENGED STATUTES DO NOT SERVE ANY IMPORTANT GOVERNMENTAL PURPOSE

The Equal Protection Clause of the Fourteenth Amendment protects individuals from arbitrary discrimination and provides, "[N]o

state shall deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1. Indiana Code § 31-14-7-1(1) extends the presumptions and benefits of parenthood to both spouses in opposite-sex marriages who consensually conceive and bear a child via artificial insemination by a third party, but not to both spouses in same-sex marriages who conceive and bear a child under the same circumstances. In this manner, I. C. § 31-14-7-1(1) creates two classes of similarly situated individuals, one of which is favored and granted rights (married male spouses in opposite-sex marriages), and the other of which is disfavored and severely burdened (married female spouses in same-sex marriages).

The next step in the constitutional analysis is to determine whether the State has an important interest in discriminating against Plaintiffs. Given that the State's long-articulated interest is in doing what is in the best interest of the child and given that the Indiana legislature has stated the purpose of Title 31 is to protect, promote and preserve Indiana families, there is no conceivable important governmental interest that would justify the different treatment of female spouses of artificially-inseminated birth mothers from the male spouses of artificially-inseminated birth mothers.

This case presents a rare instances where the purpose and policy of the contested statute has been expressly stated by the Indiana legislature. The presumption of parenthood statute is contained within

Title 31, the purpose of which is to:

> (1) recognize the importance of family and children in our society;
>
> (2) recognize the responsibility of the state to enhance the viability of children and family in our society;
>
> (3) acknowledge the responsibility each person owes to the other;
>
> (4) strengthen family life by assisting parents to fulfill their parental obligations . . .

I.C. § 31-10-2-1(1)-(4). *See also, In re K.S.P.,* 804 N.E.2d at 1257 (upholding adoption of child by same-sex partner, citing Indiana's policy to "recognize the importance of family and children in our society" and "strengthen family life by assisting parents to fulfill their parental obligations").

The refusal to legitimize the relationship between the Plaintiff Children and both of their parents is at cross-purposes with Indiana's presumption of parenthood statute. *See, In re the Paternity of H.J.B.*, 829 N.E.2d 157, 160 (Ind. Ct. App. 2005) (citing *D.R.S. v. R.S.H.,* 412 N.E.2d 1257, 1261 (Ind. Ct. App. 1980)) (recognizing it is appropriate to withhold disestablishment of deceased father's paternity until paternity established in another as "[w]ere we to hold otherwise, our courts could create a 'filius nullius [son of no one],' which is exactly what paternity statutes were created to avoid"). Indiana law recognizes that "the guiding principle of statutes governing the parent-child relationship is the best interests of the child." *In re K.S.P.,* 804 N.E.2d at 1257. Striving to do

what is in the best interest of the child has led Indiana courts to conclude that the adoption of children by two persons of the same-sex "derives from the state's interest in protecting and promoting the welfare of children by expediting their entry into a suitable, stable family unit." *Id.*

> [O]ur paramount concern should be with the effect of our laws on the reality of children's lives. It is not the courts that have engendered the diverse composition of today's families. It is the advancement of reproductive technologies and society's recognition of alternative lifestyles that have produced families in which a biological, and therefore a legal, connection is no longer the sole organizing principle.
>
> * * * *
>
> We are not called upon to approve or disapprove of the relationship between the appellants. Whether we do or not, the fact remains that Deborah [the same-sex partner who is not biologically related to the children] has acted as a parent of [the children] from the moment they were born. *To deny legal protection of their relationship, as a matter of law, is inconsistent with the children's best interests and therefore with the public policy of this state, as expressed in our statutes affecting children.*

Id. at 1259-60 (citation omitted) (emphasis added). *See also, In re A.C.*, 1 N.E.3d at 692 (where child was artificially conceived while same-sex couple lived in committed relationship, "partner who did not give birth to child has standing to seek visitation with the child").

Defendants can cite no non-discriminatory reasons that would militate against a female spouse in a same-sex marriage from being accorded the same presumption of parenthood accorded to a male spouse in an opposite-sex marriage. During discovery, the State was

given multiple opportunities to articulate its interest in promoting a legal fiction of parenthood for husbands but not for female same sex spouses. Each time the State objected to the interrogatory "on the ground that it seeks information that is not relevant to a claim or defense or any party and is not reasonably calculated to lead to the discovery of admissible evidence." (Ex. N, State's Answers to Interrogatories, Nos. 2, 3, 4 and 8).[5]

Nor do the County Defendants provide any important governmental interest justifying the discriminatory treatment. The only justification offered by the County Defendants for granting the fiction of biological parenthood to husbands but not to female same sex spouses is compliance with the statute. (*See,* Ex. B, Tippecanoe County Defendants' Responses to Interrogatory Nos. 2-4 and 9; Ex. C, Marion County Defendants' Responses to Interrogatory Nos. 2-4 and 9; Ex. K, Vigo County Defendants' Responses to Interrogatory Nos. 2-4 and 9; Ex. L, Bartholomew County Defendants' Responses to Interrogatory Nos. 2-4 and 9). Compliance for the sake of compliance with a statute which violates the Equal Protection Clause is not itself an important government interest served by the discriminatory statute.

Denial of the presumption of parenthood to Ashley, Elizabeth, Tonya, Cathy, Sarah and Nicole does not serve the best interests of the

[5] The State even objected to the definitions listed in the interrogatories, which copied the definitions asserted by the State in its interrogatories to Plaintiff. Because of time constraints, Plaintiffs proceeded with the scheduled filing of their motion for summary judgment rather then filing a motion to compel answers to the interrogatories.

Plaintiff Children nor does it serve to promote, protect and preserve the Plaintiffs' families. On this basis, as there is no substantial governmental interest in treating the Plaintiff spouses differently than they would be treated if they were males, the statutes treat Plaintiffs differently because of their gender and sexual orientation and thus deny them Equal Protection.

D. THE STATE'S DISCRIMINATION AGAINST THE PLAINTIFFS ON THE BASIS OF THEIR GENDER AND SEXUAL ORIENTATION IS NOT SUBSTANTIALLY RELATED TO THE ACHIEVEMENT OF AN IMPORTANT GOVERNMENTAL OBJECTIVE

The final question to be answered is whether the discrimination imposed by I.C. § 31-14-7-1(1) is substantially related to the achievement of promoting, protecting and preserving families and acting in the best interests of the child. Or, as the Seventh Circuit has noted:

> is the discriminatory policy overinclusive because the benefit it confers on society could be achieved in a way less harmful to the discriminated-against group, or underinclusive because the government's purported rationale for the policy implies that it should equally apply to other groups as well?

Baskin, 766 F.3d at 655. In the present case, I.C. § 31-9-2-15, I.C. § 31-9-2-16 and I.C. § 31-14-7-1(1) are both underinclusive and overinclusive.

Other States answering this question have concluded:

> It is important for our laws to recognize that married lesbian couples who have children enjoy the same benefits and burdens as married opposite-sex couples who have children. By naming the nonbirthing spouse on the birth certificate of a married lesbian couple's child, the child is ensured support from that parent and the parent establishes fundamental legal rights at the moment of birth. Therefore, the only explanation for not listing the nonbirthing lesbian

> spouse on the birth certificate is stereotype or prejudice. The exclusion of the nonbirthing spouse on the birth certificate of a child born to a married lesbian couple is not substantially related to the objective of establishing parentage.

Gartner v. Iowa Department of Public Health, 830 N.W.2d 335, 353-354 (Iowa 2013).[6]

1. I.C. § 31-14-7-1(1) Is Underinclusive And Overinclusive

I.C. § 31-14-7-1(1) is both underinclusive in terms of the class of persons it seeks to protect and overinclusive because the harm it imposes outweighs the benefit.

"[T]o say that the policy is underinclusive is to say that its exclusion of other, very similar groups is indicative of arbitrariness."

[6] In Utah, after the district court issued a preliminary injunction against the State, by stipulation of the parties, the court entered a permanent injunction stipulated to convert the preliminary injunction to a permanent injunction and "ordered that if Defendants continue to enforce Utah Code . . ., with respect to male spouses of women who give birth through assisted reproduction with donor sperm, they must also apply the statute equally to female spouses of women who give birth through assisted reproduction with donor sperm." *See,* Ex. M, *Roe v. Patton,* U.S. Dist. Ct. Utah, Case No. 2:15-cv-00253. A circuit court judge in Arkansas has held that both same sex spouses are to be named on the birth certificate of a child born to the marriage. http://www.huffingtonpost.com/entry/arkansas-birth-certificates_565f6723e4b08e945fedecd7 (Last visited Dec. 3, 2015). In October 2015, Kansas issued assurances that it would include both same sex spouses on birth certificates. http://cjonline.com/news/2015-10-12/kansas-no-court-order-needed-same-sex-birth-certificates (Last visited Nov. 28, 2015). In August 2015, Texas revised its policies to include the issuance of birth certificates containing both names of a same sex couple so long as one is the birth mother and the other is her spouse. http://www.dshs.state.tx.us/vs/revisedpolicies-vitalrecords-same-sex-couples.pdf (Last visited Nov. 28, 2015). This year Michigan began including not only the birth mother but her same sex spouse on birth certificates. *See,* http://www.pridesource.com/article.html?article=72408 (Last visited Dec. 3, 2015).

Baskin, 766 F.3d at 656. Granting the rebuttable presumption of parenthood to a male spouse who is not biologically related to the child while denying the same rebuttable presumption to a female spouse who is similarly situated is indicative of arbitrariness in this case because the statute is not substantially related to promoting and protecting families and doing what is in the best interests of the child. I.C. § 31-14-7-1(1) is underinclusive because it only provides for men and fails to allow a female spouse in a similar situation the same presumption of parenthood.

I.C. § 31-14-7-1(1) is overinclusive because in its effort to create a biological presumption between a man and a child, it unnecessarily imposes unequal treatment. As the *Baskin* court noted:

> One way to decide whether a policy is overinclusive is to ask whether unequal treatment is *essential* to attaining the desired benefit. Imagine a statute that imposes a $2 tax on women but not men. The proceeds from that tax are, let's assume, essential to the efficient operation of government. The tax is therefore socially efficient, and the benefits clearly outweigh the costs. But that's not the end of the inquiry. Still to be determined is whether the benefits from imposing the tax *only on women* outweigh the costs. And likewise in a same-sex marriage case the issue is not whether heterosexual marriage is a socially beneficial institution but whether the benefits to the state from discriminating against same-sex couples clearly outweigh the harms that this discrimination imposes.

Baskin, 766 F.3d at 656.

As discussed *supra*, the discrimination against these Plaintiffs and others similarly situated, i.e., the harm imposed by I.C. § 31-14-7-1(1), is

not outweighed by any possible benefit to them or to society. The harm to these families is not necessary to achieve, and is in fact inimical to, the promotion and protection of families or doing what is in the best interests of the child. Because I.C. § 31-14-7-1(1) imposes harm beyond any benefit, it is also overinclusive.

2. I.C. § 31-9-2-15 Is Underinclusive And I.C. § 31-9-2-16 Is Overinclusive

I.C. § 31-9-2-15 is underinclusive because it does not classify the children born to a lawfully married same-sex couple as children born in wedlock, instead expressly limiting children born in wedlock to only those children born to a man and a woman. I.C. § 31-9-2-15 is overinclusive because the harm it imposes upon children born to a same-sex marriage, i.e., stigma, is not necessary to preserve and protect families nor is it in the best interests of the child.

II I.C. § 31-14-7-1(1) DENIES THE PLAINTIFFS DUE PROCESS

The Fourteenth Amendment of the U.S. Constitution provides that no state shall "deprive any person of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV, § 1 ("Due Process Clause").

A. I.C. § 31-14-7-1(1) IMPLICATES A FUNDAMENTAL RIGHT

The Due Process Clause "includes a substantive component that provides heightened protection against government interference with certain fundamental rights and liberty interests." *Brokaw v. Mercer County,* 235 F.3d 1000, 1018 (7th Cir. 2000) (quoting *Washington v. Glucksberg,* 521 U.S. 702 720 (1997)). Fundamental rights, although

generally limited, have long been deemed to include "matters relating to marriage, family, procreation, and the right to bodily integrity," *Albright v. Oliver,* 510 U.S. 266, 272 (1994), and what has been described as "perhaps the oldest of the fundamental liberty interests recognized," a parents' liberty interest in the "care, custody, and control of their children." *Troxel v. Granville,* 530 U.S. at 65. Parents hold a protected liberty interest in controlling their children's religious upbringing, *Wisconsin v. Yoder,* 406 U.S. 205, 232 (1972) ("The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children"); in the way they choose to educate their child, *Pierce v. Society of Sisters,* 268 U.S. 510 (1925) (law that required children to attend public schools unreasonably interfered with fundamental parental right to guide child's intellectual and religious upbringing); and in controlling their child's education. *Meyer v. Nebraska,* 262 U.S. 390 (1923)*; see also, Stanley v. Illinois,* 405 U.S. 645 (1972) (unwed father who acted as parent to his children and lived with mother for many years holds liberty interest in parental control). "[F]reedom of personal choices in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment." *Moore v. City of East Cleveland,* 431 U.S. 494, 499 (1977); *see also, Planned Parenthood v. Casey,* 505 U.S. 833 (1992) (recognizing constitutional protection of personal decisions regarding marriage, procreation, contraception, family relationships, child rearing,

and education); *Santosky v. Kramer*, 455 U.S. at 753 (there is "a fundamental liberty interest of natural parents in the care, custody, and management of their child."). Preserving families promotes not just the parents' fundamental liberty interest in raising and caring for their own children but also promotes and protects the children's interests. *E.M. v. Ind. Dept. of Child Servs.* 4 N.E.3d 636, 647 (Ind. 2014).

Just like any man married to a woman artificially inseminated by another, Ashlee, Elizabeth, Tonya, Cathy, Sarah and Nikkole decided with their spouses to conceive a child and are each loving and deeply committed parents. They act as parents in every sense of the word and as the spouse of the birth mother, just like any man in the same circumstances, the law should not deny them their fundamental right to make decisions that involve the welfare and raising of their children.

B. THE STANDARD OF REVIEW IS STRICT SCRUTINY

When legislation burdens the exercise of a fundamental right, strict scrutiny applies, and the State must show that the statutory classification serves a compelling state interest "and is closely tailored to effectuate only those interests." *Zablocki v. Redhail*, 434 U.S. 374, 388 (1978). Inasmuch as Indiana's presumption of parenthood statute cannot withstand even intermediate scrutiny, it cannot survive the more demanding strict scrutiny required by substantive due process.

C. I.C. § 31-14-7-1(1) IS NOT NARROWLY TAILORED TO ANY STATE INTERESTS

As discussed *supra*, I.C. § 31-14-7-1(1) is neither closely tailored nor rationally related to any State interest. The statute's exclusion of the same-sex spouses of birth mothers does not legally bind the second parent to the newborn and denies the second parent the joys, obligations and rights of parenthood. At the same time, children of same-sex families are stigmatized, made to feel their family is of lesser value then families headed by a man and a woman, and are denied the security and benefits of having two people legally recognized as their parents.

III THE REMEDY

"Ordinarily, 'when the right invoked is that to equal treatment,' the appropriate remedy is a mandate of equal treatment, a result that can be accomplished by withdrawal of benefits from the favored class as well as by extension of benefits to the excluded class." *Morales-Santana v. Lynch*, 792 F.3d at 270 (citing *Heckler v. Mathews,* 465 U.S. 728, 740 (1984)) (where statute imposed different citizenship criteria depending upon whether mother or father was U.S. citizen, equal rights were extended to all children and not retracted). As the *Morales-Santana* court recently observed, “we are unaware of a single case in which the Supreme Court has contracted, rather than extended, benefits when curing an equal protection violation through severance." *Id.* (citing *Califano v. Westcott,* 443 U.S. 76, 89 (1979) (where an underinclusive statute violates equal

protection federal court "may extend the coverage of the statute to include those who are aggrieved by the exclusion"). Plaintiffs respectfully request that the Court permanently enjoin Defendants from enforcing I.C. § 31-17-7-1(1) in a way that differentiates between male and female spouses of women who give birth with the aid of artificial insemination by a third party. Furthermore, the Plintiff children born of these same sex unions are entitled to the same equal protection accorded children born to a man and a woman using artificial insemination and to not be considered as children born out-of-wedlock under I.C. §§ 31-9-2-15 and -16.

CONCLUSION

WHEREFORE, and for all of the foregoing reasons, 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 violates 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., H.S., I.J.B. a/k/a I.J.B-S, H.N.B. Unborn Baby Doe and G.R.M.B. as children born in wedlock within the State of Indiana;

D. Enter a permanent injunction directing Defendants to presume that Ashlee Henderson, Captain Nicole Singley, Tonya Bush-Sawyer, Cathy Bannick, Sarah

Janson and Nikkole McKinley-Barrett are the presumed parents of L.W.C.H., H.S., I.J.B. a/k/a I.J.B-S, H.N.B., Unborn Baby Doe and G.R.M.B., respectively, by identifying them as parents on the birth certificate;

E. Enter a permanent injunction directing Defendants to presume that all same-sex spouses married to the birth mother at the time of birth are presumed to be the parent of the child born to the marriage;

F. Enter a permanent injunction directing Defendants to recognize all children born to a birth mother married to a same-sex spouse is a child born in wedlock within the State of Indiana;

G. Award Plaintiffs the costs of suit, including reasonable attorneys' fees under 42 U.S.C. § 1988; and,

H. Enter all further relief to which Plaintiffs may be justly entitled.

Respectfully submitted,

/s/*Karen Celestino-Horseman*
Karen Celestino-Horseman
Of Counsel, Austin & Jones, P.C.
One N. Pennsylvania St.
Suite 220
Indianapolis, IN 46204
Tel: (317) 632-5633
Fax: (317) 630-1040
E-mail: karen@kchorseman.com

/s/ *William R. Groth*
William R. Groth
Fillenwarth Dennerline Groth &
& Towe, LLP
429 E. Vermont St.
Suite 200
Indianapolis, IN 46202
Tel: (317) 353-9363
Fax: (317) 351-7232
E-mail: wgroth@fdgtlaborlaw.com

/s/ *Raymond L. Faust*
Raymond L. Faust
House Reynolds & Faust LLP
11711 North Pennsylvania St.
Suite 190
Carmel, IN 46032
Tel: (317) 564-8490
Fax: (317) 564-8499
Email: rfaust@housereynoldsfaust.com

/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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *Plaintiffs' Brief in Support of Their Motion for Summary Judgment* was filed electronically on December 4, 2015. Notice of this filing will be sent to the following counsel by operation of the Court's electronic filing system.

Thomas M. Fisher
Solicitor General
Office of the Attorney General
302 W. Washington St., IGCS 5th Floor
Indianapolis, IN 46204-2770
Email: Tom.Fisher@atg.in.gov

Lara K. Langeneckert
Office of the Attorney General
302 W. Washington St., IGCS 5th Floor
Indianapolis, IN 46204-2770
lara.langeneckert@atg.in.gov

Douglas J. Masson
Hoffman, Luhman & Masson, PC
200 Ferry St., Suite C
P.O. Box 99
Lafayette, IN l47902-0099

Anthony Scott Chinn
Faegre Baker Daniels LLP
300 North Meridian Street
Suite 2700
Indianapolis, IN 46204
(317) 237-0300
Fax: (317) 237-1000
Email: scott.chinn@faegrebd.com

Anna M. Konradi
Faegre Baker Daniels LLP
300 North Meridian Street
Suite 2700
Indianapolis, IN 46204
317-237-1016
Fax: (317) 237-0300
Email: anna.konradi@Faegrebd.com

Anne Kramer Ricchiuto
Faegre Baker Daniels LLP
300 North Meridian Street
Suite 2700
Indianapolis, IN 46204
317-237-1420
Fax: 317-237-1000
Email: anne.ricchiuto@FaegreBD.com

J. Grant Tucker
Jones Patterson & Tucker, P.C.
330 Franklin Street
Columbus, IN 47201
(812) 376-8266
Fax: (812) 376-0981
Email: gtucker@jpt-law.com

Michael J. Wright
Wright Shagley Lowery, P.C.
500 Ohio Street
Terre Haute, IN 47807
(812) 232-3388
Email: mwright@wslfirm.com

/s/ Karen Celestino-Horseman
Karen Celestino-Horseman
Of Counsel, Austin & Jones, P.C.
One N. Pennsylvania St., Ste. 220
Indianapolis, IN 46204
Tel: (317) 632-5633
Fax: (317) 630-1040
E-mail: Karen@kchorseman.com