UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

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| NOELL and CRYSTAL ALLEN, a married couple and JACKIE and LISA PHILLIPS-STACKMAN, a married couple and L.J.P-S, by parent and next friend Lisa Phillips-Stackman<br><br>Plaintiffs,<br><br>-vs-<br><br>DR. JEROME M. ADAMS, in his official capacity as Indiana State Health Commissioner; DR. VIRGINIA A. CAINE, in her official capacity as Director and Health Officer of the Marion County Health Department; DARREN KLINGLER, Administrator, Vital Records, Marion County Health Department; DR. JAMES MINER, GREGORY S. FEHRIBACH, LACY M. JOHNSON, CHARLES S. EBERHARDT II, DEBORAH J. DANIELS, DR. DAVID F. CANAL, and JOYCE Q. ROGERS, all in their official capacities as Trustees, Health & Hospital Corporation of Marion County | ) | No. 1:15-cv-01929-RLY-MJD |

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

Pursuant to Federal Rule of Civil Procedure 65, plaintiffs, Noell and Crystal Allen, a married couple and Jackie and Lisa Phillips-Stackman, a married couple and L.J.P-S, by parent and next friend Lisa Phillips-Stackman, by counsel, respectfully request that this Court preliminarily enjoin defendants from refusing to issue birth certificates listing Noell Allen and Jackie Phillips-Stackman as parents and to otherwise accord them all rights accorded parents identified on a birth certificate. Further, plaintiffs ask that the Court enjoin

the defendants from declining to recognize that L.J.P-S is a child born in wedlock.

**STATEMENT OF FACTS**

On November 21, 2015, Ashton David Allen and Alivea Deon Allen were born to Noell and Crystal Allen. (Ex. A, Allen Aff., ¶ 6). The children were conceived with the assistance of artificial insemination and a third-party sperm donor. (Ex. A, Allen Aff., ¶ 5). Sadly, the twins died on the same day they were born. (Ex. A, Allen Aff., ¶ 6). On November 22, 2015, hospital personnel informed the grieving couple that Noell, an administrative law judge with the Indiana Civil Rights Commission, would not be listed on the birth certificate as a parent to the twins.[1] (Ex. A, Allen Aff., ¶ 7). Because the twins are dead, Noell cannot adopt the children. While Noell is not listed on the birth certificate, she is listed on the death certificate. (Ex. A, Allen Aff., ¶ 9, Attach. 1). "My children were taken from me twice - once when they passed and the second time when the State of Indiana said I could not be recognized as mother to my babies," said Noell. (Ex. A, Allen Aff., ¶ 11). "I will continue to feel that pain every day until I am recognized on their birth certificates." *Id.*

On October 21, 2015, L.J.P-S was born to Jackie and Lisa Phillips-Stackman. (Ex. B, Phillips-Stackman Aff., ¶ 5). Due to health problems, Jackie had to undergo a hysterectomy so she had her eggs frozen. (Ex. B, Phillips-Stackman Aff., ¶ 4). With the assistance of in vitro fertilization,

[1] The hospital gathers the information using the State's form, *see,* Ex. C, and then forwards it to the Marion County Health Department which then forwards it onto the Indiana State Department of Health. Ex. D, outline of procedure provided by the Marion County Health Department.

Jackie's egg was fertilized by the sperm of a third party sperm donor and then placed in Lisa. (Ex. B, Phillips-Stackman Aff., ¶ 5). Even though Jackie is biologically related to L.J.P-S and was married to Lisa at the time she gave birth to L.J.P-S, defendants refused to name Jackie on the birth certificate as a parent to L.J.P-S.

L.J.P-S was born with a genetic defect and hydrocephaly. (Ex. B, Phillips-Stackman Aff., ¶ 7). She was hospitalized for nearly a month after her birth due to her condition. *Id.* She is being seen and followed by various specialists who at this time do not yet know how seriously L.J.P-S will be affected by the genetic defect. *Id.* Currently, Lisa is a stay at home mom, caring for L.J.P-S full-time. Jackie is a detective with the Violent Crimes Unit of the Indianapolis Metropolitan Police Department. (Ex. B, Phillips-Stackman Aff., ¶ 3). L.J.P-S is carried on Jackie's insurance. (Ex. B, Phillips-Stackman Aff., ¶12). Because Jackie is not legally recognized as a parent to L.J.P-S on the child's birth certificate, if Jackie dies while on active duty or is killed in the line of duty, then L.J.P-S would not receive the monthly benefit paid through the pension fund to children of police officers. *See,* http://www.in.gov/inprs/77fundmbrhandbooksurvivorbenefits.htm (Last visited Dec. 10, 2015). Not only would L.J.P-S not receive the monthly benefit but she would also not receive college tuition and fee assistance if Jackie were to be killed in the line of duty. I.C. 21-14-6 *et seq.* If Lisa were to die, then her relationship with Jackie would terminate and as Jackie's relationship with L.J.P-S is that of stepparent/stepchild, Jackie is concerned as to whether the

expensive medical care required by L.J.P-S would continue to paid by her health insurance. (Ex. B, Phillips-Stackman Aff., ¶12).

**ARGUMENT**

When a child, conceived with the aid of a third party sperm donor, is born, the defendants list the male husband of the birth mother on the birth certificate as the parent of the baby, even though the father is not biologically related to the child. The defendants presume parenthood to the male spouse, even though the mother, the doctor, the hospital and others know that the husband is not biologically related to the child. *See,* Ex. C, Birth Certificate Work Sheet, p. 7 (expressly inquiring if the child is born with the assistance of artificial means). The defendants are refusing to extend this same presumption of parenthood to the same-sex spouses of the birth mothers.

Defendants rely on I.C. §§ 31-14-7-1(1)[2], 31-9-2-15[3], 31-9-2-16[4]

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[2] 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

[3] "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.

[4] "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

(hereinafter "Parenthood Statutes") which apply the presumption of parenthood to the husband of a birth mother who has conceived with the aid of sperm from a third party sperm donor and which define children born in- and out-of-wedlock.

The Defendants' refusal to apply the same presumption of parenthood to Noell and Jackie as would apply to the husband of a mother who conceives by artificial insemination violates the Equal Protection and Due Process clauses of the U.S. Constitution. Because of the dire circumstances of the Plaintiffs in this matter, they cannot wait for final judgment in this case. Therefore, they ask this Court to grant their preliminary injunction prohibiting Defendants from refusing to apply the presumption of parenthood to Noell and Jackie in the same manner as is applied to male spouses of birth mothers. By listing them on the birth certificates as parents, it would also mean the children are considered to be born in wedlock.

## I PLAINTIFFS SATISFY THE REQUIREMENTS FOR A PRELIMINARY INJUNCTION

A preliminary injunction may be granted upon a showing that the moving party (1) has "some likelihood of succeeding on the merits"; (2) has "no adequate remedy at law"; and (3) "will suffer irreparable harm if preliminary relief is denied." *Abbott Labs. v. Mead Johnson & Co.*, 971 F.2d 6, 11 (7th Cir. 1992) (citations omitted). As regards the first element, "It is enough that the plaintiff's chances are better than negligible." *Brunswick Corp. v. Jones*, 784

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under IC 31-14-7-1(1) or IC 31-14-7-1(2).

F.2d 271, 275 (7th Cir. 1986) (citations omitted). If the moving party meets these elements, the court then considers "the irreparable harm the non-moving party will suffer if preliminary relief is denied; and . . . the public interest, meaning the consequences of granting or denying the injunction to non-parties." *Abbot Labs. v. Mead Johnson & Co.*, 971 F.2d 6, 11-12 (7th Cir. 1992).

In considering if the moving party has met their burden, the Seventh Circuit uses a "sliding scale approach . . . the more likely it is the plaintiff will succeed on the merits, the less the balance of irreparable harms need weigh towards its side; the less likely it is the plaintiff will succeed, the more the balance need weigh towards its side." *Kraft Foods Grp. Brands LLC v. Cracker Barrel Old Country Store, Inc.*, 735 F.3d 735, 740 (7th Cir. 2013)(internal quotations omitted). The most important factor to consider is the irreparable harm the moving parties will suffer without such injunctive relief. *Reinders Bros., Inc. v. Rain Bird E. Sales Corp.*, 627 F.2d 44, 52-53 (7th Cir. 1980).

**A. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS**

Plaintiffs are likely to succeed on the merits of their claim as Defendants' refusal to apply the presumption of parenthood to Noell and Jackie violates the Equal Protection and Due Process Clauses of the U.S. Constitution. Other courts have recently held in light of the fact that same-sex marriage is now legal nationwide, similar laws regarding parenthood must apply equally to same-sex spouses. *See, e.g., Roe v. Patton*, 2:15-cv-00253-DB, Dkt. No. 18 C.D. Utah October 20, 2015 (state enjoined to include same-sex spouses of birth

mothers as parents on birth certificates)

**1. DEFENDANTS' APPLICATION OF THE PARENTHOOD STATUTES DENIES PLAINTIFFS EQUAL PROTECTION**

**a. Standard of Review**

The Fourteenth Amendment to the United States Constitution provides that a state shall not "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, §1. 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, 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. 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).

In the present case, the parenthood Statues fail under an intermediate scrutiny because 1) the discrimination imposed by the statutes do not serve an important government purpose and 2) the discrimination is not substantially related to the achievement of any important governmental objectives.

**b. The Discriminatory Application Of The Challenged Statutes Does Not Serve Any Important Governmental Purpose**

The State's long-articulated interest is in doing what is in the best interests 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 important governmental objective in denying the presumption of

parenthood to the female spouse of a birth mother. Title 31 expressly states its purpose 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 (court upheld 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").

It has, therefore, 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. *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 particularly as "Child" under the Dissolution Act is defined "as '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'"). This makes good sense because it is a crime to disclose the identity of a sperm donor if the donor chooses to be unidentified, I.C. 16-41-14-15; therefore, if

the donor is anonymous and the presumption did not apply to the birth mother's spouse, the child would be unable to identify a second parent. Furthermore, without the presumption for the non-birth spouse, if the birth mother were to die, the child would be left an orphan. This inherently goes against Indiana's public policy of recognizing the importance of family, enhancing the viability of children, and assisting parents in their parental obligations. I.C. § 31-10-2-1.

However, despite this public policy and the settled law that a child born by artificial insemination is born of the marriage, if the 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. Instead, as the Plaintiffs learned, even though the married same-sex couples 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. In essence this creates a contradiction because while at the time of birth, the female spouse to a birth mother is denied the rights and responsibilities of a parent, in the event of a divorce, this same spouse could be awarded custody and/or be ordered to pay child support in the event of a divorce. *See Levin v. Levin*, 645 N.E.2d 601 (Ind. 1994); *Engelking v. Engelking*, 982 N.E.2d 326 (Ind. Ct. App. 2013). Further, the Marion County Health Department also sends the mothers of children born to same sex marriages a notice that tells them they

need to either have been married to a man or have a court order before the child is considered to be born in wedlock. (Ex. B, Phillips-Stackman Aff.,_., ¶___). This again contradicts the court's holding in *Levin.*

In addition to promoting and protecting families, 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 interests 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.* Furthermore, "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.* 1259-60 (citation omitted); *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"). Thus, Indiana's interest that has long been recognized by the courts and expressly articulated by the legislature is always to do what is in the best interests of the child and to preserve and promote families.

Denial of the presumption of parenthood to Noell and Jackie does not serve the best interests of their 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 Noell and Jackie differently than they would

be treated if they were males, or the children differently if they were born to opposite-sex rather than same-sex parents, the statutes violate the Equal Protection clause.

### 2. DEFENDANTS' APPLICATION OF THE PARENTHOOD STATUTES VIOLATES SUBSTANTIVE DUE PROCESS

The Fourteenth Amendment to the United States Constitution precludes any state from "depriving any person of life, liberty or property, without the due process of law." U.S. Const. amend. XIV, § 1. When a fundamental right is burdened, the court must apply strict scrutiny. *Zablocki v. Redhail*, 434 U.S. 374, 388 (1978). Under strict scrutiny, "when a statutory classification significantly interferes with the exercise of a fundamental right, it cannot be upheld unless it is supported by sufficiently important state interests and is closely tailored to effectuate only those interests." *Id.* Because the Parenthood Statutes interfere with a fundamental right, strict scrutiny applies.

#### a. Defendants' Application Of The Presumption Of Parenthood Statutes Implicates Fundamental Rights

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. *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); *Moore v. City of East Cleveland,* 431 U.S. 494, 499 (1977) ("[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"; *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.").

**b. The Parenthood Statutes Are Not Narrowly Tailored To Serve A Compelling State Interest**

Under a strict scrutiny analysis, any interference with the exercise of fundamental rights must be supported by a compelling state interest and the statutes must be narrowly tailored to effectuate that interest. As discussed *supra*, the State's interest in discriminating against Plaintiffs is not compelling and is not narrowly tailored to serve any state interest.

**B. PLAINTIFFS HAVE NO ADEQUATE REMEDY AT LAW AND WILL SUFFER IRREPARABLE HARM IF INJUNCTIVE RELIEF IS DENIED**

The deprivation of the Plaintiffs' equal protection and due process rights in and of itself is an irreparable injury. *See e.g.*, *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (preliminary injunction granted as "the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."); *Preston v. Thompson*, 589 F.2d 300, 303 (7th Cir. 1978)

("The existence of a continuing constitutional violation constitutes proof of an irreparable harm"); *Heckler v. Mathews*, 465 U.S. 728, 739-40 (1984); "[D]iscrimination itself, by perpetuating archaic and stereotypic notions or by stigmatizing members of the disfavored group . . . can cause serious non-economic injuries to those persons who are personally denied equal treatment solely because of their membership in a disfavored group"); *accord Windsor*, 133 S. Ct. at 2694 (noting that "[t]he differentiation demeans the couple"); *Young v. Ballis*, 762 F.Supp. 823, 827 (S.D. Ind. 1990) ("Threat of continued violation of one's constitutional rights is proof of irreparable harm").

All the plaintiffs are suffering immediate, irreparable harm for which there is no adequate remedy at law. The law in the present case has effectively declared that Jackie and Noell are strangers to their own children. There is no amount of money that can compensate them for the defendants' denial of them as the parents of their children. There is no amount of money that can compensate them for the defendants' classification of these children as illegitimate.

The Phillips-Stackmans are living in a legal limbo every day. L.J.P-S is in the unstable position of only having parent. Every time a new medical situation arises, Jackie has to worry about what might happen if Lisa is unavailable to tell the new provider that Jackie is authorized to make health care decisions. If anything should happen to Lisa, then L.J.P-S may ultimately not be covered by Jackie's health insurance and the necessary medical treatment needed by L.J.P-S would have to somehow be paid. Jackie does not have that kind of

money. Further, as discussed *supra,* for children of police officers who are killed in the line of duty or while on active duty, there are important benefits. If the child of an officer killed in the line of duty is also disabled, the benefit is increased. http://www.in.gov/inprs/77fundmbrhand booksurvivorbenefits.htm (Last visited Dec. 9, 2015). Currently, Jackie must live every day with the worry that if something happens to her while working for the Violent Crimes Unit (the name of the unit describesa the kind of danger she faces daily), her child who may need special care will not even receive the standard benefits given to the children of fellow male officers.

The Allens are are placed in an untenable position. The grief of losing a child is inconsolable but for Noell and Crystal, every day the pain begins anew because it is another day the defendants refuse to legally recognize Noell as a mother to her dead children. The connection with her children on their birth certificate is one of the few connections available to Noell following the passing of the twins. The only way that the pain can be stopped is for Noell to be named on the birth certificate. The Allens have buried their children but this does not mean that the daily denial of Noell's position as parent and as a family in any way lessens the pain caused by the defendants' actions.

Being defined as a child born out-of-wedlock and denied the stability of two legal parents simply because you have two mothers is demeaning to L.J.P-S. *See, U.S. v. Windsor*, 133 S.Ct. 2675, 2694 (2013). Every day that the State refuses to list Jackie as a parent on the birth certificate of L.J.P-S is another day that she is denied her identity.

> 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).

## II GRANTING THE INJUNCTIVE RELIEF WILL NOT HARM THE DEFENDANTS AND PUBLIC INTEREST WEIGHS IN FAVOR OF GRANTING SUCH RELIEF

Defendants will not suffer any harm if they are required to apply the parenthood presumption to these plaintiffs. *See*, *Joelner v. Vill. of Washington Park*, 378 F.3d 613, 620 (7th Cir. 2004) ("There can be no irreparable harm to a municipality when it is prevented from enforcing an unconstitutional statute").

Furthermore, the requested relief would only require the Defendants apply the same presumption of parenthood already applied to male spouses of birth mothers to two female spouses of birth mothers. Compared to the severe irreparable harms the Plaintiffs will suffer without such relief, Defendants' minor administrative burden in amending the birth certificates is negligible and self-inflicted.

Finally, public interest weighs heavily in favor of granting the requested injunctive relief. As discussed *supra*, if Jackie is named as the parent on the birth certificate of L.J.P-S then if anything happens to Lisa, there will be health insurance to cover the medical expenses of the baby, otherwise, the burden will fall upon taxpayers. The public interest in protecting and preserving Hoosier families would also be served because legal recognition would be given to the families. The public interest in ensuring that the best interests of the child are protected would also be served, as L.J.P-S would have the love and resources of two parents legally obligated to care for her. And certainly the public interest in encouraging couples to marry and commit to each other would be promoted by recognizing that the twins and L.J.P-S were indeed children born to a marriage and born in wedlock. Furthermore, upholding constitutional rights serves the public interest. *See, Tanford v. Brand*, 883 F.Supp. 1231, 1237 (S.D. Ind. 1995) ("governmental compliance with the Constitution always serves the common good.").

## CONCLUSION

WHEREFORE, Plaintiffs respectfully request that this Court enjoin Defendants as follows:

a) Order defendants to Issue birth certificates for Ashton David Allen and Alivea Deon Allen, which include Noell Allen as parent;

b) Order defendants to Issue a birth certificate for L.J.P-S to include Jackie Phillips-Stackman as parent;

c) Order defendants to consider Ashton David Allen, Alivea Deon Allen, and L.J.P-S to be children born in wedlock; and,

d) Award all further relief to which Plaintiffs may be justly entitled.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on December 14, 2015, a copy of the foregoing *Motion for Preliminary Injunction* was filed electronically and a copy of the foregoing has been served via first class mail, postage prepaid upon:

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