UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

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	)	
Plaintiffs,	)	
-vs-	)	No. 1:15-cv-01929-RLY-MJD
DR. JEROME M. ADAMS, in his official capacity as Indiana State Health Commissioner, *et al.*	)	
Defendants	)	

REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

ARGUMENT

The Fourteenth Amendment requires states to recognize the marriages of same-sex couples "on the same terms and conditions as opposite-sex couples." *Obergefell v. Hodges*, 135 S. Ct. 2584, 2605 (2015). When the U.S. Supreme Court upheld the recognition of same-sex marriage, it specifically noted that "[t]hese aspects of marital status include: . . . birth and death certificates . . . child custody, support and visitation rules." *Id.* at 2601. It was approximately 11 years ago that the Indiana Supreme Court declined to recognize that "when two women in a domestic relationship agree to bear and raise a child together by artificial insemination of one of the partners with donor semen, both women are the legal parents of the resulting child." (Response in Opposition, Filing No. 27, at ECF p. 2) (citing *King v. S.B.*, 837 N.E.2d 965, 967 (Ind. 2005)). But *King*

was decided at a time when Indiana did not recognize same-sex marriage. Since *King*, it has been declared the law of the United States that same-sex marriage is to be recognized by all the states, including Indiana.

With the recognition of same-sex marriage comes the same rights and obligations afforded heterosexual couples, including the rights and responsibilities regarding children. Plaintiffs must look to this Court to implement the Supreme Court's holding in *Obergefell* that under the Equal Protection and Due Process Clauses of the Fourteenth Amendment the states, including Indiana, may no longer harm and humiliate married lesbian couples and the children born of their unions by denying them the many aspects of marital status and legal parental recognition, including, *inter alia*, the issuance of birth certificates identifying both spouses as parents and the recognition of their children as born in wedlock.

I GRANTING PLAINTIFFS A PRELIMINARY INJUNCTION IS PROPER

"To win a preliminary injunction, a party must show that it has (1) no adequate remedy at law and will suffer irreparable harm if a preliminary injunction is denied and (2) some likelihood of success on the merits." *Ezell v. City of Chicago*, 651 F.3d 684, 694 (7th Cir. 2011) (citations omitted). "If the moving party meets these threshold requirements, the district court weighs the factors against one another, assessing whether the balance of harms favors the moving party or whether the harm to the nonmoving party or the public is sufficiently weighty that the injunction should be denied." *Ezell*, 651 F.3d at 694 (citation omitted). In the present case, Plaintiffs have no remedy at law and

will suffer irreparable harm; they will likely will succeed on the merits; and, as the State has identified no way in which it will be harmed, the balance of harms favors Plaintiffs.

A. PLAINTIFFS WILL SUCCEED ON THE MERITS

1. Indiana Is Denying Plaintiffs Equal Protection

a. Heightened Scrutiny Is The Standard Of Review

Heightened scrutiny is appropriate because Plaintiffs are being discriminated against on the basis of sexual orientation and gender. The State claims that rational basis is the appropriate standard of review "[b]ecause Indiana's parentage statutes are facially neutral." (Response in Opposition, Filing No. 27, at ECF p. 18) (citing *Washington v. Davis*, 426 U.S. 229, 242 (1976) (holding that disparate impact on a suspect class is insufficient to justify strict scrutiny absent evidence of discriminatory purpose)). However, as the U.S. Supreme court observed in *M.L.B. v. S.L.J.*, 519 U.S. 102, 126 (1996), "*Washington v. Davis*, . . . does not have the sweeping effect respondents attribute to it."

Washington challenged a requirement that government employees take a verbal skill test in which four times as many blacks than whites failed the test. In upholding the test requirement as constitutional, the *Washington* court observed that "Disproportionate impact . . . [s]tanding alone . . . does not trigger the rule that racial classifications are to be subjected to the strictest scrutiny". *Davis*, 426 U.S. at 242 (citations omitted). As the *M.L.B.* court observed, this was unlike *Williams v. Illinois*, 399 U.S. 235 (1970), where the

law being challenged was one "under which an indigent offender . . . continued in confinement beyond the maximum prison term specified by statute if his indigency prevented him from satisfying the monetary portion of the sentence." *M.L.B.*, 519 U.S. at 126. Because the law in *Williams* "expose[d] *only indigents* to the risk of imprisonment beyond the statutory maximum" and therefore, was "not merely *disproportionate* in impact [but r]ather, they are wholly contingent on one's ability to pay, and thus 'visit[ing] different consequences on two categories of persons'" the *Washington* analysis did not apply. *M.L.B.*, 519 U.S. at 127 (internal citations omitted) (emphasis in original).

In the present case, as in *Williams*, the laws at issue "visit different consequences" on two classifications. There is no disproportionate impact because at the time of birth, husbands of birth mothers who conceive with the aid of a third-party sperm donor and female spouses of lesbian birth mothers who conceive in the same manner are treated completely different from each other as are the children resulting from the union. For this reason, the State's argument fails and heightened scrutiny is to be applied.

b. The Classifications At Issue Are Based Upon Gender And Sexual Orientation

Indiana Code § 31-14-7-1(1) creates a rebuttable presumption that a man married to the birth mother is biologically related to the children born during the course of the marriage. The State admits that it allows the wife/birth mother to rebut the presumption by granting her the authority to name or not name her spouse on the birth certificate. (Response in Opposition,

Filing No. 27, at ECF p. 20). The Certificate of Live Birth Worksheet ("Worksheet) asks the mother to identify her marital status and whether she is married to the father of her child. (Plaintiff's Exhibit: Certificate of Live Birth Worksheet, Filing No. 11-7, at ECF p. 4). If the birth mother answers yes and provides her husband's name, he is listed on the birth certificate, entirely irrespective of whether or not the child has a biological connection to the father. However, if the birth mother answers that she is not married to the father of her child because her spouse is a female, no name other than the birth mother's name is listed as a parent on the birth certificate. (Response in Opposition, Filing No. 27, at ECF p. 20).

The State disingenuously argues that the classification consists of parents who are and are not biologically related to the children. This is not true. Indiana Code §§ 31-14-7-1(1), 31-9-2-15, and 31-9-2-16 have led to the State's creation of two unequally-treated classes of individuals defined not by biological relationship but by gender and sexual orientation. The privileged class consists of heterosexual married couples and their children who were conceived, by agreement of the couple, with the use of third-party sperm and the husband is accorded all the rights and obligations of parenthood, including being listed on the child's birth certificate, even though the husband has no biological connection to the child while the child is granted the status of being a natural born child with the right of support, inheritance and the like. The plaintiffs and their children belong to the disadvantaged class which consists of married lesbians whose wife, by mutual consent of both spouses, bears a child

conceived with sperm from a third-party but who by operation of Indiana statutes and policies are refused the rights and obligations of parenthood without going through the expensive and cumbersome adoption procedures and their children are not accorded the legal rights and benefits of having two parents and are instead considered illegitimate, with only one parent and no right to inheritance, support and the like from the other parent. The bottom line: The State allows the man and woman to engage in a legal fiction that the man is the biological parent of the child but will not allow the female same-sex couple to engage in the same fiction.

c. Biology Is Not The Controlling Factor

The State argues that "biology is paramount" in defining whether a child is born in or out of wedlock. (Response in Opposition, Filing No. 27, at ECF p. 8). If this were true, then the State would not allow a wife to identify her husband as the biological father of her child when in actuality the husband has no biological relationship with the child. When the wife makes this claim, the doctors, nurses, hospital and the State of Indiana all know that the husband is not biologically related to the child. The Worksheet contains the information the State requires be gathered by local officials and provided to the State for use in its database. The Worksheet specifically inquires about whether the baby was conceived with the aid of artificial insemination, intrauterine insemination and/or assisted reproduction technology such as in vitro fertilization as these procedures are considered additional risk factors in

the pregnancy. (Plaintiff's Exhibit: Certificate of Live Birth Worksheet, Filing No. 11-7, at ECF p. 7-8).

While there is a certain simplicity in the State's argument that parental rights should be conferred only where there is a biological relationship between a parent and child, courts, including those in Indiana, have routinely adapted and fashioned family law doctrines without regard to traditional biological connections out of fidelity to the strong policies favoring the preservation and protection of the family unit and the children in that family unit. For example, a divorcing husband who "knowingly and voluntarily consent[ed]" to artificial insemination is obligated to support the children of his former marriage, even though there is no biological relationship between the father and the children. *Engelking v. Engelking*, 982 N.E.2d 326, 328-29 (Ind. Ct. App. 2013). Inferring a parent-child relationship where a child has been conceived by artificial insemination with the consent of both marital partners has been the law in Indiana for at least two decades. *Levin v. Levin*, 645 N.E.2d 601 (Ind. 1994).

Bringing children into the world and protecting them from harm has long been a key benefit of state-sanctioned marriage. The State's grant of a fictional biological relationship to men married to the birth mother who conceived with the aid of a third-party sperm donor shows the State's interest in doing what is best for the child. Thus, contrary to the State's claims, biological relationship is not paramount.

d. Birth Certificates Are Necessary To Exercise Parental Rights

The State downplays the significance of a two-parent birth certificate by arguing that "[b]irth certificates are not a source of parental rights; rather, birth certificates are designed to be a reflection of those rights." (Response in Opposition, Filing No. 27, at ECF p. 27). At the very minimum, being listed on the birth certificate raises a strong presumption of parenthood which can only be rebutted by "direct, clear and convincing evidence." *Fairrow v. Fairrow,* 559 N.E.2d 597, 600 (Ind. 1990). *See, Myers v Myers,* 13 N.E.3d 478, 483 (Ind. Ct. App. 2014) (mother estopped from challenging father's parenthood even though father was not child's biological parent as father was identified in and had signed child's birth certificate); *Ohning v. Driskill,* 739 N.E.2d 161 (Ind. Ct. App. 2000) (as mother listed child's father on birth certificate, mother estopped from disputing child's paternity). Without the government issued document reflecting status as parent, it is impossible to exercise parental rights.

The birth certificate is the first, and often only, reflection of parenthood. The Worksheet itself states, "The birth certificate is a document that will be used for legal purposes to prove your child's...parentage." (Plaintiff's Exhibit: Certificate of Live Birth Worksheet, Filing No. 11-7, at ECF p. 1). The birth certificate's reflection of parenthood makes it the document most often utilized by parents seeking to exercise and meet the rights and responsibilities associated with parenthood. For example, a parent wanting to travel outside of the U.S. with a minor child must secure a passport for the child and this requires the parent to provide "evidence of Parental Relationship." 22 C.F.R.

51.28; https://travel.state.gov/content/passports/en/passports/under-16.html (Last visited Jan. 18, 2016). School districts require a parent to present the child's birth certificate when enrolling the child. *See,* I.C. § 20-33-2-10 (if parent lacks birth certificate or other reliable proof, school must notify Indiana clearinghouse on missing children); and, http://www.myips.org/ENROLL (Last visited Jan. 18, 2016). Enrolling a child in organized sports also requires presenting a birth certificate. *See, e.g.,* http://www.littleleague.org/assets/forms_pubs/tournaments/proof-of-age-requirement.pdf?pip=false (Last visited Jan. 18, 2016). A parent must also provide a birth certificate to enroll a child in daycare. 470 IAC 3-4.7-36. The state utilizes birth certificates to process numerous government benefits, particularly when citizenship must be proven. *See, e.g.,* http://www.in.gov/fssa/files/BCC_CCDF_State_Plan_2014-2015.pdf (childcare assistance) (Last visited Jan. 18, 2016); http://www.in.gov/fssa/ompp/3002.htm (Hoosier Healthwise) (Last visited Jan. 18, 2016). Thus the birth certificate provides the legal documentation necessary to act as a parent.

e. The State Does Not Dispute That It Considers The Children Born To Plaintiffs' Marriages As Illegitimate

The State admits that Indiana law classifies the Plaintiffs' children as children born out-of-wedlock. (Response in Opposition, Filing No. 27, at ECF p. 16) ("The State considers the Children to be born out of wedlock because their biological mothers are not married to their biological fathers"). A more plain

statement of refusing to accord same-sex lesbian couples the same rights as married heterosexual couples could not be made. In the eyes of the State of Indiana, a married lesbian couple can never produce a legitimate child and their children are forced to face the social stigma of bastardy and illegitimacy.[1]

The State also asserts that a child born to a married man and woman who conceive using sperm from an anonymous donor is a "child born out of wedlock" within the meaning of I.C. § 31-9-2-16(2). (Response in Opposition, Filing No. 27, at ECF p. 8-9). The State's contention is belied by *Levin v. Levin*, 645 N.E.2d 601, 605 (Ind. 1994) which held that "a child conceived through artificial insemination, with the consent of both parties, is correctly classified as a child of the marriage" despite the lack of any biological connection between the child and the husband.

The State claims that "a child born to a married couple—whether opposite-sex or same-sex—but conceived using sperm from an anonymous donor is plainly a 'child born out of wedlock.'" (Response in Opposition, Filing No. 27, at ECF p. 8-9). In support of this argument, the State ignores *Levin* and *Engleking* and instead relies upon *K.S. v. R.S.*, 669 N.E.2d 399 (Ind. 1996). But the State's reliance is misplaced. Contrary to the State's claim, the child in *K.S.* was presumed legitimate until the biological father was able to rebut with

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[1] While a legal classification of "illegitimate" does not impact the legal rights of Plaintiffs' children, as was argued in Plaintiffs opening brief, it does impose stigma by implying that the Plaintiffs' marriage are not sufficiently enough a "marriage" to make the resulting children "legitimate."

clear and convincing evidence the presumption that the child was born to the birth mother's marriage to another man.[2] *K.S.*, 669 N.E.2d at 405.

Under current law and practice, the State allows the birth mother who conceives by artificial insemination using donor sperm to identify her husband as the biological father of her child even though everyone involved knows that it is not true.[3] By naming her husband as the father, the wife also secures for her child the rebuttable presumption that her child is legitimate and born in wedlock. In contrast, lesbian couples are not allowed to engage in the same legal fiction so their children will always be illegitimate and will only have one legally obligated parent. On this basis, the laws are unconstitutional.[4]

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[2] Further, in *K.S.*, the child was conceived via sexual intercourse and not with the aid of artificial insemination. "[T]here is no such thing as 'artificial insemination by intercourse.'" *Straub v. B.M.T. by Todd*, 645 N.E.2d 597, 601 (Ind. 1994) (court found biological father remained obligated to support child born as result of sexual intercourse despite contract with mother absolving father of parental obligations). In fact, in all the cases cited by Defendants on page eight of its brief, including *K.S.*, a party sought to rebut the presumption of legitimacy of a child conceived through sexual intercourse and that, of course, is not the issue in this case. The issue is the State's refusal to grant the presumption of legitimacy to the Children of the Plaintiffs.

[3] Despite the State's insinuation, no Indiana court has held that a child born to a married couple as a result of artificial insemination is a "child born out of wedlock" within the meaning of I.C. § 31-9-2-16. While Justice Dickson in his dissent in *A.B. v. S.B.*, 837 N.E.2d 965, 968 (Ind. 2005), opined that a child conceived by artificial insemination and born to a woman during a two year domestic partnership with another woman, would be considered a "child born out of wedlock," no other justice joined him in that opinion and, at the time, same-sex marriage was not recognized in Indiana.

[4] There is no substantive difference between a "child of the marriage" and a "child born in wedlock" as both are identical and the benefits and obligations of parenthood flow from either. *See, e.g., Estate of Lamey v. Lamey*, 689 N.E.2d

f. The State's Interest Is In the Preservation And Promotions Of The Plaintiff Families

In their opening brief, the Plaintiffs noted that the State's interest is in doing what is in the best interests of the child, an interest that has been legislatively expressed in I.C. § 31-10-2-1(1)-(4). (Plaintiffs' Memorandum in Support, Filing No. 11, p. 8-12). The State cannot identify any governmental interest served by different treatment of plaintiffs on the basis of gender and sexual orientation. Indeed, the classification according to gender and sexual identity flies in the face of Indiana's explicitly child- and family-centered policies.

The State's actual governmental interest is in legally recognizing as parents two women who are married and who, with the aid of artificial insemination, have a child. In this manner, the State ensures that the child has two parents who are legally obligated to care for the child otherwise, the child is left with one parent as, in the case of the Phillips-Stackmans, the sperm donor has been released from any responsibility to support the child. *See*, *In re Paternity of MF*, 938 N.E.2d 1256 (Ind. 2010) (donor found not legally responsible to support child to whom sperm donor agreement applied).

1265 (Ind. Ct. App. 1997). In *Estate of Lamey,* the court rejected an attempt by a father to claim that under *K.S. v. R.S.* a "child of the marriage" is not necessarily a child "born in wedlock." The appellate court distinguished *K.S.* by stating that it believed that Indiana's supreme court "did not intend the potential harmful effect that such an extension of [that decision] would have on a child's ability to inherit via intestate succession." *Estate of Lamey* at 1269-1270.

2. ALTERNATIVELY, THE STATUTES DENY PLAINTIFFS DUE PROCESS

Alternatively, plaintiffs contend that I.C. §§ 31-14-7-1(1), 31-9-2-15, and 31-9-2-16 denies them due process by infringing upon their right to parenthood and family. The State claims that "legal parental status is a necessary prerequisite to the exercise of those rights and such status is conferred by state law." (Response in Opposition, Filing No. 27, at ECF p. 14). In other words, the Plaintiffs are denied legal parental status because the State of Indiana has refused to confer it upon them and their children and without the proper legal status, the Plaintiffs and the Children are unable to exercise their fundamental rights.

The State posits, but without citation to authority, that parental rights in Indiana flow from only two sources: a biological parental relationship or a legal adoption proceeding. (Response in Opposition, Filing No. 27, at ECF p. 1). That assertion ignores the fact that Indiana case law, *see, Levin* and *Engelking*, recognizes that a male marriage partner has both parental obligations and rights when he consents to his wife's conceiving a child with the aid of a third party sperm donor.

On the basis of all of the foregoing, the challenged statutes infringe upon Plaintiffs' right to Due Process.

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

A failure to recognize same-sex marriage constitutes "a constitutional violation" that qualifies as "irreparable harm for purposes of preliminary

injunctive relief." *Baskin v. Bogan*, 983 F. Supp. 2d 1021, 1028 (S.D. Ind. 2014) (citing *Preston v. Thompson,* 589 F.2d 300, 303 n. 3 (7th Cir. 1978) ("[t]he existence of a continuing constitutional violation constitutes proof of an irreparable harm"); *see Does v. City of Indianapolis,* No. 1:06-cv-865-RLY-WTL, 2006 U.S. Dist. LEXIS 72865, 2006 WL 2927598, *11 (S.D. Ind. Oct. 5, 2006) (quoting *Cohen v. Coahoma Cnty., Miss.,* 805 F. Supp. 398, 406 (N.D. Miss. 1992) for the proposition that "[i]t has repeatedly been recognized by federal courts at all levels that violation of constitutional rights constitutes irreparable harm as a matter of law."); *see also Back v. Carter,* 933 F. Supp. 738, 754 (N.D. Ind. 1996) ("When violations of constitutional rights are alleged, further showing of irreparable injury may not be required if what is at stake is not monetary damages. This rule is based on the belief that equal protection rights are so fundamental to our society that any violation of those rights causes irreparable harm.") (internal quotations omitted); *see also Ezell v. City of Chicago,* 651 F.3d 684 (7th Cir. 2011) (finding irreparable harm when Plaintiffs' Second Amendment rights were likely violated); *see also Hodgkins v. Peterson,* No. 1:04-cv-569-JDT-TAB, 2004 U.S. Dist. LEXIS 16359, 2004 WL 1854194, * 5, fn 10 (S.D. Ind. Jul. 23, 2004) (granting a preliminary injunction enjoining enforcement of Indianapolis' curfew law as it likely violated the parents' due process rights and finding that "when an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.")).

In the present case, as discussed *infra,* Plaintiffs' constitutional rights to Equal Protection and Due Process are being denied by Defendants' refusal to recognize that the Children are born in wedlock and by treating the Plaintiff couples differently. The State's treatment and denial of rights "tells those couples, and all the world" that their marriages are "second tier." *U.S. v. Windsor*, 133 S. Ct. 2675, 2694 (2013). It "disparage[s] and demean[s] the dignity of [these] couples in the eyes of the State and the wider community," treating them as having lesser value than other families and as being unworthy of legal recognition and support. *Obergefell v. Wymyslo*, 962 F. Supp. 2d 968, 995 (S.D. Ohio 2013); *aff'd sub nom Obergefell v. Hodges*, 135 S. Ct. 2584. By refusing to recognize that the same-sex spouse of the birth mother is the parent of the child they planned for and by refusing to recognize children born to the same-sex marriage as children born in wedlock yet at the same time according these rights to similarly situated husbands and the children of heterosexual married couples, the State of Indiana is effectively failing to refuse to recognize the marriage of lesbian couples and thereby infringing upon their constitutional rights.

In similar cases, other federal courts have held that a state's refusal to issue equal birth certificates to children born to same-sex spouses inflicts irreparable harm. *See, e.g., Roe v. Patton*, 2015 WL 4476734, No. 2:15-cv-00253-DB, 2015 U.S. Dist. 96207 (C.D. Utah. Jul. 22, 2015). In *Roe,* the plaintiff couple had a child together after being married, utilizing a third-party sperm donor to conceive. The preliminary injunction issued by the *Roe* court

not only provided for the named plaintiffs but also applied to every married lesbian couple in Utah. Specifically, the *Roe* court ordered Utah to stop enforcing Utah's law "in a way that differentiates between male spouses of women who give birth through assisted reproduction with donor sperm and similarly situated female spouses of women who give birth through assisted reproduction with donor sperm." *Roe*, 2015 WL 4476734 at *9. And if Utah continued to provide the presumption of parenthood "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." *Roe*, 2015 WL 4476734 at *9 -*10. *See, also Henry v. Himes*, 14 F. Supp. 3d 1036, 1060, *aff'd sub nom Obergefell v. Hodges*, 135 S. Ct. 2584 (state's refusal to issue birth certificates reflecting both same-sex spouses as parents causes plaintiffs to "needlessly suffer harmful delays, bureaucratic complications, increased costs, embarrassment, invasions of privacy, and disrespect" that constitute "irreparable harm"); *Tanco v. Haslam*, 7 F. Supp. 3d 759, 770 (M.D. Tenn. 2014), *aff'd sub nom Obergefell v. Hodges*, 135 S. Ct. 2584 (finding that "an imminent risk of potential harm to [two plaintiff couples'] children during their developing years from the stigmatization and denigration of their family relationship" constituted irreparable harm); *cf. Brenner v. Scott*, 999 F. Supp. 2d 1278 (N.D. Fla. 2014) (holding that the dignitary injury inflicted by Florida's denial of a death certificate listing a same-sex spouse constituted irreparable harm).

In the present case, unlike *Roe*, Plaintiffs are seeking a preliminary injunction for only two couples who are trying to live through extraordinary times and challenges. As discussed in their opening brief, the Phillips-Stackmans are concerned about what could happen when it comes to insuring and providing for their baby daughter who was born with a genetic defect and is insured under the health insurance policy of Jackie Phillips-Stackman, who the State currently deems the child's stepmother. Jackie is a detective with the violent crimes unit and if anything happens to her or to her wife, under the law, Jackie's relationship with her daughter would no longer be in existence which means the child could not qualify for continued health insurance or for benefits awarded to the children of first responders. The State claims that if something happens, that either Jackie or Lisa could take an administrative appeal. The State fails to address what will happen to the baby's continued medical care if there is no health insurance providing coverage or how the remaining parent and child are to support themselves during the pendency of an appeal. Nor does the State address how the surviving parent is to handle her grief and caring for her child while at the same time pursuing an administrative appeal that would further protract an already painful period for which there could be no compensation.

As regards the Allens, every day that this issue remains unresolved, Crystal and Noell Allen once again confront the death of their children. The State claims that "Any delay in receiving birth certificates, assuming the Plaintiffs prevail, could potentially be compensated by monetary relief for any

additional emotional injury suffered by the Plaintiff." (Response in Opposition, Filing No. 27, at ECF p. 29-30). At the same time, "Defendants do not concede Plaintiff Noell Allen is entitled to any monetary relief." (Response in Opposition, Filing No. 27, at ECF p. 30 fn. 4). Regardless, the Allens have not sought monetary damages. What they seek is closure and that will only come when they see Noell's name on the birth certificate and an acknowledgment by the State that their children were born in wedlock.

C. THE HARMS BALANCE HEAVILY IN FAVOR OF PLAINTIFF

In this case, the balance of harms favors all the Plaintiffs as the State has failed to allege any harm to itself or the public that is sufficiently weighty so that the injunction should be denied. If the preliminary injunction is granted, only two couples in all of Indiana will be impacted and those are the Allens and Phillips-Stackmans. The State could continue to issue birth certificates to husbands unrelated to the children born to their marriage and those children could continue to be considered as legitimate. In other words, the State has identified absolutely no harm that would result by granting this injunction.

CONCLUSION

WHEREFORE, Jackie and Lisa Phillips-Stackman and Crystal and Noell Allen respectfully request that the Court enter a preliminary injunction on their behalf.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 22, 2015, a copy of the foregoing *Reply in Support of Plaintiffs' Motion for Preliminary Injunction was* filed electronically. Notice of this filing will be sent to the following counsel by operation of the Court's electronic filing system:

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