

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

ERIN PORTERFIELD,	)	Case No. CI 21-3993
KRISTIN WILLIAMS, KADIN	)	
WILLIAMS, AND Kristin	)	
Williams on behalf of C. W., a	)	
minor individual,	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
DEPARTMENT OF HEALTH	)	<b>AMENDED COMPLAINT</b>
AND HUMAN SERVICES,	)	<b>FOR DECLARATORY</b>
DANNETTE SMITH in her	)	<b>JUDGMENT AND</b>
official capacity as CEO of the	)	<b>INJUNCTIVE RELIEF</b>
Nebraska Department of Health	)	
and Human Services, and GARY	)	
ANTHONE in his official	)	
capacity as Director of the	)	
Department's Division of Public	)	
Health,	)	
Defendants.	)	
	)	
	)	

COMES NOW the Plaintiffs, by and through their counsel, Sara E. Rips of the ACLU of Nebraska, and Angela Dunne and Angela Lennon of Koenig | Dunne, and in support of their Complaint for Declaratory Judgment and Injunctive Relief state as follows:

**INTRODUCTION**

1. This is a civil rights case about recognizing and protecting the fundamental rights of Nebraska families; recognizing and ensuring that Nebraska children's birth certificates accurately identify their legal parents; and ending impermissible and inequitable gender discrimination against Plaintiffs and other same-sex families in Nebraska.

2. Plaintiffs are a loving and committed family who are without a path, legal or otherwise, to permanently secure their parent-child relationships under Nebraska law. Plaintiffs started and expanded their family at a time when the Nebraska Constitution barred same-sex marriage. In this family of two mothers and two sons, they exist as legal strangers under Nebraska law. As a result, the mothers have faced unnecessary challenges and hurdles including each mother only being able to provide insurance for their biological child, working with schools and medical providers to ensure each parent has access to information and can make decisions on behalf of their children.

3. The Plaintiff children bring this action to challenge the discrimination against them based on the circumstances of their birth and the marital status of their parents. They have no path under Nebraska law to secure their relationships to their second parent.

4. Plaintiffs also bring this action to challenge the impermissible and inequitable gender discrimination against Plaintiffs and other same-sex families in Nebraska. Plaintiffs seek relief from this Court to protect Plaintiffs' rights as a family. Plaintiffs, having no other remedy at law, seek to be treated the same as unmarried opposite-sex couples who, under Nebraska law, can establish parentage of their children through voluntary acknowledgment at any time after a child is born.

5. Defendants do not treat unmarried same-sex couples the same as unmarried opposite-sex couples. With the very narrow exception of surrogacy under Neb. Rev. Stat. § 71-604.02, Defendants only permit men to voluntarily acknowledge parentage and prohibit women from voluntarily acknowledging parentage of a child they did not physically birth. Defendants are discriminating against Plaintiffs on the basis of sex and depriving Plaintiffs of their fundamental familial rights and their rights to be free from gender-based discrimination.

6. Defendants are prohibiting the fundamental rights of Nebraska same-sex parent families to be legally recognized and protected.

7. Not only do Plaintiffs lack a clear path to legally secure their parent-child relationships, but Defendants also have and continue to deny Plaintiffs birth certificates that accurately identify Ms. Porterfield and Ms. Williams as legal parents to both of their children despite both parents signing and submitting acknowledgments of parentage to the Department.

8. Defendants' refusal to acknowledge parentage stigmatizes and harms Plaintiffs in economic, legal, and social ways. The Plaintiff children suffer stigma and harm as a result of a lack of legal security. One prime example is that the children stand on unequal footing when it comes to their inheritance rights. The biological child of the decedent will automatically receive preferential tax rate status on their inheritance, while his sibling will have to petition the courts for redress in order to receive the same treatment. This need to petition the courts exists despite a District Court order and testate documents that recognize and affirm the *in loco parentis* status of each mother. However, those documents do not inherently satisfy the requirements of Neb. Rev. Stat. § 77-2004. Rather, the courts must receive proof that the *in loco parentis* relationship meets the seven-part test developed by the Nebraska Supreme Court in *In re Estate of Ackerman*, 250 Neb. 665 (1996). This is one way that Plaintiffs and other similarly situated same-sex couples and their children are stigmatized and relegated to a second-class status due to the Defendants refusal to recognize their parentage.

9. Defendants' refusal to recognize the parentage of both Plaintiff parents undermines the family's economic stability, their emotional well-being, and denies them "dignity and status of immense import." *United States v. Windsor*, 570 U.S. 744, 768 (2013).

10. Plaintiffs seek declaratory and injunctive relief for violations of the Nebraska Constitution.

11. Plaintiffs seek a declaration that Nebraska's refusal to recognize signed and notarized Acknowledgments of Parentage as a valid legal finding violates the Due Process Clause and Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. Plaintiffs ask this court to declare Neb. Rev. Stat. §§ 43-1408.01, -1409, and 71-640.02 unconstitutional as applied on the grounds they violate the Equal Protection and Due Process Clauses of the Nebraska Constitution.

12. There is no adequate remedy at law in Nebraska for Plaintiffs and other similarly situated same-sex families. Plaintiffs are suffering irreparable injury. In turn, granting a declaratory judgment and injunction precluding the denial of the Acknowledgements of Parentage inflicts no harm on the State of Nebraska, Defendants, or anyone in an opposite-sex couple.

13. Families established through unmarried same-sex couples must have the same legal rights, status, and dignity enjoyed by children and parents in families established through unmarried opposite-sex relationships. This is critical not only for Plaintiffs and other same sex couples and their children, but also advances the public's interest of ensuring children's primary form of support comes from their parents and not the State and protecting children from being stigmatized as a result of the circumstances of their birth.

## **JURISDICTION AND VENUE**

14. This Court has original jurisdiction over this matter pursuant to Neb. Rev. Stat. § 24-302.

15. Pursuant to Neb. Rev. Stat. § 25-21,149 this Court has the power to declare rights, status, and other legal relations. This includes constitutional challenges to statutes. *See Meyerkorth v. State*, 173 Neb. 889 (1962). As well as the establishment of parentage. *See White v. Mertens*, 225 Neb. 241 (1987).

16. Neb. Rev. Stat. § 84-911 requires those challenging the constitutionality of regulations to bring their actions in the District Court of Lancaster County.

17. Plaintiffs served the Attorney General with a copy of this Complaint for Declaratory Judgment and Permanent Injunction in accordance with the requirements of Neb. Rev. Stat. § 25-21,159.

## **PARTIES**

18. Plaintiffs Erin Porterfield and Kristin Williams reside in Omaha, Nebraska. Erin Porterfield and Kristin Williams were in a relationship together from 2000 to 2013. The couple decided to expand their family utilizing assisted reproductive technology (ART) and an anonymous donor. During their relationship, Erin gave birth to their first child, Kadin Williams, in 2002. Kristin Williams gave birth to their second child, C.W., in 2005. Both mothers used the same donor. Plaintiffs consider Erin to be a full and equal parent to C.W. and Kristin to be a full and equal parent to Kadin despite Defendants refusal to recognize their parentage.

19. Plaintiff Kadin Williams temporarily resides out of state for college and permanently resides in Omaha, Nebraska. Kadin knows his parents are Erin Porterfield and Kristin Williams even though Defendants fail to recognize his family.

20. Plaintiff C. W., a minor child, resides in Omaha, Nebraska with his mothers. C.W. knows his parents are Erin Porterfield and Kristin Williams even though Defendants fail to recognize his family.

21. Defendant Department of Health and Human Services (“the Department”) is the state agency charged with registering vital events and adopting, promulgating, and enforcing necessary rules and regulations to carry out the purposes of the Vital Statistics Act. Neb. Rev. Stat. § 71-603.

22. Defendant Smith is the Chief Executive Officer for the Department of Health and Human Services and is responsible in her official capacity for overseeing all Department functions and their

operation consistent with state and federal law. Neb. Rev. Stat. § 81-3117. She is sued in her official capacity.

23. Defendant Gary Anthone is the Director of the Department's Division of Public Health. Dr. Anthone is responsible in his official capacity for overseeing Vital Statistics. Dr. Anthone is sued in his official capacity.

24. Defendants have offices at 301 Centennial Mall South, Lincoln, NE.

### **STATUTORY AND REGULATORY FRAMEWORK**

25. While Plaintiffs do not challenge the validity of the federal statutes and regulations, it is important to provide an overview of that framework in order to understand the challenged Nebraska statutes and regulations. Congress enacted Title IV of the Social Security Act with the purpose of helping states operate programs designed to:

- a. "provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
- b. end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
- c. prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and
- d. encourage the formation and maintenance of two-parent families." 42 U.S.C. § 601.

26. To further that goal, Part D of Title IV requires states who choose to participate in federally subsidized welfare programs to develop procedures regarding the establishment of paternity, which includes voluntary paternity acknowledgments. 42 U.S.C.

§ 666(a)(5)(C). As such, the Social Security Act controls the processes for voluntarily acknowledging paternity.

27. Title IV-D requires states to develop and utilize an affidavit for the voluntary acknowledgment of paternity. 42 U.S.C. § 666(a)(5)(C)(iv). The Title also requires states to establish procedures to affirm the validity of a signed voluntary acknowledgment as a legal finding upon expiration of a 60-day rescission period. 42 U.S.C. § 666(a)(5)(D)(ii). States must also develop procedures under which voluntary acknowledgments and adjudications of paternity are filed with the State registry of birth records. 42 U.S.C. § 666(a)(5)(M). States must also enact mechanisms that allow for the inclusion of a father on the birth certificate of a child whose parents are unwed in situations where the father and mother have signed a voluntary acknowledgment of paternity or a court has adjudicated paternity. 42 U.S.C. § 666(a)(5)(D)(i).

28. The Nebraska legislature enacted Neb. Rev. Stat. §§ 43-1408.01, -1409, and 71-640.02 to establish the relevant statutory procedures required by Title IV-D. Neb. Rev. Stat. § 43-1412 provides that signed and notarized acknowledgments of paternity are admissible in any proceeding to establish paternity without the need for any further evidence. Neb. Rev. Stat. § 71-630 requires the Department to amend the birth certificate of a child upon request and receipt of a sworn acknowledgment of paternity signed by both parents to show paternity. Additionally, in 2020, the Legislature enacted § 71-604.02 to allow for the acknowledgment of maternity only in the case of surrogacy situations.

29. The Department developed and enacted Title 466 of the Nebraska Administrative Code to establish the necessary regulatory procedures required by Title IV-D. 466 NAC §1-001.

## **STATEMENT OF FACTS**

30. Plaintiffs Kadin Williams and C.W. are healthy, thriving, and well-loved children. Both children have healthy relationships with

their families, strong friendships with their peers, and a feeling of belonging both at home and in their community. Plaintiff Kadin Williams is currently a freshman in college and Plaintiff C.W. is a high school student. Both mothers have been active participants in the lives and well-being of their sons since birth. They have supported the children through guitar, piano, and voice lessons. They attend their sons' concerts and performances in show choir, marching band, jazz band, and theater. They currently split the costs of college and health insurance for their older son. Both mothers have enriched their sons' lives through travel both domestic and abroad, including Europe, Mexico, numerous ski trips, and visits to family in Utah, California, and Washington. At all times, the mothers have invested their time, money, and love to prepare their sons to be healthy, contributing members of society.

31. Ms. Porterfield and Ms. Williams began a romantic relationship in 2000. At all times during the couples' relationship, Nebraska law prohibited them from marrying. Despite this prohibition, Ms. Porterfield and Ms. Williams loved each other and decided to start a family together.

32. The couple went to the Heartland Center for Reproductive Medicine for assistance with building their family. The couple utilized intrauterine insemination and anonymous donor sperm, and Ms. Porterfield gave birth to the couple's first child, Kadin, in 2002. Ms. Williams gave birth to the couple's second child, C.W., in 2005 also using intrauterine insemination and anonymous donor sperm.

33. Ms. Porterfield and Ms. Williams purchased the anonymous donor sperm from a Georgia sperm bank. The donor, in accordance with the practices of the State of Georgia and sperm bank, signed a contract which waived all parental rights and responsibilities and liabilities related to any conceived offspring.

34. Since the birth of their children, Plaintiffs Porterfield and Williams have held themselves out to be the parents of both children. At all times, Plaintiffs Porterfield and Williams have been actively involved in the lives of their children. Both have at all times been



central to their children’s moral and spiritual upbringing, healthcare, education, and discipline. The couple resided together and raised their children as co-parents for over a decade until September 2013. Like many couples there came a point where their romantic relationship ended. After the couple parted ways, they actively mediated a parenting plan to continue their co-parenting relationship in the best interests of their children.

35. On July 9, 2015, Ms. Porterfield filed a Complaint for Initial Child Custody Determination in the District Court of Douglas County, Nebraska. On February 1, 2017, the court ordered that Ms. Williams stands *in loco parentis* to Kadin, and Ms. Porterfield stands *in loco parentis* to C.W. The Court also approved the parties’ proposed parenting plan and child support obligations. In its order, the Court wrote: “each party hereby has the usual and legal relationship with said child that exists between a parent and child.” The court also ordered the addition of the non-birth parent to each child’s birth certificate.

36. On February 28, 2018, Erin Porterfield submitted an Application for Amendment of Kadin Porterfield Williams’ birth certificate to add Kristin Williams as Kadin’s mother. On March 27, 2018, DHHS denied the request for amendment. Ms. Porterfield requested a hearing regarding the denial. After a hearing on the matter, the Department of Health and Human Services’ hearing officer affirmed the Department’s denial on August 30, 2018. Ms. Porterfield did not further challenge the Department’s ruling.

37. The Department denied Plaintiff Porterfield’s request to add Ms. Williams to the birth certificate because a person that stands *in loco parentis* is not the equivalent of a father under the statute.

38. On July 8, 2021, Plaintiffs Porterfield and Williams executed Voluntary Acknowledgments of Parentage in the presence of a Notary Public. The Voluntary Acknowledgments signed by Plaintiffs Porterfield and Williams are nearly identical to the form provided by the Office of Vital Statistics to parents at hospitals. The only difference

between the forms is that the form the Plaintiffs signed utilized gender-neutral language.

39. On or about July 20, 2021, Plaintiffs Porterfield and Williams submitted the notarized Acknowledgments of Parentage to the Office of Vital Records, an office that is part of the Department of Health and Human Services, as required by 466 NAC 6-005.

40. Pursuant to Neb. Rev. Stat. § 43-1409 the voluntary acknowledgments became effective sixty (60) days from the date the parties signed.

41. On or about September 29, 2021, the Department, through counsel, sent a letter rejecting the validity of the Acknowledgments and concluding that the Department lacks the authority to recognize the Acknowledgments.

### **NEBRASKA *IN LOCO PARENTIS***

42. The concept of *in loco parentis* is a legal fiction and common law doctrine long used by Nebraska courts to afford rights to nonparents where the exercise of those rights is in the best interests of the child. A person standing *in loco parentis* to a child is one who has put themselves in the situation of a lawful parent by assuming the obligations incident to the parental relationship, without going through the formalities necessary to a legal adoption, and the rights, duties, and liabilities of such person are the same as those of the lawful parent. To stand *in loco parentis*, one must assume all obligations incident to the parental relationship.

43. And yet, *in loco parentis* is not a permanent status and the rights of a parent standing *in loco parentis* are always lesser than the rights of a legally acknowledged parent. *Windham v. Griffin*, 295 Neb. 279 (2016).

44. People who stand *in loco parentis* can sever the parent-child relationship at any time they choose. Legal parents cannot.

45. Courts can sever *in loco parentis* rights without the same showing required to sever the rights of a legal parent. *Id.*

46. Nebraska law views Ms. Porterfield's and Ms. Williams' rights to be temporary, flexible, and capable of being both suspended and reinstated. And at the same time, the law forecloses Plaintiffs Porterfield and Williams from pursuing the formalities necessary to be considered legal parents.

### **NEBRASKA PATERNITY LAW**

47. Under the common law, fathers are under no legal liability to support children of theirs born out of wedlock. *Carlson v. Bartels*, 143 Neb. 680, 683 (1943). The Nebraska Legislature abrogated the common law when they enacted paternity laws. *Id.* at 683–84. The government's interest in establishing parentage laws is to ensure that both parents of a child provide financial support. *See State on Behalf of J.R. v. Mendoza*, 240 Neb. 149, 159 (1992).

48. Nebraska law makes the father of a child born out of wedlock liable for support and education in the same manner as the father of a child born of a marriage is liable for support. Neb. Rev. Stat. §§ 43-1402, 1401. It also requires that the mother of a child also be liable for support of the child. Neb. Rev. Stat. § 43-1402.

49. As the laws in Nebraska currently stand, there are five ways for a non-gestational parent to establish parentage: a) the marital presumption; b) adoption; c) an action for paternity; d) voluntary acknowledgment of parentage; and e) declaratory judgment.

#### ***The Marital Presumption***

50. Neb. Rev. Stat. § 42-377 provides that a child born to a married couple is presumed legitimate. The Supreme Court's ruling in *Pavan v. Smith*, 137 S. Ct. 2075 (2017) affirmed that the presumption applies equally to same-sex and opposite-sex married couples.

51. Ms. Porterfield and Ms. Williams were unable to marry because at the time of their relationship, article I, section 29 of the Nebraska Constitution banned the recognition of same-sex marriages. The parties separated before the Supreme Court decided *Obergefell v.*

*Hodges*, 576 U.S. 644 (2015) and before the District Court of Nebraska enjoined § 29 in *Waters v. Ricketts*, 159 F.Supp.3d 992 (2016).

### ***Adoption***

52. Nebraska case law prohibits second parent adoption with the exception of stepparent adoption. *In re Adoption of Luke*, 263 Neb. 365 (2002). The *Luke* Court made clear that unless the couple is married, the non-birth parent cannot adopt without forcing the birth parent to cede their parental rights.

53. For same-sex couples who conceived children prior to *Obergefell* and subsequently married, adoption can be an appropriate avenue to obtain parentage of their children.

54. Ms. Porterfield and Ms. Williams are not able to utilize adoption to obtain parentage over their children without destroying the rights of the other parent which is not in the best interests of the children, the parents, the family, or the general public interest.

### ***Paternity Action***

55. Nebraska laws allows the State, the mother, or the putative father to bring an action for paternity. Neb. Rev. Stat. § 43-1414. The Court can enter default judgments against the father in these proceedings upon a showing of service and a failure to answer or appear. Neb. Rev. Stat. § 43-1412. As such, courts can make legal findings of parentage without adducing evidence in accordance with Title IV-D of the Social Security Act. *See* 45 CFR § 302.70(a)(5)(viii) (a state must have in place “[p]rocedures requiring a default order to be entered in a paternity case upon a showing that process was served on the defendant in accordance with State law, that the defendant failed to respond to service in accordance with State procedures, and any additional showing required by State law”).

56. Nebraska’s paternity statutes limit the timeframe in which parents can bring actions to establish paternity. Neb. Rev. Stat. § 43-1411 bars the bringing of a paternity action after the child has

reached the age of eighteen. The oldest child, Kadin Williams, has already reached the age of 18.

### ***Voluntary Acknowledgment of Paternity***

57. To comply with the requirements of Title IV-D, states must provide mechanisms to establish paternity through voluntary acknowledgment. 45 CFR § 302.70(a)(5); 45 C.F.R. § 303.5(g); 42 U.S.C. § 666(a)(5)(D)(ii)(I). The federal mandates require states to develop and use affidavits that meet certain requirements. 42 U.S.C. § 666(a)(5)(C)(iv). The mandates require that states provide due process protections. 45 CFR § 302.70(a)(5). They also require states to develop procedures “under which the voluntary acknowledgment of paternity creates a rebuttable or, at the option of the State, conclusive presumption of paternity, and under which such voluntary acknowledgment is admissible as evidence of paternity.” *Id.*

58. Neb. Rev. Stat. §§ 43-1408.01 and -1409 establish most of the necessary requirements for compliance with Title IV-D. Title 466 of NAC also makes clear that the Department is the agency responsible for administering, implementing, and enforcing the program.

59. Absent from both federal mandate and Neb. Rev. Stat. § 43-1409 is an explicit requirement that the signatories acknowledge that the signing father is, or that there is a reasonable belief that he is, the child’s biological father.

60. In Nebraska, the proper legal effect of a signed, notarized acknowledgment of paternity is a finding that the individual who signed as the father is in fact the legal father. *Tyler F. v. Sara P.*, 306 Neb. 397, 406 (2020). And a father whose paternity is established by a final, voluntary acknowledgment has the same right to seek custody as the child’s biological mother, even if subsequent genetic testing shows no biological relationship. *In re Adoption of Jaelyn B.*, 293 Neb. 917 (2016).

61. Voluntary acknowledgments of paternity cannot be rescinded merely on the basis of a showing of a lacking genetic

relationship. Neb. Rev. Stat. § 43-1409; *see Cesar C. v. Alicia L.*, 281 Neb. 979 (2011); *Tyler F. v. Sara P.*, 306 Neb. 397 (2020). Rather, once the sixty-day rescission period has passed, the acknowledgments can only be rescinded upon a showing of fraud, duress, or material mistake of fact. Neb. Rev. Stat. § 43-1409.

62. Ms. Porterfield and Ms. Williams chose to start a family in which each woman would be an equal parent to their children. They have always stipulated and held themselves both out to be equal parents to their children. They knowingly and willingly signed the voluntary acknowledgments of parentage after being apprised of the attendant legal consequences, rights, and responsibilities as required by federal law and state statute and regulation.

### ***Declaratory Judgment***

63. The Uniform Declaratory Judgments Act, Neb. Rev. Stat. § 25-21,149 et seq. provides courts with the power to declare rights, status, and other legal relations, including under certain circumstances the power to determine the parentage of a child. *Carlson v. Bartels*, 143 Neb. 680 (1943); *White v. Mertens*, 225 Neb. 241 (1987).

64. This is especially true when both parents stipulate parentage. *White v. Mertens*, 225 Neb. 241 (1987).

65. Because the Department has refused to accept the signed, notarized Acknowledgments, the parties only remaining option for obtaining legal recognition of parentage is to pursue an action for declaratory judgment.

### **FIRST CLAIM FOR RELIEF**

#### ***(Declaratory Judgment of Parentage under State Statutes)***

66. Plaintiffs incorporate by reference and re-allege paragraphs 1–65 of this Complaint as though fully set forth herein.

67. This Court has authority to grant declaratory relief as provided by the Uniform Declaratory Judgments Act, Neb. Rev. Stat. § 25-21,149 et seq.

68. Under the Declaratory Judgments Act, an equity court has the power to determine the parentage of a child as set forth in *Carlson v. Bartels*, 143 Neb. 680 (1943) and *White v. Mertens*, 225 Neb. 441 (1987).

69. The Declaratory Judgments Act empowers this Court to resolve “question[s] of construction or validity arising the instrument, statute, . . . and obtain[ing] a declaration of rights, status, or other legal relations thereunder.” Neb. Rev. Stat. § 25-21,150. Further, the Act allows this Court to grant “[f]urther relief . . . whenever necessary or proper.” Neb. Rev. Stat. § 25-21,156.

70. Ms. Porterfield and Ms. Williams are both the parents to Kadin and C.W. They stand *in loco parentis* to one of their children because the law currently precludes them from obtaining legal status as parents. Ms. Porterfield and Ms. Williams chose to start a family together and to have children together despite being prohibited by law from marrying. Their rights as unwed, same-sex parents are different from the rights of unwed opposite-sex parents despite having fully participated in their children’s lives through physical, emotional, and financial support.

71. Plaintiffs Kadin Williams and C.W. are both the children of Erin Porterfield and Kristin Williams. Their rights as children of unmarried, same-sex parents are different from the rights of children born to unmarried, opposite-sex parents and married parents despite not being responsible for the conditions of their birth. *See Weber v. Aetna*, 406 U.S. 164, 175-76 (1972). They are entitled to have a legal relationship with both of their mothers.

72. Unlike some putative parents who shirk their responsibilities related to their offspring, Ms. Porterfield and Ms. Williams ardently seek and have sought all the rights, responsibilities, obligations, and liabilities attendant to legal parentage to recognize

and protect the full fundamental familial rights of themselves and their children.

73. An unmarried opposite-sex unwed couple could conceive a child through ART and their acknowledgments of parentage would not receive one moment of scrutiny by Defendants. Despite the fact that Neb. Rev. Stat. § 43-1409 does not require parents to affirm genetic kinship in a voluntary acknowledgment of parentage, Defendants denied Ms. Porterfield's and Ms. William's acknowledgments based on their gender.

74. In accordance with the heightened constitutional protections afforded to both parents and children, the Nebraska Supreme Court's holding in *White v. Mertens*, and to advance the public interest, Plaintiffs are entitled to a declaratory judgment so that Ms. Porterfield and Ms. Williams are both recognized as full legal parents of Kadin and C.W. and so that the acknowledgments they signed are valid legal findings that should be treated the same as any other valid acknowledgment of parentage.

75. As a matter of constitutional avoidance, this Court should declare both Plaintiffs Erin Porterfield and Kristin Williams as mothers of Kadin Williams and C.W.

76. There is no other adequate remedy under the law available to the Plaintiffs that would assure their rights as parents to their children.

## **SECOND CLAIM FOR RELIEF** ***(Declaratory Judgment in Equity)***

77. Plaintiffs incorporate by reference and re-allege paragraphs 1–76 of this Complaint as though fully set forth herein.

78. A suit for declaratory judgment is an action sui generis and may involve questions of law or equity or both; whether a declaratory judgment action is treated as an action at law or one in equity is to be determined by the nature of the dispute. *City of Lincoln v. Nebraska Public Power Dist.*, 10 Neb.App. 713, 725 (2001).



79. Neither Nebraska law nor regulations address the parentage of children born through ART.

80. Children conceived through ART have the same rights to have the financial and legal security that comes through legal recognition of parent-child relationships.

81. In accordance with the heightened constitutional protections afforded to both parents and children, the Nebraska Supreme Court's holding in *White v. Mertens*, and to advance the public interest, Plaintiffs are entitled to a declaratory judgment so that Ms. Porterfield and Ms. Williams are both recognized as full legal parents of Kadin and C.W.

82. As a matter of constitutional avoidance, this Court should declare Plaintiffs Erin Porterfield and Kristin Williams to both be the mothers of Kadin Williams and C.W.

83. There is no other adequate remedy under the law available to the Plaintiffs that would assure their rights as children to their parents.

### **THIRD CLAIM FOR RELIEF**

#### ***(As Applied Equal Protection Constitutional Challenge to State Statutes)***

84. Plaintiffs incorporate by reference and re-allege paragraphs 1–83 of this Complaint as though fully set forth herein.

85. Article I, section 3 of the Nebraska Constitution guarantees all persons the equal protection of the laws.

86. Defendants refuse to recognize the signed and notarized Acknowledgments of Parentage as a valid legal finding and thus in turn have failed to issue birth certificates reflecting the names of both parents. In doing so, Defendants have subjected Plaintiffs to adverse and discriminatory treatment.

87. Defendants' refusal to accept same-sex acknowledgments of parentage and have the same recognized on the birth certificates as set forth in Neb. Rev. Stat. §§ 43-1408.01 and -1409 in the case of

Plaintiffs Erin Porterfield and Kristin Williams, solely on the basis of their status as a same-sex couple, their sex, and their sexual orientation is in clear violation of their right to Equal Protection under the State Constitution. Defendants cannot assert any rational basis, much less a substantial interest, for this denial of Plaintiffs' fundamental rights.

88. Defendants' refusal to accept same-sex acknowledgements of parentage and have the same recognized on the birth certificates as set forth in Neb. Rev. Stat. § 43-1409 in the case of Plaintiffs Kadin Williams and C.W., solely on the basis of their status as the children of a same-sex couple is in clear violation of their right to Equal Protection under the State Constitution.

89. Defendants cannot assert any basis, much less a substantial interest, for this denial of Plaintiffs Kadin Williams and C.W.'s fundamental rights.

90. Legal parentage confers children with important rights and benefits. Among those include inheritance rights and access to government benefits, along with the rights to care, protection, and financial support from their parent. Where there is a couple who consented, wanted, and planned for the creation of a child, providing that child with two legal parents at birth benefits society.

91. Defendants' refusal to provide this essential security and recognitions of the Plaintiffs' legal parent-child relationships through acknowledgments of paternity is a denial of rights that negatively impacts the Plaintiff children. By not allowing children of unmarried, same-sex couples to gain security and recognition through AOPs when children of unmarried different-sex couples are able to access those protections, the statutes create two classes of children and discriminate against the Plaintiff children based on the circumstances of their birth and the gender of their parents.

92. There is no societal benefit achieved by treating Plaintiffs differently and requiring non-birth mothers and children born to unmarried parents using ART to go through time-consuming and expensive legal procedures, such as this action, to achieve what is

automatically granted to opposite-sex parents and similarly situated children.

93. The effect of a delay in the issuance of a birth certificate reflecting both parents can be not only inconvenient, but also devastating to Plaintiffs' family in case of death or other change in family circumstances. The children Plaintiffs in this case, and those of other same-sex couples in the State of Nebraska, are deprived of access to immediate, clear proof of their relationship to both of their parents and the security afforded by such proof. This denial discriminates against such children on the basis of their parents' status as a same-sex couple, their parents' sex, and their parents' sexual orientation.

94. Moreover, by refusing to honor acknowledgments of parentage for children of unmarried parents of the same-sex, while honoring similar acknowledgments on behalf of similarly situated children with different-sex parents, Defendants have created two classes of Nebraska-born children and impermissibly disadvantaged children of unmarried same-sex parents.

95. There is no rational basis for Defendants' treatment of Plaintiffs nor for the classification Defendants have created. The course of conduct taken by, or attributable to, Defendants is not narrowly tailored to further any legitimate or substantial interest. Accordingly, Defendants' conduct violates the Equal Protection guarantee found in article I, section 3 of the Nebraska Constitution.

98. Defendants interpret the Acknowledgment of Paternity statutes to preclude the Plaintiff parents from securing their legal parentage. This interpretation undermines their core purpose, which is to establish a child's legal relationship with their parents as close to birth as possible so that the parents—not the state—are responsible for the child's financial support. Ensuring a child has two parents available for financial support and stability serves the best interest of the child while protecting the public's fiscal and social interests that children do not become public charges and have access to stable, loving families.

99. The parent Plaintiffs have no adequate remedy at law to redress the wrongs alleged in this action, which are of a continuing nature and will cause irreparable harm.

100. The children Plaintiffs have no adequate remedy at law to redress the wrongs alleged in this action, which are of a continuing nature and will cause irreparable harm.

101. As a result of Defendants' unlawful and unconstitutional actions, Plaintiffs have suffered and will continue to suffer substantial injury.

102. Neb. Rev. Stat. § 71-640.02 requires Defendants to enter on the birth certificate of any child born out of wedlock the name of the father of the child upon receipt of (1) a certified court order establishing paternity or a statement in writing by the father that he is the father of the child and (2) the written request of a person having legal custody of the child.

103. Plaintiffs seek a declaration that Defendants' refusal to apply Neb. Rev. Stat. §§ 43-1408.01, -1409, and 71-640.02 on the same terms and conditions as it does for unmarried opposite-sex couples and children born to unmarried opposite-sex couples using ART violates the Equal Protection guarantee found in article I, section 3 of the Nebraska Constitution.

104. Unless this Court enjoins the Defendants, they will continue to discriminate against Plaintiffs and unmarried same-sex couples who choose to conceive children and their children. Neb. Rev. Stat. §§ 43-1408.01, -1409, and 71-640.02, as applied, discriminate against Plaintiffs, their children, and other unmarried same-sex couples and their children.

#### **FOURTH CLAIM FOR RELIEF**

#### ***(As Applied Due Process Constitutional Challenge to State Statutes)***

105. Plaintiffs incorporate by reference and re-allege paragraphs 1–104 of this Complaint as though fully set forth herein.

106. Defendants' enforcement, under color of state law, of Nebraska's Voluntary Acknowledgment of Paternity laws, including the categorical prohibition against acceptance of same-sex signed voluntary acknowledgments of paternity, violates the parent Plaintiffs' fundamental right to parental autonomy protected by the Due Process Clause found in article I, section 3 of the Nebraska Constitution, by improperly burdening their fundamental rights to make decisions concerning the care, custody, and control of their children.

107. Nebraska's laws prevent the non-gestational parent Plaintiffs from fully making fundamental decisions about their children that are central to their status as parents. These decisions include: (i) the ability to take steps to have the family they have created become legally recognized; (ii) the ability to support and contribute to the making of a legally certain determination of who will receive custody of their children in the event of their death or incapacitation; (iii) the ability to support and contribute to the making of a legally certain determination of who will have the unquestioned ability to make decisions regarding their child's medical care; (iv) the ability to support and contribute to the making of a legally certain determination regarding inheritance, survivor's benefits, and welfare; and (v) other decisions central to their child's health and wellbeing.

108. This categorical exclusion is not narrowly tailored to further any compelling government interest and, in fact, is not even rationally related to the furtherance of any legitimate government interest.

109. Both parents and their children have cognizable substantive due process rights to the parent-child relationship. *Amanda C. ex rel. Richmond v. Case*, 275 Neb. 757 (2008).

110. Defendants' enforcement against same-sex unwed couples and their children, under color of state law, solely on the basis of the parents' status as a same-sex couple, their sex, and their sexual orientation deprives Plaintiffs of their constitutional right to substantive due process under article I, section 3 of the Nebraska Constitution.

111. The Plaintiffs have no adequate remedy at law to redress the wrongs alleged in this complaint, which are of a continuing nature and will cause irreparable harm.

112. Unless this Court enjoins the Defendants, they will continue to apply Nebraska's categorical prohibition against voluntary acknowledgments on the basis of gender and sexual orientation against Plaintiffs and other similarly situated Nebraska families.

**FIFTH CLAIM FOR RELIEF**  
***(As Applied Equal Protection Constitutional Challenge to State Regulations)***

113. Plaintiffs incorporate by reference and re-allege paragraphs 1–113 of this Complaint as though fully set forth herein.

114. Article I, section 3 of the Nebraska Constitution guarantees all persons the equal protection of the laws.

115. Defendants' refusal to recognize the signed and notarized Acknowledgments of Parentage and issue birth certificates reflecting the names of both parents in accordance with Title 466 of the Nebraska Administrative Code. In doing so, Defendants have subjected all four Plaintiffs to adverse and discriminatory treatment based on Ms. Porterfield's and Ms. Williams' gender and sexual orientation.

116. Defendants' refusal to accept same-sex acknowledgments of parentage and have the same recognized on the birth certificates as required by Title 466 in the case of Plaintiffs Erin Porterfield and Kristin Williams, solely on the basis of their status as a same-sex couple, their gender, and their sexual orientation is in clear violation of their right to equal protection under the State Constitution. Defendants cannot assert any rational basis, much less a substantial interest, for this denial of Plaintiffs' fundamental rights.

117. Defendants' refusal to acknowledge same-sex acknowledgments of parentage and have the same recognized on the birth certificates as required by Title 466 in the case of Plaintiffs

Kadin Williams and C.W., solely on the basis of their status as the children of a same-sex couple is in clear violation of their right to equal protection under the State Constitution. Defendants cannot assert any basis, much less a substantial interest, for this denial of Plaintiffs Kadin Williams and C.W.'s fundamental rights.

118. Moreover, by refusing to honor acknowledgments of parentage for the children of unmarried parents of the same-sex, while honoring similar acknowledgments on behalf of similarly situated children with opposite-sex parents, Defendants have created two classes of Nebraska-born children and impermissibly disadvantage children of same-sex parents.

119. There is no rational basis for Defendants' treatment of Plaintiffs or for the classification Defendants have created. The course of conduct taken by, or attributable to, Defendants is not narrowly tailored to further any legitimate or substantial interest. Accordingly, Defendants' conduct violates the Equal Protection guarantee found in article I, section 3 of the Nebraska Constitution.

120. Defendants interpret Title 466 of the Nebraska Administrative Code to preclude the Plaintiff parents from securing their legal parentage. This interpretation undermines the Title's core purpose, which is to establish a child's legal relationship with their parents as close to birth as possible so that parents—not the state—are responsible for the child's financial support. By ensuring a child has two parents available for financial support and stability serves the best interest of the child while preserving the public's fiscal interests.

121. The Plaintiffs have no adequate remedy at law to redress the wrongs alleged in this action, which are of a continuing nature and will cause irreparable harm.

122. As a result of Defendants' unconstitutional actions, Plaintiffs have suffered and will continue to suffer substantial injury.

123. Plaintiffs seek a declaration that DHHS' refusal to apply Title 466 of NAC on the same terms and conditions as it does for unmarried opposite-sex couples and their children violates the Equal Protection guarantee found in the Nebraska Constitution.

124. Unless this Court enjoins the Defendants, they will continue to discriminate against Plaintiffs and unmarried same-sex couples who choose to conceive children and the children on the basis of their gender and sexual orientation.

**SIXTH CLAIM FOR RELIEF**  
***(As Applied Due Process Constitutional Challenge to State Regulations)***

125. Plaintiffs incorporate by reference and re-allege paragraphs 1–124 of this Complaint as though fully set forth herein.

126. Defendants’ enforcement, under color of state law, of Title 466 of the Nebraska Administrative Code, including the categorical prohibition against acceptance of same-sex signed voluntary acknowledgments of paternity, violates the parent Plaintiffs’ fundamental right to parental autonomy protected by the Due Process Clauses found in article I, section 3 of the Nebraska Constitution, by improperly burdening their fundamental rights to make decisions concerning the care, custody, and control of their children.

127. These regulations prevent the non-gestational parent Plaintiffs from making fundamental decisions about their children that are central to their status as parents. These decisions include: (i) the ability to take steps to have the family they have created become legally recognized; (ii) the ability to support and contribute to the making of a legally certain determination of who will receive custody of their children in the event of their death or incapacitation; (iii) the ability to support and contribute to the making of a legally certain determination of who will have the unquestioned ability to make decisions regarding their child’s medical care; (iv) the ability to support and contribute to the making of a legally certain determination regarding inheritance, survivor’s benefits, and welfare; and (v) other decisions central to their child’s health and wellbeing.

128. This categorical exclusion is not narrowly tailored to further any compelling government interest and, in fact, is not even



rationally related to the furtherance of any legitimate government interest.

129. Both parents and their children have cognizable substantive due process rights to the parent-child relationship. *Amanda C. ex rel. Richmond v. Case*, 275 Neb. 757 (2008).

130. Defendants' enforcement of these regulations against Plaintiffs and same-sex unwed couples, under the color of state law, deprives Plaintiffs of their constitutional right to substantive due process under article I, section 3 of the Nebraska Constitution.

131. The Plaintiffs have no adequate remedy at law to redress the wrongs alleged in this complaint, which are of a continuing nature and will cause irreparable harm.

132. Unless this Court enjoins the Defendants, they will continue to interpret the regulations to categorically reject voluntary acknowledgments based on the sex and sexual orientation of the acknowledging parent.

### **SEVENTH CLAIM FOR RELIEF** ***(Injunctive Relief)***

133. Plaintiffs incorporate by reference and re-allege paragraphs 1–132 of this Complaint as though fully set forth herein.

134. Unless this Court restrains the Defendants through a permanent injunction, the Plaintiffs will continue to suffer severe, irreparable harm.

135. There is no other adequate remedy at law for the Plaintiffs. Plaintiffs Erin Porterfield and Kristin Williams are suffering irreparable harm. Kadin Williams and C.W. are also suffering irreparable harm. There is no harm to the State or the Department in granting an injunction prohibiting enforcement of the challenged statutes and regulations as applied to the Plaintiffs with respect to the acceptance of same-sex acknowledgment of parentage. The harm to Plaintiffs is severe. The public interest is clearly served by this Court acting to order recognition in Nebraska of same-sex

parentage through voluntary acknowledgment consistent with the manner in which Nebraska treats similarly situated opposite-sex couples and their children as applied to the acceptance of acknowledgments of paternity. Only prompt action by this Court ordering declaratory and injunctive relief will serve the public interest.

136. The statutes and regulations as currently applied are inadequate to prevent a failure of justice.

137. The United States and Nebraska Supreme Courts have made clear that both children and their parents have constitutional rights to familial relationships.

138. The hardships faced by Plaintiffs outweigh any inconveniences on the part of the Department.

139. Public interest favors a constitutional interpretation of the laws and regulations that does not discriminate on the basis of sex or sexual orientation.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for the following relief:

A. A declaration that Plaintiff Porterfield is the legal mother of C.W. in addition to Plaintiff Williams, and that Plaintiff Williams is the legal mother of Plaintiff Kadin Williams in addition to Plaintiff Porterfield;

B. An order requiring that Defendants amend the Plaintiff children's birth certificates to reflect the parentage of both of their mothers;

C. A declaration that the Nebraska statutes related to voluntary acknowledgments of paternity should be applied equally and equitably without regard for the gender or sexual orientation of the acknowledging parent;

D. A declaration that the Nebraska regulations related to voluntary acknowledgments of paternity should be applied equally and equitably without regard for the gender or sexual orientation of the acknowledging parent;

E. An order enjoining Defendants from enforcing or applying categorical restrictions on unwed same-sex parents and their children on the basis of the parents' gender or sexual orientation;

F. An order enjoining Defendants from refusing to register and give full effect to voluntary acknowledgments of parentage from same-sex individuals consistent with the acceptance process applied to opposite-sex applicants;

G. An order enjoining Defendants from refusing to issue accurate birth certificates and other vital records documents to Plaintiffs;

H. An order awarding Plaintiffs their costs, including reasonable attorneys' fees; and

I. An order awarding any such other and further legal and or equitable relief as this Court deems just.

DATED this 21st day of January, 2022.

By: /s/ Sara E. Rips

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# Certificate of Service

I hereby certify that on Friday, January 21, 2022 I provided a true and correct copy of the Amended Complaint to the following:

Department of Health and Human represented by Erik W. Fern (Bar Number: 23733)  
service method: Electronic Service to erik.fern@nebraska.gov

Anthone,Gary, represented by CAMPBELL, JAMES A. (Bar Number: 26934) service  
method: Electronic Service to jim.campbell@nebraska.gov

Williams,Kadin, represented by Angela,Dunne (Bar Number: 21938) service method:  
Electronic Service to laurenk@KoenigDunne.com

Smith,Dannette, represented by CAMPBELL, JAMES A. (Bar Number: 26934) service  
method: Electronic Service to jim.campbell@nebraska.gov

Peterson,Doug, service method: Email

Williams,Kristin, represented by Angela Lennon (Bar Number: 24964) service method:  
Electronic Service to laurenk@koenigdunne.com

Department of Health and Human represented by CAMPBELL, JAMES A. (Bar Number:  
26934) service method: Electronic Service to jim.campbell@nebraska.gov

Signature: /s/ Sara Elizabeth Rips (Bar Number: 26091)