

# NEBRASKA

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DEPT. OF HEALTH AND HUMAN SERVICES



Pete Ricketts, Governor

September 29, 2021

Sara Rips  
ACLU Nebraska  
134 S. 13<sup>th</sup> Street #1010  
Lincoln, Nebraska 68508


RE: Acknowledgement of Parentage; ACLU letter dated July 20, 2021

Dear Sara:

Thank you for your patience as the Department of Health and Human Services reviewed the issues raised in your letter dated July 20, 2021. As previously discussed by telephone, the Department, in consultation with the Office of Attorney General, has conducted an in-depth review of this complicated issue. The ACLU's proposal, as well as relevant statutes, regulations, and case law were studied and given great consideration. Only after such contemplation and scrutiny does the Department conclude, as outlined below, that it does not have the legal authority to accept the proposed Acknowledgement of Parentage form, and is unable to amend the birth certificates at issue.

Under current statutory language, an individual must be legally recognized as a parent to be listed as a parent on a Nebraska birth certificate. At this time, the only routes to legal parentage under Nebraska law are through marital presumption, adoption, or biological relationship. Ms. Porterfield and Ms. Williams were not legally married at or around the dates of birth, they have not adopted the biological child of the other, nor do they share a biological connection with the child born to the other. While a court has declared them to be *in loco parentis*, our Supreme Court has held that status is not the equivalent to the role of a parent. Accordingly, for the Department to take the requested actions, it would need to interpret new meaning into the current laws. This would extend beyond the authority of the executive branch and infringe upon the constitutional purview of either or both the legislature or the courts. Regrettably, I must advise the Department is without legal authority to comply with your request.

Respectfully,



Bo Botelho, JD  
General Counsel  
Department of Health and Human Services