

3. Plaintiffs bring this action to challenge the impermissible and inequitable gender discrimination against Plaintiffs and other same-sex families in Nebraska. Plaintiffs seek equal treatment. 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.

4. Defendants do not treat unmarried same-sex couples the same as unmarried opposite-sex couples. Defendants only permit men to voluntarily acknowledge parentage and prohibit women from voluntarily acknowledging parentage. 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.

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

6. Defendants 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.

7. Defendants' refusal to acknowledge parentage stigmatizes and harms Plaintiffs in economic, legal, and social ways. 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.

8. Defendant's refusal to recognize Plaintiff's parentage 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).

9. Plaintiffs seek declaratory and injunctive relief for violations of the Nebraska Constitution and the United States Constitution.

10. 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 United States and Nebraska Constitutions.

11. 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 permitting the acceptance of an Acknowledgement of Parentage inflicts no harm on the State of Nebraska, Defendants, or anyone in an opposite-sex couple.

12. 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, but also advances the public interest as well.

JURISDICTION AND VENUE

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

14. 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).

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

16. 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

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

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

STATUTORY AND REGULATORY FRAMEWORK

24. 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.

25. 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.

26. 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).

27. 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.

28. The Department developed and enacted Chapter 6 of Title 466 of the Nebraska Administrative Code to establish the necessary regulatory procedures required by Title IV-D.

STATEMENT OF FACTS

29. In 2000, Plaintiffs Erin Porterfield and Kristin Williams began a romantic relationship. During the course of their relationship, Ms. Porterfield and Ms. Williams decided to have children together utilizing assisted reproductive technology (ART).

30. The couple went to the Heartland Center for Reproductive Medicine for assistance with conceiving children. The couple split the cost of three vials from one anonymous donor. The couple utilized intrauterine insemination 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 using the same ART and donor. The couple destroyed the remaining donor vial.

31. Ms. Porterfield and Ms. Williams purchased the vials of donor specimen from an out of state sperm bank. Before donation, the sperm bank requires donors to sign a legally binding contract waiving all parental rights and responsibility to all children conceived with his genetic material.

32. 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.

33. 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.

34. 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.

35. 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.

36. 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.

37. 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.

38. Pursuant to Neb. Rev. Stat. § 43-1408.01 and 42 U.S.C. § 666(a)(5)(D)(ii)(I), the voluntary acknowledgments became effective sixty (60) days from the date the parties signed.

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

NEBRASKA *IN LOCO PARENTIS*

40. 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 themself 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.

41. 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).

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

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

44. 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

45. 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).

46. 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.

47. 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

48. 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 applied equally to same-sex and opposite-sex married couples.

49. 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

50. Nebraska case law prohibits second parent 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 rights.

51. 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. However, Ms. Porterfield and Ms. Williams are not able to utilize this avenue 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

52. 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”).

53. 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

54. 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.*

55. Neb. Rev. Stat. §§ 43-1408.01 and -1409 establish most of the necessary requirements for compliance with Title IV-D.

56. Absent from both federal mandate and state law 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.

57. 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).

58. Voluntary acknowledgments of paternity cannot be rescinded merely on the basis of a showing of lack 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.

59. 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

60. 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).

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

62. 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)

63. Plaintiffs incorporate by reference and re-allege paragraphs 1–62 of this Complaint as though fully set forth herein.

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

65. 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).

66. 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.

67. Ms. Porterfield and Ms. Williams have stipulated, through the voluntary acknowledgments of parentage, that they 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 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.

68. 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.

69. An unmarried opposite-sex unwed couple could conceive a child through ART and their acknowledgments of parentage would never receive one moment of scrutiny by Defendants. Despite no regulation or statute requiring parents to affirm genetic kinship in a voluntary

acknowledgment of parentage, Defendants denied Ms. Porterfield's and Ms. Williams's acknowledgments based on their gender.

70. 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.

71. 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
(As Applied Equal Protection Constitutional Challenge to Statute)

72. Plaintiffs incorporate by reference and re-allege paragraphs 1–71 of this Complaint as though fully set forth herein.

73. Article I, section 3 of the Nebraska Constitution and the 14th Amendment to the United States Constitution, enforceable pursuant to 42 U.S.C. § 1983, guarantee all persons the equal protection of the laws.

74. 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.

75. 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 federal and state constitutions. Defendants cannot assert any rational basis, much less a compelling interest, for this denial of Plaintiffs' fundamental rights.

76. There is no societal benefit achieved by treating Plaintiffs differently and requiring non-birth mothers to go through time-consuming and expensive legal procedures to achieve what is automatically granted to opposite-sex parents.

77. 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.

78. Moreover, by refusing to honor acknowledgments of paternity for children of whom Defendants disapprove, while honoring similar acknowledgments on behalf of similarly situated children with parents of whom Defendants approve, Defendants have created two classes of Nebraska-born children and demonstrate impermissible animus.

79. 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, substantial, or compelling interest. Accordingly, Defendants' conduct violates the Equal Protection guarantee found in article I, section 3 of the Nebraska Constitution and the 14th Amendment of the United States Constitution.

80. The Acknowledgment of Paternity statutes further burden the parent Plaintiffs by placing the sole legal responsibility for their children on their shoulders, without allowing them to share that responsibility with their former partner, while similarly situated opposite-sex couples are able to obtain legal parenting responsibility simply through voluntary acknowledgment.

81. 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.

82. 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.

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

84. 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.

85. 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 violates the Equal Protection guarantee found in article I, section 3 of the Nebraska Constitution and the 14th Amendment of the United States Constitution.

86. Unless this Court enjoins the Defendants, they will continue to discriminate against Plaintiffs and other unmarried same-sex couples who choose to conceive children.

87. Neb. Rev. Stat. §§ 43-1408.01, -1409, and 71-640.02, as applied, discriminate against Plaintiffs and other unmarried same-sex couples.

THIRD CLAIM FOR RELIEF
(As Applied Due Process Constitutional Challenge to Statutes)

88. Plaintiffs incorporate by reference and re-allege paragraphs 1–87 of this Complaint as though fully set forth herein.

89. 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 and the 14th Amendment of the United States Constitution, by improperly burdening their fundamental rights to make decisions concerning the care, custody, and control of their children.

90. 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.

91. 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.

92. 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).

93. Defendants' enforcement against same-sex unwed couples, under color of state law, solely on the basis of their 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, and the 14th Amendment of the United States Constitution.

94. 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.

95. 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.

FOURTH CLAIM FOR RELIEF
(As Applied Equal Protection Constitutional Challenge to Regulations)

96. Plaintiffs incorporate by reference and re-allege paragraphs 1–95 of this Complaint as though fully set forth herein.

97. Article I, section 3 of the Nebraska Constitution and the 14th Amendment to the United States Constitution, enforceable pursuant to 42 U.S.C. § 1983, guarantee all persons the equal protection of the laws.

98. Defendants have refused to recognize the signed and notarized acknowledgments of parentage and issue birth certificates reflecting the names of both parents. In doing so, Defendants have subjected Plaintiffs to adverse treatment based on their gender or sex and sexual orientation.

99. Moreover, by refusing to honor acknowledgments of paternity for children of whom Defendants disapprove, while honoring similar acknowledgments on behalf of similarly

situated children with parents of whom Defendants approve, Defendants have created two classes of Nebraska-born children and demonstrate impermissible animus.

100. 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, substantial, or compelling interest. Accordingly, Defendants' conduct violates the Equal Protection guarantee found in the U.S. and Nebraska Constitutions.

101. The Acknowledgment of Paternity regulations found in Chapter 6 of Title 466 of the Nebraska Administrative Code further burden the parent Plaintiffs by placing the sole legal responsibility for their children on their shoulders, without allowing them to share that responsibility with their former partner, while similarly situated opposite-sex couples are able to obtain legal parenting responsibility through acknowledgment.

102. 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.

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

104. Plaintiffs seek a declaration that DHHS' refusal to apply 466 NAC 6 on the same terms and conditions as it does for unmarried opposite-sex couples violates the Equal Protection guarantee found in the Nebraska Constitution and the 14th Amendment of the United States Constitution.

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

FIFTH CLAIM FOR RELIEF
(As Applied Due Process Constitutional Challenge to Regulations)

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

107. Defendants’ enforcement, under color of state law, of Chapter 6 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 and the 14th Amendment of the United States Constitution, by improperly burdening their fundamental rights to make decisions concerning the care, custody, and control of their children.

108. 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.

109. 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.

110. 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).

111. 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 and the 14th Amendment of the U.S. Constitution.

112. 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.

113. 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.

SIXTH CLAIM FOR RELIEF
(Injunctive Relief)

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

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

116. 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 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.

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

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

119. The hardships faced by Plaintiffs outweigh any inconveniences or animus on the part of the Department.

120. 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. and that Plaintiff Williams is the legal mother of Plaintiff Kadin Williams;

B. 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;

C. 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;

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

E. 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;

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

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

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

DATED this 4th day of October, 2021.

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