

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

CASY CARSON and JACQUELINE CARSON,
on their own behalf and as next friends of S.B.C.
and S.D.C.,

Plaintiffs,

v.

CATHERINE E. HEIGEL, in her official
capacity as Director of the South Carolina
Department of Health and Environmental Control
and State Registrar of Vital Statistics,

Defendant.

No. 3:16-cv-00045-MGL

**FIRST AMENDED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

NATURE OF THE ACTION

1. Plaintiffs Casy Carson (“Casy”) and Jacqueline Carson (“Jacqueline”) are a married couple who were denied accurate birth certificates for their newborn twins, simply because Casy and Jacqueline are spouses of the same sex. Even though South Carolina’s Department of Health and Environmental Control (“DHEC”) routinely lists both different-sex spouses as parents on their children’s birth certificates (including when their children were born through assisted reproduction and one of the parents is not genetically related to the children), Casy and Jacqueline’s twins received birth certificates inaccurately stating that they have only one parent, because DHEC refuses to recognize Casy and Jacqueline’s marriage on the same terms as the marriages of different-sex couples.

2. Casy and Jacqueline legally married in Washington, D.C. in 2014. They quickly

began planning to have children, and Jacqueline subsequently became pregnant through assisted reproduction using an anonymous sperm donor. In the Fall of 2015, Jacqueline gave birth to twins, including a baby boy, S.B.C., and a baby girl, S.D.C., in Greenville, South Carolina. Casy and Jacqueline filled out forms at the hospital indicating that they were married, and that they both are the parents of their newborn boy and girl.

3. South Carolina law provides that children born into a marriage are automatically treated as the legal child of both spouses, and requires DHEC to provide a birth certificate memorializing the parental status of each spouse. This recognition of the family's parent-child bonds allows parents instantly and reliably to establish their status in a range of important settings, from authorizing emergency medical care to enrolling a child for daycare or school.

4. In keeping with the importance of these familial relationships, DHEC has a duty under state law to provide birth certificates that accurately memorialize these parent-child relationships based on the parents' marriage, even where it is definitively known that one spouse lacks a genetic connection to the child. DHEC currently applies these automatic protections only to children born to different-sex spouses, however. Children born to same-sex spouses are denied accurate birth certificates – receiving instead a certificate falsely stating that the child has only one parent – unless and until same-sex spouses undertake a costly and time-consuming process to obtain a court order requiring DHEC to issue an accurate birth certificate.

5. Even though Casy and Jacqueline indicated their marital status on the forms at the hospital, the birth certificates they received for S.B.C. and S.D.C. falsely indicate that the children have only one parent – Jacqueline, and contain no reference to Casy.

6. DHEC's policy of refusing to provide accurate birth certificates to the children of Casy and Jacqueline and other same-sex spouses, as implemented through Defendant Catherine

Heigel's individual actions, violates guarantees of equal protection and due process under the Fourteenth Amendment to the U.S. Constitution. This discriminatory policy also denies the children of same-sex spouses the dignity, stability, autonomy, and privacy afforded to the families of different-sex spouses, and stigmatizes same-sex spouses' family relationships as inferior. Casey and Jacqueline bring this suit, on their own behalf and on behalf of their children (together, "Plaintiffs" or the "Carson family"), pursuant to 42 U.S.C. § 1983 seeking declaratory and injunctive relief for the violation of their rights under the Fourteenth Amendment. Plaintiffs ask this Court to: (1) declare that the denial of accurate birth certificates for the children of same-sex spouses is unconstitutional; (2) enjoin Defendant Heigel's ongoing refusal to issue accurate two-parent birth certificates for the children of same-sex spouses on the same terms as the children of different-spouses; and (3) order Defendant Heigel to ensure that corrected birth certificates are issued upon request to the Carson family, and to other same-sex spouses and children previously denied them, without charging any fees that otherwise might apply to a corrected birth certificate.

JURISDICTION AND VENUE

7. Plaintiffs bring this action under 42 U.S.C. § 1983 to redress the deprivation under color of state law of rights secured by the United States Constitution.

8. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1343 because the matters in controversy arise under the Constitution and laws of the United States.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) and Local Civ. Rule 3.01 (D.S.C.) because Defendant Heigel resides within the Columbia Division of the District of South Carolina and all Defendants reside within South Carolina, and because

Defendant Heigel does business relating to the events alleged herein in this Division.

10. This Court has the authority to enter a declaratory judgment and to provide preliminary and permanent injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure, and 28 U.S.C. §§ 2201 and 2202.

11. This Court has personal jurisdiction over Defendant because she is domiciled in South Carolina.

PARTIES

12. Plaintiffs Casy Carson and Jacqueline Carson, both in their mid-twenties and both lesbian women, are same-sex spouses. They reside in Pendleton, Anderson County, South Carolina. Each appears individually and as next friend to the couple's infant twins, S.B.C. and S.D.C.

13. Plaintiffs S.B.C. and S.D.C. reside in Pendleton, Anderson County, South Carolina, and sue through their parents, Casy and Jacqueline.

14. Defendant Catherine E. Heigel is sued in her official capacity as Director of the South Carolina Department of Health and Environmental Control ("Director") and State Registrar of Vital Statistics ("State Registrar"). Defendant Heigel's statutory duties under S.C. Code Ann. § 44-63-30 require her to carry into effect DHEC's orders and regulations, including regulations specifically requiring that DHEC list both spouses on birth certificates for children born into a marriage. Defendant Heigel's name and signature appear on the birth certificates for both S.D.C. and S.B.C. in her capacity as Director and State Registrar. Defendant Heigel is a person within the meaning of 42 U.S.C. § 1983 and was acting under color of state law at all times relevant to this complaint.

15. Defendant Heigel, and those subject to her direction, supervision, and control,

intentionally performed, participated in, aided and/or abetted in some manner the acts alleged here, proximately caused the harm alleged herein, and will continue to injure Plaintiffs and other families of same-sex spouses irreparably if not enjoined. Accordingly, the relief requested herein is sought against Defendant Heigel, as well as all persons under her supervision, direction, or control, including but not limited to her officers, employees, and agents.

LAW GOVERNING BIRTH CERTIFICATES

16. In South Carolina, children born into a marriage are presumptively treated as the legal children of both spouses. Pursuant to S.C. Code Regs. § 61-19, Sect. 8(f) (also, the “Regulation”), DHEC must determine parentage for each newborn’s birth certificate according to the following rules (emphasis added), which the Constitution requires be read in a gender-neutral fashion to apply equally to wives of married women as well as husbands of married women:

Parentage should be determined as follows:

(1) If the mother was married either at time of conception or birth, or anytime between conception and birth, the name of the husband *shall* be entered on the certificate as the father of the child, unless paternity has been determined otherwise by a court of competent jurisdiction.

. . .

(5) A child born to a married woman as a result of artificial insemination, with consent of her husband, *shall* be deemed to be the legitimate child of the husband and wife.

17. Pursuant to subsection (1), only a court determination of paternity may disturb the obligation to list both spouses as parents. Pursuant to subsection (5), the obligation to list both spouses on the birth certificate applies even where it is definitively known that one spouse lacks or both spouses lack a genetic connection to their child, as is the case for many children born “as a result of artificial insemination.”

18. Upon information and belief, and as required by the Regulation, DHEC routinely

provides birth certificates listing both different-sex spouses as parents based on the fact of their marriage. DHEC refuses, however, to issue accurate birth certificates on the same terms to same-sex couples. Instead, upon information and belief, DHEC will not issue a birth certificate accurately listing both same-sex spouses as parents unless the omitted parent obtains either an adoption decree or some other court order requiring DHEC to issue an accurate birth certificate.

19. In defiance of the Fourth Circuit's ruling in *Bostic v. Schaefer*, 760 F.3d 352 (4th Cir. 2014), that states must recognize same-sex couples' valid marriages, and the Supreme Court's ruling in *Obergefell v. Hodges*, 135 S. Ct. 2071 (2015), that the Fourteenth Amendment requires equal treatment of same-sex spouses and their children, Defendant Heigel refused to apply the Regulation equally to the Carson family when S.B.C. and S.D.C. were born, and continues to refuse to apply the regulation to families of same-sex spouses on the same terms as families of different-sex spouses. Defendant Heigel's actions directly contravene the holding in *Obergefell* involving Ohio's refusal to provide same-sex spouses with birth certificates on the same terms as different-sex spouses. *Obergefell* held that states must make the rights and responsibilities of marriage available to same-sex couples on the same terms as different-sex couples, expressly listing "birth . . . certificates" as one of the important facets of marriage to which same-sex couples must have equal access.

STATEMENT OF FACTS

20. Casy and Jacqueline began dating in high school, and have been a loving, devoted couple since October 2011. Casy served as an Air Defense Battle Management Systems Operator in the National Guard, until a serious injury required her to end active duty service in 2013. Casy now cares for the couple's twins full-time. Jacqueline works as a teacher for a Head Start agency in Seneca, South Carolina, and helps take care of toddlers of various ages.

21. Casy and Jacqueline were legally married on April 18, 2014. They married in Washington, D.C., since they were not yet permitted to marry in South Carolina. Because Casy's family could not afford to travel to the wedding ceremony, the couple had a reception in South Carolina after they returned home.

22. Casy and Jacqueline wanted to wait to have children until they were married, to provide their children with the added stability of a recognized family unit. They also wanted to share a common last name to help others understand that they are a family, but they could not fully effectuate a name change until South Carolina began recognizing same-sex couples' marriages. Because they knew Jacqueline would be the birth mother, they decided to make Casy's last name their family name, to help others understand that Casy is the children's other parent. Once South Carolina began recognizing their marriage, Jacqueline formally assumed Casy's last name.

23. Casy and Jacqueline began working with a local fertility clinic so that Jacqueline could conceive via assisted reproductive technology. Casy and Jacqueline also worked with a company called Pacific Reproductive Services in California to find an anonymous donor. Casy and Jacqueline worked together as partners through every aspect of the process, including the selection of the anonymous donor, and Casy was by Jacqueline's side during the insemination.

24. Casy and Jacqueline signed a consent agreement provided by their local fertility clinic, and agreed in that contract that they would not "attempt to discover the identity of the donor." Casy also expressly agreed that any children conceived would be her "legitimate child(ren) and heir(s) of [her] body," and that "such child(ren) conceived or born shall be considered to be in all respects, including descent and distribution of [her] property, a child(ren) of [her] body." Casy and Jacqueline separately received a letter from Pacific Reproductive

Services confirming that the donor had signed a contract “in which he acknowledges his waiver of parental rights.”

25. Jacqueline became pregnant in January 2015. Casy supported Jacqueline through a difficult pregnancy, and in the Fall Jacqueline gave birth to twins: a baby boy, S.B.C., and a baby girl, S.D.C. Two days after the birth, the couple filled out the forms at the hospital required to help DHEC prepare the birth certificates. Casy and Jacqueline crossed out the word “father” on the forms, wrote “second mother” next to it, and listed Casy’s name. They also indicated on the forms that they are married.

26. Casy and Jacqueline subsequently received birth certificates for S.B.C. and S.D.C. in the mail from DHEC. Without any explanation, both birth certificates incorrectly omitted all of Casy’s information and listed Jacqueline as the children’s sole parent.

27. Casy and Jacqueline have researched obtaining an adoption decree in South Carolina, but the attorney they contacted for help charges a flat fee of \$5,000. They know that, at a minimum, they would need to pay approximately \$175.00 in court fees, which this young family can ill afford after incurring expenses relating to Jacqueline’s pregnancy, including a period of hospitalization and loss of income while she was on bed rest. Further, South Carolina’s Judicial Department has self-help packets for individuals seeking a divorce or child support, but no such resources for individuals seeking to navigate an adoption on their own.

28. Unless and until parents like Casy undertake such expensive and burdensome steps, they are subject to ongoing vulnerability and barriers to exercising their family autonomy in a host of important settings. Equally important, DHEC’s policy subjects parents like Casy and Jacqueline to the indignity of being required to seek court approval before being able to have the parentage of their children accurately acknowledged, and secure the accurate birth certificates

that issue automatically to different-sex spouses. Casy and Jacqueline may choose to have other children in the future, and should not have to bring a court proceeding to obtain the accurate birth certificates that they should receive under state law, at a time when they are caring for newborns.

29. Defendant Heigel's refusal to issue accurate birth certificates to same-sex couples absent an adoption decree or order of parentage inflicts serious harm on the Carson family, and other families like them. This discriminatory policy leaves Casy and other same-sex spouses unable to prove parentage to third parties, such as medical providers, day care providers, and schools. This leaves the Carson family particularly vulnerable in emergency situations, since Casy is the full-time caregiver of the children, but may not be able to authorize emergency medical care were it needed. Nor would Casy be able to prove her parental relationship for purposes of insuring the children if she subsequently entered the workforce.

30. This discriminatory treatment also makes it difficult, if not impossible, to supply the accurate documentation required by the Social Security Administration to obtain a Social Security card for the children of married same-sex couples, and by the U.S. Department of State for obtaining a passport for them, which require documents demonstrating biographical information such as the names of one's parents. Casy currently receives Social Security disability benefits because of the back injury that ended her National Guard career, but because she cannot produce an accurate birth certificate for her children, she cannot obtain children's benefits otherwise available to the twins, depriving the family of important financial support. If Casy predeceased her minor children, they might not qualify for Social Security survivor's benefits without a birth certificate documenting the parent-child relationship.

31. If a family falls on hard economic times, birth certificates may be required to apply for benefits on behalf of the children. Moreover, if a child goes missing or is kidnapped,

law enforcement agencies often require parents to produce a birth certificate to report a missing child or secure the child's return.

32. Birth certificates are also commonly necessary for a state agency to obtain delinquent child support.

33. Even if Casey and Jacqueline can explain the discrepancies in the birth certificates and establish Casey's equal claim to exercise control over S.B.C.'s and S.D.C.'s care and custody, having to do so invades the privacy of the Carson family by requiring them to reveal to a host of third parties which parent has a genetic connection to the children, signals to others that they are not a "real" family on equal footing with others, and invites discrimination against them. In short, same-sex spouses are required to broadcast the very personal details of their use of assisted reproduction, and the status of their genetic relationships to their children, to others every time they need to explain why one parent was omitted from the birth certificate. Different sex spouses in South Carolina, on the other hand, are afforded a measure of privacy and dignity in obtaining accurate birth certificates that eliminate the need to explain to strangers how they created their family, and whether they are genetically related to their children – an important measure of privacy to many families formed through, for example, assisted reproduction or adoption.

34. Defendant Heigel's failure to issue two-parent birth certificates to the Carson children harms them by inaccurately describing their legal relationships to their parents and by communicating to them and to any other people who may see their birth certificates that their government does not perceive them as a legal family, each with two legally recognized parents. Through no fault of their own, the Carson children suffer the stigma of being told by their government that their family is somehow lesser than other marital families.

35. Defendant Heigel’s discriminatory denial of accurate birth certificates to S.B.C. and S.D.C., and other children of same-sex spouses, deprives them of the dignity, legitimacy, privacy, security, support, and protections available upon birth to children of different-sex spouses, and deprives Casey and Jacqueline of the dignity, privacy, security, support, and protections available to different-sex spouses.

CLAIMS FOR RELIEF

**FIRST CLAIM FOR RELIEF
Deprivation of Equal Protection
U.S. Const. Amend. XIV**

36. Plaintiffs incorporate by reference and re-allege paragraphs 1-35 of this complaint as though fully set forth herein.

37. Plaintiffs state this cause of action against Defendant Heigel in her official capacity for purposes of seeking declaratory and injunctive relief.

38. The Fourteenth Amendment to the United States Constitution, enforceable pursuant to 42 U.S.C. § 1983, provides that no state shall “deny to any person within its jurisdiction the equal protection of the laws.”

39. Defendant Heigel’s individual actions in refusing to apply S.C. Code Regs. § 61-19, Sect. 8(f), which the Constitution requires to be read in a gender-neutral fashion, to same-sex spouses on the same terms as different-sex spouses, including but not limited to her individual actions in signing S.B.C.’s and S.D.C.’s birth certificates in her capacity as both Director and Registrar, violate the equal protection guarantee of the Fourteenth Amendment both facially and as applied to Plaintiffs.

40. DHEC’s discriminatory policy, as implemented through Defendant Heigel’s individual actions, violates the rights of Casey and Jacqueline and other same-sex spouses to

equal protection by discriminating impermissibly on the basis of Casy and Jacqueline's sexual orientation, status as a same-sex couple, and sex, and with respect to the exercise of fundamental rights and liberties secured by the Due Process Clause.

41. DHEC's discriminatory policy, as implemented through Defendant Heigel's individual actions, violates the rights of S.B.C. and S.D.C. and other children of same-sex spouses to equal protection by discriminating impermissibly on the basis of their parents' sexual orientation, status as a same-sex couple, and sex, and with respect to their parents' exercise of fundamental rights and liberties secured by the Due Process Clause.

42. Families with same-sex spouses are identical to families with different-sex spouses in every way relevant to the need for legally accurate birth certificates for children born during their marriage, including for example, the need for stability and predictability that comes with automatic recognition of each spouse's status as a parent.

43. Defendant Heigel's discriminatory refusal to apply the Regulation, which the Constitution requires to be read in a gender-neutral fashion, on equal terms to same-sex and different-sex spouses denies same-sex spouses and their children equal dignity and respect, and deprives their families of a critical safety net for recognizing and protecting parent-child bonds. Defendant Heigel's discriminatory policy brands same-sex spouses and their children as second-class citizens through a message of government-imposed stigma and fosters private bias and discrimination, by instructing all persons who interact with these families that their family relationships are less worthy than others.

44. DHEC's discriminatory policy, as implemented through Defendant Heigel's individual actions, also harms the children of same-sex couples by incorrectly labeling them the children of unmarried parents, depriving them of access to immediate, clear proof of their

relationship to both parents and of the security that comes with having two parents listed on their birth certificates. Defendant Heigel's refusal to provide these children with accurate birth certificates discriminates against and punishes these children based on their parents' status as same-sex couples, and their parents' sexual orientation.

45. Defendant Heigel's discrimination against same-sex spouses and their families does not serve any legitimate governmental interest, let alone any important or compelling interests, nor does it serve any such interests in an adequately tailored manner.

SECOND CLAIM FOR RELIEF
Deprivation of Due Process
U.S. Const. Amend. XIV

46. Plaintiffs incorporate by reference and re-allege paragraphs 1-35 of this complaint as though fully set forth herein.

47. Plaintiffs state this cause of action against Defendant Heigel in her official capacity for purposes of seeking declaratory and injunctive relief.

48. The Fourteenth Amendment to the United States Constitution, enforceable pursuant to 42 U.S.C. § 1983, provides that no state shall "deprive any person of life, liberty, or property, without due process of law."

49. Defendant Heigel's individual actions in refusing to apply S.C. Code Regs. § 61-19, Sect. 8(f) on the same terms to same-sex spouses as different-sex spouses, including but not limited to her individual action in signing S.B.C. and S.D.C.'s birth certificates in her capacity as both Director and Registrar, unconstitutionally infringes on the fundamental rights and liberty interests of Plaintiffs, and other families with same-sex spouses, guaranteed by the Fourteenth Amendment.

50. Plaintiffs have a liberty interest in their family privacy, dignity, integrity, and association, which includes the fundamental right to security in their legal parent-child bonds. Casey and Jacqueline also have a protected liberty interest in their parental autonomy, including the fundamental right to make decisions concerning when, whether, and how to have and rear their family, and concerning the care, custody, and control of their children that are presumptively in the children's best interests.

51. The right to marry safeguards children and families, and thus is recognized by the Supreme Court as a unified whole with related rights of childrearing, procreation, and education. The Regulation's protection for the bonds between children and their married parents is both a core right and responsibility of marriage. By declining to apply the Regulation to the children born to same-sex spouses, and depriving these families of legally accurate two-parent birth certificates, Defendant Heigel interferes with the permanency and stability important to children's best interests, and infringes impermissibly on same-sex spouses' fundamental liberty interests in their existing marriage, and on their fundamental parental interests.

52. There is no constitutionally adequate basis for Defendant Heigel's decision to infringe on the fundamental rights and liberty interests of same-sex spouses and their children, let alone an interest that can survive the heightened scrutiny required to justify infringement of those fundamental rights and liberty interests.

DECLARATORY AND INJUNCTIVE RELIEF
28 U.S.C. §§ 2201 and 2202; Federal Rules of Civil Procedure, Rules 57 and 65

53. Plaintiffs incorporate by reference and re-allege paragraphs 1-35 of this complaint as though fully set forth herein.

54. This case presents an actual controversy because Defendant Heigel's present and ongoing denial of equal treatment to Plaintiffs subjects them to serious and immediate harms,

warranting the issuance of a declaratory judgment.

55. Plaintiffs seek preliminary and permanent injunctive relief to protect their constitutional rights and avoid the injuries described above. A favorable decision enjoining Defendant Heigel's discriminatory actions would redress and prevent the irreparable injuries to Plaintiffs identified herein, for which Plaintiffs have no adequate remedy at law or in equity.

56. Defendant Heigel will incur little to no burden in applying the Regulation to same-sex spouses on the same terms as she applies the Regulation to different-sex spouses, whereas the hardship for Plaintiffs of being denied equal treatment and due process is severe, subjecting them to an irreparable denial of their constitutional rights. The balance of hardships thus tips strongly in favor of Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment:

A. Declaring that Defendant Heigel's refusal to apply S.C. Code Regs. § 61-19, Sect. 8(f) in a gender-neutral fashion on equal terms to same-sex spouses and their children, and refusal to issue legally accurate birth certificates listing both same-sex spouses as parents of their children born during marriage, violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution;

B. Preliminarily and permanently enjoining Defendant Heigel, along with Defendant Heigel's officers, employees, and agents, all persons acting in active concert or participation with Defendant Heigel, and all persons under Defendant Heigel's supervision, direction, or control, from (1) refusing to apply S.C. Code Regs. § 61-19, Sect. 8(f) in a gender-neutral fashion on the same terms to same-sex spouses and their children as different-sex spouses and their children,

and from (2) refusing to issue accurate birth certificates listing both same-sex spouses as parents of their children born during marriage;

C. Ordering Defendant Heigel in her official capacity, along with Defendant Heigel's officers, employees, and agents, all persons acting in active concert or participation with Defendant Heigel, and all persons under Defendant Heigel's supervision, direction, or control, to issue a corrected birth certificate to Casey and Jacqueline listing both of them as parents to S.B.C. and S.D.C. without charging any fees that otherwise might apply to a corrected birth certificate; to issue birth certificates listing same-sex spouses as parents on the same terms as different-sex spouses under Code Regs. § 61-19, Sect. 8(f); and to issue accurate birth certificates upon request to same-sex spouses previously denied them without charging any fees that otherwise might apply to a corrected birth certificate;

D. Awarding Plaintiffs their costs, expenses, and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 and other applicable laws; and

E. Granting such other and further relief as the Court deems just and proper.

DATED: January 27, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 27, 2016, I served the foregoing document by causing a copy to be placed in a sealed envelope for delivery by Federal Express service, addressed as follows:

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