

REGS. 61-19 § 8(f)(1) and (5) equally to Plaintiffs for the purpose of issuance of birth certificates to same-sex spouses in violation of the Supreme Court's ruling in *Obergefell v. Hodges* and the Fourteenth Amendment. In its February 15, 2017 Order, this Court declared "Defendant's failure to treat same-sex spouses in the same manner she treats different-sex spouses in the issuance of birth certificates violates Plaintiffs' rights under the Fourteenth Amendment to the United States Constitution." ECF No. 36 at 5.

Based on the findings of this Court, made on the pleadings and the record as a whole, the parties agree: (1) the Court has jurisdiction over the parties and the subject matter of this action; (2) the purpose of the Fourteenth Amendment to the United States Constitution will be promoted and effectuated by the entry of the Consent Decree; and (3) this Consent Decree resolves all matters in controversy between the parties, except for attorney's fees and costs, which are addressed in paragraph 12 below. In accordance with this Court's Order, the parties have agreed to enter and be bound by the present Consent Decree, which details the manner that will secure the relief sought by Plaintiffs.

WHEREFORE, IT IS HEREBY ORDERED hereafter, the Defendant shall prepare and issue birth certificates in the State of South Carolina in compliance with the following directives:

1. DHEC shall apply all rules, procedures, policies and practices relating to the issuance of birth certificates to same-sex spouses on the same terms as it applies them to different-sex spouses.
2. The birth mother will be listed on the original birth record as the "Mother" of a child born in the State of South Carolina.

3. When the birth mother is married at the time of conception, birth, or any time between conception and birth, her spouse will be presumed to be the other parent.

4. Excluding instances of surrogate births, the spouse of the birth mother will be entered on the birth record as the other parent of the child. *See* **Exhibit 1** (the attached **Ex. 1** provides additional details for birth clerks and the general public regarding the forthcoming changes to vital statistics record-keeping policy related to how birth records will be entered for children born in this State to married same-sex couples).

5. Immediately upon entry of this Consent Decree, Defendant will issue two-parent birth certificates to married same-sex parents on the same terms, and using the same protocols, as two-parent certificates are provided to married, different-sex parents.

6. Defendant will modify its existing vital records system to allow updates to its current systems and forms so the first parent is listed as “Mother/ Parent,” and the second parent is listed as “Father/Parent.” *See* **Ex. 1**. If DHEC has not completed these updates by June 15, 2017, Defendant shall provide a written status report to the Court and Plaintiffs explaining DHEC’s good faith efforts to modify its system, and providing an estimate of the date by which these updates will be completed. Once these gender-neutral birth certificates are available, upon the request of either parent or legal representative of a child who in the past did not receive a birth certificate correctly identifying both same-sex spouses as parents, or who did not receive a gender neutral birth certificate, a corrected birth certificate will be provided to the requesting party free of charge. The corrected birth certificate will be provided within twenty-one (21) days of receipt of the completed application, including satisfactory documentation of fact and date of marriage, second parent’s full name to be listed on the certificate, and second parent’s date and place of birth.

Certified copies of the second parent's marriage certificate and birth certificate will be accepted as satisfactory documentation. In addition to the change to the current system referenced above, DHEC will continue with its ongoing procurement process to acquire a new vital records system to replace the current system and will update Exhibit 1 as appropriate to reflect changes made by the system, which will include options to list "Mother/Father/Parent" for either parent.

7. Defendant will also institute updates to allow the Mother's Worksheet for Child's Birth Certificate completed at hospitals to be recorded in a gender-neutral fashion, and will replace the word "husband" with "spouse."

8. Within two (2) business days from the entry of this Consent Decree, Defendant will issue corrected birth certificates via United States Mail Service to Plaintiffs' mailing address. This corrected birth certificate will be provided without charge.

9. Defendants will make Ex. 1 available to the public on its website (www.scdhec.gov) for a period of two years following the entry of this Consent Decree.

10. Any individuals who otherwise met the requirements outlined in Ex. 1 for inclusion on a birth certificate issued in this State under the updated protocol, but were previously denied issuance of a birth certificate listing both same-sex spouses as parents may obtain a corrected birth certificate without any additional charges or fees, and may contact DHEC at (803) 898-3630 or in person at 2600 Bull Street, Columbia, South Carolina 29201 for more information.

11. This Court shall retain jurisdiction of this case for purposes of monitoring compliance with, and enforcing, this Consent Decree, and entry of such further orders as may be necessary or appropriate for construction or implementation of this Consent Decree.

12. Attorney's fees and costs shall be determined pursuant to Fed. R. Civ. P. 54 and Local Civ. Rule (D.S.C.) 54.02 - 54.03, and Plaintiffs shall have until 45 days after entry of this Consent Decree to submit their motion for fees and costs. Defendant shall have thirty days to respond.

Signed this 28th day of February, 2017 in Columbia, South Carolina.

/s/ Mary Geiger Lewis
MARY GEIGER LEWIS
UNITED STATES DISTRICT JUDGE

The parties jointly request the Court approve and enter the Consent Decree.

[Signatures on following pages]

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Respectfully submitted,

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South Carolina Department of Health and

Environmental Control and State Registrar of Vital



February 24, 2017

RE: SAME-SEX PARENTAGE AND BIRTH REGISTRATION

The mission of the Department of Health and Environmental Control is to protect and promote the health of the public and the environment in South Carolina. Maintaining accurate vital statistics is a valuable tool in accomplishing this mission.

South Carolina's statutes and regulations on registration of births focus primarily on collecting and recording the actual facts of birth. Under DHEC regulations, a person who physically gives birth is considered the child's birth mother and would be identified as such on the original birth record. When the birth mother is married at the time of conception, birth, or any time between conception and birth, the birth mother's spouse is presumed to be the other parent, and ordinarily should be entered on the birth record as the other parent of the child, except in the case of surrogate births. This designation is made regardless of whether the spouse is male or female. Following this protocol allows DHEC both to keep accurate vital statistics for our state and to create birth certificates that provide for proper identification of legal parentage.

A birth certificate may include two men or two women as the parents of a child born to a surrogate mother in the same way that a man and a woman would be listed as parents of a child born to a surrogate mother. Guidance on birth registration for children born to surrogates is described in a separate guidance document.

Birth certificate forms in DHEC's existing registration system require an entry for mother and father. Until changes are made to the system, when both parents are of the same sex, the biological parent will be entered as appropriate. For example, if the parents are both male, the biological father will be listed as "Father" and the second parent as "Mother." If the parents are both female, the biological mother will be listed as "Mother" and the second parent as "Father."

Beginning March 1, 2017, upon the request of either parent or legal representative of a child who in the past received a birth certificate that identified only one parent, when application of this new procedure would have listed both same-sex spouses as parents, a corrected birth certificate listing both parents will be provided to the requesting party free of charge. The corrected birth certificate will be provided within twenty-one (21) days of receipt of the completed application, including satisfactory documentation of the fact and date of marriage, second parent's full name to be listed on the certificate, and second parent's date and place of birth. Certified copies of the second parent's marriage certificate and birth certificate will be accepted as satisfactory documentation.

If neither individual seeking to be listed on the birth certificate is the child's biological parent, a certificate of adoption would be required to add either or both as parents.

For more information or questions, you may contact Angie Saleeby, Director of Vital Records, at 803-898-3635, vitalrecords@dhec.sc.gov.