

ALESSANDRA SOLER
EXECUTIVE DIRECTOR

DALE BAICH
PRESIDENT



Via Email and Certified Mail

March 15, 2018

Dr. Cara M. Christ, Director
Arizona Department of Health Services
P.O. Box 60018
Phoenix, AZ 85007

Re: *Revisions to Birth Certificates and Birth Certificate Applications*

AMERICAN CIVIL
LIBERTIES UNION FOUNDATION
OF ARIZONA
P.O. BOX 17148
PHOENIX, AZ 85011-0148
P/602.650.1854
F/602.650.1376
WWW.ACLUAZ.ORG

Dear Dr. Christ:

The ACLU of Arizona wrote to you in November 2017, requesting that the Arizona Department of Health Services revise all newly issued birth certificates and birth certificate applications to reflect the possible circumstances of the birth and the preference of the couple (Parent 1/Parent 2, Mother/Mother, Father/Father, or Mother/Father). Currently, Arizona birth certificates and birth certificate applications do not reflect all families. The requested revisions would bring the Department into compliance with both federal and state case law. *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015); *Pavan v. Smith*, 137 S. Ct. 2075 (2017); *McLaughlin v. McLaughlin*, 401 P.3d 492 (Ariz. 2017), cert denied, 2018 WL 1037583 (February 26, 2018).

As we explained in our letter dated November 13, 2017, the Arizona Supreme Court's *McLaughlin* opinion makes clear that all couples should be afforded the same rights and presumptions, and that gendered language used in the context of marriages and families in Arizona is outdated and unconstitutional. The United States Supreme Court declined to review *McLaughlin* on February 26, 2018, meaning that the Arizona Supreme Court's decision must now go into effect. Therefore, we once again ask that the requested revisions be made.

Arizona birth certificates are not gender-neutral and do not account for all possible circumstances of the birth of the child (Parent 1/Parent 2, Mother/Mother, Father/Father, or Mother/Father). Current birth certificate applications do list "Mother/Parent 1" and "Father/Parent 2," but this still does not reflect all possible types of families in Arizona, and such language actually stigmatizes same-sex couples. For instance, only one parent in a family with two mothers will be allowed to be designated as the "Mother."

To reflect more accurately the law, we request that all birth certificates and applications be changed to account for all families. We also request that you contact all licensed birthing facilities and hospitals in the state, and inform them of these changes. Finally, we ask that you update your website, and other informational material, to be inclusive of all families.

We ask that you contact us regarding the Department's planned course of action no later than March 30, 2018.

Sincerely,

A handwritten signature in blue ink that reads "Brenda Muñoz Furnish". The signature is fluid and cursive, with the last name "Furnish" being more prominent.

Brenda Muñoz Furnish
Staff Attorney
ACLU of Arizona

AMERICAN CIVIL
LIBERTIES UNION FOUNDATION
OF ARIZONA



MARK BRNOVICH
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL
STATE GOVERNMENT DIVISION
EDUCATION AND HEALTH SECTION

AUBREY JOY CORCORAN
HEALTH UNIT CHIEF COUNSEL
2005 NORTH CENTRAL AVENUE
PHOENIX, ARIZONA 85004
DIRECT: (602) 542-8890
AUBREYJOY.CORCORAN@AZAG.GOV

April 25, 2018

By Mail and Email

Ms. Brenda Muñoz Furnish, Esq.
ACLU of Arizona
P.O. Box 17148
Phoenix, Arizona 85011-0148
bmfurnish@acluaz.org

RE: Request to Revise to Arizona Birth Certificates and Birth Certificate Applications

Dear Ms. Furnish,

The Arizona Department of Health Services and Director Dr. Cara Christ (collectively “the Department”) appreciate your courtesy in allowing additional time to respond to your March 15, 2018 letter (“Letter”).

Your Letter requests that the Department revise Arizona birth certificates and birth certificate applications to (1) reflect the preference of the parents, and (2) comply with federal and state case law. The Department has reviewed its regulatory authority and its processes regarding birth certificate registration and the attending forms. The Department believes their forms and processes comport with both the Arizona statutes governing birth certificates and the case law you cited in your Letter.

The Department recognizes that the Arizona Supreme Court’s recent decision in *McLaughlin v. McLaughlin*, 243 Ariz. 29, 35, ¶ 23 (2017), acknowledged that same-sex couples in Arizona are entitled to the same benefits afforded couples in opposite sex marriages, in accordance with both *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) and *Pavan v. Smith*, 137 S. Ct. 2075 (2017). Specifically, the benefit at issue was an evidentiary presumption of paternity based on the marital relationship as delineated in A.R.S. § 25-814(A)(1). The Court was clear that a same-sex spouse must be extended the marital paternity presumption and the rights that extend therefrom. *Id.* What the *McLaughlin* decision did not do, however, was decide or determine that the Department must change its birth certificate forms to reflect the preference of the parents—the specific request you have made.

Brenda Muñoz Furnish, Esq.
April 25, 2018
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That being said, the Department processes are in accordance with case law and the Arizona statute governing maternity and paternity for birth certificates, namely A.R.S. § 36-334. To that end, when initially registering a birth certificate, the Department has placed, and continues to place, the name of the spouse of the mother who gave birth to the child on the birth certificate irrespective of gender.¹ Further, the Department makes amendments to birth certificates according to statute, rule, and court orders. *See* A.R.S. § 36-337; Title 9, Ch. 19 of the Arizona Administrative Code.

Sincerely,



Aubrey Joy Corcoran
Health Unit Chief
Education and Health Section

cc: Cara Christ, M.D., Director, Arizona Department of Health Services
Kevin Ray, Esq., Section Chief Counsel, Education and Health Section, Office of the Arizona Attorney General

PHX #6991737

¹ There are statutory exceptions to placing a spouse, regardless of gender, on a birth certificate if the spouse affirmatively waives their right to presumptive parentage by means of A.R.S. § 25-814(B).