



STATE OF ARKANSAS

**ASA HUTCHINSON
GOVERNOR**

December 8, 2017

Nathaniel Smith, MD
Director
Arkansas Department of Health
4815 W. Markham
Little Rock, AR 72205

Dear Dr. Smith:

Based on the constitutional requirements set forth in the United States Supreme Court's decision in *Pavan v. Smith*, 137 S.Ct. 2075 (2017) and the Arkansas Supreme Court's decision in *Smith v. Pavan*, 2017 Ark. 284, I am directing the Department of Health to carry out the Birth Certificate Law (Arkansas Code Section 20-18-401) as follows:

1. The Department must allow female spouses of women who give birth to be listed on their children's birth certificates on the same terms as male spouses of women who give birth. That is, the Department must list the spouse of a woman who gives birth, regardless of the gender of the spouse, on their children's birth certificates unless the exceptions in Arkansas Code Section 20-18-401 (f)(1)(A)-(B) apply.
2. The Department must issue, at no charge and upon request, two corrected birth certificates listing both spouses if those spouses would have been entitled to be initially listed on the birth certificate under paragraph 1. Additional corrected copies of the birth certificate shall be issued by the Department at the normal charge for such copies.
3. The Department must in a reasonable time frame notify all relevant hospital administrators that female spouses of women who give birth should be treated the same as male spouses of women who give birth for purposes of birth certificates.
4. The Department must issue birth certificate forms that accurately record female spouses of women who give birth on their child's birth certificate. Other

states, for example, have allowed two mothers or “Parent 1” and “Parent 2” to be listed.

Following this directive will comply with the constitutional directives set forth in the United States Supreme Court’s decision in *Pavan v. Smith*, 137 S.Ct. 2075 (2017) and the Arkansas Supreme Court’s decision in *Smith v. Pavan*, 2017 Ark. 284, and therefore complies with the injunction issued by Judge Fox on December 8, 2017. Accordingly, the Department may continue issuing birth certificates in accordance with this directive.

Sincerely,

A handwritten signature in black ink that reads "Asa Hutchinson". The signature is written in a cursive style with a large, sweeping initial "A".

Asa Hutchinson