

# SCOTUS declines to hear same-sex parent case



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On December 14, 2020, the United States Supreme Court declined to review the Seventh Circuit Court of Appeals' decision requiring the State of Indiana to list two females on the birth certificate of a child of a lesbian couple who was conceived by in-vitro fertilization. Ashlee and Ruby Henderson brought suit against the Indiana State Health Commissioner claiming that the State's practice of listing only the birth mother and her husband, if any, violated their rights to equal protection under the United States Constitution. Indiana argued that forcing it to identify both women as parents would prevent the State from treating the sperm donor as a parent, while providing parental rights to an individual who provided neither the sperm nor the egg.

The trial court ruled in favor of the couple and ordered Indiana to treat same-sex couples the same as opposite-sex couples with regard to parentage on birth certificates. Indiana appealed, and the appeals court upheld the trial court's decision. Indiana then filed a petition of certiorari asking the Supreme Court to hear the case.

Court-watchers have monitored this case, waiting to see if the Supreme Court's 6-3 conservative majority, given the addition of new Justice Amy Coney Barrett, would take this opportunity to roll back rights of same-sex couples as established by the Court's 2015 decision in *Obergefell v. Hodges*, legalizing same-sex marriage, and confirmed by the Court's 2017 decision in *Pavan v. Smith*, which requires the government to provide the same rights to all couples with respect to parentage on birth certificates, regardless of the parents' genders.

Many observers have been particularly interested whether Justice Coney Barrett, who has been critical of same-sex marriage, will seek to disturb *Obergefell* and *Pavan* and whether this case would present the opportunity for her to do so.



Once a party has appealed a lower court's decision to the Supreme Court, it requires the vote of four justices before the Court will grant certiorari agreeing to hear the case. While we know that the Court denied certiorari, neither the margin of the vote, nor the vote cast by any individual justice, is publicly revealed, so we cannot know how any particular justice, including Justice Coney Barrett, voted. At least six justices, including at least three of the justices typically considered to be conservative, voted against hearing Indiana's appeal.

The Court's refusal to take this case may be a signal that the current Supreme Court is not interested in reversing or narrowing the rights established by its recent opinions. The value of the Court's denial of certiorari in *Box*, however, is somewhat limited, as the denial does not necessarily indicate that the majority of justices agree with the lower court's ruling. Rather, refusal to take the case means that fewer than four justices felt this particular case was worth review. Because the Court refused to hear the case, it will not issue an opinion either confirming or upsetting the rights of same-sex couples or set any new precedent that would bind future courts.

As a result, the Seventh Circuit's *Box* decision will continue to guide courts, at least within that court's jurisdiction, which includes Wisconsin, Illinois, and Indiana. While other appellate courts will undoubtedly consider the Seventh Circuit's opinion when faced with similar cases, it is possible that another court may reach a conflicting conclusion. While the Supreme Court's decision not to consider *Box* may signal some stability of same-sex rights, the door remains open for future challenges.

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