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2 **IN THE CHANCERY COURT OF HINDS COUNTY, MISSISSIPPI**

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4 TALIESIN PHILLIP CHARLES  
5 GOLDSTEIN PERDUE, a minor,

6 by his parents and next friends  
7 MARTHA HOLLY PERDUE  
8 CHERI LYNN GOLDSTEIN,

9 Plaintiff,

10 - v -

Civil Action No. G-2001-1891

11 MISSISSIPPI STATE BOARD OF  
12 HEALTH; MISSISSIPPI STATE  
13 DEPARTMENT OF HEALTH; DR. ED  
14 THOMPSON; MISSISSIPPI BUREAU OF  
15 VITAL STATISTICS; and JUDY  
16 MOULDER,

17 Defendants.

18 **COMPLAINT**

19 TALIESIN PHILLIP CHARLES GOLDSTEIN PERDUE, by his parents and next friends,  
20 files this Complaint against the above-named Defendants, and in support thereof states as follows.

21 **INTRODUCTION**

- 22 1. In this action, Plaintiff seeks declaratory and injunctive relief against certain state agencies  
23 and agency administrators who, pursuant to Mississippi law, are required to issue birth  
24 certificates to persons born within the state and adopted outside the state. Plaintiff was  
25 born in Mississippi. Despite having received an order from a Vermont court showing that  
26 Plaintiff has been lawfully adopted in Vermont, Defendants have refused requests made on  
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1 Plaintiff's behalf for a birth certificate reflecting his legal name and his relationship to his  
2 adoptive parents. Defendants' refusal violates Mississippi law and deprives Plaintiff of the  
3 security, benefits, and convenience a state-issued certificate of birth provides and that other  
4 persons born in Mississippi enjoy as a matter of course.  
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7 2. Section 93-17-21 of the Mississippi Code imposes a duty on the Defendant BUREAU OF  
8 VITAL STATISTICS ("Bureau") to create and issue an amended birth certificate on a  
9 showing that a person born in Mississippi has been lawfully adopted. Additionally,  
10 Defendant STATE DEPARTMENT OF HEALTH's ("Department") Rule 27(a) of the  
11 Rules Governing the Registration and Certification of Vital Events sets forth a procedure  
12 for compliance with § 93-17-21 "for a child born in Mississippi and adopted in this or any  
13 other state," which provides, "The State Registrar shall honor orders of courts of other  
14 states having appropriate jurisdiction over Mississippi born persons in matters of adoption."  
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16 The statute and rule apply to all persons born in Mississippi who tender the specified  
17 documents and fees. Nothing in them excuses the Bureau's obligation to issue a properly  
18 requested birth certificate to any person or class of persons. Nor does the statute or rule  
19 authorize Bureau employees to deny such a certificate in an exercise of discretion.  
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22 3. On information and belief, Defendant Bureau refuses to issue an amended birth certificate  
23 to Plaintiff because it does not approve of the lesbian relationship of Plaintiff's adoptive  
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1 mothers. Defendants' refusal to fulfill their obligations under § 93-17-21 and Rule 27 is  
2 *ultra vires*, and should be enjoined, because no lawful basis exists under Mississippi law  
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4 for disregarding plainly applicable, nondiscretionary directives. Defendants have, in fact,  
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6 flouted those directives, ignoring the rule's requirement that the Bureau honor valid,  
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8 foreign adoption decrees.

- 9 4. Acting under color of state law, Defendants have subjected Plaintiff, a four year-old boy, to  
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11 adverse treatment to express their disapproval of the relationship between the boy's lawful  
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13 parents. In addition to being contrary to Mississippi statute, this course of action violates  
14  
15 the Equal Protection guarantees of the Mississippi Constitution.

#### 16 PARTIES

- 17 5. Plaintiff TALIESIN PHILLIP CHARLES GOLDSTEIN PERDUE was born on September  
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19 2, 1997, in Jackson, Mississippi. His birth mother consented to his adoption. He was  
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21 placed with his prospective adoptive parents, his next friends in this litigation, upon his  
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23 discharge from the hospital eight days after his birth. His adoptive parents complied with  
24  
25 all legal requirements that apply to interstate adoptions.

- 26 6. Since that time Plaintiff has lived continuously with his parents in the State of Vermont.  
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28 The Washington District Probate Court, State of Vermont, entered an order of adoption on  
April 18, 2000, establishing a parent-child relationship between plaintiff and his next

1 friends.

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3 7. Next friend MARTHA HOLLY PERDUE, 44, a resident of Worcester, Vermont, co-  
4 petitioned to adopt Plaintiff and is one of Plaintiff's two legal parents. A foster parent for  
5 eighteen years, PERDUE works full time within the household home-schooling and  
6 otherwise caring for seven adoptive children, including Plaintiff, and two adults with severe  
7 mental retardation. PERDUE has been in a committed relationship with CHERI LYNN  
8 GOLDSTEIN for twelve years. She and GOLDSTEIN have been recognized for their  
9 commitment and talent in creating a nurturing household for their children and other  
10 members of their household, and they have been sought out by Vermont officials when  
11 special-needs children have needed adoptive homes.  
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16 8. Next friend CHERI LYNN GOLDSTEIN, 39, a resident of Worcester, Vermont, co-  
17 petitioned to adopt Plaintiff and is one of Plaintiff's two legal parents. GOLDSTEIN is a  
18 legal parent, with PERDUE, of six children, and acts as a parent of the other two children  
19 and the two adults in the household. GOLDSTEIN has been in a committed relationship  
20 with MARTHA HOLLY PERDUE for twelve years. GOLDSTEIN works outside the  
21 home as a paralegal in the office of the Attorney General of Vermont.  
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25 9. The MISSISSIPPI STATE BOARD OF HEALTH is a body that is created by statute and  
26 charged with responsibility for all vital records functions. Miss. Code §§ 41-3-,  
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1 15(5)(a)(xiv), 41-57-1.

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3 10. The MISSISSIPPI STATE DEPARTMENT OF HEALTH administers vital records  
4 functions under the aegis of the State Board of Health and pursuant to statute. Miss. Code  
5 Ann. § 41-3-15(5)(a)(xiv).

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7 11. DR. ED THOMPSON is Mississippi's State Health Officer and the head of the  
8 MISSISSIPPI STATE DEPARTMENT OF HEALTH. THOMPSON is sued in his official  
9 capacity.  
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12 12. The MISSISSIPPI BUREAU OF VITAL STATISTICS, an agency created by state statute,  
13 Miss. Code Ann. §§41-57-1, 41-57-3, is charged with providing birth certificates to  
14 individuals born in Mississippi.  
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16 13. JUDY MOULDER is the State Registrar of Mississippi and the head of the MISSISSIPPI  
17 BUREAU OF VITAL STATISTICS. MOULDER is sued in her official capacity.  
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19 **FACTUAL BASIS**

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21 14. On November 19, 1997, PERDUE and GOLDSTEIN jointly filed a petition to adopt  
22 Plaintiff, who was then 78 days old and had lived with them for 70 days. Filed with the  
23 petition was a Mississippi birth certificate showing that Plaintiff was born in Jackson. The  
24 adoption sought jointly by PERDUE and GOLDSTEIN was entirely lawful. *See* 15A Vt.  
25 Statutes § 1-102.  
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1 15. On April 18, 2000, the Washington District Probate Court, State of Vermont, Hon. George  
2 Kendrick Belcher presiding, granted the petition to adopt. The court's order, a copy of  
3 which is attached hereto as Exhibit A, included a provision changing Plaintiff's name to his  
4 present name. It also provided that "A new birth certificate shall be issued by the  
5 Supervisor of Vital Records with the following information set forth therein," listing the  
6 names of both PERDUE and GOLDSTEIN. An accompanying "Report of Adoption,"  
7 signed by Judge Belcher on the same date, indicated, "Prepare new birth certificate with  
8 adoptive info. and substitute [sic] it for the original record."  
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13 16. By memorandum dated May 8, 2000, Vermont's Vital Records Department provided a  
14 certified copy of Plaintiff's adoption order to the Branch Director of Vital Records  
15 Certification in Mississippi.  
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18 17. On or about May 19, 2000, Sanford R. Horton, Jr., an attorney with Defendant STATE  
19 DEPARTMENT OF HEALTH, informed Kurt M. Hughes, then attorney for PERDUE and  
20 GOLDSTEIN, that Defendant BUREAU OF VITAL STATISTICS would not issue an  
21 amended birth certificate for Plaintiff due to the state's policy concerning adoptions by  
22 same-sex couples within Mississippi.  
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25 18. A May 31, 2001 letter to JUDY MOULDER, requesting issuance of an amended birth  
26 certificate to Plaintiff, has garnered no response.  
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1 19. Defendants' unlawful conduct leaves Plaintiff with no birth certificate attesting to the  
2 date and place of his birth, his legal name, and the names of his legal parents. The lack  
3 of a birth certificate means that Plaintiff will suffer continual difficulty, harm, and loss of  
4 opportunity inasmuch as a birth certificate is the preferred, or even required, form of  
5 documentation in support of passport applications, school enrollments, driver's license  
6 applications, claims for retirement benefits, and access to many other documents and  
7 events that are part of everyday life. Defendants have not and cannot state any lawful  
8 reason that Plaintiff should have to suffer such difficulty and detriment.  
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13 **FIRST CLAIM FOR RELIEF**

14 20. Paragraphs 1 through 19 of this Complaint are incorporated herein.

15 21. Miss. Code Ann. § 93-17-21 provides that on receiving notice that a child born in  
16 Mississippi has been adopted, the "bureau shall prepare a revised birth certificate which  
17 shall contain the original date of birth, with the place of birth being shown as the residence  
18 of the adoptive parents at the time the child was born, but with the names of the adopting  
19 parents and the new name of the child. In all other particulars, the certificate shall show the  
20 true facts of birth . . . . The original birth certificate shall be removed and placed, with  
21 reference made to the decree of adoption, in a safely locked drawer or vault . . . and for all  
22 purposes the revised certificate shall be and become the birth certificate of the child."  
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1 Additionally, Rule 27(a) of Defendant STATE DEPARTMENT OF HEALTH's Rules  
2 Governing the Registration and Certification of Vital Events provides, "A new certificate of  
3 birth, for a child born in Mississippi and adopted in this or any other state, shall be prepared  
4 by the State Registrar and registered in accordance with Section 93-17-21 of the  
5 Mississippi Code of 1972, Annotated. The State Registrar shall honor orders of courts of  
6 other states having appropriate jurisdiction over Mississippi born persons in matters of  
7 adoption."  
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11 22. Defendants' refusal to issue an amended birth certificate to Plaintiff violates Mississippi  
12 law concerning the issuance of birth certificates to children born in the state and  
13 subsequently adopted, as embodied in the statute and rule cited above. The actions taken or  
14 omitted by Defendants, or attributable to them, are therefore *ultra vires* and subject to  
15 judicial remedy.  
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19 **SECOND CLAIM FOR RELIEF**

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21 23. Paragraphs 1 through 22 of this Complaint are incorporated herein.

22 24. The Mississippi Constitution guarantees all persons the equal protection of the laws. Miss.  
23 Const. Art. 3, §§ 14, 24.  
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25 25. Defendants have refused to issue Plaintiff a document routinely provided to other persons  
26 born in Mississippi. In so doing, Defendants have subjected Plaintiff to adverse treatment  
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1 26. Moreover, by refusing to honor adoption orders by out-of-state courts on behalf of children  
2 adopted by parents of whom Defendants disapprove, while honoring said orders on behalf  
3 of similarly situated children with adoptive parents of whom Defendants approve,  
4 Defendants have created two classes of Mississippi-born children adopted out-of-state.  
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7 27. There is no rational basis for Defendants' treatment of Plaintiff or for the classification  
8 Defendants have created. The course of conduct taken by, or attributable to, Defendants is  
9 not tailored to further any legitimate, substantial or compelling interest. Accordingly, their  
10 conduct violates the Equal Protection guarantee found in the Mississippi Constitution.  
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13 28. As a result of Defendants' unconstitutional actions, Plaintiff has suffered substantial injury.  
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15 **PRAYER FOR RELIEF**

16 On the basis of the foregoing allegations, Plaintiff, by his next friends, prays for judgment  
17 as follows:  
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- 19 1. For an injunction directing Defendants to issue an amended birth certificate to  
20 Plaintiff forthwith.
- 21 2. For a declaration that denial of an amended birth certificate to Plaintiff is *ultra*  
22 *vires* because it violates the applicable Mississippi statute and regulation;  
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- 24 3. For a declaration that denial of an amended birth certificate to Plaintiff violates the  
25 guarantee of equal protection of the laws found in the Mississippi Constitution; and  
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4. For reasonable costs and attorneys' fees pursuant to the equitable powers of this court.

Respectfully submitted,

J. CLIFF JOHNSON II (Miss. Bar # 9383)

ATTORNEY FOR PLAINTIFF

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