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ACLU of Utah Statement

On May 12, 2009, the national office of the American Civil Liberties Union filed a lawsuit charging that patents on two human genes associated with breast and ovarian cancer are unconstitutional and should be invalidated. Individuals with certain mutations along these two genes, known as BRCA1 and BRCA2, are at a significantly higher risk for developing hereditary breast and ovarian cancers.

The lawsuit, *Association for Molecular Pathology v. U.S. Patent and Trademark Office*, was filed in U.S. District Court for the Southern District of New York against the U.S. Patent and Trademark Office (PTO), Myriad Genetics, and the University of Utah Research Foundation, which hold the patents on the BRCA genes. The plaintiffs include organizations representing over 150,000 researchers and pathologists, breast cancer and women's health groups, and individual women.

The lawsuit charges that gene patents interfere with the free flow of information and knowledge (among researchers, doctors, patients) in violation of the First Amendment, and that patents on human genes are illegal under patent law because genes are "products of nature" and the PTO never should have granted patents on them.

The PTO has granted thousands of patents on human genes – in fact, about 20 percent of our genes are patented. A gene patent holder has the authority to prevent anyone from studying, testing or even looking at a gene. As a result, scientific research has been delayed, limited or even shut down due to concerns about gene patents.

In the case of the BRCA genes, Myriad's lab is the only place in the country that performs full sequencing of the genes for diagnostic purposes. Because Myriad controls all uses of the genes, others are prevented from testing these genes or developing alternative tests. Myriad's monopoly on the BRCA genes makes it impossible for women to obtain other tests or get a second opinion about their results, and allows Myriad to charge a high rate for their tests – over \$3,000, which is too expensive for some women to afford.

The University of Utah Research Foundation is not the focus of the lawsuit but was named as a plaintiff because it licensed its BRCA genes patents to Myriad. The ACLU of Utah recognizes the valuable scientific research conducted at the University of Utah and the significant contributions it makes to the state.

The ACLU of Utah supports the national ACLU's litigation of the case on the principle that knowledge about our own bodies and the ability to make decisions about our health care are some of our most personal and fundamental rights. The government should not be granting private entities control over something as personal and basic to who we are as our genes.

At the same time, the ACLU of Utah continues to focus on its core civil liberties priorities in our state namely immigrant rights, racial justice, participatory democracy, religious liberty, LGBT equality and reproductive freedom.

The ACLU of Utah looks forward to the public education opportunities and dialogue around this complex matter among our friends and supporters and the general community in Utah.