

Joshua A. Block*
ACLU LGBT Project
125 Broad Street, Floor 18
New York, New York, 10004
Telephone: (212) 549-2593
Facsimile: (212) 549-2650
jblock@aclu.org

John Mejia (Bar No. 13965)
Leah M. Farrell (Bar No. 13696)
ACLU of Utah
355 North 300 West
Salt Lake City, Utah 84103
Telephone: (801) 521-9862
jmejia@acluutah.org
lfarrell@acluutah.org

**Pro hac vice motion to follow*

Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

ANGELA LESLIE ROE and KAMI ROE,

Plaintiffs,

vs.

W. DAVID PATTON, in his official
capacity as the Executive Director of the
Utah Department of Health, and
RICHARD OBORN, in his official capacity
as the Director of Utah’s Office of Vital
Records and Statistics,

Defendants.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Case No. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Plaintiffs Angela Leslie (“Angie”) and Kami Roe are a married same-sex couple. With Angie’s consent, Kami conceived a child with the assistance of donor sperm and gave birth to their daughter, L.R., in February 2015. Under Utah law governing assisted reproduction, if a man consents to his wife conceiving a child by donor sperm, he is the father of the resulting child. Utah Code Ann § 78B-15-701 (“If a husband provides sperm for, or consents to, assisted reproduction by his wife . . . he is the father of a resulting child born to his wife.”). But because

Angie is a woman, the Utah Office of Vital Records and Statistics (“Office”) refuses to acknowledge her as a legal parent to L.R. and will not issue a birth certificate listing Angie as L.R.’s parent unless Angie adopts L.R. through a step-parent adoption.

2. The Office’s refusal to recognize both spouses as legal parents pursuant to Utah’s assisted reproduction statutes violates the Equal Protection Clause of the Fourteenth Amendment. A same-sex spouse and a different-sex spouse whose wife conceives through donor insemination are similarly situated in all relevant respects. The purpose of the statutes is to immediately establish parentage for a spouse who has consented to bringing a child into the world whether or not that spouse shares a genetic relationship with the child. Utah’s assisted reproduction statutes recognize that the different-sex spouses should not be forced to undergo a second-parent adoption in these circumstances to provide the protection of two legal parents for their children. Equal protection requires that same-sex spouses and their children be afforded the same protections.

PARTIES

3. Angie Roe and Kami Roe reside in West Jordan, Utah.

4. Angie and Kami’s daughter, L.R., was born at Jordan Valley Medical Center in West Jordan, Utah.

5. The Department of Health and the Office are both located in Salt Lake City, Utah.

6. Defendant W. David Patton is sued in his official capacity as the Executive Director of the Utah Department of Health (the “Department”).

7. Defendant Richard Oborn is sued in his official capacity as the Director of the Office, which is an office within the Department of Health.

JURISDICTION AND VENUE

8. This Court has federal-question jurisdiction over Plaintiffs' claims arising under the Fourteenth Amendment of the United States Constitution and 42 U.S.C. § 1983. Jurisdiction is therefore proper under 28 U.S.C. § 1331 (general federal question jurisdiction) and § 1343 (civil rights actions).

9. This Court has jurisdiction to render the declaratory relief requested under 28 U.S.C. §§ 2201 and 2202.

10. Venue is proper in this district under 28 U.S.C. § 1391(b) because Defendants reside in this district and the action arose in this district and a substantial part of the events or omissions giving rise to the claim occurred in this district.

UTAH'S ASSISTED REPRODUCTION STATUTES

11. Under the Utah Uniform Parentage Act ("Utah's assisted reproduction statutes"), Utah Code Ann § 78B-15-701, *et seq.*: "If a husband provides sperm for, or consents to, assisted reproduction by his wife . . . he is the father of a resulting child born to his wife." *Id.* § 78B-15-703.

12. The "consent to assisted reproduction by a married woman must be in a record signed by the woman and her husband." *Id.* § 78B-15-704(a).

13. But "[f]ailure of the husband to sign a consent . . . before or after the birth of the child, does not preclude a finding that the husband is the father of a child born to his wife if the wife and husband openly treat the child as their own." *Id.* § 78B-15-704(b).

FACTUAL ALLEGATIONS

14. Angie and Kami have been together as a committed couple for five years.

15. Angie and Kami married on December 20, 2013, which was the first day it became legal for same-sex couples to marry in Utah pursuant to the injunction issued by the U.S. District Court for the District of Utah in *Kitchen v. Herbert*, No. 2:13-CV-00217-RJS.

16. Marriages of same-sex couples entered into between December 20, 2013, and January 6, 2014, must be afforded all the protections, benefits, and responsibilities given to all other marriages under Utah law, pursuant to a permanent injunction issued by the U.S. District Court for the District of Utah in *Evans v. Utah*, No. 2:14-cv-55- DAK.

17. Angie and Kami jointly decided to have a child together with the assistance of sperm from an anonymous donor.

18. On May 21, 2014, with Angie's knowledge and consent, Kami conceived through intrauterine insemination at the University of Utah School of Medicine.

19. In connection with the intrauterine insemination, Angie and Kami both signed a document titled "Donor Semen Storage Agreement," which acknowledged that donor semen was being used for insemination of Kami and identified Angie as Kami's wife.

20. Kami gave birth to L.R. in February of 2015, at Jordan Valley Medical Center (the "hospital").

21. After L.R.'s birth, Angie and Kami signed an additional document memorializing, ratifying, and reaffirming Angie's consent for Kami to conceive with the assistance of donor semen.

22. When hospital staff gave Angie and Kami paperwork to fill out for L.R.'s birth certificate, Angie wrote in her name as L.R.'s parent.

23. The hospital staff would not accept the paperwork and instructed Angie to call the “Adoption/Court Order Specialist” at the Office.

24. The Adoption/Court Order Specialist, pursuant to an official policy, told Angie that because Angie and Kami are a same-sex couple, Angie could not be listed as a parent on L.R.’s birth certificate unless she adopted L.R. through a step-parent adoption.

25. Adopting L.R. through step-parent adoption would require various steps. First, Angie and Kami would have to file a Petition to Adopt a Minor Stepchild in Utah State Court and pay a filing fee of \$360. Angie would then have to submit to a background check by the Utah Bureau of Criminal Identification and the Utah Division of Child and Family Services. Once the adoption petition is submitted, Angie and Kami would have to wait until a judge schedules a hearing on their adoption petition. They would then have to appear in person at the hearing to get a judge’s approval for Angie to adopt L.R.

26. If Angie were male instead of female, the Office would not require Angie to go through the step-parent adoption process, but would instead recognize Angie as L.R.’s parent pursuant to Utah’s assisted reproduction statutes and issue a birth certificate with both spouses listed as parents.

CLAIM FOR RELIEF

27. Plaintiffs reincorporate the allegations in paragraphs 1 to 26 as this paragraph 27.

28. Plaintiffs state this cause of action against Defendants in their official capacities for purposes of seeking declaratory and injunctive relief.

29. The Fourteenth Amendment to the United States Constitution, enforceable pursuant to 42 U.S.C. § 1983, provides that no state shall “deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1.

30. The Utah Vital Statistics Act, Utah Code Ann. § 26-2-1, *et seq.*, requires the Department of Health to “establish a statewide vital records system for the registration, collection, preservation, amendment, and certification of vital records and other similar documents.” Utah Code Ann. § 26-2-3(1)(b). The Department must also “prescribe forms for certificates, certification, reports, and other documents and records necessary to establish and maintain a statewide system of vital records,” including birth certificates. Utah Code Ann. § 26-2-3(1)(c).

31. The Office, which is part of the Utah Department of Health, enforces Utah’s assisted reproduction statutes, Utah Code Ann § 78B-15-701, *et seq.*, by determining whether the spouse of married woman who gives birth to a child conceived by donor sperm from a third party should be listed as the parent on the child’s birth certificate.

32. In his official capacity Executive Director of the Utah Department of Health, Defendant Patton has supervisory responsibility over the Office.

33. In his official capacity as Director of the Office, Defendant Oborn has supervisory responsibility over the Office.

34. A same-sex spouse and a different-sex spouse of a woman who conceives through donor insemination are similarly situated in all relevant respects for purposes of establishing parentage under Utah’s assisted reproduction statutes.

35. On its face and as applied to Angie and Kami Roe, the Office’s policy of refusing to recognize same-sex spouses for purposes of establishing parentage under Utah’s assisted reproduction statutes discriminates based on sex. The Office recognizes the male spouses of women who conceive through donor sperm as parents of the resulting children, but does not

recognize the female spouses of women who conceive through donor sperm as parents of the resulting children.

36. On its face and as applied to Angie and Kami Roe, the Office's policy of refusing to recognize same-sex spouses for purposes of establishing parentage under Utah's assisted reproduction statutes also discriminates based on sexual orientation. The Office recognizes two parents for the children of married different-sex couples who conceive through donor sperm, but will recognize only one parent for the children of married same-sex couples who conceive through donor sperm

37. The Office requires married same-sex couples who conceive through donor sperm, but not married different-sex couples who conceive the same way. This policy forces same-sex couples to spend additional time and money to undergo a step-parent adoption for both spouses to be recognized as parents. It also imposes a dignitary harm by forcing same-sex couples, but not different-sex couples, to submit to background checks and seek court approval to provide two legal parents for their children.

38. The Office inflicts an additional dignitary harm on same-sex couples who conceive through assisted reproduction by requiring them to comply with the added burdens of a step-parent adoption process while not requiring that different-sex couples who conceive through assisted production comply with the same burdens. This differential treatment stigmatizes same sex couples and marks them as not worthy of equal treatment.

39. The Office's policy of refusing to recognize same-sex spouses for purposes of establishing parentage under Utah's assisted reproduction statutes harms those couples' children by denying them a birth certificate reflecting two legal parents until the non-birth parent completes a step-parent adoption.

40. The Office’s policy of refusing to recognize same-sex spouses for purposes of establishing parentage under Utah’s assisted reproduction statutes also harms those couples’ children by casting a cloud of uncertainty over whether they have a legal parent-child relationship with one of their parents.

41. On its face and as applied to Angie and Kami Roe, the Office’s policy of refusing to recognize same-sex spouses for purposes of establishing parentage under Utah’s assisted reproduction statutes violates the Equal Protection Clause of the Fourteenth Amendment.

42. The Office has the statutory authority to apply Utah’s assisted reproduction statutes equally to male spouses and female spouses to comply with the requirements of equal protection. *See* Utah Code Ann. § 68-3-12(1)(c)(establishing general rule of construction that “[a] word used in one gender includes the other gender”); Utah Code Ann. § 78B-15-106 (establishing rule of construction that “[p]rovisions of this chapter relating to determination of paternity also apply to determinations of maternity”).

43. Even if the Office did not have the statutory authority to apply Utah’s assisted reproduction statutes to female spouses of women who conceive through assisted reproduction, this Court has the power to cure violations of equal protection by extending the benefit to the excluded class.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks the following relief:

A. A declaration that female spouses of women who give birth through assisted reproduction may establish parentage under the Utah Uniform Parentage Act, subject to the same terms and conditions that apply to male spouses.

B. A preliminary and permanent injunction requiring Defendants to issue a birth certificate recognizing both Angie Roe and Kami Roe as legal parents of L.R. and requiring Defendants to recognize Angie Roe and Kami Roe as the legal parents of L.R. for all purposes under Utah law.

C. A preliminary and permanent injunction requiring Defendants to recognize the female spouses of women who give birth through assisted reproduction as legal parents under the Utah Uniform Parentage Act, subject to the same terms and conditions that apply to male spouses.

D. Awarding Plaintiffs their costs, expenses, and reasonable attorneys' fees pursuant to, *inter alia*, 42 U.S.C. § 1988 and other applicable laws; and

E. Granting such other and further relief as the Court deems just and proper.

F. The declaratory and injunctive relief requested in this action is sought against each Defendant; against each Defendant's officers, employees, and agents; and against all persons acting in active concert or participation with any Defendant, or under any Defendant's supervision, direction, or control.

Dated: April 13, 2015

Respectfully submitted,

s/ John Mejia _____

Joshua A. Block*
ACLU LGBT Project
125 Broad Street, Floor 18
New York, New York, 10004
Telephone: (212) 549-2593
Facsimile: (212) 549-2650
jblock@aclu.org

John Mejia (Bar No. 13965)
Leah M. Farrell (Bar No. 13696)
ACLU of Utah
355 North 300 West
Salt Lake City, Utah 84103
Telephone: (801) 521-9862
jmejia@acluutah.org
lfarrell@acluutah.org

**Pro hac vice motion to follow*

Attorneys for Plaintiffs