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**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 _____

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**Pro hac vice motion to follow*

Attorneys for Plaintiffs

CIVIL COVER SHEET

JS 44 (Rev. 12/12)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS Angela Leslie Roe, Kami Roe</p> <p>(b) County of Residence of First Listed Plaintiff <u>Salt Lake County</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) see attached</p>	<p>DEFENDANTS W. DAVID PATTON, in his official capacity, RICHARD OBORN, in his official capacity</p> <p>County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:15%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:50%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p>PERSONAL INJURY - Product Liability</p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p>PERSONAL INJURY - Product Liability</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<p>LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<p>PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
	<p>CIVIL RIGHTS</p> <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p>PRISONER PETITIONS</p> <p>Habeas Corpus:</p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p>Other:</p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<p>SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN *(Place an "X" in One Box Only)*

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District *(specify)* 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*
Section 1983

Brief description of cause:
Equal protection in establishing parentage

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMANDS
 Preliminary injunction

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY *(See instructions):* JUDGE _____

DATE: April 13, 2015

SIGNATURE OF ATTORNEY OF RECORD: s/ Leah Farrell

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____

Case: 2:15cv00253
 Assigned To : Benson, Dee
 Assign. Date : 4/13/2015
 Description: Roe et al v. Patton et al