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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

ANGELA LESLIE ROE and KAMI ROE, Plaintiffs, v. W. DAVID PATTON, in his Official Capacity as Executive Director of the Utah Department of Health, and RICHARD OBORN, in his Official Capacity as Director of Utah's Office of Vital Statistics, Defendants.	**DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION** Case No. 2:15-cv-00253-DB Judge Dee V. Benson

Pursuant to Rule 65 of the Federal Rules of Civil Procedure and DUCivR 7-1, Defendants W. David Patton and Richard Oborn, in their official capacities ("Utah"), submit through counsel this memorandum in response to the Plaintiffs' motion for preliminary injunction ("Motion" or "Mot."). Doc. #3.

BACKGROUND

Plaintiffs' claims mix statutorily separate legal categories of marriage, birth certificates for purposes of vital statistics, and obligations of parentage, all of which are treated distinctly under the Utah Code, even when related under Utah law. This background section provides the Court with an overview of the interplay between the vital statistics and parentage provisions in the Utah Code upon which Plaintiffs focus their claims.

Plaintiffs' constitutional analysis is unsound because it fails to recognize that birth certificates in Utah do not confer rights of parentage on anyone, as the obligations of parentage are governed by the Utah Uniform Parentage Act ("Parentage Act"); whereas birth certificates and their purposes are codified in the Utah Vital Statistics Act ("UVSA"). While these two sections of the Utah Code define how parentage obligations are affixed by operation of law in Utah, they each have separate purposes and rationales, and each relate to categories of spousal sexual orientation in ways that, as seen below, have a rational basis and are therefore constitutional under the applicable standard of review.

1. The Utah Vital Statistics Act

The Utah Department of Health ("DOH") has long been required to establish a program for vital and health statistics. *See* Utah Code Ann. § 26-1-30(2)(t). The UVSA charges DOH with operating a statewide system of vital records and statistics throughout the state of Utah. Utah Code Ann. § 26-2-3(1)(b). The vital records system includes the registration, maintenance, amendment, and certification of records of all vital events which occur in this state, including birth, marriages, and death. *See id.*

2. Purpose of Birth Certificates and Their Non-Relation to the Parentage Act

The UVSA requires a birth certificate to be filed with DOH for every "live birth" which occurs in the state within 10 days after the birth. *See* Utah Code Ann. § 26-2-5(2). The UVSA also provides that a birth certificate shall include the facts of birth as certified by the physician in attendance at the birth or other individuals authorized by law. These facts include the date, time, place of birth, and information about the parents. *See* Utah Code Ann. § 26-2-5(3)(b), (4)(b).

A birth certificate is a formal and legal compilation of the facts of a birth and establishes a child's identity, age, and citizenship. It is sometimes but not always the official record of a child's parentage. However, the birth certificate, in and of itself, does not establish parentage nor is it definitive proof of parentage.

Importantly for the claims in this matter, the Utah Parentage Act *is silent on registration of birth certificates.* Indeed, it is the Parentage Act that governs the establishment of parentage. The Parentage Act defines "parent" as "an individual who has established a parent-child relationship under Section 78B-15-201." Utah Code Ann. § 78B-15-102(17).

Below is Section 78B-15-201, titled "Establishment of parent-child relationship". *Id.* As it is only Angela Roe's parentage status that is at issue in this matter, the strikethroughs are provisions not applicable to this case, though the provisions remain for the convenience of the Court and parties:

> (1) The mother-child relationship is established between a woman and a child by:
>
> ~~(a) the woman's having given birth to the child, except as otherwise provided in Part 8, Gestational Agreement;~~
> (b) an adjudication of the woman's maternity;
> (c) adoption of the child by the woman; or

~~(d) an adjudication confirming the woman as a parent of a child born to a gestational mother if the agreement was validated under Part 8, Gestational Agreement, or is enforceable under other law.~~

(2) The father-child relationship is established between a man and a child by:
(a) an unrebutted presumption of the man's paternity of the child under Section 78B-15-204;
~~(b) an effective declaration of paternity by the man under Part 3, Voluntary Declaration of Paternity Act, unless the declaration has been rescinded or successfully challenged;~~
(c) an adjudication of the man's paternity;
(d) adoption of the child by the man;
(e) the man having consented to assisted reproduction by a woman under Part 7, Assisted Reproduction, which resulted in the birth of the child; or
~~(f) an adjudication confirming the man as a parent of a child born to a gestational mother if the agreement was validated under Part 8, Gestational Agreement, or is enforceable under other law.~~

78B-15-204 Presumption of paternity.
(1) A man is presumed to be the father of a child if:
(a) he and the mother of the child are married to each other and the child is born during the marriage;
[…]
(2) A presumption of paternity established under this section may only be rebutted in accordance with Section 78B-15-607.

As the plain language of subsection 204 suggests, the presumption of parentage only applies to cases of marriages involving a man and a woman. It does not apply to instances of marriages between two women or two men. The statute therefore distinguishes based on sexual orientation rather than sex or gender, as it is equally inapplicable to situations where two women or two men are married to each other.

Plaintiffs argue that they "do not need to invoke the presumption of parentage because the assisted reproduction statutes automatically establish Angie as a legal parent." Mot. at n.4. However, the presumption of parentage argument they are invoking is off the mark, because that is how an opposite-sex couple may become a father by operation of law. Under Section 78B-15-

201, a father-child relationship is established by the *man* having consented to assisted reproduction by a woman under Part 7, Assisted Reproduction, which resulted in the birth of the child. Along with the definition of "parent," the definition of "man" means "a male." Utah Code Ann. § 78B-15-102(15). The requirements of Section 78B-15-201 must first be met before an individual is considered a legal parent. Additionally, Section 78B-15-701 refers to the husband as being the "father" of a resulting child born to his wife.

The UVSA recognizes the biological and gendered roles of "mother" and "father," grounded in the fact of birth, meaning the child has one biological mother and one biological father. Utah Code Ann. § 26-2-5. This determination is independent from any type of marital relationship because the words describe a separate relationship between an individual and the child. Unless Plaintiffs put on evidence to the contrary, it is a fact that a non-biologically related female spouse can never be the biological father of a child. It is a biological impossibility for a woman who does not give birth to a child to establish paternity of a child through the act of birth. Therefore, a presumption of paternity is meaningless when applied to a same-sex female couple.

Further, even if the presumption did apply, it is rebuttable, and a non-biological female spouse would always be able to disestablish her parentage (possibly ending her child support or other parental obligations), and a biological mother would always be able to disestablish her partner's parentage. Therefore, it is reasonable for DOH not to apply the legal presumption of paternity in favor of a non-biological female spouse. As described here and below, there is an obvious rational basis for not doing so.

3. DOH's Interest in the Integrity of Vital Records

Although the manner and methods of registration have evolved over the years, the overarching purpose of the vital records system has remained remarkably consistent: to ensure vital records, including birth, death, and marriage certificates are accurate as to the vital event at issue. Utah Code Ann. § 26-2-3; § 26-1-30(2)(t). This is a distinct and important governmental function. A birth certificate which accurately reflects a child's legal parents is important both to the child, his or her parents, and to the DOH as the custodian of vital statistics, and to third parties who rely on the accuracy of DOH statistical data.

4. Public Health and Statistics

One primary interest of DOH relates to its maintenance of reliable and comprehensive statistics of all vital events for purposes of public health programming and research. To further this interest, the Department collects a variety of information from parents of Utah children from the "Parent's Worksheet for Child's Birth Certificate." *See* Exh. 1. This worksheet is completed by every mother who gives birth in this state in order to obtain a birth certificate for her child. DOH gathers information from the worksheet about the mother, including information about her education and background, socio-demographic data, and prenatal history. DOH also collects information from the worksheet about the father of the child, including his age, race, level of schooling, and primary language.

DOH uses this information to prepare an "annual compilation, analysis, and publication of statistics derived from vital records." Utah Code Ann. § 26-2-3(1)(b), (d). The information obtained from the birth of children allows the DOH to identify public health trends and determine government funding for public health. DOH discloses this data to public health

officials and researchers to study important health issues, including teenage pregnancy, rate of infant morbidity and mortality rates, and congenital or inherited disorders. Utah Code Ann. § 26-2-22(2)(c). DOH shares this data with other federal and state agencies necessary to carry out the official duties of such agencies. *See* Utah Code Ann. § 26-2-22(2)(d).

Under Plaintiffs' claims, a female spouse of the birth mother should be construed to be the biological father, or at least parent, for purposes of the birth certificate, and her background and health history would then be transmitted and maintained by DOH as if she were the second biological parent of the child. Yet her background and health history is irrelevant in relation to the child, and the accurate identification of the biological father would be 0%. In contrast, a husband may provide sperm to be used for assisted reproduction by his wife. He is not considered to be a "donor" under the statute; instead he is the actual biological father of the child and his information is provided to DOH. *See* Utah Code Ann. §§ 78-15-102(1), 702, 703. This statistical information would then be included in the statistical data published by DOH and shared with researchers and other public health officials. This information would be inaccurate, unreliable, and askew. If the process proposed by Plaintiffs were implemented in the aggregate, it would likely have a significant impact on the public's health and public policy, as statistics and data under such a procedure would be inherently flawed.

5. Process for Parent and Step-Parent Adoption

The UVSA contains a simple avenue for an intended parent who does not have a biological connection to a child to be entered on the child's birth certificate: adoption. The adoption option is the avenue available to all spouses and would-be parents, regardless of sex, who would take on parental obligations for children with whom they have no biological

connection. The process is the same whether the non-biological parents are same-sex or opposite-sex: the law requires the rights of the biological parent to be terminated and the rights of the non-biological parent to be established under the Utah Adoption Act and the Parentage Act. The presumption of paternity does not apply in this situation.

Following a legal adoption and receipt of a certified report of adoption, DOH issues *a new, supplemental birth certificate for the child, upon which the actual place, time, and date of birth are shown and the name of the new adoptive legal parent is entered as the child's legal parent*. *See* Utah Code Ann. § 26-2-10; 26-2-25(1); Utah Admin. Code R436-5-5. The original birth certificate and the evidence submitted in support of the supplementary certificate are then sealed. *See* Utah Code Ann. § 26-2-10(4)(b).

DOH does not require the adoptive parent to complete the "Parent's Worksheet for Child's Birth Certificate" because her or his background, demographic information, and health and activities during the course of the pregnancy are not relevant for public health or research purposes. The important statistical information gathered from the original birth certificate is not altered.

Unless adjudicated a parent by the court, same-sex male couples may only use the adoption or step-parent adoption process to establish parentage during their marriage. Same sex male couples cannot solely rely on assisted reproduction as outlined in the statute to conceive a child. Consequently, the Parentage Act only draws distinctions on the basis of sexual orientation, not the basis of sex. Plaintiffs' prayer for relief, seeking to be treated the same as males, is therefore moot due to the plain language of the statute itself: same sex couples who are

comprised of males and same sex couple who are comprised of females are treated exactly the same under the UVSA.

Thus, Plaintiffs accurately state the general steps on the step-parent adoption process, but exaggerate the burden imposed as this is typically a quick and easy process outlined above. Unless a gestational mother is involved, an adoption or step-parent adoption is the only process non-biological same-sex male spouse may become a legal parent. Except for a gestational mother, step parent adoption is the only way for a would-be parent in the context of a same sex marriage to establish and accept the obligations of parentage. And this is true for both males and females in the context of parentage involving same sex marriages.

6. The Policy Rationales and Considerations of the Parentage Act and UVSA

Of note, an adoption decree is not signed unless any individual who could assert parentage of the child had their parental rights terminated. If a female spouse to the biological mother is automatically a legal parent by virtue of the child's birth, a biological father's rights (if any) may not have been terminated yet. Regardless of the manner of conception, the child has a biological father who possesses legal and fundamental right of parentage until such rights are legally terminated. These rights are not conferred on unwed biological fathers who have not asserted parentage pursuant to Sections 78B-6-120, 121 (describing consent to adoption or relinquishment for adoption).

A. Relation to Marriage

Allowing full access to marital rights does not require the DOH to presume a non-biological female fathered a child because this issue impacts parties outside the civil marriage contract (rather than statutes that impact two consenting adults). Here, the actual biological

father of the child and the child herself could be prejudiced by the proposed process. Unlike an opposite-sex couple, who are presumed to consent to parenting by having sex, a spouse in a same-sex marriage would be able to impose parental obligations on the other spouse without any consent on her part. Same-sex male couples cannot conceive and bear children without the aid of a third party.

B. Privacy Implications and Process Implications

It is possible that female same-sex couples who procreate by means of assisted reproduction have different rights than a same-sex couple who rely on a known-donor for conception (e.g., a male sexual partner). Under Plaintiffs' theory, if a child is conceived through assisted reproduction, the female spouse would be a legal parent by virtue of being married. "Assisted reproduction" means a method of causing pregnancy other than through sexual intercourse. *See* Utah Code Ann. §§ 78B-15-102(3), 701, 702. DOH should not be required to inquire into how each child in the state is conceived, whether naturally or with reproductive assistance, or to determine who the intended parents of the child are after birth. This may cause significant administrative difficulties to DOH, and unnecessarily intrude into the sexual history and decisions made by a couple—history and decisions which have obvious privacy interests. Requiring DOH to investigate how children are conceived would significantly impact the privacy rights of Utah citizens.

C. Process for Adjudication of Parentage

One way to establish a mother-child relationship is through adjudication of maternity. Utah Code Ann. § 78B-15-201(1)(b). Adjudication of maternity typically applies when a woman is confirmed as a parent of a child born to a gestational mother. Utah Code Ann.

§ 78B-15-201(1)(d). Under Section 78B-15-106, provisions of the Parentage Act "relating to determination of paternity also apply to determinations of maternity." *Id*. This does not mean, however, that the rules applicable to "establishment" of paternity also apply to "establishment" of maternity. "Determination of parentage" means, in part, adjudication by a tribunal. Utah Code Ann. § 78B-15-102(9). Therefore, the procedures applicable to adjudicating paternity are equally applicable when it is necessary to adjudicate maternity. However, it is quite rare that adjudication of maternity would be necessary, although a circumstance may arise when genetic testing is needed to adjudicate maternity. For example, if a woman alleges that a child born to a gestational mother did not result from assisted reproduction documented via a gestational agreement.

7. Rational Governmental Bases for Distinctions in the Parentage Code and the UVSA.

In sum, Utah has several rational bases for the distinctions made in the Parentage Act and the UVSA. Most prominently, the UVSA statistics are used by university and other scholarly researchers who depend upon reliable if not perfect data regarding children born in Utah and their biological parents. Second, because it is a biological impossibility for a woman to ever establish paternity of a child, it is reasonable for DOH not to apply the legal presumption of paternity in favor of a non-biological female spouse, either in the UVSA or the Parentage Act. Third, the primary purpose of the UVSA is to ensure vital records, including birth, death, and marriage certificates are accurate as to the vital event at issue. Utah Code Ann. §§ 26-2-3; 26-1-30(2)(t). This is a distinct and important governmental function and has no relation to the establishment of parentage which is governed by the Parentage Act. Fourth, Utah has an interest served by the UVSA in the maintenance of reliable and comprehensive statistics of all vital

events for purposes of public health programming and research. Finally, as discussed above, Utah has an interest in determining whether the parentage obligations taken on by non-biological parents are the product of deliberate and non-coercive means; while Utah does not believe this is at issue in the present case, the procedures outlined in the the UVSA and the Parentage Act are rational ways of Utah achieving these goals and protections.

DISCUSSION

1. Legal Standards for Facial and As-Applied Challenges

"Facial challenges are strong medicine. Article III of the Constitution ensures that federal courts are not roving commissions assigned to pass judgment on the validity of the nation's laws, but instead address only specific 'cases' and 'controversies.'" *Ward v. Utah*, 398 F.3d 1239, 1246 (10th Cir. 2005). (quotation marks and citation omitted). As the Supreme Court has observed, "facial challenges are best when infrequent. . . . Although passing on the validity of a law wholesale may be efficient in the abstract, any gain is often offset by losing the lessons taught by the particular, to which common law method normally looks." *Sabri v. United States*, 541 U.S. 600 (2004) (internal citations omitted). "Because facial challenges push the judiciary towards the edge of its traditional purview and expertise, courts must be vigilant in applying the most exacting analysis to such claims." *Ward*, 398 F.3d at 1247 (citing *Broadrick v. Oklahoma*, 413 U.S. 601, 611-12 (1973)). The Supreme Court has been absolutely clear that to succeed in a facial attack "the challenger must establish that no set of circumstances exists under which the Act would be valid"— an onerous burden, making it "the most difficult challenge to mount successfully." *United States v. Salerno*, 481 U.S. 739, 745 (1987).

In sum, Plaintiffs' burden on the likelihood of success on its facial challenge is not to prove that some set of specific factual circumstances would make the application of the Parentage Act unconstitutional—that would be an as-applied challenge; rather, Plaintiffs must show that the Parentage Act is unconstitutional under any set of circumstances. *See Salerno*, 481 U.S. at 745. The Court is well familiar with as-applied challenges. In as-applied challenges, a plaintiff's burden is to come forward with some evidence that demonstrates the regulatory scheme is unconstitutional as-applied to the circumstances of the case. *See, e.g., Sallahdin v. Mullin***,** 380 F.3d 1242, 1248 (10th Cir. 2004).

For the purposes of this motion only, Utah accepts the evidence Plaintiffs have offered. Plaintiffs have not argued that the Parentage Act is unconstitutional under any set of circumstances. For that reason alone, the Court should deny their facial challenge. For the reasons described below, Plaintiffs do not meet their burden in showing a likelihood of success on the merits of their as-applied challenge.

2. Requirements for a Preliminary Injunction for this Case

"It is well settled that a preliminary injunction is an extraordinary remedy, and that it should not be issued unless the movant's right to relief is 'clear and unequivocal.'" *Heideman v. South Salt Lake City*, 348 F3d 1182, 1188 (10th Cir. 2003) (affirming denial of motion for preliminary injunction brought by nude dancing artists on First Amendment free expression challenge to city ordinance requiring g-strings and pasties) (quoting *Kikumura v. Hurley*, 242 F.3d 950, 955 (10th Cir. 2001)).

Before a preliminary injunction may be entered, pursuant to Federal Rule of Civil Procedure 65, the moving party must establish that:

> (1) [the movant] will suffer irreparable injury unless the injunction issue; (2) the threatened injury . . . outweighs whatever damage the proposed injunction may cause the opposing party; (3) the injunction, if issued, would not be adverse to the public interest; and (4) there is a substantial likelihood [of the moving party's success] on the merits.

Heideman, 348 F.3d at 1188 (quoting *Resolution Trust Corp. v. Cruce*, 972 F.2d 1195, 1198 (10th Cir. 1992)). "[W]here . . . a preliminary injunction '*seeks to stay governmental action taken in the public interest pursuant to a statutory or regulatory scheme*'" no lesser standards for the issuance of a preliminary injunction are applicable. *Id.* (emphasis added) (quoting *Sweeney v. Bane*, 996 F.2d 1384, 1388 (2d Cir. 1993)). In this case, therefore, Plaintiffs must meet their burden of showing that each of the four required elements necessary for a preliminary injunction to issue weigh *clearly and unequivocally* in their favor. *Id.*; *accord Kikumura*, 242 F.3d at 955. Plaintiffs cannot meet this burden, and the Court should deny their request for preliminary injunctive relief.

Plaintiffs may argue that a relaxed standard should apply due to the nature of the constitutional claims and the assumption that the equities portions of the preliminary injunction analysis entitle Plaintiffs to a relaxed standard on the merits. Based on the clear Tenth Circuit authorities above, the Court should decline Plaintiffs' suggestion should they make such an argument. On this point, Plaintiffs correctly note that since they are seeking a mandatory injunction that would force the Utah Department of Health and the Utah Office of Vital Statistics to alter their procedures, they "must make a strong showing both with regard to the likelihood of success on the merits and with regard to the balance of harms." *O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 389 F.3d 973, 976 (10th Cir. 2004) (en banc). Moreover, as discussed below in Utah's treatment of the irreparable injury factor, Plaintiffs additionally have not made a showing that entitles it to the relaxed standard. Accordingly, this

Court must determine whether Plaintiffs have clearly and unequivocally met their burden on each factor.

3. Likelihood of Success on the Merits

State statutes enjoy the presumption of constitutionality. *United States v. Monts*, 311 F.3d 993, 996 (10th Cir. 2002); *accord City of Herriman v. Bell*, 590 F.3d 1176 (10th Cir. 2010); *Heideman*, 348 F.3d 1190-91; *Hopkins v. Oklahoma Public Employees Retirement System*, 150 F.3d 1155, 1160 (10th Cir. 1998). In situations such as this, plaintiffs always bear the heavy burden of rebutting the presumption of constitutionality and courts refrain from second guessing legislative policy makers in determining whether statutory provisions are constitutional. *Hopkins*, 150 F.3d at 1160. One federal court recently and eloquently addressed the presumption of constitutionality and the consequent role of judicial review:

> [I]t is the role of the legislature to carefully examine [policy] concerns, to weigh them against each other, and to create social policy in the form of legislation (or, indeed, to elect not to do so).
>
> When the constitutionality of a state law is challenged, however, a court does not engage in the same process. Judicial review of laws for constitutional compliance focuses on only a small sliver of the issues that the legislature considers. A court does not act as a super-legislature to determine the wisdom or workability of legislation. Instead, it determines only whether legislation is constitutionally permissible. A law may be constitutional, but nevertheless foolish, ineffective, or cumbersome to enforce.
>
> The limited role of the court grows out of the separation of powers among the executive, legislative, and judicial branches of government. A legislature, being a body directly elected by the citizenry, is granted the broadest power to act for and by the people. The judiciary acts only as a check on the exercise of that collective power, not by substitution of the personal opinion of a judge as to what he or she believes public policy should be. The judge must only compare the public policy adopted by the legislature against the constitutional minimums that protect individual rights.
>
> Constitutionality is a binary determination: either a law is constitutional, or it is not. This Court will not express a qualitative opinion as to whether a law is "good" or "bad," "wise" or "unwise," "sound policy" or a "hastily-considered overreaction." Similarly, this Court will not assess what alternatives the

> legislature could have chosen, nor determine whether the enacted laws were the best alternative. Such decisions belong to the people acting through their legislature. Put another way, in determining whether a law is constitutional, this decision does not determine whether either law is "good," only whether it is constitutionally permissible.

Colorado Outfitters Ass'n et al. v. Hickenlooper, 24 F.Supp.3d 1050, 1055-56 (D. Colo. 2014) (brackets added).

Because this case deals with levels of constitutional scrutiny given to sexual orientation distinctions made in the law, it may be of particular interest in today's legal and political climate. One constitutional scholar recently observed: "The current climate . . . means that important distinctions are being lost. One is that it is possible to favor same sex marriage as a policy matter without believing that the Constitution requires it." Adam Liptak, *The Case Against Gay Marriage: Top Law Firms Won't Touch It*, N.Y. TIMES, April 11, 2015 at 4 (quoting Stanford University's Professor Michael W. McConnnell and Director of Stanford's Constitutional Law Center) (attached as Exh. 2). While the legal questions regarding marriage, parentage and vital statistics law are surely distinct, because this case involves distinctions in the law based on sexual orientation, similar considerations may or may not apply. In either case, Utah is confident that this Court is mindful of the current legal challenges wending their way through federal and state courts and is dispassionate as it considers the questions this case presents.

A. Plaintiffs' Claims and Arguments

As discussed in the Background section, the implications of Plaintiffs' claims touch on many provisions of the Utah Code. Plaintiffs particularly complain of the unequal application of the following provisions in the Parentage Act:

78B-15-703. Husband's paternity of child of assisted reproduction.

> If a husband provides sperm for, or consents to, assisted reproduction by his wife as provided in Section 78B-15-704, he is the father of a resulting child born to his wife.

78B-15-704. Consent to assisted reproduction.

> (1) A consent to assisted reproduction by a married woman must be in a record signed by the woman and her husband. This requirement does not apply to the donation of eggs for assisted reproduction by another woman.
>
> (2) Failure of the husband to sign a consent required by Subsection (1), 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.

Utah Code Ann. §§ 78B-15-703, 704. By their plain terms, these provisions are inapplicable to same sex couples. On their face they are provisions only for establishing parentage in cases of married couples who are comprised of a man and a woman, not of two men or two women. They therefore do not distinguish on the basis of sex, but rather make implied distinctions based on sexual orientation. Consequently Plaintiffs are incorrect as a matter of logic and plain language when they assert that the provisions distinguish on the basis of sex. *See* Mot. at 6.

Moreover, the provisions only contemplate a non-same sex couple situation when it is the category of "father" that is sought by operation of law. *See id*. Angie Roe does not wish to be categorized as L.R.'s "father" but as L.R.'s parent, and the provision for that procedure is covered, as discussed at *supra* Background § 2, in Section 78B-15-201 and is applicable to men and women alike, without distinction with respect to sex or sexual orientation. Similarly, a married male couple would find Sections 78B-15-703, 704 equally inapplicable to them: To establish parentage they would have to go through the same procedures of Section 78B-15-201. On its simple terms, as discussed at *supra* Background § 2, Section 78B-15-201 provides

parentage procedures for those who are non-birth mothers and that provision discriminates neither on the basis of sex or sexual orientation.

Plaintiffs first ask for an injunction mandating Utah to "issue a birth certificate recognizing both Angie Roe and Kami Roe as the legal parents of L.R. for all purposes under Utah law." Mot. at 2. Second, Plaintiffs also ask for injunctive relief mandating that Utah "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." *Id.* It should be clear by now that there is a fundamental problem with each of these requests, as they rest on a misunderstanding of the operations of vital statistics and parentage provisions in the Utah Code, and also fail to recognize that neither the UVRA nor the Parentage Act make distinctions based on sex, but rather on rational distinctions based on sexual orientation.

Regarding the first request, as discussed *supra* in Background §§ 1 and 2, a birth certificate is not the Utah statutory mechanism by which parentage is established—that process is governed by Section 78B-15-201. Moreover, Utah has a rational basis for not providing a birth certificate immediately to Angie Roe, as a primary purpose of a birth certificate include but are not limited to: 1) maintaining reliable and comprehensive statistics of all vital events for purposes of public health programming and research; 2) preparing an "annual compilation, analysis, and publication of statistics derived from vital records," *See* Utah Code Ann. §26-2-3(1)(b), (d); 3) identifying public health trends and determining government funding for public health; 4) disclosing this data to public health officials and researchers to study important health issues, from teenage pregnancy to infant morbidity and mortality rates, to congenital and

inherited disorders, s*ee* Utah Code Ann. § 26-2-22(2)(c); and 5) sharing this data with other federal and state agencies necessary to carry out the official duties of such agencies, *see* Utah Code Ann. §26-2-22(2)(d). Each of these interests provides rational bases for the distinctions at issue. *See supra*, Background §§ 4, 7.

With respect to the second point, much of the same analysis applies. Plaintiffs also ask for injunctive relief mandating that Utah "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." Mot. at 2. Yet, as discussed above, *supra* Background § 5, the Parentage Act applies to males and females equally and only makes distinctions on the basis of sexual orientation. Plaintiffs' request that they be "subject to the same terms that apply to males spouses" is therefore already in effect, and thus moot as Plaintiffs present no live controversy on this allegation.

Plaintiffs cite the case of *Evan v. Herbert* et. al., 2:14CV55DAK (D. Utah 2014) for the proposition that 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, Compl. ¶ 3, but they do not address the fact that the *Evans* case did not address issues of parentage nor did the court specify the types of protections, benefits, and responsibilities attendant under Utah law to all marriages. As such, the *Evans* case is inapposite and unhelpful to the primary issues of parentage and vital statistics now before the Court.

i. Legal Standards and Review Applicable to Plaintiffs' Various Complaints

Contrary to Plaintiffs' arguments, this case involves distinctions in the law regarding sexual orientation, not on the basis of sex. Therefore this Court's constitutional scrutiny is under rational basis review. *See Price-Cornelison* v. *Brooks,* 524 F.3d 1103, 1113 (10th Cir. 2008). The relief requested by the Plaintiffs includes: 1) "a declaration that female spouses of women who give birth through assisted reproduction may establish parentage under the Utah Uniform Parentage Act [("the Act")], subject to the same terms and conditions that apply to male spouses"; and 2) injunctive relief "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"; and 3) an injunction requiring "Defendants to recognize the female spouses of women who give birth through assisted reproduction as legal parents under the Uniform Parentage Act, subject to the same terms and conditions that apply to male spouses." Doc. #2, Complaint, Prayer for Relief, §§ A, B, C ("Complaint" or "Compl."). As has already been addressed and further clarified below, Plaintiffs, a female same-sexed couple, base their prayer for relief on sex discrimination, while the Act, as applied, makes distinctions on terms of sexual-orientation, which passes rational basis scrutiny.

Plaintiffs challenge the constitutionality of the Act, both facially and as-applied, as violating the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. *See, e.g.*, Compl. § 41; Mot at 5. In support of their claims, they argue:

1) that the Act impermissibly discriminates on the basis of sex because if Angie were a male, and Kami had conceived a child through donor insemination, through consent manifested in writing, and the couple held

Angie out as L.R.'s parent, Angie would consequently enjoy the status of parent to L.R. through operation of subsection 704 (Mot. at 5);

2) that whether analyzed as a distinction based on sex or a distinction based on sexual orientation, Plaintiffs argue that this Court must apply heightened scrutiny to the Act (Mot. at 6);

3) that Utah's Assisted Reproduction Statutes violate constitutional guarantees of equal protection due to differential treatment of same-sex spouses, specifically same-sex female spouses (Mot. at 7-8); and

4) the Act cannot survive rational basis or intermediate scrutiny, though Plaintiffs do not address any basis that might be advanced to justify the distinctions made in support of the statutory scheme, and therefore have advanced no argument with respect to scrutiny analysis except for an assertion that treating birth mothers who have same sex spouses and birth mothers who have opposite sex spouses cannot be justified in any case. Mot. at 7-10.

Each of Plaintiffs' contentions fails to present a constitutional infirmity in the Parentage Act. Defendants have already addressed Plaintiffs' point one, and will not repeat those arguments. Points two, three and four are addressed below, both in terms of the applicable standard of review and the rational bases that support the distinctions in Utah law of which Plaintiffs complain.

B. The Appropriate Level of Scrutiny

As to the claim that the Act violates Equal Protection due to impermissible sexual discrimination, subsection 704 makes a distinction not on the basis of *sex* but on the basis of *sexual orientation*. As noted above, by its plain terms, the provision applies only to situations which involve a husband and wife. Plaintiffs argue that "if Angie were a man instead of a woman, the Office would recognize her as a legal parent pursuant to Utah's assisted reproduction statute and would issue a birth certificate listing Angie as L.R.'s parent with no need for step-parent adoption." Mot. at 5. This is not the case. The Parentage Act's plain language addresses a particular circumstance in which a couple is comprised of one man and one woman, and

provides only for such procedures in cases involving a couple with heterosexual orientation. If two married men sought the procedures of Section 704, they, like the Plaintiffs, would find Section 704 similarly inapplicable to them. *See* Background § 2 (discussing general Section 201 parentage procedures for non-biological would-be parents who would take on the obligation of parentage).

The Parentage Act therefore does not facially discriminate on the basis of sex, but rather makes a distinction based on sexual orientation, and under Tenth Circuit precedent the law is subject to rational basis scrutiny, especially where, as here, there is no alleged animus in the legislative history of the statutory provisions under examination. *See*, *e.g.*, *Price-Cornelison*, 524 F.3d at 1113; *accord Bishop v. Smith*, 760 F.3d 1070, 1099-1109 (10th Cir. 2014) (Holmes, J. concurring). Regarding the fact that rational basis review applies to distinctions based on sexual orientation, until recently at least nine circuits (and now at least seven or eight other circuits, depending on how they are counted) apply rational basis scrutiny when performing an equal protection analysis on legal distinctions involving sexual orientation.[1] Plaintiffs cite *SmithKlein Beecham Corp v. Abbott Labs.*, 740 F.3d 471, 481 (9th Cir. 2014) for the proposition that the Court in *United States v. Windsor*, 133 S.Ct. 2675 (2013) established a higher level of scrutiny for statutory distinctions based upon sexual orientation. *See SmithKlein*, 740 F.3d at

[1] *See*, *e.g.*, *Price-Cornelison*, 524 F.3d at 1113; *Baskin v. Bogan*, 766 F.3d 648, 671 (7th Cir. 2014) (speculating on possible requirement of more than rational basis review after it performed review on rational basis grounds); *Davis* v. *Prison Health Servs.*, 679 F.3d 433, 438 (6th Cir. 2012); *Cook* v. *Gates*, 528 F.3d 42, 61-62 (1st Cir. 2008); *Bruning*, 455 F.3d at 866-67; *Johnson* v. *Johnson*, 385 F.3d 503, 532 (5th Cir. 2004); *Lofton* v. *Sec'y of Dep't of Children & Family Servs.*, 358 F.3d 804, 818 (11th Cir. 2004); *Thomasson* v. *Perry*, 80 F.3d 915, 927-28 (4th Cir. 1996); *Woodward* v. *United States*, 871 F.2d 1068, 1076 (Fed. Cir. 1989); *Padula* v. *Webster*, 822 F.2d 97, 103 (D.C. Cir. 1987).

471. They also cite for the same proposition *dicta* in *Baskin v. Bogan*, 766 F.3d 648, 671 (7th Cir. 2014) (speculating on possible requirement of more than rational basis review after it performed review on rational basis grounds), *cert denied*, 135 S.Ct. 316 (2014), *cert denied sub nom*., *Walker v. Wolf*, 135 S.Ct. 316 (2014). Indeed, subsequently the Ninth Circuit itself has been divided regarding why heightened scrutiny in this context might be merited. *Compare Latta v. Otter*, 771 F.3d 456, 477 (2014) (Rheinhardt, J. concurring) with *id*. at 481 (Berzon, J. concurring).

Contrary to the Plaintiffs' assertions and the Ninth Circuit's interpretation of *Windsor* in *SmithKlein*, 740 F.3d at 481, however, neither the Tenth Circuit nor the Supreme Court has ever applied heightened scrutiny based on sexual orientation despite repeated invitations to do so, including most recently in *Windsor*. *Windsor* held that Section 3 of the federal Defense of Marriage Act was invalid for lacking a "*legitimate* purpose," 133 S. Ct. at 2696 (emphasis added). This is standard rational-basis language, and it contrasts sharply with the requirements of strict scrutiny, *see, e.g., Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 227 (1995) (strict scrutiny requires showing that law is "narrowly tailored" to "further *compelling* governmental interests") (emphasis added), and intermediate scrutiny, *see, e.g., Craig v. Boren*, 429 U.S. 190, 197 (1976) (intermediate scrutiny requires that gender classifications "serve *important* governmental objectives" and be "substantially related to achievement of those objectives.") (emphasis added). Plaintiffs also ignore that, in situations such as this, where there is not animus alleged behind the statutory distinctions made in the Utah Code, the Tenth Circuit has affirmed that rational basis review governs the analysis. *Bishop* , 760 F.3d at 1099-1109.

In sum, there is no basis for this Court to revisit well-settled precedent on this point. Plaintiffs invite this Court to embrace heightened scrutiny with respect to sexual orientation analysis required in this case. The Court should decline to do so and apply the law of the Tenth Circuit reaffirmed just last year in *Bishop*. Plaintiffs have given this Court no reason to deviate from binding precedent. As described below, there are several rational bases for the distinctions the Act makes, which are ignored by Plaintiffs, and for the reasons described below the Act passes rational basis scrutiny.

C. Analysis and Rationale Bases for the Parentage Act's Distinctions

"Under the rational basis test, the court upholds the policy "if there is 'any reasonably conceivable state of facts that could provide a rational basis for the classification.'" *Spragens v. Shalala*, 36 F.3d 947, 951 n. 3 (10th Cir. 1994) (quoting *FCC v. Beach Communications, Inc.*, 508 U.S. 307, 313 (1993)); *accord Price-Cornelison*, 524 F.3d at 1113; *Bishop*, 760 F.3d at 1099-1109. Rational basis scrutiny merely inquires "if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *F.C.C. v. Beach Communications, Inc.*, 508 U.S. 307, 313-14 (1993). As discussed above in Background § 7, there are more than five rational bases for Utah to maintain these distinctions. The Plaintiffs therefore have not and cannot meet their burden of clearly and convincingly demonstrating a likelihood of success on the merits in this case. Accordingly, the Motion should be denied.

4. Irreparable Harm

> To constitute irreparable harm, an injury must be certain, great, actual and not theoretical. Irreparable harm is not harm that is merely serious or substantial. The party seeking injunctive relief must show that the injury complained of is of such *imminence* that there is a clear and present need for equitable relief to prevent irreparable harm. It is also well settled that simple economic loss usually does not, in and of itself, constitute irreparable harm;

such losses are compensable by monetary damages.

Heideman, 348 F.3d at 1189 (internal quotations, citations and brackets omitted) (emphasis in original). As with the other four required elements necessary for a preliminary injunction to issue, Plaintiff bears the burden of showing that this element weighs *clearly and unequivocally* in their favor. *Id*. at 1198.

Although some federal courts have held that some alleged constitutional violations, most frequently alleged First Amendment violations, give rise to a presumption of irreparable harm in certain cases, the principle is not applicable generally and is not applicable here. *See Free Speech Coalition v. Shurtleff*, 2007 WL 922247, *18 (D. Utah 2007) (Kimball, J.) (and cases cited therein); *see also Heideman*, 348 F.3d at 1190 (noting presumption when infringement of First Amendment rights is alleged). As one member of this Court has noted in the First Amendment context, "presumptions, … are not assumptions." *Free Speech Coalition*, 2007 WL 922247 at *18. And no federal court has ever said that irreparable harm should be *assumed* when such constitutional allegations are at issue in a motion for preliminary injunction. To do so would render the irreparable harm prong of the preliminary injunction test meaningless in such cases. Even if such were found to be the general practice among courts reviewing injunction motions, such a practice would not accord with the law. Indeed, the Tenth Circuit has stated that the merits of constitutional claims must be considered by reviewing courts when evaluating whether the presumption of irreparable harm applies in a given case. *See Heideman*, 348 F.3d at 1190 ("It is necessary, however, to consider the specific character of the First Amendment claim."). In such cases where the showing is not strong on the merits, the presumption does not apply.

Such a perspective is in accord with the latest Supreme Court jurisprudence on the subject. In its last major foray into standards of review applicable under Rule 65 motions, the Supreme Court held that a more lenient irreparable harm standard in cases where a plaintiff has shown a "strong likelihood of prevailing on the merits" is "inconsistent with [its] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Natural Res. Def. Council, Inc*., 555 U.S. 7, 20 (2008). The Tenth Circuit has recognized this principle as well. *See Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1128 (10th Cir. 2013) (citing *Winter).*

The irreparable harm alleged here is that the alleged equal protection violation itself constitutes irreparable harm and that the practice of DOH of not providing a non-biologically connected mother instant birth certificate access causes a "cloud of uncertainty over the parental status of Angie and Kami, and other same sex couple." Mot. at 11. The rights of other couples here are not at issue in this Motion, but more importantly, Utah has demonstrated that there is no constitutional depravations caused by the statutory scheme under the UVSA and Parentage Acts. Therefore, there is no irreparable constitutional harm and any other perceived harm can be addressed by the Plaintiffs under the operation of current Utah law. Under the facts and law before the Court, Plaintiffs cannot maintain that they will suffer irreparable harm absent a preliminary injunction and there Motion should consequently be denied.

5. Balance of Harms

To be entitled to a preliminary injunction, the movant has the burden of clearly and unequivocally showing that "the threatened injury to the movant outweighs the injury to the other party under the preliminary injunction." *Kikumura,* 242 F.3d at 955; *accord Heideman,*

348 F.3d at 1190.

Plaintiffs have articulated alleged constitutional harm, which Utah has addressed and dispelled in its discussion of the Plaintiffs' likelihood of success on the merits. Mot. 11-12. In contrast, the harm Utah would suffer under the issuance of an injunction is severe. "[A]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *New Motor Vehicle Bd. of California v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers). Suspending enforcement of a law, which for analysis under this prong enjoys the presumption of legality, is itself an injury that weighs in favor of the Defendants. *See Heideman*, 348 F.3d at 1190. Moreover, the uncertainty that the balance of Utah's citizens would endure could be great, and Utah obviously has an interest in certainty under the law, as do Plaintiffs. Utah also has an interest in maintaining and providing as useful statistics and accurate statistics as possible to public health workers and the injunction sought would hamper that service. As such, the balance of harms again tips in favor of Utah and Plaintiffs have not met its burden under this required prong to be entitled to a preliminary injunction.

6. Public Policy

A movant also has the burden of clearly and unequivocally demonstrating that the injunction, if issued, is not adverse to the public interest. *Kikumura*, 242 F.3d at 955. As discussed above both in the likelihood of success on the merits section and the irreparable harm section, granting an injunction to stop effectuation of a valid statute is adverse to the public interest. Utah also has a public policy interest in providing accurate birth records to researchers, which policy would be hampered by the issuance of an injunction. Plaintiffs have raised only

constitutional harms as grounds for the interest of the injunction; as discussed above in detail, those harms are non-existent. Plaintiffs have therefore not met their burden on this requirement to obtain a preliminary injunction either.

CONCLUSION

For the foregoing reasons, this Court should DENY the Motion.

Respectfully submitted April 27, 2015.

OFFICE OF THE UTAH ATTORNEY GENERAL

/s/ Parker Douglas
PARKER DOUGLAS
Utah Federal Solicitor
Counsel for Defendants

Parent's Worksheet for Child's Birth Certificate

Mother's Name _____ Room # _____

PLEASE PRINT CLEARLY - DO NOT TAKE THIS WORKSHEET HOME. Give COMPLETED form to the birth certificate clerk or your nurse. This form is not an application for a certified copy of the child's birth certificate. See hospital packet for application to apply for a certified copy of your newborn's birth certificate or order the birth certificate on line at silver.health.utah.gov. Your birth attendant or hospital must submit your newborn's birth certificate to the state health department within 10 days from date of birth.

The information you provide below will be used to create your child's birth certificate. The birth certificate is a document that will be used for legal purposes to prove your child's age, citizenship and parentage. This document will be used by your child throughout his/her life. State laws provide protection against the unauthorized release of identifying information from the birth certificate to ensure the confidentiality of the parents and their child. **It is very important that you provide complete and accurate information to all of the questions.** In addition to information used for legal purposes, other information from the birth certificate is used by health and medical researchers to study and improve the health of mothers and newborn infants. Items such as parent's education, race, and smoking will be used for studies. Individuals will NOT be identified in these research studies. Nor will the answers you give to these questions appear on copies of the birth certificate issued to you or your child.

1. Is this a multiple live birth delivery? ❑ Yes **No** ❑ If "**Yes**", see **page 5 of 5** to list all other live births born during this delivery.

2. Child's legal name, as parents wish it to appear on the birth certificate

Child's First Name(s) _____

Child's Middle Name(s)_____

Child's Last Name(s) _____ Child's Suffix _____ (Jr, Sr etc)

3. Child's Sex ❑ Male ❑ Female ❑ Undetermined **4. Child's Date of Birth** _____/_____/_____ MM/DD/YYYY

5. Child's Time of Birth (24-hour clock) _____:_____ **6. Child's Birth Weight** _____ LBS & OZ

7. Child's height at birth _____ **(Not in Uintah, only for hospital inter-office use)**

8. Child's Place of Birth (check one) ❑ Hospital ❑ Enroute to Hospital ❑ Birthing Center ❑ Homebirth Intended ❑ Homebirth Unintended ❑ Homebirth unknown if intended ❑ Clinic/Dr's Office ❑ Other

9. If child not born at a Hospital or Birthing Center, list the street address, city and county of delivery here

_____

(Street Address) (City) (County)

10. Name of delivering Doctor/CNM/ Midwife _____ _____**Title**_____

Mother's Marital Status (Check the box that applies to the marital status of the mother of this newborn)

11. ❑ Yes, I the mother of the newborn, am still/have been married to the **BIOLOGICAL FATHER of the newborn** any time within 300 days or more to the date of this delivery.

NOTE: Common Law Couples are not recognized as legally Married.

A term pregnancy is 270 days plus or minus 14 days which is rounded up to 300 days for purposes of establishing marital status during the pregnancy.

12. ❑ No, I the mother of the newborn am **not married OR now divorced** to/from the **BIOLOGICAL FATHER or ANY OTHER MAN** at any time during the 300 days preceding this delivery.

❑ Has mother of newborn EVER been married? ❑ Yes ❑ No

Do parents wish to sign a Voluntary Declaration of Paternity in order for the biological father to be listed on the birth certificate? ❑ Yes ❑ No (Ask for birth certificate clerk assistance in the preparation of the necessary form(s). EXT#_____.

13. ❑ Yes, I the mother of the newborn, am **MARRIED, BUT NOT to the BIOLOGICAL FATHER of the newborn** during the 300 days preceding this delivery.

Do parents wish to sign a Voluntary Declaration of Paternity in order for the biological father to be listed on the birth certificate?

❑ Yes ❑ No

(Ask for birth certificate clerk assistance in the preparation of the necessary form(s). EXT#_____.

Parent(s), Please Continue →

OPTIONAL SECTION FOR BIRTH CERTIFICATE CLERK USE ONLY

Child's Sex _____ Child's DOB _____ Child's Time of Birth _____:_____ Child's Medical Record # _____

Child's Alternate Medical Record # _____

Delivery Attendant Name _____ Marital Status _____

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14. Mother's Current Legal Name at This Child's Birth (Do not list mother's maiden name in middle name fields)

Mother's First Name(s) _____ **Mother's Middle Name(s) at her birth**_____

Mother's Last Name(s) _____ Mother's Suffix _____(Jr, Sr etc)

15. Mother's Name Prior to First Marriage (Maiden) (Do not list mother's maiden name in middle name fields)

Mother's First Name(s) _____ **Mother's Middle Name(s) at her birth** _____

Mother's Last Name(s) _____ Mother's Suffix _____(Jr, Sr etc)

16. Mother's Date of Birth _____/_____/ _____
Month Day Year

17. Mother's Telephone # _____ _____- _____
(# will only be used when necessary, to ask for additional information and will be provided to the Immunization Registry and local health departments)

18. Mother's Social Security Number _____- _____-_____

Furnishing parent(s) Social Security Number(s) (SSNs) is required by Federal Law, 42 USC 405(c) (section 205(c) of the Social Security Act). The number (s) will be made available to the (State Social Services Agency) to assist with child support enforcement activities and to the Internal Revenue Service for the purpose of determining Earned Income Tax Credit compliance.

19. Mother's State of Birth _____
Spell out name of U.S. State

20. Mother's Country of Birth if not U.S.A. _____

21. Mother's Usual/Current Residence

Complete number and street _____

U.S. State _____ City, Town, or Location _____

County _____ Foreign Country if residence not in U.S. _____

Zip Code _____ -_____ **22.** Inside city limits ❑ Yes No ❑ Don't know ❑

23. NOTE: If you wish to receive an email confirming the registration of your child's birth from the Utah Office of Vital Records and Statistics please list your email address here _____ Print clearly

(Email address may be used for public health surveillance or out-reach services for mother /newborn.)

24. Mother's mailing address same as residence ❑ **Yes** **No** ❑ **If "No", list mail address below.**

25. Mother's Mail Address Is the last name of the household the same as this newborn' last name? ❑ Yes ❑ No If No, please list the primary name of the member of the household in care of receiving the newborn's Social Security Card below.

Name (If Mail In-Care-Of Someone else) _____

Complete number and street/PO Box/Drawer # (No General Delivery)_____

City, Town, or Location _____ County _____

State or foreign country if not U.S. _____ Zip Code _____-_____

26. Father's Legal Name

Father's First Name(s) _____ Father's Middle Name(s) _____

Father's Last Name(s) _____ Father's Suffix _____(Jr, Sr etc)

27. Father's Date of Birth _____/_____/ _____
Month Day Year

28. Father's Social Security Number _____- _____-_____

Furnishing parent(s) Social Security Number(s) (SSNs) is required by Federal Law, 42 USC 405(c) (section 205(c) of the Social Security Act). The number (s) will be made available to the (State Social Services Agency) to assist with child support enforcement activities and to the Internal Revenue Service for the purpose of determining Earned Income Tax Credit compliance.

29. Father's State of Birth _____
Spell out name of U.S State

30. Father's Country of Birth if not U.S.A. _____

31. ❑ **Yes** **No** ❑ **Is Father's Resident Address same as mother?** If 'No' list father's address below

32. Number and street/PO Box/Drawer #_____

U.S. State _____ City, Town, or Location _____

County _____ Foreign Country if residence not in U.S. _____

Zip Code _____ -_____

33. Inside city limits ❑ Yes No ❑ Don't know ❑

CONFIDENTIAL INFORMATION FOR MEDICAL AND HEALTH USE ONLY

This information is protected under the Vital Statistics Act and Rules. Responds to the following questions is important and **CONFIDENTIAL.** The information you provide will ONLY be used by health and medical researchers to study and improve the health of mothers and newborn infants. The goal of these studies are to help guide public health policy and programs such as Birth Defect Network, WIC, Immunization Registry, Medicaid and Baby Your Baby. We appreciate your cooperation in providing a complete picture of your pregnancy.

34. Is this child to be placed for adoption? ❑ Yes No ❑

35. Name of the agency and/or attorney _____

Note: If this child is being relinquished for adoption do not mark SSA box. Adoptive parents may apply for SS card after the adoption is finalized.

36. ❑ **YES**, I give permission to provide my child's name and date of birth to the Social Security Administration for purposes of issuing a social security number to my child. **Parent(s) must sign page 5 of this form for SSA card request to be processed**

37. ❑ **NO!!, I do not give permission to provide my child's name and date of birth to the Social Security Administration for purposes of issuing a social security number to my child.**

NOTE: As required by Federal Law, 42 USC 405(c)(section 205(c) of the Social Security Act). The number(s) will be made available to the (State Social Services Agency) to assist with child support enforcement activities and to the Internal Revenue Service for the purpose of determining Earned Income Tax Credit Compliance. There is NO CHARGE for your child's social security card. Please disregard any literature you may receive by mail or otherwise requesting a fee to process your child's social security card.

38. ❑ Mother enrolled in Medicaid at time of birth, if yes, list Utah Medicaid #_____

39. Mother Receives WIC food for her children? ❑ Yes ❑ No ❑ Don't Know (Clerk, if this box check, enter 'No' to WIC)

40. Mother Received WIC food for herself during this pregnancy? ❑ Yes ❑ No ❑ Don't Know (Clerk, if this box check, enter 'Yes' to WIC question in Uintah)

41. Primary Source of payment for this delivery (Check one)

❑ Medicaid ❑ Private Insurance ❑ Self-pay ❑ Indian Health Service ❑ CHAMPUS/TRICARE
❑ Other Government (Federal, State, Local) ❑ CHIP ❑Other ❑ Unknown **(check if Medicaid Pending)**

42. Has a relative of the baby had a hearing loss that existed since childhood? (A permanent or hereditary loss)
❑ Yes No ❑ Don't Know ❑

43. Mother's height _____feet _____ inches

44. Mother's pre-pregnancy weight (weight immediately before this pregnancy) _____**lbs** **45. Mother's weight at delivery** _____**lbs**

46. Did mother smoke? ❑ Yes No ❑ If "Yes" How many cigarettes per day OR packs of cigarettes per day did you smoke on an average day during each of the following time periods? If "No" enter '0' (20 cigarettes per pack)

	# of cigarettes		**# of packs**
Three months before pregnancy	_____	OR	_____
First three months of pregnancy	_____	OR	_____
Second three months of pregnancy	_____	OR	_____
Third trimester of pregnancy	_____	OR	_____

47. ❑ Yes No ❑ Infant is being breastfed at discharge

48. Mother Pregnancy History

Was mother told by her healthcare provider that she had gestational diabetes during this pregnancy? ❑ Yes No ❑

49. Did mother have a history of being diagnosed with diabetes (not gestational) prior to this pregnancy? ❑ Yes No ❑

(If yes to either of these questions, Birth Clerk please verify this information from medical records at time of delivery – if verified add this information to the risk factor section of the birth certificate.)

50. Date of last menses (period)(approx) _____/_____/_____ (Month/Day/Year)

51. Number of previous live births (do not include this child) ____ 52. Number of previous **live** births now dead ____

53. Date of last live birth (do not include this child) _____/_____ (Month/Year)

54. Number of terminations (any pregnancy not resulting in a live birth) _____ **55. Date of last termination** _____/_____ (Month/Year)

56. # of terminations 00-15 weeks_____(if no weeks listed on the prenatal care record count it here)

# of terminations 16-19 weeks_____ # of terminations 20 weeks or greater_____

57. Number of previous multiple birth pregnancies _____

58. Date of first prenatal care visit ____/_____/_____ (Month/Day/Year) **59.** Date of last prenatal care visit ____/____/_____ (Month/Day/Year)

60. Total number of prenatal care visits during this pregnancy _____

61. Did mother have a transfer of prenatal care during this pregnancy? ❑ Yes No ❑ If "Yes", what was the date of the first visit with the first prenatal care provider? _____/_____/_____ (Month/Day/Year)

62. Number of visits with first prenatal care provider _____

63. Mother of Hispanic Origin (Check all that apply)

❑ No, not Spanish/Hispanic/Latina

❑ Yes, Mexican, Mexican American, Chicana ❑ Yes, Puerto Rican ❑ Yes, Cuban

❑ Yes, **Other Spanish/Hispanic/Latina (Specify)** _____(e.g. Spaniard, Salvadoran, Dominican, Colombian)

64. Mother's Race (check all that apply)

❑ White ❑ Native Hawaiian ❑ Samoan

❑ Black or African American ❑ Filipino ❑ Tongan

❑ Chinese ❑ Asian Indian ❑ Vietnamese

❑ Japanese ❑ Korean ❑ Guamanian or Chamorro

❑ American Indian or Alaska Native (name of enrolled or principal tribes) (**specify**) _____

❑ Other Asian (specify)_____/_____

❑ Other Pacific Islander (**specify**)_____/_____

❑ Other (**specify**) _____ (Clerk - **Enter Hispanic type here if not race given)**

65. Mother's level of schooling completed (check the box that best describes mother's education**)**

❑ 8th grade or less

❑ 9th - 12th grade, no diploma

❑ High school graduate or GED completed

❑ Some college credit, but no degree

❑ Associate degree (e.g. AA, AS)

❑ Bachelor's degree (e.g. BA, AB, BS)

❑ Master's degree (e.g. MA, MS, MEng, MEd, MSW, MBA)

❑ Doctorate (e.g. PhD, EdD) or Professional degree (e.g. MD, DDS, DVM, LLB, JD)

65. Father of Hispanic Origin (Check all that apply)

❑ No, not Spanish/Hispanic/Latino

❑ Yes, Mexican, Mexican American, Chicano ❑ Yes, Puerto Rican ❑ Yes, Cuban

❑ Yes, **other Spanish/Hispanic/Latino** (e.g. Spaniard, Salvadoran, Dominican, Colombian)(Specify) _____

67. Father's Race (check all that apply)

❑ White ❑ Native Hawaiian ❑ Samoan

❑ Black or African American ❑ Filipino ❑ Tongan

❑ Chinese ❑ Asian Indian ❑ Vietnamese

❑ Japanese ❑ Korean ❑ Guamanian or Chamorro

❑ American Indian or Alaska Native (name of enrolled or principal tribes) _____ / _____

❑ Other Asian specify)_____ / _____

❑ Other Pacific Islander (specify)(excludes Samoan/Tonga check above boxes)_____ / _____

❑ Other (specify) _____ (Clerk - **Enter Hispanic type here if not race marked)**

68. Father's level of schooling completed (check the box that best describes father's education**)**

❑ 8th grade or less

❑ 9th - 12th grade, no diploma

❑ High school graduate or GED completed

❑ Some college credit, but no degree

❑ Associate degree (e.g. AA, AS)

❑ Bachelor's degree (e.g. BA, AB, BS)

❑ Master's degree (e.g. MA, MS, MEng, MEd, MSW, MBA)

❑ Doctorate (e.g. PhD, EdD) or Professional degree (e.g. MD, DDS, DVM, LLB, JD)

Mother's Fertility History

Recently, questions have been raised regarding the incidence of birth defects and other birth outcomes and fertility treatments. Your answers to the following questions will help scientists answer these questions. Answers are very important whether or not your baby had any problems and whether or not you used any fertility treatments.

69. How long had you been trying to get pregnant when you conceived? Please count the time from when you first started having sexual intercourse without any contraception.

❑ 0 -5 Months ❑ 6 – 11 Months ❑ 1 -2 Years ❑ 3 – 4 Years ❑ 5 -6 Years ❑ >6 Years

70. Did you take any fertility drugs or receive any medical procedures to help you get pregnant with your new baby? ❑ Yes No ❑

71. Did you use any of the following fertility treatments ***during the month you got pregnant*** *with your new baby***? If "Yes", check all that apply.**

❑ Fertility –Enhancing Drugs by mouth (Clomid, clomiphene, or others)

❑ Fertility –Enhancing Drugs by injection (Pergonal, Follistim, HGG or others)

❑ Artificial Insemination or Intrauterine Insemination (AIH, AID/DI)

❑ Assisted Reproductive Technology or InVitro Fertilization (IVF, GIFT, ZIFT, ICSI)

❑ Other Medical Treatment - check all that apply (birth clerk – enter any responses to the following boxes in the 'Other' specify field.)

❑ Use of Donor Semen ❑ Use of Donor Eggs

❑ Surgery for endometriosis ❑ Metformin or glucophage ❑ Progesterone

72. ❑ **Yes, I wish to affirm that I want Social Security card processed for my child**

X **Signature of infant's mother or father** _____ **Date**_____

If parent's are not married, Mother must sign here ➶

Printed name of the above individual_____
I Certify, that the personal information provided on this worksheet is correct to the best of my knowledge and belief.

If you wish to review a proof sheet of your child's birth certificate information, please ask the birth certificate clerk to provide this to you before leaving the hospital. Thank you for participating in the accuracy and completeness or your child's birth certificate.

Enter Name and other birth information for Twin B and/or Triplets B and C below
If this delivery was a multiple live birth delivery, please use B, C and D for names, sex, date of birth, time of birth and birth weight below for each additional child born at this same time. DO NOT INCLUDE THIS BABY BELOW
If Twin/Trip/Quad/Baby # 2 (B)- legal name as parents wish it to appear on the birth certificate **(SFNof # 1**_____**)**

73. Child's First Name _____

Child's Middle Name_____

Child's Last Name _____ Child's Suffix _____ (Jr, Sr etc)

74. Child's Sex ❑ Male ❑ Female ❑ Undetermined **75. Child's Date of Birth** _____/_____/_____

76. Child's Time of Birth (24-hour clock) _____:_____ **77. Child's Birth Weight** ____ LBS & _____OZ

78. Child's height at birth _____ **(Not in Uintah, only for hospital inter-office use)**

Trip/Quad/Baby #3(C) - legal name as parents wish it to appear on the birth certificate **(SFN of # 1**_____**)**

79. Child's First Name _____

Child's Middle Name_____

Child's Last Name _____ Child's Suffix _____(Jr, Sr etc)

80. Child's Sex ❑ Male ❑ Female ❑ Undetermined **81. Child's Date of Birth** _____/_____/_____

82. Child's Time of Birth (24-hour clock) _____:_____ **83. Child's Birth Weight** ____ LBS & _____ OZ

87. Child's height at birth _____ **(Not in Uintah, only for hospital inter-office use)**

Quad/Baby #4(D) - legal name as parents wish it to appear on the birth certificate **(SFNof # 1**_____**)**

84. Child's First Name _____

Child's Middle Name_____

Child's Last Name _____ Child's Suffix _____(Jr, Sr etc)

85. Child's Sex ❑ Male ❑ Female ❑ Undetermined **86. Child's Date of Birth** _____/_____/_____

87. Child's Time of Birth (24-hour clock) _____:_____ **88. Child's Birth Weight** _____ LBS & ____ OZ

89. Child's height at birth _____ **(Not in Uintah, only for hospital inter-office use)**

Certificate Clerk Notes Section

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Exhibit 2

The New York Times | http://nyti.ms/1z6Z4sR

U.S.

The Case Against Gay Marriage: Top Law Firms Won't Touch It

By ADAM LIPTAK APRIL 11, 2015

WASHINGTON — The stacks of Supreme Court briefs filed on both sides of the same-sex marriage cases to be heard this month are roughly the same height. But they are nonetheless lopsided: There are no major law firms urging the justices to rule against gay marriage.

Leading law firms are willing to represent tobacco companies accused of lying about their deadly products, factories that spew pollution, and corporations said to be complicit in torture and murder abroad. But standing up for traditional marriage has turned out to be too much for the elite bar. The arguments have been left to members of lower-profile firms.

In dozens of interviews, lawyers and law professors said the imbalance in legal firepower in the same-sex marriage cases resulted from a conviction among many lawyers that opposition to such unions is bigotry akin to racism. But there were economic calculations, too. Law firms that defend traditional marriage may lose clients and find themselves at a disadvantage in hiring new lawyers.

"Firms are trying to recruit the best talent from the best law schools," said Dale Carpenter, a law professor at the University of Minnesota, "and the overwhelming majority of them want to work in a community of respect and diversity."

But some conservatives say lawyers and scholars who support religious liberty and oppose a constitutional right to same-sex marriage have been bullied into silence. "The level of sheer desire to crush dissent is pretty unprecedented," said Michael W. McConnell, a former federal appeals court judge who teaches law at Stanford.

Representing unpopular clients has a long and proud tradition in American justice, one that experts in legal ethics say is central to the adversarial system. John Adams, the future president, agreed to represent British soldiers accused of murder in the 1770 Boston Massacre. Clarence Darrow defended two union activists who dynamited the Los Angeles Times building in 1910, killing 21 workers. Leading law firms today have lined up to defend detainees at Guantánamo Bay, Cuba, some accused of ties to Al Qaeda.

The Supreme Court has said criminal defendants are entitled to a lawyer. There is no right to counsel in civil cases, but most lawyers do not lightly turn away paying clients. Some lawyers, though, have been forced out of their firms for agreeing to take on clients opposed to same-sex marriage.

Whatever the reason, there is a yawning gap between the uniformity of views among legal elites and the more mixed opinions of the American public and the members of the Supreme Court. Polls indicate that while a slim majority of Americans support same-sex marriage, many remain skeptical, and the court's decision, expected in June, is likely to be closely divided.

In earlier eras, the opposing sides were more evenly matched in landmark civil rights cases. One of the lawyers who argued in favor of segregated public schools in 1953 in Brown v. Board of Education was John W. Davis, a leader of the glittering New York law firm now known as Davis Polk & Wardwell. He was the Democratic nominee for president in 1924, the ambassador to Britain and the solicitor general, and he once held the record for most Supreme Court arguments in the 20th century.

Mr. Davis was "the most accomplished and admired appellate lawyer in America," Richard Kluger wrote in "Simple Justice," a history of the Brown case, which Mr. Davis lost in a unanimous 1954 ruling.

When the Supreme Court hears arguments on April 28 in the marriage

cases, among them Obergefell v. Hodges, No. 14-556, the main lawyer opposing same-sex marriage will be John J. Bursch, who practices at a medium-size firm in Michigan. He served as the state's solicitor general and has argued eight cases in the Supreme Court. But his firm, Warner Norcross & Judd, will not be standing behind him.

"When the State of Michigan asked me to handle the case, I asked the firm's management committee about the engagement, and the management committee declined the representation," Mr. Bursch said. "I am still a partner at Warner Norcross, but the firm has no involvement at all in the marriage case."

Douglas E. Wagner, the firm's managing partner, said the case was just too controversial. "This is an issue that engenders strong emotions on both sides for our clients, attorneys and staff," he said.

Mr. Bursch's experience was similar to that of Paul D. Clement, who served as solicitor general in the George W. Bush administration and has argued more than 75 cases in the Supreme Court. He defended a federal law, the Defense of Marriage Act, that denied benefits to married same-sex couples, losing in the Supreme Court in 2013 by a 5-to-4 vote. He is conspicuously absent this time around.

Mr. Clement seems to have learned a bitter lesson from the last case, United States v. Windsor. In 2011, as it was heating up, his law firm, King & Spalding, withdrew from the case under pressure from gay rights groups. Mr. Clement quit, moving to a smaller firm and continuing to represent his clients.

"I resign out of the firmly held belief," he wrote at the time, "that a representation should not be abandoned because the client's legal position is extremely unpopular in certain quarters." Mr. Clement did not respond to a request for comment.

Ryan T. Anderson, a fellow at the Heritage Foundation who opposes same-sex marriage, said the episode was a turning point. "When the former solicitor general and superstar Supreme Court litigator is forced to resign from his partnership," Mr. Anderson said, "that shows a lot."

Gay rights advocates offer their own reason for why prominent lawyers

are lined up on one side of the marriage cases. "It's so clear that there are no good arguments against marriage equality," said Evan Wolfson, the president of Freedom to Marry. "Lawyers can see the truth."

The current attitude among elite lawyers about same-sex marriage grew very quickly, said Kenji Yoshino, a law professor at New York University.

"It usually takes much longer for a position to become so disreputable that no respectable lawyer will touch it," said Professor Yoshino, a writer for The Ethicists column in The New York Times Magazine and the author of "Speak Now," a history of the challenge to Proposition 8, California's ban on same-sex marriage. (In 2013, the Supreme Court dismissed a case on Proposition 8, which had been overturned by a Federal District Court, without ruling on whether there was a constitutional right to same-sex marriage.)

Charles J. Cooper, who argued for Proposition 8, filed a supporting brief in the new cases. In 2009, he explained that he was able to handle the Proposition 8 case because he worked at a small firm. "The issue is too volatile, too controversial, too much of a tear in the fabric of the partnership" for a major law firm, he told The Legal Intelligencer. He declined a request for an interview.

The current climate, Professor McConnell of Stanford said, means that important distinctions are being lost. One is that it is possible to favor same-sex marriage as a policy matter without believing that the Constitution requires it.

But this is, he said, a topic he has learned to avoid. "You're going to shut up, particularly if you don't care that much," he said. "I usually just keep it to myself."

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