MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW DOCKET NO.: PEN-11-393

IN RE:

ROBERT NOLAN AND CELIA NOLAN,
Appellants

v.

KRISTEN LABREE AND JEFFREY LABREE
Appellees

ON APPEAL FROM THE PENOBSCOT DISTRICT COURT

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STATEMENT OF INTEREST OF AMICI

On February 29, 2012, the Court invited amici briefs on the following issue:

> Whether following a surrogacy arrangement, the District Court has power to declare the parentage of both genetic parents to the exclusion of the gestational carrier and her spouse.

This brief is submitted in response to that invitation.

The Amici filing this Brief is a group, otherwise unaffiliated, of lawyers, all of whom have played a significant role in the practice or policy of family law in the State of Maine. Several of the Amici are fellows of the American Academy of Matrimonial Lawyers and members of the Maine Family Law Section of the Maine Bar Association. The opinions expressed herein do not necessarily represent the opinions of those groups, however, and the groups have not authorized them to take a particular position in this matter.

This group has a substantial interest in the case before the Court, as a significant number of parents represented in Title 19-A actions are no longer biological or adoptive parents of the child, but rather become parents with medical assistance, most predominantly donor insemination and in vitro fertilization. These parents fall into several categories: heterosexual couples who experience fertility issues or in which the woman cannot carry a pregnancy to term; individuals who need medical assistance to have a child on their own; and same-sex couples.

The other affiliated attorneys who make up these Amici ask for certainty on behalf of their growing number of clients who seek parentage through these

medical procedures. While this issue was of urgent importance since the early days of sperm donor insemination and in vitro science, the issues now are occurring regularly. An exception to District Court jurisdiction in these instances would create enormous uncertainty for these families and their children, and leave us with a significant number of clients with no meaningful door to the courthouse to affirm their parental rights.

In sum, Amici seek an affirmative answer to the question presented, so that intended parents are recognized as the legal parents of their children.

STATEMENT OF THE ISSUE

Whether following a surrogacy arrangement, the District Court has power to declare the parentage of both genetic parents to the exclusion of the gestational carrier and her spouse.

ARGUMENT

Summary

All the parties agree as to what should happen here: the intended, genetic parents should be deemed the child's parents, and the gestational carrier and her spouse should be declared not to be parents of the child. This result is logical, just and in the best interests of the child. Conversely, to deem the gestational carrier, whose role was to carry the biological child of the intended parents to term and who has no desire to parent, to be the mother of the child, and, further, to maintain the spouse of the gestational carrier as a parent, does not make sense.

The law abhors unjust or mischievous results, and the briefs of the parties and the previously filed Amicus Brief on behalf of Appellants discuss how the Uniform Act on Paternity, 19-A M.R.S. §§ 1551 *et seq.*, can and should be read to authorize the District Court to establish maternity and, in establishing both maternity and paternity, declare who should not be deemed a parent as well. These existing briefs also explain how the equitable powers of the District Court accompanying its specifically bestowed powers also authorize that Court to declare parentage.

Amici support these arguments without repeating them. Instead, they supplement the previously filed briefs in two ways. First, this Brief provides a more comprehensive overview as to how other jurisdictions have answered the question before the Court, accompanied by matrix (Addendum 1) surveying the current treatment of surrogacy in the 50 states and District of Columbia. Second, the Brief explains more fully how identification of the intended, genetic parents as the child's parents is a constitutional right of the child as well as the parents.

I. In each of the four jurisdictions in which courts have considered the precise issue presented to this Court – do courts have the authority to declare maternity given a paternity statute and silence in the statute as to maternity – the courts have held that they have such authority under either their equitable powers or equal protection principles.

A matrix of the legal treatment of gestational surrogacy and parentage determinations in other jurisdictions is attached hereto as Addendum 1.[1]

As this matrix indicates, the states' statutory approaches to parentage determinations in the surrogacy context typically fall into one of three categories. They:

(1) statutorily define parentage in the gestational surrogacy context;

(2) permit actions in court to determine paternity and maternity; and/or

(3) permit actions in court to determine paternity only.

Twelve states statutorily define parentage rights after gestational surrogacy.[2] For example, under Arkansas law, the intended, genetic parents are the legal parents of a child born by gestational surrogacy, if the intended parents are married. Ark. Code Ann. § 9-10-201(b). The courts in these states merely enforce the gestational surrogacy statutes when disputes arise, and do not have to determine parentage on an as-needed basis.[3] Maine is not one of these states.

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[1] No effort was made to examine each state's equitable applications because of the differences among states as to the scope and nature of equity power.

[2] Arkansas, Connecticut, Florida, Illinois, Nevada, New Hampshire, North Dakota, Tennessee, Texas, Utah, Virginia, and Wisconsin.

[3] North Dakota distinguishes between traditional and gestational surrogacy. Contracts involving traditional surrogacy, where a woman is artificially inseminated with sperm, are void unless involving a husband and wife. N.D. Cent. Code Ann.

As the matrix further indicates, seventeen states and the District of Columbia statutorily permit an action in court to determine both paternity and maternity.[4] For example, under California law, "[a]ny interested person may bring an action to determine the existence or nonexistence of a mother and child relationship." Cal. Fam. Code § 7650. California also permits an action to determine paternity. *Id.* at § 7630. Courts in these states with general jurisdiction or that are designated to enforce parentage laws doubtless have the power to adjudicate issues of maternity and paternity in the context of gestational surrogacy.[5] Maine is not one of these states, either.

A total of twenty-one states statutorily permit an action in court to determine paternity but are silent as to maternity determinations.[6] Maine is one of these states.

(*cont....*)
§ 14-18-05. Contracts involving gestational surrogacy, where an embryo conceived by using the egg and sperm of intended parents is implanted in a carrier's uterus, are enforceable and "[a] child born to a gestational carrier is a child of the intended parents for all purposes . . . ." *Id.* at 14-18-08.

[4] Arizona, California, Colorado, Delaware, District of Columbia, Hawaii, Kansas, Minnesota, Missouri, Montana, New Jersey, New Mexico, Ohio, Oklahoma, Rhode Island, Vermont, Washington, and Wyoming.

[5] The District of Columbia expressly prohibits gestational surrogate parenting contracts and imposes substantial penalties on those who participate in or facilitate such agreements. D.C. Code Ann. § 16-402. Likewise, in Arizona, no person may enter into or facilitate the formation of a gestational surrogate parentage contract. Ariz. Rev. Stat. § 25-218. Still, both District of Columbia and Arizona statutorily authorize an action to establish maternity, and in Arizona, the court has ruled that a woman who is genetically related to a child must have a procedural process through which to prove her maternity. *See Soos v. Super. Ct.*, 897 P.2d 1356, 1359-60 (Ariz. Ct. App. 1995).

[6] Alabama, Alaska, Georgia, Idaho, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Nebraska, New York, North Carolina, Oregon, Pennsylvania, South Carolina, South Dakota, and West Virginia.

The majority of these jurisdictions' courts are silent on the issue presented here – whether following a surrogacy arrangement, the trial court has the power to declare the parentage of both genetic parents to the exclusion of the gestational carrier and her spouse. Courts in only four of these twenty-one jurisdictions have spoken to this question. In each, the court found that the trial court had the power to declare the parentage of *both* genetic parents.[7] In some cases, the court entered a parentage order even prior to the birth of the child. Thus, the unanimous weight of authority with respect to the specific question presented finds that, even in the absence of a statutory scheme determining parentage in the surrogacy context or a statutory action to determine maternity, trial courts have authority to declare the parentage of *both* genetic parents to the exclusion of the gestational carrier and her spouse.

Indiana. Similar to Maine law, Indiana law creates an action to determine paternity, but not maternity. *See* Ind. Code Ann. §§ 31-14-1-1 *et seq.* Courts in Indiana, however, have found that under principles of equity the intended genetic mother can seek a maternity declaration under the procedural template created by the paternity statute. *In re Paternity and Maternity of Infant R.*, 922 N.E.2d 59 (Ind. Ct. App. 2010). Similar to the case here, in *Infant R.*, the intended parents, who were genetically related to the child, and the gestational carrier all agreed that the intended parents were to

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[7] *In re Paternity and Maternity of Infant R.*, 922 N.E.2d 59 (Ind. Ct. App. 2010); *In re Roberto d.B.*, 923 A.2d 115 (2007); *Culliton v. Beth Israel*, 756 N.E.2d 1133 (Mass. 2001); *T.V. v. New York State Dept. of Health*, 929 N.Y.S.2d 139 (N.Y. App. Div. 2011); *Doe v. NYC Bd. of Health*, 782 N.Y.S.2d 180 (N.Y. Sup. Ct. 2004); *Arredondo v. Nodelman*, 622 N.Y.S.2d 181 (N.Y. Sup. Ct. 1994).

serve as the legal parents of the child. *Id.* at 59. After the child was born and the gestational carrier was designated as the child's mother, the intended parents brought suit to determine parentage. *Id.* The Juvenile Court denied the intended parents' petition, finding that Indiana law did not permit a non-birth mother to establish maternity. *Id.* The Appellate Court reversed, finding that although no legislation specifically provided for the establishment of maternity, equity required that "the paternity statutes provide a procedural template to challenge the putative relationship between the infant and [the gestational carrier]." *Id.* at 62. The court remanded to the trial court with instructions that the intended mother should be declared the child's legal mother if she established that she was biologically related to the child. *Id.*

Maryland. Similar to Maine law, Maryland statute provides for an action to determine paternity, but not maternity. *See* Md. Code Ann., Fam. Law §§ 5-1001 *et seq.* Courts in Maryland have applied principles of equal protection to hold that a gestational carrier must have the opportunity to disclaim maternity under Maryland's paternity statute. *In re Roberto d.B.*, 923 A.2d 115 (Md. 2007). In *In re Roberto*, an unmarried man initiated *in vitro* fertilization, whereby his sperm was used to fertilize an egg from a female donor, which was placed for gestation in the womb of the gestational carrier. *Id.* at 117. After the gestational carrier gave birth to twins, the Maryland Division of Vital Records listed the gestational carrier as the mother of the child, despite all parties expecting that the carrier would have no legal relationship to the children. *Id.* at 118. The intended father, joined by the

gestational carrier, initiated an action to determine parentage (*i.e.*, remove legal maternity from the gestational carrier) and to remove the gestational carrier's name from the birth certificate. *Id.* at 118-19. The trial court denied the petition, concluding that it did not have the power to determine maternity. *Id.* at 119.

The Court of Appeals reversed, finding that, "[b]ecause Maryland's [equal protection law] forbids the granting of more rights to one sex than to the other, in order to avoid an equal rights challenge, the paternity statutes in Maryland must be construed to apply equally to both males and females." *Id.* at 124. Reading Maryland's statute to permit only paternity determinations would violate equal protection rights because such an interpretation would "provide[] an opportunity for genetically unlinked males to avoid parentage, while genetically unlinked females do not have the same option." *Id.* at 122. Finally, the Court of Appeals found that it was within the trial court's power to order Vital Records to issue a birth certificate that contains only the father's name. *Id.* at 126.

Massachusetts. Massachusetts does not legislatively authorize an action to establish maternity for children born in wedlock. (*See* Addendum 1.) Notwithstanding this fact, courts in Massachusetts have exercised equitable powers to declare the intended, genetic parents the child's legal parents. *Culliton v. Beth Israel*, 756 N.E.2d 1133 (Mass. 2001).

In *Culliton*, a married couple, who were the intended, genetic parents under a gestational surrogacy agreement, sought a pre-birth order declaring

them the legal parents of the baby and ordering the hospital to place only their names on the birth certificate. *Culliton*, 756 N.E.2d at 1135. The Probate and Family Court denied the requested relief, concluding that it did not have the authority to issue the requested order. *Id.* at 1136. On appeal, the Supreme Judicial Court granted the intended parents' requested relief, holding that the trial court should exercise its general equity jurisdiction to declare parentage in the intended parents when plaintiffs are the sole genetic sources of the baby; the gestational carrier agrees with the orders sought; and no one, including the hospital, has contested the petition. *Id.* at 1138. The court's conclusion "acknowledge[d] the importance of establishing the rights and responsibilities of parents as soon as is practically possible." *Id.* at 1139.

New York. New York also does not statutorily authorize an action to establish maternity, yet its courts have again applied their equitable powers to declare maternity in the intended, genetic mother. *T.V. v. New York State Dept. of Health*, 929 N.Y.S.2d 139 (N.Y. App. Div. 2011); *Arredondo v. Nodelman*, 622 N.Y.S.2d 181 (N.Y. Sup. Ct. 1994); *Doe v. NYC Bd. of Health*, 782 N.Y.S.2d 180 (N.Y. Sup. Ct. 2004).

In *Arredondo*, the Family Court determined that it did not have authority to issue a maternity determination in favor of the intended, genetic mother in the absence of a statute authorizing an action for maternity. *Arredondo*, 622 N.Y.S.2d at 181. On appeal, the New York Supreme Court, a court of general jurisdiction, found that it did have the authority, under equity, to declare maternity in the intended, biological mother when there was no dispute over

who the biological parents were. *Id.* at 182; s*ee also Doe*, 782 N.Y.S.2d 180 (same). Likewise, in *T.V.*, the Appellate Division held that the Supreme Court did "have the authority to issue an order of maternity to the Genetic Mother without resorting to the artifice of a formal adoption proceeding," even in the absence of a statutory scheme permitting maternity actions. *T.V.*, 929 N.Y.S.2d at 152.

In sum, Maine is one of twenty-one states that statutorily create an action to establish paternity, but are silent as to maternity. Only four states in this group have considered the exact question presented here – whether following a surrogacy arrangement, the trial court has power to declare the parentage of *both* genetic parents to the exclusion of the gestational carrier and her spouse. As discussed above, courts in all four states have decided that the trial courts do have the power to declare parentage of both genetic parents. In the absence of a maternity statute, courts in Indiana, Massachusetts and New York found this power grounded in principles of equity, while the court in Maryland based its decision on principles of equal protection.[8]

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[8] Courts in other states with different statutory schemes have found that, in the context of gestational surrogacy, granting only a biological father an opportunity to prove or disclaim parentage, and not a biological mother, violates equal protection rights. *Soos*, 897 P.2d 1356 (Arizona statute banning surrogate agreements violative of Equal Protection Clause because the statute afforded the biological father a procedure for proving paternity, but did not afford the biological mother any means by which to prove maternity); *J.R. v. Utah*, 261 F. Supp. 2d 1268 (D. Utah 2002) (holding unconstitutional prior surrogacy statute establishing the gestational carrier as the legal mother, and suggesting that same statute may be violative of equal protection clause because it allows the genetic father, but not the genetic mother, to be listed on the birth certificate of a child born to a gestational surrogate). *See also In re Adoption of Sebastian*, 879 N.Y.S.2d 677, 688, 690 (Sur. 2009) ("it is clear that provisions permitting the biological ('putative') father of a child born out of wedlock to establish parental status while excluding the genetic mother from the same opportunity is a

II. The child's constitutional rights support an affirmative answer to the question presented.

In its opinion and order, the District Court discussed both the limits of its power and the impact of those limits on the four adults who are parties to this action. The District Court did not, however, discuss the underlying reason why these four adults sought judicial intervention in the first place: the child, Desmond.

First, the Declaratory Judgment Act, 14 M.R.S. §§ 5951 *et seq.*, and the Uniform Act on Paternity should be read in harmony with existing Maine statutory and common law that empowers, and requires, courts to act in the best interests of the child when reaching decisions that concern parental rights and responsibilities. Considering the Declaratory Judgment Act and the Uniform Act on Paternity in light of the "best interests" standard provides an additional reason to interpret these statutes as conferring on the District Court the power to settle the question of Desmond's parentage.

Second, Desmond has his own liberty interest in having his parentage settled rationally and with clarity. Interpreting the Declaratory Judgment Act and the Uniform Act on Paternity to allow the District Court to declare the Nolans as Desmond's sole parents avoids unconstitutional interpretations of those statutes.

(*cont....*)
constitutionally prohibited gender-based classification"; thus, "New York's existing procedures for establishing paternity [should] be available for determination of the legal parenthood of a genetic mother.").

A. The District Court is empowered to ascertain parentage in conjunction with its authority to determine the best interests of the child.

Maine statutory and common law not only require a court to consider the best interests of the child when determining parental rights and responsibilities, but also grant Maine courts substantial power to protect and vindicate those interests. Title 19-A provides that "[t]he court, in making an award of parental rights and responsibilities with respect to a child, shall apply the standard of the best interests of the child." 19-A M.R.S. § 1653(3). While courts typically apply § 1653 in determining the physical custody of a child in divorce proceedings, Maine courts – consistent with the section's plain language – have applied § 1653 in other actions concerning the well-being of children and the obligation of parents with respect to that well-being. *See, e.g., Hinkley v. Hinkley*, 2000 ME 64, ¶ 8, 749 A.2d 752, 754 (applying § 1653(3) when awarding sole medical decision-making over children, where custody had been determined previously); *see also In re Jacob C.*, 2009 ME 10, ¶ 15, 965 A.2d 47, 51 ("In making a decision under title 19-A on parental rights and responsibilities, a child's residence, or parent-child contract, a court must apply the best interest of the child standard set forth in 19-A M.R.S. § 1653(3).").

The "best interests" standard is not only a creature of statute. Rather, § 1653(3) "embodies the same *parens patriae* authority in judicial proceedings as extant under common law." *C.E.W. v. D.E.W.*, 2004 ME 43, ¶ 10, 845 A.2d 1146, 1150. And at common law, both prior to and since the statutory

codification of the best interests standard, Maine courts consistently have exercised their *parens patriae* power to promote and to guard the best interests of children in appropriate cases. *Id.* Indeed, consistent with its treatment of § 1653, Maine courts have relied on their *parens patriae* powers in various proceedings where a child's welfare is at issue. *See Cloutier v. Cloutier*, 2003 ME 4, ¶ 7, 814 A.2d 979, 982 (a court "may be required to act as *parens patriae* if children are involved" in "family matters"); *Rideout v. Riendeau*, 2000 ME 198, ¶ 27, 761 A.2d 291, 302 (*parens patriae* power provided basis on which to grant grandparents visitation rights for grandchild).

The determination of the parentage of a child born via a gestational surrogate is precisely the sort of "family matter" that concerns a child's well-being and the "rights and responsibilities" of the parents involved. In this way, the Nolans' action implicated the District Court's *parens patriae* authority and aroused the substantial power that such authority confers. The Declaratory Judgment Act and Uniform Act on Paternity should be interpreted in a manner consistent with existing statutory and common law power to authorize the District Court to amend a birth certificate to reflect the child's intended parents.[9]

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[9] Amici strongly support the parties' position that the District Court has the power to declare maternity. If somehow this were not the case, however, then the Superior Court would have "full equity jurisdiction" to so declare, and this Court should so indicate in order to identify the path forward for intended parents seeking to legalize their relationships with their children. *See* 14 M.R.S. § 6051(13).

B. Construing the relevant statutes to authorize the District Court to declare parentage avoids their possible conflict with the child's constitutional rights.

A narrow interpretation of the Declaratory Judgment Act and the Uniform Act on Paternity not to authorize the District Court to declare parentage, both paternal and maternal, would not only implicate the equal protection concerns discussed by the parties, but the child's own constitutionally protected right to the identification, enjoyment and maintenance of his familial relationship with the Nolans.

The Supreme Court has "recognized on numerous occasions that the relationship between parent and child is constitutionally protected." *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978); *see also Santosky v. Kramer*, 455 U.S. 745, 753 (1982) (noting the "Court's historical recognition that freedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment"). Adults are not the only ones who enjoy the Constitution's protections. *See Planned Parenthood of Cent. Missouri v. Danforth*, 428 U.S. 52, 74 (1976) ("Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution and possess constitutional rights."), *overruled on other grounds in part by Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833 (1991); *In re Gault*, 387 U.S. 1, 13 (1967) ("neither the Fourteenth Amendment nor the Bill of Rights is for adults alone").

While the Supreme Court has not been faced with the specific question of whether a child has a liberty interest in the relationship with his parents, it is "extremely likely that, to the extent parents and families have fundamental liberty interests in preserving such intimate relationships, so, too, do children have these interests, and so, too, must their interests be balanced in the equation." *Troxel v. Glanville*, 530 U.S. 57, 88 (2000) (Stevens, J., dissenting); *see also* Barbara Bennett Woodhouse, *Talking About Children's Rights in Judicial Custody and Visitation Decision-Making*, 36 Fam. L.Q. 105, 113 (Spring 2002) ("After *Troxel*, it appears that at least six of the justices would weigh children's interest in protection of intimate relationships in the balance of constitutional rights.").

Accordingly, various state and federal courts have recognized that a child possesses a liberty interest in the protection and maintenance of the relationship with his parents. *Smith v. City of Fontana*, 818 F.2d 1411, 1419 (9th Cir. 1983) ("We hold that a child's interest in her relationship with a parent is sufficiently weighty by itself to constitute a cognizable liberty interest."), *overruled in part on other grounds by Hodgers-Durgin v. de la Vina*, 199 F.3d 1037 (9th Cir. 1999); *In re Bridget R.*, 49 Cal. Rptr. 2d 507, 524 (Cal.Ct.App. 1996) ("as a matter of simple common sense, the rights of children in their family relationships are at least as fundamental and compelling as those of their parents"), *superseded in part by statute on another point as stated in In re Santos Y.*, 112 Cal. Rptr. 2d 692, 723 (Cal.Ct.App. 2001); *In re Jasmon O.*, 878 P.2d 1297, 1307 (Ca. 1994) ("Children, too, have fundamental rights –

including the fundamental right to be protected from neglect and to have a placement that is stable [and] permanent.") (internal quotations omitted; brackets in original); *Espinoza v. O'Dell*, 633 P.2d 455, 464 (Colo. 1981) ("[t]he parent's liberty interest in the companionship, care, custody, and management of his or her children under most circumstances, runs parallel to the child's interest in a continued relationship and association with its parent").

Applying this law, the stable and permanent placement of Desmond is with his intended parents *qua* parents. They wanted him; they took the steps required to bring him into this world; and they protect and nurture him. The gestational carrier and her spouse sought no such role and only to facilitate the Nolans' intended parentage. A failure to reflect this parentage on his birth certificate threatens his right to a stable relationship with his parents and to have his parentage conclusively determined.[10] While the parties to this litigation do not dispute physical custody or other matters pertaining to Desmond's care, the determination of his parentage remains a predicate to a host of questions concerning the child's welfare even given such consensus. Who has the legal right to custody of Desmond? Who has the right to determine his medical treatments? Who has the right to determine the nature of his education and religious practices? A child's parentage is relevant to each

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[10] The threat to Desmond's liberty is heightened by the preclusive effect that Maine courts give to determinations of paternity. *See Godsoe v. Godsoe*, 2010 ME 42, ¶ 16, 995 A.2d 232, 235 ("The doctrine of res judicata applies to parentage determinations made in divorce or parental rights judgments, whether contested or not."). If allowed to stand, the District Court's determination that Desmond effectively has four parents could bind future courts faced with questions concerning Desmond's parentage or any related parental rights and responsibilities.

of these questions, and children delivered through gestational carriers have a constitutionally protected right to have these questions resolved so that they can enjoy a secure familial relationship with their intended parents.

CONCLUSION

For the reasons given above and in the briefs of the parties and the Amicus Brief of Appellants, the Court should find that the District Court has the power to declare the parentage of both intended, genetic parents to the exclusion of the gestational carrier and her spouse. If the Court determines that the District Court lacks such power, it should rule that the Superior Court has the authority to declare maternity to the exclusion of the gestational carrier.

DATED: March 23, 2012

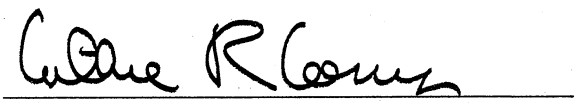

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Exhibit 1

State	Relevant Statutes	Relevant Case Law
Alabama	Ala. Code § 26-10A-34 • Payment of surrogacy fees exempted from statute criminalizing payments in connection with adoption 26 Ala. Code Ch. 17 ("Alabama Uniform Parentage Act") • Ala. Code § 26-17-106 ("Provisions of this chapter relating to determinations of paternity apply to determinations of maternity.") • Ala. Code § 26-17-602 (action to establish parentage)	
Alaska	Alaska Stat. §25.20.045 • "A child, born to a married woman by means of artificial insemination performed by a licensed physician and consented to in writing by both spouses, is considered for all purposes the natural and legitimate child of both spouses." Alaska Stat. § 25.20.050 • Procedure to establish identity of parents of children born out of wedlock	
Arizona	Ariz. Rev. Stat. § 25-218 • Prohibiting surrogacy agreements as against public policy and establishing maternity in the surrogate, not the intended parents; affords intended father opportunity to establish paternity 25 Ariz. Rev. Stat. Ch. 6, Art. 1 ("Maternity & Paternity Proceedings") • Ariz. Rev. Stat. § 25-806 (either putative parent may bring action to establish either paternity or maternity)	*Soos v. Super. Ct.*, 897 P.2d 1356, 1359-60 (Ariz. Ct. App. 1995). (holding that Ariz. Rev. Stat. § 25-218 violated Equal Protection Clause because under statute "[a] woman who may be genetically related to a child has no opportunity to prove her maternity and is thereby denied the opportunity to develop the parent-child relationship . . . [and] . . . is afforded no procedural process by which to prove her maternity under the statute").
Arkansas	9 Ark. Code Ann. Subt. 2, Ch. 10 ("Paternity") • Ark. Code Ann. § 9-10-201, 202 (authorizes gestational surrogacy and establishes that child belongs to the intended parents if the intended parents are married) • Ark. Code Ann. § 9-10-201 ("For birth registration purposes, in cases of surrogate mothers the woman giving birth shall be presumed to be the natural mother and shall be listed as such on the certificate of birth, but a substituted certificate of birth may be issued upon orders of a court of competent jurisdiction.")	

State	Relevant Statutes	Relevant Case Law
California	Cal. Fam. Code Div. 12, Part 3 ("Uniform Parentage Act") • Cal. Fam. Code § 7630 (action to establish paternity • Cal. Fam. Code § 7650 (action to establish maternity)	*Johnson v. Calvert*, 851 P.2d 776, 782 (Cal. 1993) (in maternity dispute between intended mother and gestational carrier, holding, in light of gestational surrogacy contract, that "she who intended to bring about the birth of a child that she intended to raise as her own. . . is the natural mother under California law").
Colorado	15 Colo. Rev. Stat. Ann. Art. 11, part 1, subpart 2 ("Parent-Child Relationship") • Colo. Rev. Stat. Ann. § 15-11-121 ("Child born to gestational carrier" – establishes parentage in Probate context) 19 Colo. Rev. Stat. Ann. Art. 4 ("Uniform Parentage Act") • Colo. Rev. Stat. Ann. § 19-4-107 (action to establish paternity) • Colo. Rev. Stat. Ann. § 19-4-122 (action to establish maternity) • Colo. Rev. Stat. Ann. § 19-4-124 (upon order of court, state registrar of vital statistics shall prepare a new certification of birth consistent with the findings of the court)	
Connecticut	Conn. Gen. Stat. Ann. § 45a-774 • "Any child or children born as a result of A.I.D. shall be deemed to acquire, in all respects, the status of a naturally conceived legitimate child of the husband and wife who consented to and requested the use of A.I.D." Conn. Gen. Stat. § 7-48a • "If the birth is subject to a gestational agreement, the Department of Public Health shall create a replacement certificate of birth immediately," upon certain conditions. • Authorizes "court of competent jurisdiction [to] approv[e] a gestational agreement and issu[e] an order of parentage pursuant to such gestational agreement." Conn. Gen. Stat. Ann. §§ 46b-160 *et seq.* • Action to establish paternity	*DeBernardo v. Gregory*, 2007 WL 4357736 (Conn. Super. Ct. Nov. 7, 2007) (declaring the intended parents as the legal parents of unborn child and ordering hospital to place intended parents' names on birth certificate upon birth). *See also Raftopol v. Ramey*, 299 Conn. 681, 12 A.3d 783 (2011); *Cunningham v. Tardifff*, 2008 WL 4779641 (Conn. Super. Ct. Oct. 14, 2008); *Cassidy v. Williams*, 2008 WL 2930591 (Conn. Super. Ct. July 9, 2008).
Delaware	Del. Code Ann. 13, Ch. 8 ("Uniform Parentage Act") • Del. Code Ann. tit. 13, § 8-106 ("Provisions of this chapter relating to determination of paternity apply to determinations of maternity.") • Del. Code Ann. tit. 13, Subch. VI ("Proceeding to Adjudicate Parentage")	

State	Relevant Statutes	Relevant Case Law
District of Columbia	D.C. Code Ann. Div. II, Tit. 16, Ch. 4 ("Surrogate Parenting Contracts") • D.C. Code Ann. § 16-402 (surrogate parenting contracts invalid and creating civil penalties for those who are involved in, induce, or arrange for the formation of such contracts) D.C. Code Ann. Div. II, Tit. 23, Ch. 23, Subch. II ("Parentage Proceedings") • D.C. Code Ann. § 16-2342 (action may be commenced by "the person whose parentage is to be determined")	
Florida	XLIII Fla. Stat. Ch. 742 ("Determination of Parentage") • § 742.15 (authorizing gestational surrogacy when intended parents are legally married) • § 742.16 (within 3 days after birth of child delivered by gestational surrogate, intended parents shall petition a court of competent jurisdiction for affirmation of parental status and when at least one member of the commissioning couple is the genetic parent of the child, the commissioning couple shall be presumed to be the natural parents of the child) • Fla. Stat. § 742.011 (action to establish paternity)	
Georgia	19 Ga. Code Ann. Ch. 7, Art. 3 ("Determination of Paternity") • § 19-7-43 (action to determine paternity)	
Hawaii	Haw. Rev. Stat. Div. III, Title 31, Ch. 584 ("Uniform Parentage Act") • Haw. Rev. Stat. § 584-6 (action to establish paternity) • Haw. Rev. Stat. § 584-21 ("Any interested party may bring an action to determine the existence or nonexistence of a mother and child relationship.")	
Idaho	7 Idaho Code Ch. 11 ("Proceedings to Establish Paternity") • Idaho Code § 7-1107 (proceedings to establish paternity may be instituted only after the birth of the child)	

State	Relevant Statutes	Relevant Case Law
Illinois	750 Ill. Comp. Stat. 45 ("Illinois Parentage Act of 1984") • 750 Ill. Comp. Stat. 45/6 (parent-child relationship may be established by consent in gestational surrogacy under certain statutory conditions) 750 Ill. Comp. Stat. Ann. 47 ("Gestational Surrogacy Act") • 750 Ill. Comp. Stat Ann. 47/1 *et seq.* (providing legal parentage to intended parents under certain statutory conditions)	
Indiana	31 Ind. Code Ann. Art. 20, Ch. 1 ("Surrogate Agreements") • § 31-20-1-1 (all surrogate agreements are against public policy and unenforceable) 31 Ind. Code Ann. Art. 14 ("Family Law: Establishment of Paternity") • § 31-14-1-1 *et seq.* (action to establish paternity)	*In re Paternity and Maternity of Infant R.*, 922 N.E.2d 59, 62 (Ind. Ct. App. 2010) (holding that, under narrow circumstances of gestational surrogacy, equity required that "the paternity statutes provide a procedural template to challenge the putative relationship between the infant and [gestational carrier]" and that gestational carrier was the presumptive legal mother unless the intended mother established that she was the biological mother of the baby).
Iowa	16 Iowa Code Ann. § 710.11 • Exempts surrogacy fees from statute criminalizing the buying and selling of individuals 6 Iowa Code Ann. Subt. 6, Ch. 252F ("Administrative Establishment of Paternity") • § 252F.2 (action to establish paternity) 6 Iowa Code Ann. Ch. 252K ("Uniform Interstate Family Support Act") • § 252K.701 (proceeding to establish parentage)	
Kansas	38 Kan. Stat. Ann. Ch. 38, Art. 11 ("Parentage Act") • Kan. Stat. Ann. § 38-1115 (action to establish paternity) • Kan. Stat. Ann. § 38-1126 ("Any interested party may bring an action to determine the existence or nonexistence of a mother and child relationship.")	
Kentucky	XXXV Ky. Rev. Stat. Ann. Ch. 406 ("Uniform Act on Paternity") • § 406.021 (action to establish paternity) XVII Ky. Rev. Stat. Ann. Ch. 199 ("Protective Services for Children") • § 199.590(4) (traditional surrogacy contracts are unenforceable when surrogate is compensated)	

State	Relevant Statutes	Relevant Case Law
Louisiana	La. Rev. Stat. Ann. § 9:2713 • Contract for compensated surrogacy agreement is null and void and unenforceable La. Rev. Stat. Ann. §§ 9:391 *et seq.* • Action to establish paternity La. Civ. Code Ann. art. 184 ("Maternity") • "Maternity may be established by a preponderance of the evidence that the child was born of a particular woman"	
Maine	19-A Me. Rev. Stat. Ann. Part 3, Ch. 55, Subch. 1 ("Paternity Proceedings") • 19-A Me. Rev. Stat. Ann. §§ 1551 *et seq.* (action to establish paternity)	
Maryland	Md. Code Ann., Fam. Law, Tit. 5, subt. 10 ("Paternity Proceedings") • Md. Code Ann., Fam. Law, Tit. 5, §§ 5-1001 *et seq.* (action to establish paternity)	*In re Roberto d.B.*, 923 A.2d 115, 124 (Md. 2007) ("Because Maryland's [Equal Protection law] forbids the granting of more rights to one sex than to the other, in order to avoid an equal rights challenge, the paternity statutes in Maryland must be construed to apply equally to both males and females."). The court further held that it is within the trial court's power to order the vital records agency to issue a birth certificate that contains only the intended parents' names. *Id.* at 125.
Massachusetts	Mass. Gen. Laws Title III, ch. 209C ("Children Born out of Wedlock") • Mass. Gen. Laws ch. 209C § 14 (action to establish paternity for children born out of wedlock) • Mass. Gen. Laws ch. 209C § 21 ("Any interested party may bring an action to determine the existence of a mother and child relationship.")	*Culliton v. Beth Israel*, 756 N.E.2d 1133. 1138 (Mass. 2001) (finding that trial court should exercise its general equity jurisdiction to declare parentage in the intended parents when plaintiffs are the sole genetic sources of the baby, the gestational carrier agrees with the orders sought, and no one, including the hospital, has contested the petition). The court explicitly held that the Massachusetts' parentage statute did not apply because the child in this case was not born "out of wedlock" because plaintiffs were married. *Id.* at 1137. Thus, the court's ruling appears to have been based on equitable principles. *See also Hodas v. Morin*, 814 N.E.2d 320 (Mass. 2004) (reaffirming *Culliton*).

State	Relevant Statutes	Relevant Case Law
Michigan	Mich. Comp. Laws Ann. Ch. 722, §§ 722.851 *et seq.* ("Surrogate Parenting Act") • Mich. Comp. Laws Ann. § 722.855 ("A surrogate parentage contract is void and unenforceable as contrary to public policy.") • Mich. Comp. Laws Ann. § 722.859 (knowingly entering into surrogate contract for compensation is misdemeanor and punishable by fine of up to $10,000 or imprisonment) Mich. Comp. Laws Ann. Ch. 722, §§ 722.711 *et seq.* ("The Paternity Act") • Action to establish paternity	
Minnesota	Minn. Stat. Ann. Ch. 257, §§ 257.51 *et seq.* ("Parentage Act") • Minn. Stat. Ann. § 257.57 (action to establish paternity) • Minn. Stat. Ann. § 257.71 (action to establish maternity)	
Mississippi	93 Miss. Code Ann. Ch. 9, §§ 93-9-1 *et seq.* ("Mississippi Uniform Law of Paternity") • Action to establish paternity	
Missouri	XII Mo. Ann. Stat. Ch. 10, §§ 210.817 *et seq.* ("Uniform Parentage Act") • Mo. Ann. Stat. § 210.826 (action to establish paternity) • Mo. Ann. Stat. § 210.848 ("Any interested party may bring an action to determine the existence or nonexistence of a mother and child relationship.")	
Montana	40 Mont. Code Ann. Ch. 6, Part 1 ("Uniform Parentage Act") • Mont. Code Ann. § 40-6-107 (action to establish paternity) • Mont. Code Ann. § 40-6-121 ("Any interested party may bring an action to determine the existence or nonexistence of a mother and child relationship.")	
Nebraska	Neb. Rev. Stat. § 25-21,200 • "A surrogate parenthood contract entered into shall be void and unenforceable." (refers to "compensated" agreement) Neb. Rev. Stat. Ch. 43, Art. 14 ("Parental Support and Paternity") • Neb. Rev. Stat. § 43-1411 (action to establish paternity)	

State	Relevant Statutes	Relevant Case Law
Nevada	11 Nev. Rev. Stat. Ch. 126 ("Parentage") • Nev. Rev. Stat. § 126.045 (married persons may enter into a contract with a surrogate for assisted conception and the contract must specify the parentage of the child) • Nev. Rev. Stat. §§ 126.071 *et seq.* (action to establish paternity) • Nev. Rev. Stat. § 126.231 ("Any interested party may bring an action to determine the existence of a mother and child relationship.")	
New Hampshire	XII N.H. Rev. Stat. Ann. Ch. 168-B ("Surrogacy") • N.H. Rev. Stat. Ann. § 168-B:16 (surrogate arrangement is lawful if it conforms to certain statutory conditions) • N.H. Rev. Stat. Ann. § 168-B:26 (if surrogate does not exercise her 72-hour post-birth right to keep the child, intended parents are named as parents on the birth certificate) XII N.H. Rev. Stat. Ann. Ch. 168-A • N.H. Rev. Stat. Ann. §§ 168-A:1 *et seq.* (action to establish paternity)	
New Jersey	9 N.J. Stat. Ann. Subt. 4, Ch. 17, Art. 10 ("Parentage") • N.J. Stat. Ann. §§ 9:17-38 *et seq.* (action to establish paternity) • N.J. Stat. Ann. § 9:17-57 (action to establish "mother and child relationship")	*In re T.J.S.*, 16 A.3d 386, 398 (N.J. Super. Ct. App. Div.) (no equal protection violation when parentage statute recognizes parental status for infertile husband but not infertile wife because "nothing in our Constitution or law provides that an adult—male or female—with no biological or gestational connection to a child has a fundamental right to create parentage by the most expeditious or convenient method possible"), *review granted*, 23 A.3d 935 (N.J. 2011). *A.H.W. v. G.H.B.*, 772 A.2d 948, 954 (N.J. Super. Ct. Ch. Div. 2000) (holding that biological parents of unborn child being carried by a surrogate were not permitted to pre-birth judgment of parentage and order placing only their names on the birth certificate because of voluntary surrender of parentage statute, under which a parent must wait at least 72 hours after birth to surrender his or her parental rights to the child).

State	Relevant Statutes	Relevant Case Law
New Mexico	40 N.M. Stat. Ann. Art. 11A ("New Mexico Uniform Parentage Act") • N.M. Stat. Ann. § 40-11A-801 (surrogacy agreements "not authorize[d] or prohibit[ed]") • N.M. Stat. Ann. § 40-11A-106 ("Provisions of the New Mexico Uniform Parentage Act relating to determination of paternity apply to determinations of maternity insofar as possible.") • N.M. Stat. Ann. § 40-11A-201 (establishment of paternity or maternity)	
New York	N.Y. Dom. Rel. Law Ch. 14, Art. 8 ("Surrogate Parenting Contracts") • N.Y. Dom. Rel. Law § 122 ("Surrogate parenting contracts are hereby declared contrary to the public policy of this state, and are void and unenforceable.") • N.Y. Dom. Rel. Law § 123 (penalties for violating surrogate law) N.Y. Fam. Ct. Act §§ 511 *et seq.* ("Paternity Proceedings")	*T.V. v. N.Y. State Dep't of Health*, 929 N.Y.S.2d 139 (N.Y. App. Div. 2011) (holding that Supreme Court has jurisdiction to issue an order of maternity to the genetic intended mother of a child born by gestational surrogacy even in the absence of a statutory scheme authorizing an action to establish maternity). *In re Adoption of Sebastian*, 879 N.Y.S.2d 677, 690 (Sur. 2009) (holding that, pursuant to principles of equal protection, "New York's existing procedures for establishing paternity [must] be available for determination of the legal parenthood of a genetic mother"). *Arredondo v. Nodelman*, 622 N.Y.S.2d 181 (Sup. Ct. 1994) (holding that New York Supreme Court, a court of general jurisdiction, has authority to declare both paternity and maternity in names of intended parents, who are both biological parents and when there was no dispute over who biological parents were); *see also Doe v. NYC Bd. of Health*, 782 N.Y.S.2d 180 (Sup. Ct. 2004) (same). *Andres A. v. Judith N.*, 591 N.Y.S.2d 946, 948-49 (Fam. Ct. 1992) (holding that family court jurisdiction permitted determination of only paternity, because New York paternity statute made no provision for declarations of maternity).

State	Relevant Statutes	Relevant Case Law
North Carolina	N.C. Gen. Stat. Ch. 49, Art. 1 ("Support of Illegitimate Children") • N.C. Gen. Stat. §§ 49-5, 49-14 (action to establish paternity) • N.C. Gen. Stat. Ann. §§ 48-10-102, 48-10-103 (adoption statutes that appear to permit surrogacy arrangement, so long as surrogate is not compensated except for medical expenses)	
North Dakota	14 N.D. Cent. Code Ch. 14-18 ("Uniform Status of Children of Assisted Conception Act") • N.D. Cent. Code § 14-18-05 (some traditional surrogacy agreements void – includes "a pregnancy resulting from insemination of an egg of a woman with sperm of a man by means other than sexual intercourse or by removal and implantation of an embryo after sexual intercourse but does not include a pregnancy resulting from the insemination of an egg of a wife using her husband's sperm." *Id.* at § 14-18-01). • N.D. Cent. Code § 14-18-08 ("A child born to a gestational carrier is a child of the intended parents for all purposes and is not a child of the gestational carrier and the gestational carrier's husband, if any.") 14 N.D. Cent. Code Ch. 14-20 ("Uniform Parentage Act") • N.D. Cent. Code § 14-20-06.(106) ("Provisions of this chapter relating to determination of paternity apply to determinations of maternity.")	
Ohio	XXXI Ohio Rev. Code Ann. Ch. 3111 ("Parentage") • Ohio Rev. Code Ann. § 3111.04 (action to establish paternity) • Ohio Rev. Code Ann. § 3111.17 ("Any interested party may bring an action to determine the existence or nonexistence of a mother and child relationship.")	*Belsito v. Clark*, 67 Ohio Misc. 2d 54, 66 (1994) (ordering that baby's birth certificate list intended parents only after reasoning that "when a child is delivered by a gestational surrogate who has been impregnated through the process of in vitro fertilization, the natural parents of the child shall be identified by a determination as to which individuals have provided the genetic imprint for that child. If the individuals who have been identified as the genetic parents have not relinquished or waived their rights to assume the legal status of natural parents, they shall be considered the natural and legal parents of that child.").