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**Memorandum**

**To:** Naomi Cahn

**From:** Jose M. Recio

**Date:** April 1, 2010

**Re:** Parentage Statute Survey – Uniform Parentage Acts of 1973 and 2002

**Parentage And Artificial Insemination Research Results**

1. SUMMARY

A brief survey of extant parentage laws for artificial insemination donors and recipients in each of the fifty states was completed. A primary goal of this exercise was to compare those laws with the Uniform Parentage Acts (“UPAs”) of 1973 and 2002. Three general groups have been identified wherein each is either similar to the 2002 UPA, similar to the 1973 UPA, or dissimilar from both UPAs. Nineteen states have statutes similar to the 2002 UPA, while thirteen states have statutes similar to the 1973 UPA. Eighteen states either have no statute addressing artificial insemination or have statutes diverging significantly from both UPAs. About fourteen states have statutes addressing embryos, while the remaining states do not. A comparison of the 1973 and 2002 UPAs is presented below, followed by a brief description of each group identified. Finally, the group of states that address embryos is described.

1. COMPARISON OF THE 1973 AND 2002 UPAs

# The 1973 and 2002 UPAs have two significant characteristics that are in substantial variance with each other. First, the 1973 UPA does not contain a “definitions” section, while the 2002 UPA does and defines a “donor” as “an individual who produces eggs or sperm” and “assisted reproduction” as including insemination, donation of eggs, or donation of embryos. [[1]](#footnote--1) The 1973 UPA only addresses “semen donated by a man” for artificial insemination in § 5.[[2]](#footnote-0) Second, the 2002 is not gender specific, while the 1973 UPA addresses only male donors of semen and additionally requires artificial insemination to be performed by a licensed physician.[[3]](#footnote-1) This divergence is due in part to the 2002 UPA defining a donor as including both sperm and egg donors, and in part to the sections addressing parental rights in artificial insemination. The 2002 UPA simply states that a donor is not the parent of a child of assisted reproduction,[[4]](#footnote-2) while the 1973 UPA only mentions male donor parental rights.[[5]](#footnote-3)

1. THREE GENEREAL GROUPS OF STATES

As is mentioned above, three general groups of states addressing artificial insemination have been identified. In addition, three states with particularly unique statutory language were found, but have been nonetheless grouped in one of the three groups. Each group and the three outlier states are discussed below.

* 1. Group One: States Approximating The 2002 UPA

 “Group One” consists of states having statutes similar to the 2002 UPA.[[6]](#footnote-4) Few states in this group have any additional qualifications or limitations to the model language. However, Ohio and Texas both state that their donor parentage rules refer to males and remain silent with respect to female donors. For example, Ohio defines “donor” as “a *man* who supplies semen for a non-spousal artificial insemination.”[[7]](#footnote-5)

* 1. Group Two: States Approximating The 1973 UPA

“Group Two” consists of states having statutes similar to the 1973 UPA.[[8]](#footnote-6) Group Two has a wider range of statutory language variation when compared to Group One. Nonetheless, the substance of Group Two’s laws closely approximates the 1973 UPA. For example, almost all states in this group require a licensed physician to perform the artificial insemination, and parental rights are conferred to the recipient and their spouse. Moreover, almost all qualify parental rights arising from artificial insemination with the term “married,” as does the 1973 UPA.

* 1. Group Three: States Distinguishable From Either UPA

“Group Three” consists of states without readily discernable parentage statutes for artificial insemination.[[9]](#footnote-7) About four states address the issue directly through case law.[[10]](#footnote-8) Approximately half of the states in this group have neither statutory language nor case law addressing the issue of artificial insemination and parental rights.

* 1. The Special Cases of Alabama, Arizona And Ohio

# Alabama, Arizona, and Ohio addressed the issue of artificial insemination and parental rights in ways that were unique from the three groups mentioned above. The unique features of each are briefly described below.

* + 1. Alabama is listed as a 2002 UPA state by The National Conference of Commissioners on Uniform State Laws, but its statutory language maintains some features similar to the 1973 UPA

# Alabama is listed by The National Conference of Commissioners on Uniform State Laws as having adopted the 2002 UPA[[11]](#footnote-9) and does in fact appear to conform to that version of the Act. However, Alabama’s code maintains a portion of the 1973 UPA language by limiting parental rights in artificial insemination to “married women.”[[12]](#footnote-10) Moreover, Alabama maintains a “licensed physician” like the 1973 UPA.[[13]](#footnote-11) Nonetheless, Alabama’s code defines “donor” and “assisted reproduction” in accordance with the 2002 UPA and effectively bestows the same rights to recipients, but under the qualifications mentioned above.[[14]](#footnote-12)

* + 1. Arizona’s code appears to outlaw a natural parent’s ability to relinquish parental, while subsequent case law has declared a portion of Arizona’s parentage laws unconstitutional

Arizona has a unique set of statutory language that may outlaw any transference or agreement of parental rights in a surrogate or artificial insemination situation. While the prohibition speaks only to surrogate contracts, Arizona defines a “surrogate parentage contract” as an arrangement that includes conception of “a child through natural or *artificial insemination*.”[[15]](#footnote-13) After this provision’s enactment, an Arizona appellate court ruled that a portion of the law, which automatically gives parental rights to surrogate mothers, is unconstitutional because it only allows *male* donors of sperm used in surrogate contracts to challenge paternity.[[16]](#footnote-14) However, no case law declaring the general prohibition on transferring parental rights in a surrogate contract or in artificial insemination instances could be found.

The research effort did find that Arizona addresses artificial insemination from the viewpoint of child support. In this respect, the Arizona code states that “a child born as the result of artificial insemination is entitled to support from the mother” and her spouse if “the spouse . . . agreed in writing to the insemination.”[[17]](#footnote-15) No other provisions in Arizona’s code were found that mention “insemination” or “donor” in conjunction with parental rights.

* + 1. Ohio’s artificial insemination laws are substantively similar to the 2002 UPA, but are at significant variance with that UPA’s language

# Ohio’s “artificial insemination” laws were enacted in 2000.[[18]](#footnote-16) In those statutes, the definition of a “donor” is confined to a man who supplies semen.[[19]](#footnote-17) However, in 2006 Ohio amended its laws to include provisions for “embryo donation.”[[20]](#footnote-18) There, it defines “donor” as “an individual who produced genetic material used to create an embryo.”[[21]](#footnote-19) That section also states that “[a] donor shall not be treated in law or regarded as a parent of a child born as a result of embryo donation.”[[22]](#footnote-20) By using the term “genetic material” in the definition of “donor,” Ohio would appear to state a symmetrical relinquishment of parental rights between male and female donors, at least in cases of embryo donation. This symmetry of rights between donor genders tends to conform to the 2002 UPA.

1. STATES ADDRESSING THE LEGAL STATUS OF EMBRYOS

Nearly all of the fourteen states addressing the “donation of embryos” are 2002 UPA states. [[23]](#footnote-21) In these states, the parental rights of an egg or sperm donor for “assisted reproduction” relinquish their rights, wherein assisted reproduction includes a procedure involving embryos.[[24]](#footnote-22) Also, a spouse’s consent to assuming parentage may be revoked at any time before embryo implantation.[[25]](#footnote-23) Significantly, Georgia, Virginia, and Ohio have “donation of embryos” provisions similar to the 2002 UPA states, but are not listed as 2002 UPA states by The National Conference of Commissioners on Uniform State Laws.[[26]](#footnote-24)

 A table summary of the state grouping established by this study is presented below.



1. Uniform Parentage Act §§ 102(8)-(4) (2002) [hereinafter, 2002 UPA]. [↑](#footnote-ref--1)
2. Uniform Parentage Act § 5 (1973) [hereinafter, 1973 UPA]. [↑](#footnote-ref-0)
3. *Id*. [↑](#footnote-ref-1)
4. 2002 UPA § 702. [↑](#footnote-ref-2)
5. 1973 UPA § 5. [↑](#footnote-ref-3)
6. These states are Delaware, North Dakota, New Mexico, Oklahoma, Texas, Utah, Washington, Wyoming, Alaska, Connecticut, Florida, Idaho, Massachusetts, Maryland, North Carolina, New York, Ohio, and Virginia. [↑](#footnote-ref-4)
7. Ohio Rev. Code Ann. § 3111.88 (2000) (emphasis added). Ohio is distinguishable from Group One in that it has separate provisions with respect to embryo rights. In that section, “donor” is re-defined as “an individual who produced genetic material used to create an embryo.” Ohio Rev. Code Ann. § 3111.97 (2006). Thus, this state was placed in Group One because the entirety of its parentage statute appears to create rights similar to the 2002 UPA. [↑](#footnote-ref-5)
8. These states are California, Missouri, Montana, New Jersey, Nevada, Wisconsin, Arkansas, Colorado, Illinois, Minnesota, New Hampshire, Oregon, and Kansas. [↑](#footnote-ref-6)
9. These states are Arizona, Georgia, Hawaii, Idaho, Indiana, Kentucky, Louisiana, Maine, Michigan, Mississippi, Nevada, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, and West Virginia. [↑](#footnote-ref-7)
10. *See Levin v. Levin*, 626 N.E.2d 527 (1993) (Indiana ruling that establishes rights similar to the 1973 UPA); *Ferguson v. McKiernan*, 596 Pa. 78, 940 A.2d 1236 (2007) (Pennsylvania ruling similar to *Levin*, 626 N.E.2d 527); *In re Baby Doe*, 353 S.E.2d 877 (1987) (South Carolina ruling similar to *Levin*, 626 N.E.2d 527); *Estes v. Albers*, 504 N.W.2d 607 (1993) (South Dakota case holding that donors are shielded from any rights or responsibilities). [↑](#footnote-ref-8)
11. *See* The National Conference of Commissioners on Uniform State Laws, <http://www.nccusl.org/Update/uniformact_factsheets/uniformacts-fs-upa.asp> (last visited April 1, 2010). [↑](#footnote-ref-9)
12. *See* Ala. Code 1975 § 26-17-702 (2008) (“A donor who donates to a licensed physician for use by a *married woman* is not a parent of a child”) (emphasis added). [↑](#footnote-ref-10)
13. *Id.* [↑](#footnote-ref-11)
14. *Compare* 2002 UPA §§ 102(4), (8) *with* Ala.Code 1975 §§ 26-17-102(4), (8) (2008). *See also* Ala.Code 1975 §§ 26-17-702. [↑](#footnote-ref-12)
15. Ariz. Rv. Stat. Ann. § 25-218(D) (1989) (emphasis added). [↑](#footnote-ref-13)
16. *See* *Soos v. County of Maricopa*, 897 P.2d 1356 (Ariz. App. Div. 1994) (holding § 25-218 unconstitutional because “[b]y providing dissimilar treatment for men and women who are thus similarly situated, the statute violates the Equal Protection Clause.”). [↑](#footnote-ref-14)
17. Ariz. Rv. Stat. Ann. § 25-501(B) (1989). [↑](#footnote-ref-15)
18. *See* Ohio Rev. Code Ann. § 3111.88 (2000). [↑](#footnote-ref-16)
19. *Id*. [↑](#footnote-ref-17)
20. *See* Ohio Rev. Code Ann. § 3111.97 (2006). [↑](#footnote-ref-18)
21. *Id*. [↑](#footnote-ref-19)
22. *Id*. [↑](#footnote-ref-20)
23. *See*, *e.g.*, N.D. Cent. Code § 14-20-02 (2005) (North Dakota). The states addressing embryos include Delaware, North Dakota, New Mexico, Oklahoma, Texas, Utah, Washington, Wyoming, Alabama, Colorado, Illinois, Ohio, Virginia, and Georgia. [↑](#footnote-ref-21)
24. *See*, *e.g.*, *Id*. [↑](#footnote-ref-22)
25. *See*, *e.g.*, Del. Code Ann. tit. 13, § 8-706 (2004) (“consent of a woman or a man to assisted reproduction may be withdrawn by that individual in a record at any time before placement of eggs, sperm or embryos.”). [↑](#footnote-ref-23)
26. *See* Ga. Code Ann., § 19-8-41 (2009); Va. Code Ann. § 20-156 (2000); Ohio Rev. Code Ann. § 3111.97. [↑](#footnote-ref-24)