

July 2, 2024

**VIA EMAIL**

Act 156 Task Force on Parentage Laws  
c/o Department of the Attorney General, Appellate Division  
425 Queen Street  
Honolulu, Hawai'i 96813  
[tammy.d.tam@hawaii.gov](mailto:tammy.d.tam@hawaii.gov)  
[derek.r.matsumoto@hawaii.gov](mailto:derek.r.matsumoto@hawaii.gov)

**Re: Importance of Recommending the Inclusion of Article 9 of the 2024 Uniform Parentage Act**

Dear Hawai'i Task Force on Parentage Laws:

On behalf of U.S. Donor Conceived Council (“USDCC”), we hereby submit these comments on the importance of including the 2024 Article 9 of the Uniform Parentage Act (“UPA”) in the reports and draft bills prepared by the Task Force. USDCC is one of two nonprofits in the United States formed and led by donor conceived people to advocate for greater recognition of their needs and interests.<sup>1</sup>

*Note: In a position statement put out by the Birth Heritage PIG about identity disclosure, donor conceived people are referred to using it/its pronouns which is dehumanizing to our community. Please use they/them/theirs when referring to donor conceived people whose gender identity is not known.*

**Background on Article 9**

In 2017, following the Supreme Court decisions in *Obergefell v. Hodges* and *Pavan v. Smith*, the Uniform Law Commission (“ULC”) updated the UPA to ensure the equal treatment of children born to same-sex couples. As part of the 2017 revision, the ULC included “a new article addressing the right of children conceived through assisted reproductive technology to access medical and identifying information regarding any gamete providers . . . . [I]n the same way that adopted children have fought to have access to information about their birth parents, a generation of children conceived through assisted reproductive technology will have claims to access information about their gamete donors. UPA 2017 addresses this issue proactively.”<sup>2</sup>

---

<sup>1</sup> U.S. Donor Conceived Council website available at <https://www.usdcc.org>.

<sup>2</sup> See James D. Pedersen, *The New Uniform Parentage Act of 2017*, Family Advocate, American Bar Association (April 1, 2018).

In 2023, the ULC convened the “Gamete Donor Identity Disclosure Study Committee” to study and decide whether to update Article 9 of the UPA to require gamete donors to consent to the release of their identifying information to an adult donor conceived person (who was born as the result of the donation) after they make a request to the sperm or egg bank. The committee consisted of eleven commissioner members, including Hawai’i Commissioner Elizabeth Kent. The study committee heard from a wide range of stakeholders during its deliberations, including gamete donors, donor conceived people, recipient parents, LGBTQ+ advocacy organizations, mental health professionals, and egg and sperm banks.

***The study committee, including Commissioner Kent, voted overwhelmingly in favor of the update to Article 9.*** The updated Article 9 (“2024 Article 9”) was approved unanimously without objection via the ULC process. As such, the 2024 Article 9 is the official policy of the ULC, and Article 9 must be included in a state’s UPA law for the state to be an “enactment state.” Thus, to abide by the ULC’s universal implementation of legislation, USDCC urges the Task Force to respect the process and not remove 2024 Article 9 of the UPA from reports and draft bills.

### **Conceptualizing Gamete-Donation Related Issues**

In the area of gamete and embryo donation, three principal parties are intricately involved: the donors, the recipients or intended parents, and the individuals born as a result of the donation (donor conceived people). Each of these parties possesses distinct interests, which, while unique, often intersect and occasionally conflict with one another.<sup>3</sup> Donors typically have concerns about compensation and the future implications of their genetic contribution. Recipients or intended parents focus on the successful conception and the legal and social aspects of parenting a donor conceived child. Meanwhile, many individuals born from these donations have an interest in their origins, access to medical history, and the potential for establishing a relationship with their genetic parents. These varied interests create a complex web of rights, interests, and corresponding obligations, necessitating careful ethical and legal considerations to balance and address the needs, rights, and interests of all parties involved.

---

<sup>3</sup> See ASRM Ethics Committee, *Interests, obligations, and rights in gamete and embryo donation: An ethics committee opinion* (2019).

## **Donor Anonymity Cannot Be Promised; Informed Consent Requires Adoption of 2024 Article 9**

It is important to keep in mind that in 2024 gamete donor anonymity is illusory due to the rise of technologies such as direct-to-consumer DNA testing and facial recognition software.<sup>4</sup> In 2022, the American Society of Reproductive Medicine (“ASRM”) updated the terminology used to refer to gamete donors to better reflect the changing landscape of gamete and embryo donation. The two categories of gamete donors are directed donors and non-identified donors.<sup>5</sup>

Directed donation, previously called “known donation,” is an arrangement in which the identity of the recipient and the donor are known to one another at the time of donation. Non-identified donation is any arrangement in which the donor and recipient are unknown to one another at the time of donation. Non-identified donation includes what was previously called “anonymous” donation, as well as donors who have consented to identity disclosure arrangements, called “Open-ID” donors.

2024 Article 9’s system of requiring identity disclosure to donor conceived adults upon request benefits both donors and donor conceived individuals by releasing the information with a donor’s prior informed consent in a legal, orderly manner.

As further discussed below, many donor conceived people desire this information. And revealing gamete donor identifying information through DNA testing is often a costly, messy, and traumatic process. The 2024 Article 9 system will have the additional benefit of encouraging recipient parents to tell their donor conceived children that they are donor conceived. For the reasons discussed above, adopting a system that facilitates identity disclosure release, as several other democracies have done (e.g., United Kingdom, Australia, Germany, France), is a logical and necessary change.

---

<sup>4</sup> See Heather Murphy, *Most White Americans’ DNA Can Be Identified Through Genealogy Databases*, The New York Times (Oct. 11, 2018).

<sup>5</sup> See ASRM Ethics & Practice Committee, *Updated terminology for gamete and embryo donors: Directed (identified) to replace “known” and non-identified to replace “Anonymous”: A committee opinion* (2022).

## **A Large Percentage of Donor Conceived People Desire the Gamete Donor's Identifying Information, and Non-Identifying Information is Inadequate**

Multiple studies show that a large percentage of donor conceived people desire the gamete donor's identifying information.<sup>6</sup> For example, the 2020 "We Are Donor Conceived" survey, which included 481 participants, revealed that 87% of respondents believe all donor conceived individuals should have the option to know the donor's identity.<sup>7</sup> Specifically, 71% emphasized the personal importance of this knowledge. The nature of the desired relationship varies: 31% hope to form a close friendship, 21% seek a casual acquaintance, and 19% desire a mentor/adviser-type relationship. Only 9% do not desire any form of relationship with the donor.

Research indicates that many donor conceived people from all types of family structures have a desire to know the donor's identity.<sup>8</sup> Studies have found that non-identifying information (e.g., height, weight, religion) is insufficient to satisfy the information needs of donor conceived people.<sup>9</sup> One leading study states that many donor conceived people's "exploration of the connection to the donor . . . reveals that sharing the family's donor origins with the [donor conceived person] as well as considerable non-identifying knowledge about the donor . . . were not enough to address information needs of these adults."<sup>10</sup>

Having access to identifying information can help donor conceived individuals' health and wellbeing by offering them a better understanding of their social, cultural, and biological heritage and identity.<sup>11</sup> This access allows donor conceived individuals to obtain critical medical history information, which can be vital for preventive healthcare and management of hereditary conditions. Additionally, it enables these individuals to understand their genetic predispositions, fostering a more informed approach to their health and lifestyle choices.

Beyond the medical implications, access to identifying information helps in forming a more complete sense of self. Knowledge of one's genetic origins can alleviate feelings of uncertainty and fragmentation, promoting psychological stability and self-acceptance. It also facilitates connections with biological relatives, which can enrich a donor

---

<sup>6</sup> Beeson (2011), Canzi (2019), Hertz (2013), Jadva (2010), Mahlstedt (2010), Zadeh (2018). Please see the attached Reference sheet for complete citations to these and other authorities.

<sup>7</sup> 2020 Survey, We Are Donor Conceived, *available at* <https://www.wearedonorconceived.com/2020-we-are-donor-conceived-survey>.

<sup>8</sup> Beeson (2011), Canzi (2019), Hertz (2013), Jadva (2010), Mahlstedt (2010), Zadeh (2018)

<sup>9</sup> Scheib (2017).

<sup>10</sup> Scheib (2017).

<sup>11</sup> Cahn (2018).

conceived person's social and cultural experiences by introducing them to previously unknown family traditions and heritage. These connections can provide a sense of belonging and continuity, which are essential components of a well-rounded identity.

Therefore, the availability of identifying information not only serves practical health purposes but also contributes significantly to the emotional and psychological wellbeing of donor conceived individuals, fostering a more holistic and integrated sense of self.

### **2024 Article 9 is Necessary to Provide Autonomy to Donor Conceived Adults**

Perhaps most importantly, it is necessary to require identity disclosure to donor conceived adults (consistent with 2024 Article 9 of the UPA) because it is impossible to know in advance which of the donor conceived people born from a donor will want and/or request the donor's identifying information.

Requiring identity disclosure ensures that a donor conceived person aged 18 years or older can access this information about their genetic origins/birth heritage if desired. Ending anonymity and providing access to identifying information "gives donor-conceived offspring the same rights as other children to know the identity of their legal and genetic parents, a move that is also occurring for adoptees."<sup>12</sup>

### **Updated Article 9 Will Not Significantly Impact the Cost or Supply of Donor Gametes**

Studies and publicly available information indicate that 2024 Article 9 will not significantly impact the cost or supply of donor gametes. First, 2024 Article 9 is not retroactive, meaning the existing supply of donor gametes will be grandfathered in and will remain available for potential purchase. Thus, current inventories are unaffected by the new regulations and can still be used under the previous anonymity provisions.

Second, evidence from countries that have required identity disclosure gamete donation shows no decrease in the supply of donor gametes.<sup>13</sup> In the UK, after the implementation of identity disclosure laws in 2005, the supply of donor sperm actually *increased* over time.<sup>14</sup> The same is true for Australia.<sup>15</sup>

---

<sup>12</sup> Cahn (2018).

<sup>13</sup> Adams (2016).

<sup>14</sup> Human Fertilisation & Embryology Authority, *Trends in egg, sperm and embryo donation 2020* (Nov. 2020).

<sup>15</sup> Adams (2016).

Third, a group of egg and sperm banks that account for a large percentage of the donor gamete market now require all new gamete donors to consent to identity disclosure at 18.<sup>16</sup> In fact, some of these banks testified in support of 2024 Article 9 during the ULC process. The shift in major sperm and egg banks' policy towards required identity disclosure at 18 reflects a broader industry trend towards greater transparency and ethical responsibility by prioritizing the interests of donor conceived people.

Lastly, although the cost of donor sperm has risen in recent years, this increase is largely attributed to higher screening and overhead expenses, as well as the growing use of IVF. IVF and related procedures, including ICSI (intracytoplasmic sperm injection), require fewer donor gametes, leading banks to distribute the increased costs across a smaller number of vials sold. These factors account for the increased cost rather than the move to identity-release donation, as this trend began prior to any state requiring identity disclosure.<sup>17</sup> Moreover, the limited studies on whether higher payments are required for identity-release donors compared to anonymous donors were conducted prior to the widespread availability of direct-to-consumer DNA testing and the growing recognition that true anonymity for gamete donors is increasingly unattainable.

### **Benefits of 2024 Article 9 on All Families Formed Through Donor Conception**

In addition to the benefits to donor conceived individuals, identity disclosure can also benefit families formed through donor conception. Having an Open-ID donor can also make discussions about the family's formation easier, because children have the option at adulthood to seek information about questions their parents cannot answer.<sup>18</sup> Additionally, parents may experience lower retrospective dissatisfaction with identity release and known/directed donation.<sup>19</sup> A longitudinal study on planned lesbian families found "[i]n comparing satisfied with dissatisfied birth mothers by donor type, the only significant differences were that those selecting open-identity donors were more satisfied than dissatisfied and that those using unknown donors were more dissatisfied than satisfied."<sup>20</sup> Further the study found that, "concerning the offspring, a majority of mothers felt that the decision to use a donor whose identity could soon be known would be of benefit in satisfying the offspring's curiosity about the donor's history, personality, and interests."<sup>21</sup>

---

<sup>16</sup> USDCC, *2022 Sperm Bank Data Survey* (2022), available at <https://www.usdcc.org/2023/04/26/2022-sperm-bank-data-survey/>

<sup>17</sup> *Id.*

<sup>18</sup> Sheib (2017).

<sup>19</sup> Sheib (2003), Sawyer (2013), Gartrell (2015).

<sup>20</sup> Gartrell (2015).

<sup>21</sup> Gartrell (2015).

## **Response to Philosophical Arguments Against 2024 Article 9**

The philosophical arguments against 2024 Article 9 and required identity disclosure are meritless. 2024 Article 9 and required identity disclosure do not suggest that donor conceived children resulting from anonymous donation should not have been born. 2024 Article 9 is about maximizing the welfare of children who are actually born. “As in other areas, it is entirely appropriate for society, through its lawmakers, to make policy based judgments about how to maximize human happiness, and if the judgment is that kids will be happier with rights to access [identifying] information, and then to regulate so they get that information.”<sup>22</sup> It is appropriate to legislate so that adult donor conceived people can request the identifying information because, unlike other circumstances cited by the opposition (*e.g.*, affairs), donor conceived people are intentionally and systematically separated from such information by a commercial industry.

### **Open-Identity Donation is Functionally Similar to Anonymous Donation**

For recipient parents, open-identity donation is functionally similar to anonymous donation in the early ages, as the donor remains unknown to the family during the child’s upbringing. However, it better balances the interests of all parents involved by allowing donor conceived individuals to access information about their genetic origins once they reach adulthood. This balance addresses the psychological and medical needs of donor conceived children while maintaining the privacy of initial anonymity that some parents may prefer. Additionally, the 2024 Article 9 only allows an adult donor conceived person to request the donor’s identifying information.

The key difference between fully anonymous donation and open-identity donation as required by 2024 Article 9 is that open-identity donation takes into consideration the needs of all parties across the entire lifespan of the donor conceived person. It protects parentage, provides a predictable framework for the donor with fully informed consent, and meets the needs of the donor conceived person’s potential desire for donor information. This system gives recipient parents the ability to select an unknown donor and never learn the identity while allowing the donor conceived adult to decide that they want to learn the identity of the donor once they reach adulthood.

Conversely, the old Article 9 gave too much weight to the recipients over the needs of other parties, thus failing to address the long-term interests of both donors and donor conceived individuals in a comprehensive manner. Under the previous framework, the

---

<sup>22</sup> Cahn, Naomi, *The New Kinship* 174 (2013).

anonymity of donors was prioritized to such an extent that it disregarded the potential emotional, psychological, and medical needs of donor conceived individuals. Furthermore, the previous Article 9 did not adequately consider the rights and interests of donors. Donors, particularly those who might be open to future contact with their genetic offspring, were often left in the dark about the implications of their anonymity, leading to potential ethical and relational dilemmas.

## **Conclusion**

For these many reasons, USDCC respectfully urges the Task Force to include 2024 Article 9 of the UPA in its reports and draft bills. We appreciate your time and consideration of this important matter and would be happy to answer any questions that the Task Force may have regarding 2024 Article 9.

Sincerely,

**/s/ Tiffany D. Gardner**

Tiffany D. Gardner  
President & CEO  
U.S. Donor Conceived Council  
[tdgardner@usdcc.org](mailto:tdgardner@usdcc.org)

**/s/ Tyler Levy Sniff**

Tyler Levy Sniff  
Vice President of Legal & Government Affairs  
U.S. Donor Conceived Council  
[tsniff@usdcc.org](mailto:tsniff@usdcc.org)

**/s/ Jamie Spiers**

Jamie Spiers  
Advisor, LGBTQ Families  
U.S. Donor Conceived Council  
[jspiers@usdcc.org](mailto:jspiers@usdcc.org)



July 2, 2024  
Act 156 Task Force  
Page 9 of 12

**/s/ Aly Tarmin**

Aly Tarmin  
Intern, Government Affairs  
U.S. Donor Conceived Council  
[atarmin@usdcc.org](mailto:atarmin@usdcc.org)

## References

- Adams DH, et al., Does the removal of anonymity reduce sperm donors in Australia? *J Law Med.* 2016 Mar;23(3):628-36. PMID: 27323639.
- Beeson, D. R., Jennings, P. K., & Kramer, W. (2011). Offspring searching for their sperm donors: how family type shapes the process. *Human reproduction* (Oxford, England), 26(9), 2415–2424. <https://doi.org/10.1093/humrep/der202>
- Cahn, Naomi R. and Suter, Sonia M., Developing a Reproductive Justice Approach to Regulating Formal and Informal Sperm Donation (December 14, 2023). Almeling, Rene, Lisa Campo-Engelstein, and Brian T. Nguyen, co-editors. *Sperm|Health|Politics*, New York University Press, Forthcoming, Virginia Public Law and Legal Theory Research Paper No. 2023-78, Available at SSRN: <https://ssrn.com/abstract=4665036>
- Cahn, Naomi R. The New “Art” of Family: Connecting Assisted Reproductive Technologies & Identity Rights, 2018 *University of Illinois Law Review*, 1443–1471 (2018).
- Cahn, Naomi R., *The New Kinship: Constructing Donor-Conceived Families* (New York, NY , 2013; online edn, NYU Press Scholarship Online
- Canzi E, Accordini M, Facchin F. 'Is blood thicker than water?' Donor conceived offspring's subjective experiences of the donor: a systematic narrative review. *Reprod Biomed Online.* 2019 May;38(5):797-807. doi: 10.1016/j.rbmo.2018.11.033. Epub 2019 Jan 8. PMID: 30904355.
- Gartrell, N. K., Bos, H., Goldberg, N. G., Deck, A., & van Rijn-van Gelderen, L. (2015). Satisfaction with known, open-identity, or unknown sperm donors: reports from lesbian mothers of 17-year-old adolescents. *Fertility and sterility*, 103(1), 242–248. <https://doi.org/10.1016/j.fertnstert.2014.09.019>
- Golombok, S. (2021). Love and truth: What really matters for children born through third-party assisted reproduction. *Child Development Perspectives*, 15(2), 103–109. <https://doi.org/10.1111/cdep.12406>
- Hertz, R., Nelson, M. K., & Kramer, W. (2013) Donor conceived offspring conceive of the donor: The relevance of age, awareness, and family form, *Social*

Science & Medicine, Volume 86, Pages 52-65, ISSN 0277-9536,  
<https://doi.org/10.1016/j.socscimed.2013.03.001>.

- Interests, obligations, and rights in gamete and embryo donation: An ethics committee opinion. (2019). *Fertility and Sterility*, 111(4), 664–670.  
<https://doi.org/10.1016/j.fertnstert.2019.01.018>
- Jadva, V., Freeman, T., Kramer, W., & Golombok, S. (2010). Experiences of offspring searching for and contacting their donor siblings and donor. *Reproductive biomedicine online*, 20(4), 523–532.  
<https://doi.org/10.1016/j.rbmo.2010.01.001>
- Mahlstedt, P. P., LaBounty, K., & Kennedy, W. T. (2010). The views of adult offspring of sperm donation: essential feedback for the development of ethical guidelines within the practice of assisted reproductive technology in the United States. *Fertility and sterility*, 93(7), 2236–2246.  
<https://doi.org/10.1016/j.fertnstert.2008.12.119>
- Pedersen, J. D. (2018, April 1). *The New Uniform Parentage Act of 2017*. American Bar Association.  
[https://www.americanbar.org/groups/family\\_law/publications/family-advocate/2018/spring/4spring2018-pedersen/](https://www.americanbar.org/groups/family_law/publications/family-advocate/2018/spring/4spring2018-pedersen/)
- Sawyer, N., Blyth, E., Kramer, W., Frith, L. A survey of 1700 women who formed their families using donor spermatozoa, *Reproductive BioMedicine Online*, Volume 27, Issue 4, 2013, Pages 436-447, ISSN 1472-6483,  
<https://doi.org/10.1016/j.rbmo.2013.07.009>.
- Scheib, J.E., Riordan, M., Rubin, S. Choosing identity-release sperm donors: the parents' perspective 13–18 years later, *Human Reproduction*, Volume 18, Issue 5, May 2003, Pages 1115–1127, <https://doi.org/10.1093/humrep/deg227>
- Updated terminology for gamete and embryo donors: Directed (identified) to replace “known” and nonidentified to replace “Anonymous”: A committee opinion. (2022). *Fertility and Sterility*, 118(1), 75–78.  
<https://doi.org/10.1016/j.fertnstert.2022.02.032>
- Zadeh, S., Ilioi, E C., Jadva, V., Golombok, S. (2018). The perspectives of adolescents conceived using surrogacy, egg or sperm donation, *Human*

July 2, 2024  
Act 156 Task Force  
Page 12 of 12

Reproduction, Volume 33, Issue 6, Pages 1099–1106,  
<https://doi.org/10.1093/humrep/dey088>