

## COMMENTS FOR ACT 156 TASK FORCE

Naomi Cahn, University of Virginia School of Law, & Sonia Suter, George Washington Law School<sup>1</sup>

We are writing in support of Hawaii’s 2024 amended Uniform Parentage Act (“UPA”), which would mandate the disclosure of gamete donor identity when donor-conceived individuals turn 18.

This is a matter within our expertise: We are both law professors, Sonia was a genetic counselor prior to attending law school, and Naomi’s spouse was adopted and has searched for - and found - one-half of his birth family. We have written books and numerous articles over the past 25 years on the issues addressed in the amended Article Nine; our articles have appeared in law reviews as well as in the popular press.<sup>2</sup>

Our approach to donor anonymity rests on several grounds: the pragmatic reality of genetic testing, which makes anonymity impossible; jurisprudential concerns for the best interest of donor-conceived people; and respect for the role of government regulation.

First, anonymity can no longer be guaranteed because of the proliferation of consumer genetic testing. Technology is showing the cracks in this system of non-disclosure. DNA tests, including direct-to-consumer kits like 23andMe, are rendering donor anonymity increasingly difficult to maintain. And internet searches make it easier to see whether a donor, once identified, has misrepresented their personal information. It is not a question of whether donor-conceived children can learn about the identity of their donor, but how.

Second, and more fundamentally, donor-conceived people have interests that this legislation will protect. As more donor-conceived people discover their origins, there

---

<sup>1</sup> This testimony is submitted in our individual capacities only; we reference the law school where we teach for affiliation purposes only. These are our own views.

<sup>2</sup> Additional information about our work and publications is available here: <https://www.law.virginia.edu/faculty/profile/nrc8g/2915359> (Naomi Cahn); <https://www.law.gwu.edu/sonia-m-suter> (Sonia Suter). And here is a recent article that we co-authored on the issues addressed in this legislation. *Generations Later, the Rights of Donor-Conceived People are Becoming Law*, THE HILL (April 23, 2022), <https://thehill.com/opinion/healthcare/3460149-generations-later-the-rights-of-donor-conceived-people-are-becoming-law/>.

is a growing movement to recognize their interests in a process that has not been focused on their needs and interests.

Not all donor-conceived people know of their origin, and many express an interest in knowing more about the donor used to conceive them, including medical and identifying information. Regardless of whether 100% of donor-conceived people decide to find out the identity of their donor, the right to know is, in and of itself, critical. The 2020 We are Donor Conceived study of 481 donor-conceived persons found that 94% of donor-conceived people agreed that they should have the ability to know the identity of the donor used to conceive them.<sup>3</sup> And in the somewhat analogous context of adoption, in which adoptive families are subject to various forms of state regulation, an increasing number of states, including Hawaii, recognize the importance of allowing adopted individuals to learn about their birth families upon reaching adulthood.<sup>4</sup>

Third, state regulation can provide structure to donor disclosure. The amended UPA can also prevent surprises for intending parents, who may not realize that a donor's identity can be so easily uncovered.

Passage of the amended UPA would also be consistent with trends in the United States and other countries. In 2022, Colorado passed the Protections For Donor-conceived Persons And Families, which mandates disclosure of donor identity when donor-conceived people become 18.<sup>5</sup> Several countries have also banned anonymity, beginning with Sweden in 1985,<sup>6</sup> and including the state of Victoria in Australia in 1998, and the UK in 2005. They have also set limits on the numbers of families per donor; for example, in the UK, no more than 10 families can use the same donor with no limit on the number of children per family.<sup>7</sup> The amended UPA brings together these various trends to ensure that donor-conceived people can learn the identity of the donor upon reaching adulthood.

---

<sup>3</sup> We Are Donor Conceived, *We are Donor Conceived Survey* (2020), <https://www.wearedonorconceived.com/2020-we-are-donor-conceived-survey/>; <https://www.theatlantic.com/science/archive/2021/10/do-we-have-right-know-our-biological-parents/620405/>

<sup>4</sup> HRS § 578-15.

<sup>5</sup> Colo. Rev. Stat. Ann. § 25-57-101 (2022).

<sup>6</sup> Agneta Skoog Svanberg, et al., *Psychosocial Aspects of Identity-Release Gamete Donation - Perspectives of Donors, Recipients, and Offspring*, 125 UPSALA J. MED. SCI. 175 (2020), <https://ujms.net/index.php/ujms/article/view/5671>.

<sup>7</sup> HFEA, *Sperm Donation and The Law: For Patients*, <https://www.hfea.gov.uk/treatments/explore-all-treatments/using-donated-eggs-sperm-or-embryos-in-treatment/legal-implications-of-using-donated-sperm/>.

While some in the LGBTQ+ community have expressed concerns about mandated disclosure of donor identity, others support the UPA amendment. For example, COLAGE, the only national organization for and by people with LGBTQ+ parents and/or caregivers, recently wrote in its Queerspawn Agenda 2024 that it “recognizes that anonymity in gamete donation is no longer a functional reality and supports identity disclosure at 18 and reasonable family limits consistent with the UPA.”<sup>8</sup>

While we understand there are concerns that this legislation might decrease the supply of donors, there is ample evidence that these concerns are overblown. In the United States, a study led by Harvard Law School’s Glenn Cohen found that some donors might be dissuaded, but that more than two-thirds of study participants would be willing to donate at an additional price of \$60 per donation.<sup>9</sup> In Australia, which does not allow for payment of sperm donation, the number of sperm donors increased during the year that anonymity was removed and thereafter.<sup>10</sup> In a 2020 survey of egg donors in South Africa, which provides for donor anonymity, 79% of egg donors indicated that allowing for identity release would not have stopped them from donating.<sup>11</sup>

Another jurisprudential concern is that regulating in this area treats ART differently from reproduction in the bedroom. Such legislation would allow donor-conceived people to obtain much of the information that the vast majority of “naturally conceived” individuals can easily obtain.<sup>12</sup> But Hawaii, like most states, already treats donor-conceived families differently from others, such as through laws relating to parentage.

Hawaii has an opportunity to provide fairness to donor-conceived people and their families through passage of the 2024 amended Uniform Parentage Act provisions concerning donor conception Thank you.

---

<sup>8</sup> Colage, *The Queerspawn Agenda*, <https://colage.org/wp-content/uploads/2024/06/Queerspawn-Agenda-2024.pdf>.

<sup>9</sup> Glenn Cohen, et al., *Sperm Donor Anonymity and Compensation: An Experiment with American Sperm Donors*, 3 J.L. & BIOSCI. 468 (2016), <https://academic.oup.com/jlb/article/3/3/468/2433403>.

<sup>10</sup> Damian H. Adams, et al, *Does the Removal of Anonymity Reduce Sperm Donors in Australia?*, 23 J. L. & MED. 628 (2016),

[https://www.researchgate.net/publication/301293693\\_Does\\_the\\_removal\\_of\\_anonymity\\_reduce\\_sperm\\_donors\\_in\\_Australia](https://www.researchgate.net/publication/301293693_Does_the_removal_of_anonymity_reduce_sperm_donors_in_Australia).

<sup>11</sup> Donrich Tholdar, *Egg Donors’ Motivations, Experiences, and Opinions; A Survey of Egg Donors in South Africa*, PLOS One (2020),

[https://www.researchgate.net/publication/301293693\\_Does\\_the\\_removal\\_of\\_anonymity\\_reduce\\_sperm\\_donors\\_in\\_Australia](https://www.researchgate.net/publication/301293693_Does_the_removal_of_anonymity_reduce_sperm_donors_in_Australia).

<sup>12</sup> Carl Zimmer, *Fathered by the Mailman? It’s Mostly an Urban Legend*, N.Y. TIMES (April 8, 2016), <https://www.nytimes.com/2016/04/12/science/extra-marital-paternity-less-common-than-assumed-scientists-find.html>