



Hannah Botkin-Doty, Esq.

- Hannah's Legal Help

- Estate and Emergency Planning**
- Adoption/Parentage/Surrogacy**
- Name Changes/Gender Correction**
- LGBTQ+ Advocacy**

What I do to make a Living...





What I do to make a Difference...

TOPICS TO COVER TODAY

BRIEF HISTORY OF
LGBTQ + RIGHTS

LGBTQ+
VOCABULARY
& BEST
PRACTICES

LGBTQ+
CUSTODY
CONSIDERATIONS
& OTHER LEGAL
ISSUES

FINAL THOUGHTS
AND
QUESTIONS FROM
THE AUDIENCE



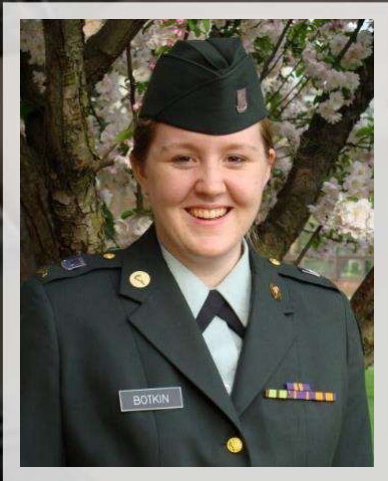
Brief History of LGBTQ+ Legal Rights

The Right to Love:

Lawrence v. Texas, 539
U.S. 558 (2003)

- U.S. Supreme Court – 6-3 Decision
- Court ruled that sanctions or criminal punishment are unconstitutional for
 - consensual,
 - adult,
 - non-procreative sexual activity.
- Recognized a Right to Privacy and Personal Autonomy





The Right to Live:

“Don’t Ask, Don’t Tell”

- DOD Directive 1304.26
- Stated that “Out” Homosexual Service Members “would create an unacceptable risk to the high standards of morale, good order and discipline, and unit cohesion...”
- In Effect from Feb-28-1994 to Sep-20-2011

The Right to Marriage

- Baker v. Nelson
- Defense of Marriage Act (DOMA)
- United States v. Windsor
- Obergefell v. Hodges



***Baker v. Nelson,
291 Minn. 310,
191 N.W.2d 185 (1971)***

- Minnesota Supreme Court Marriage statute restricting marriage licenses to persons of the opposite sex "does not offend" the U.S. Constitution.
- U.S. Supreme Court dismissed the appeal "for want of a substantial federal question"
- Established Precedent



Federal Defense of Marriage Act (DOMA)

- In Place from 1996 to 2013
- Federal Marriage Defined as: "the union of one man and one woman"
- Specifically denied 1,138 Federal Protections/Rights/Privileges to same sex married couples in the United States.



***United States v. Windsor*, 570 U.S. 744 (2013)**

- DOMA restricted access to the Federal Estate Tax Exemption
- Windsor required to pay \$363,053.00 in estate taxes to IRS.
- 5-4 decision finding Section 3 of DOMA was unconstitutional
- Recognized a deprivation of the liberty of the person protected by the Fifth Amendment.



***Obergefell v. Hodges*, 576 U.S. 644 (2015)**

- Ohio Residents, Jim Obergefell and John Arthur Married in Maryland.
- Consolidation of six lower court cases representing:
 - Sixteen same-sex couples,
 - Seven of their children,
 - An adoption agency, and
 - A funeral director.
- SCOTUS issued a 5-4 decision that found Marriage to be a Fundamental Right guaranteed to US Citizens by:
 - Due Process Clause
 - Equal Protection Clause



Current Legal Climate

More than 500 bills affecting LGBTQ people have been introduced in 2023, with at least 48 passing thus far.

Those numbers are up from 315 bills introduced and 29 passed in 2022.



LGBTQ+ Vocabulary & Best Practices

Gender: Who You Are Inside & Out

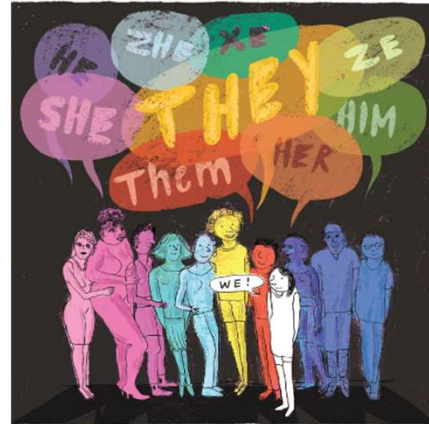
Gender Identity: How You Are Referred To

Pronouns: Words we use instead of using a person's name, like "she" or "he".

Non-binary or gender fluid people, use they/them.

Others use neopronouns like ze/zir or e/ir.

If you're unsure, simply ask: "what are your pronouns?"



ORIENTATION: Who You Love

- Homosexual
- Bisexual
- Queer
- Pansexual
- Asexual



Best Practices for the Judiciary

RULE 2.3 Bias, Prejudice, and Harassment

A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice...based upon *race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation...*

slurs

demeaning
nicknames;

negative
stereotyping;

attempted humor
based upon
stereotypes;

threatening,
intimidating, or
hostile acts;

references to
personal
characteristics

facial
expressions

body language

Manifesting Bias or Prejudice

When in Doubt, Ask!



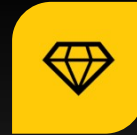
POLITENESS



KINDNESS



DEFERENCE &
DECORUM



“GOLDEN
RULE”

LGBTQ+ Legal Considerations

Name Changes

Gender Marker
Corrections

Surrogacy/Donor
Agreements

Advanced
Directives

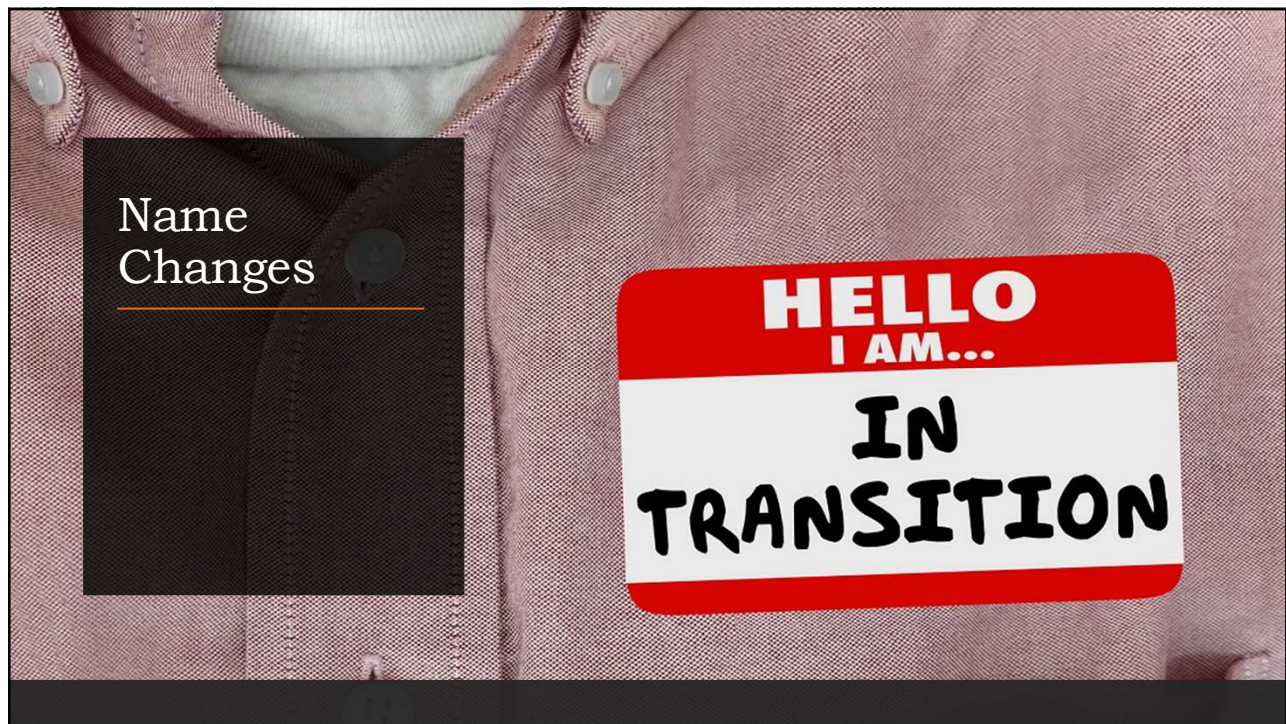
Estate Planning

Establishing
Parentage

Multi-Party
Parenting Plans
and Relationship
Agreements

Divorce and
Custody
Considerations





Reason for Requesting Name Change

The reason for requesting this name change is:

☐ Returning to pre-marriage surname ("maiden name") listed on birth certificate

☒ Gender Identity

☐ All other (provide detailed reason for all other name changes): _____



Publication Requirement

The Applicant must publish a legal notice of the application in a

- Newspaper of general circulation
- In county of filing,
- At least thirty (30) days prior to the hearing date.
- Publication will not be required if the Applicant “satisfactorily proves” that publication would jeopardize the Applicant’s personal safety.

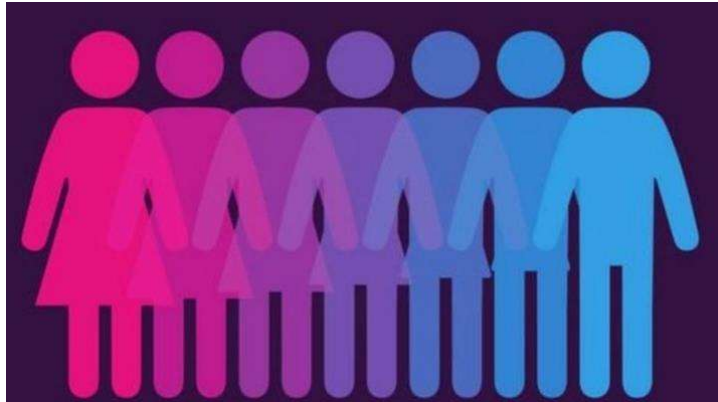
APPLICATION TO WAIVE PUBLICATION REQUIREMENT AND SEAL FILE [R.C. 2717.11]

Now comes _____, pursuant to R.C. 2717.11, hereby requests this Court to waive the publication requirement and order the file in the above-captioned matter be sealed. The publication of notice in a newspaper of general circulation will jeopardize the applicant’s personal safety for the following reason:

☐ Exhibit(s) attached in support of application, if any. (E.g. Police Report, Court Order or Protective Order)

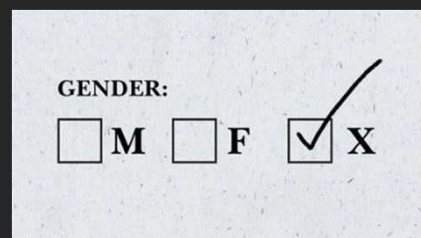
Gender Marker Corrections

- Ray v. McCloud, 507 F. Supp. 3d 925 (S.D. Ohio 2020)
- Affidavits in Support
- Physician Statements



Ray v. McCloud 507 F. Supp. 3d 925 (S.D. Ohio 2020)

- § In Ohio Transgender individuals could change their Gender Marker with Court Order
- § In 2016 Ohio Dept of Health “Re-Reviewed” its policy and became one of only two states to deny a transgender person to change the sex marker on their birth certificate.
- § In 2020, Southern District Court held that the policy violated Due Process and Privacy Rights as:
 - § it compromised the Plaintiff’s safety,
 - § reveals their intimate personal information, and
 - § could lead to future bodily harm if continued to be enforced.



(Name of Affiant)
<p>The undersigned, being first duly sworn, deposes and says that they have read the application of _____ and that they have personal knowledge of the facts therein and that the statements made in the application are true as they verily believe.</p> <p style="text-align: right; margin-right: 100px;"> Signature of Affiant _____ Address _____ </p> <p>Sworn to before me and subscribed in my presence this _____ day of _____, 20____.</p>

RELEASE OF INFORMATION			
I hereby authorize my licensed professional to release the information below to the Ohio Bureau of Motor Vehicles for the purposes of obtaining a driver license or an identification card under my identified gender. _____ (Applicant's Initials)			
LICENSED PROFESSIONAL'S STATEMENT			
To be completed by a physician, psychologist, therapist, nurse practitioner, or social worker who is licensed to practice in the United States that certifies the gender identity of the applicant.			
<input type="checkbox"/> PHYSICIAN <input type="checkbox"/> NURSE PRACTITIONER <input type="checkbox"/> PSYCHOLOGIST <input type="checkbox"/> THERAPIST <input type="checkbox"/> SOCIAL WORKER			
LICENSED PROFESSIONAL'S LAST NAME	FIRST NAME	TELEPHONE NUMBER () -	
PROFESSIONAL LICENSE / CERTIFICATE NUMBER	ISSUING STATE	NAME OF HOSPITAL OR MEDICAL CLINIC	
STREET ADDRESS	CITY	STATE	ZIP CODE
MY PROFESSIONAL OPINION IS THAT THE APPLICANT'S GENDER IDENTITY IS <input type="checkbox"/> MALE <input type="checkbox"/> FEMALE			



Contracts and Considerations

- Surrogacy Agreements
 - Altruistic v. Standard
 - Ohio requires some form of "Consideration" if not "Compensation"
- Sperm Donor Agreements
- Severing Parental Rights
 - Medical Intermediary
 - Legal Contract and Independent Counsel
 - Accounting for Spouses, Third Parties, and Relatives.

Post Birth Process

Severing Parental Rights

- Medical Intermediary
- Legal Contract and Independent Counsel
- Accounting for Third Parties and Relatives

Protection for Intended Parents

- Health Care Power of Attorney for Minor Child
- Nomination of Guardian for Minor Child
- Release of Information for Intended Parents
- Pre-Birth Orders/Post Birth Orders
- Consent to Adoption/Compliance with Assessor

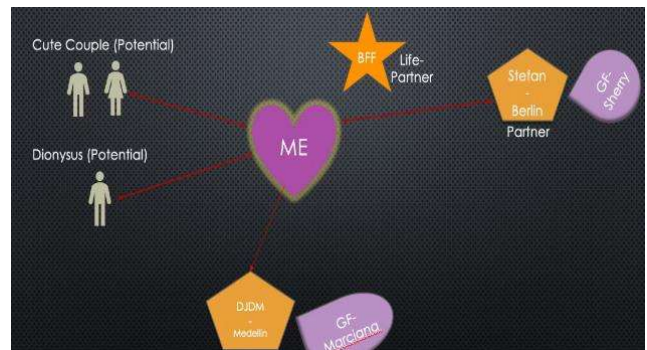


Multi-Party Parenting Plans and Relationship Agreements

Polysexuals and Alternative Partnerships

Polyamory: the practice of, or desire for, romantic relationships with **more than one partner at the same time**, with the **informed consent** of all partners involved.

Polycule: all the people in a network of non-monogamous relationships.



Advanced Directives

Preserving Legal Rights

Power of Attorney for Health Care

Power of Attorney for Finances

Living Will & Organ Donation

Nomination of Guardian for Individual

Nomination of Guardian for Minor Children



Estate Planning

Protecting Peace of Mind



Establishing Parentage

Marital Presumption of Parentage

Pavan Et Al. V. Smith 52 US ____ (2017)

- Legally Married in 2011
- Arkansas only had options for Mother and Father
- U.S. Supreme Court found (6/3) that the rule violated Equal Protection clause.
- Marital Presumption extended to Same Sex Couples.



Second Parent Determination

- Both Parents not on Birth Certificate
- Parties were legally married at the time of child's birth
- Parties used the services of a "Medical Intermediary"
- Non-Genetically linked parent gave informed consent (typically in writing)

NON-SPOUSAL ARTIFICIAL INSEMINATION AFFIDAVIT

I. PERSONAL INFORMATION			
Name		D.O.B.	
Mailing Address	City	State	Zip Code

II. CHILD'S INFORMATION	
a. Child's Name	Child's D.O.B
b. Child's Name	Child's D.O.B
c. Child's Name	Child's D.O.B

III. NON SPOUSAL ARTIFICIAL INSEMINATION AFFIDAVIT
1. I gave birth to the above named child(ren), who was/were conceived as a result of non-spousal artificial insemination.
2. The non-spousal artificial insemination was either performed by a physician or a person under the supervision and control of a physician. Name of Physician: _____
3. All applicable provisions of ORC 3111.88 through ORC 3111.96 regarding non-spousal artificial insemination were followed.
4. I am not a married woman as contemplated by ORC 3111.95, therefore, pursuant to ORC 3111.95 (B) there is no legal or natural father of the above named child.
5. I declare that the foregoing is true and correct:



Divorce and Custody Considerations

- Determining “Start” of Relationship
- Identifying Joint Assets and Marital Values
- Third Party Custody Considerations
- Name Changes included in Decree
- Defining duration and amount of Spousal/Child Support
- Pet Parents
- Equitable Distributions v. Equal Distributions



IN RE: CHANGE OF NAME OF _____
(Present Name)

TO _____
(Requested Name)

CASE NO. _____

SCO-CLC-PBT 0021.0 (Rev. 12/2022) Previous Editions Obsolete

PROBATE COURT OF _____ COUNTY, OHIO
_____, JUDGE

IN RE: CHANGE OF NAME OF _____
TO _____ (Present Name)
CASE NO. _____ (Requested Name)

**APPLICATION TO WAIVE PUBLICATION REQUIREMENT
AND SEAL FILE**
[R.C. 2717.11]

Now comes _____, pursuant to R.C. 2717.11, hereby requests this Court to waive the publication requirement and order the file in the above-captioned matter be sealed. The publication of notice in a newspaper of general circulation will jeopardize the applicant's personal safety for the following reason:

☐ Exhibits attached in support of application.

Attorney for Applicant

Applicant's Signature

JUDGMENT ENTRY WAIVING PUBLICATION AND SEALING FILE

It is hereby ORDERED that the publication requirement for the Application for Change of Name is waived, and the file in the above-captioned matter be and hereby is sealed pursuant to R.C. 2717.11.

Probate Judge

PROBATE COURT OF _____ COUNTY, OHIO
_____, JUDGE

IN THE MATTER OF THE CORRECTION OF BIRTH RECORD OF _____

CASE NO. _____

APPLICATION FOR CORRECTION OF BIRTH RECORD
[R.C. 3705.15]

In the Probate Court of _____ County on the _____ day of _____
20____ appeared _____ requesting that their birth record be
corrected in accordance with Section 37.05.15 of the Revised Code as follows:

Information recorded in this box should match information currently listed on the Birth Record			
Child's Information			
1. Full Name of Child _____	2. Date of Birth _____	3. Place of Birth (city and county) _____	4. Sex _____
Information of parent(s) currently listed on the Birth Record			
5. Parent's Name _____		6. Parent's Name _____	
7. Place of Birth _____	8. Date of Birth _____	9. Place of Birth _____	10. Date of Birth _____

ITEMS TO BE CORRECTED OR ADDED

Box No. _____	Reads as _____	Should Read _____
Box No. _____	Reads as _____	Should Read _____
Box No. _____	Reads as _____	Should Read _____
Box No. _____	Reads as _____	Should Read _____

The undersigned being first duly sworn, says the facts stated in the foregoing Application are true as they verily believe and pray that the Court order the correction of the registration of birth.

Signature of Registrant or Applicant

Address

Sworn to before me and subscribed in my presence this _____ day of _____, 20_____.

Notary Public

JOURNAL ENTRY ORDERING CORRECTION OF BIRTH RECORD

The Court on consideration of the evidence submitted finds and orders that notice of hearing be dispensed with and the birth record of registrant be corrected in accordance with the facts set forth above and that a certified copy of the order of the Court be forthwith transmitted to the Director of Health as provided by law.

Probate Judge

By: _____
Deputy Clerk

SUPPORTING AFFIDAVITS

IN THE MATTER OF THE CORRECTION OF BIRTH OF RECORD _____

State of Ohio, _____ **Affidavit of Physician**
(Name of Attending Physician)

The undersigned, being first duly sworn, deposes and says that they were the physician in attendance at the birth of _____ and that the facts stated herein are true as they verily believe.
(Name of Applicant)

Signature of Attending Physician

Address

Sworn to before me and subscribed in my presence this _____ day of _____, 20____.

Notary Public

NOTE: If the affidavit of the attending physician cannot be secured, the application must be supported by the following affidavits of two persons having personal knowledge of the facts.

State of Ohio, _____ **Affidavit**
(Name of Affiant)

The undersigned, being first duly sworn, deposes and says that they have read the application of _____ and that they have personal knowledge of the facts therein and that the statements made in the application are true as they verily believe.
(Name of Applicant)

Signature of Affiant

Address

Sworn to before me and subscribed in my presence this _____ day of _____, 20____.

Notary Public

State of Ohio, _____ **Affidavit**
(Name of Affiant)

The undersigned, being first duly sworn, deposes and says that they have read the application of _____ and that they have personal knowledge of the facts
(Name of Applicant)
therein and that the statements made in the application are true as they verily believe.

Signature of Affiant

Address

Sworn to before me and subscribed in my presence this _____ day of _____, 20_____.

Notary Public

CHILD CARRIER AGREEMENT

THIS CHILD CARRIER AGREEMENT (hereinafter "Agreement") is made by and between Carrier (hereinafter referred to as "Carrier"), Carrier's Spouse (hereinafter referred to as "Carrier's Spouse"), Intended Mother (hereinafter referred to as "Intended Mother") and their spouse, Intended Father (herein after referred to as "Intended Father"), (all of the above collectively referred to as the "Parties" or the "Party").

RECITALS

(1) The Intended Mother and Intended Father (referred to herein also as "Intended Parents") were married on _____, both over the age of eighteen (18) years and are desirous of entering into the following Agreement.

(2) The Carrier and the Carrier's Spouse are married, over the age of eighteen (18) years and are desirous of entering into the following Agreement. The Carrier represents that they are a U.S. citizen, holds a valid Driver's License and currently maintains automobile insurance coverage that, at least, meets minimum State standards and agrees to continue said coverage throughout the term of this Agreement.

(3) Each Party warrants that all representations, whether oral or written, made by it to any professional, entity or any other Party, are true.

(4) The Intended Parents desire to have a child or children and to take such child or children into their home to care for, financially provide for and otherwise raise.

REPRESENTATIONS AND WARRANTIES

(5) The Intended Parents warrant that they are incapable of carrying a pregnancy to term and have been advised by a physician that a medical need exists to use a Carrier.

(6) The Carrier, based upon their information and belief, and medical consultations warrants and represents that they are currently pregnant and willing to convey the child upon birth to the intended parents.

(7) The Carrier and Carrier's Spouse represent and warrant that neither desire to have a parental relationship with any child born pursuant to this Agreement. Further, the Carrier and Carrier's Spouse believe and intend that any Child delivered by the Carrier as a result of the conduct contemplated by this Agreement is morally, legally, ethically and contractually that of the Intended Parents.

(8) The Parties desire to maintain confidentiality between themselves, one to another, and between themselves and the public.

(9) Notwithstanding Recital 10, next below, this is a new and unsettled area of the law. No warranties have been or can be made as to the ultimate cost, liability or obligation of any of the Parties that may ensue from judicial process as a result of the conduct contemplated herein or with respect to any

Initials:

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Surrogacy Agreement

_____/_____/_____/_____

litigation necessary to establish any right of any of the Parties pursuant to this Agreement, including any parental rights and/or financial obligations regarding any child born pursuant to the conduct contemplated by this Agreement. The Parties understand that this Agreement may be held unenforceable in whole or in part as against public policy. Changes in the law may deprive Intended Parents of their parental rights, grant parental rights to the Carrier, Carrier's Spouse, or otherwise interfere with the Parties' intentions as stated in this Agreement. With full knowledge of the aforementioned issues, the Parties specifically assume these risks and desire to proceed with this Agreement.

(10) It is expressly understood that this agreement in no way constitutes payment for a child or relinquishment of a child, or payment for consent to adoption.

(11) The Parties understand that severe emotional distress and mental anguish may occur to either Party as a result of a material breach by the other Party, and the breaching Party may be held liable for intentional infliction of emotional distress in addition to all other remedies available at law or equity.

(12) Each Party warrants and represents that their decision to enter into this Agreement is a fully informed decision, made with due diligence as to the serious medical, psychological, and legal implications associated with a Child Carrier Agreement. Additionally, each Party warrants and represents that the decision to enter into this Agreement is made after deliberate consideration, without economic or emotional duress and that the consent or permission of no other Party is necessary for the performance of this Agreement by the Parties to this Agreement.

(13) The Carrier and Carrier's Spouse each represents to the best of their knowledge that neither they nor any member of their family are, or are eligible to become, registered members of any Native American Indian or Alaskan Indian tribe, and that they do not have any Native American Indian or Alaskan Indian blood, heritage, and/or ancestry.

(14) The Carrier and Carrier's Spouse each represents and warrants that they have not been convicted of a felony or misdemeanor crime and that there are no outstanding warrants for the arrest of either in connection with an alleged crime.

(15) The Intended Parents hereby represent and warrant neither of them has been convicted of a felony or misdemeanor and that there are no outstanding warrants for the arrest of either of them in connection with any alleged crime. The Parties hereto understand that under Ohio Law, absent the Court's finding that there is no significant risk to the child, the Court will not award physical or legal custody of a child born from a Child Carrier Agreement to an intended parent that has been convicted of a crime with a sexual component such that the intended parent is a registered sex offender or would be required to register as a sex offender under any state or federal law in the United States or an intended parent's home country.

(16) The Intended Parents understand that any court in the United States could require a complete background check for each Intended Parent in conjunction with any parental rights establishment action associated with this Agreement.

Initials:

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Surrogacy Agreement

_____/_____/_____/_____

NOW, THEREFORE, in consideration of the mutual promises contained herein and with the intention of being legally bound hereby, the Parties agree as follows:

PARAGRAPH 1

Purpose and Intent. The Intended Parents are entering into a written contractual agreement with the Carrier whereby the Carrier, who is currently pregnant upon giving birth to the child intend that in the absence of a material, incurable breach on the part of the Carrier, the Intended Parents shall take immediate, full, and absolute custody of the Child/Children upon birth.

The absence of a material breach by the Carrier, neither the Carrier nor their Spouse shall be held liable for support, custody or any other liability relating to the Child/Children born pursuant to this Agreement. All Parties intend that no Ohio Laws shall apply to create or imply any parental rights on behalf of the Carrier or the Carrier's Spouse.

PARAGRAPH 2

Child Defined. "Child," as referred to in this Agreement, shall include multiple births resulting from the conduct, including the insemination, contemplated by this Agreement, provided the parentage of the Child is determined pursuant to the terms of this Agreement.

PARAGRAPH 3

Risk of Abnormalities. The Intended Parents assume the legal and parental responsibilities, including the support of any Child, as defined herein, which may possess any congenital or other abnormalities or defects, and the Parties to this Agreement acknowledge that they are aware and have been advised of said risks of such abnormalities and/or defects by their own physicians.

PARAGRAPH 4

Parent-Child Relationship. The Carrier and Carrier's Spouse agrees that neither will form, nor attempt to form, a parent-child relationship with any Child the Carrier may bear pursuant to the provisions of this Agreement and each shall freely and readily, promptly terminate all presumptive parental rights to said Child pursuant to this Agreement in order to aid the Intended Parents in legalizing their relationship with the Child, and in order to aid the Intended Parents in the formation and/or continuance of their parent-child relationship with the Child.

The Carrier shall immediately give full custody of the Child to the Intended Parents upon the birth of the Child. The Intended Parents agree that commencing with the execution of the Agreement and culminating either with the birth of their Child or termination of this Agreement, whichever occurs first, they will not proceed with any inseminations, IVF procedures, or Child Carrier Agreements other than the one set forth herein.

PARAGRAPH 5

Initials:

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Surrogacy Agreement

_____/_____/_____/_____

Death of a Party. In the event of the death of the Intended Mother prior to the birth of the Child, all of the rights and obligations of the Carrier shall be of equal force and effect notwithstanding such event. The Child shall be placed in the custody of the Intended Father pursuant to this Agreement. The Carrier, Carrier's Spouse and the Intended Father shall proceed under the terms of this Agreement and agree to effectuate all of the terms contained herein and relinquish all parental rights of the Child in favor of the Intended Father.

In the event of the death of the Intended Father prior to the birth of the Child, all rights and obligations of the Carrier shall be of equal force and effect notwithstanding such event. The Child shall be placed in the custody of the Intended Mother pursuant to this Agreement. The Carrier, Carrier's Spouse and the Intended Mother shall proceed under the terms of this Agreement and agree to effectuate all the terms contained herein and relinquish all parental rights of the Child in favor of the Intended Mother.

The Intended Parents must provide alternative arrangements for the care and custody of any Child born pursuant to this Agreement should both Intended Parents die and shall forthwith disclose such arrangements to their Attorney, _____. The Attorney shall notify the Carrier of these arrangements immediately upon request by the Carrier for these details.

The Carrier agrees that in the event of death of both Intended Parents, that the Child shall be placed in the custody of the Guardian identified by the Intended Parents. Further, in the event of the death of both Intended Parents, all rights and obligations of the Carrier shall be of equal force and effect notwithstanding such event and the Carrier will relinquish all parental rights of the Child in favor of the Guardian.

PARAGRAPH 6

Access to Records. The Carrier agrees that the Intended Parents are and shall be privy to all medical information relating to the Carrier's mental and physical health and any other pertinent information relating specifically to this Agreement. In furtherance of this, the Carrier agrees to execute any medical releases, including but not limited to HIPAA Waivers giving Intended Parents authorization to request their medical records from any and all medical providers. Further, the Carrier agrees to authorize their Physician and any other medical provider they receive treatment from, to consult with the Intended Parents regarding their medical condition and treatment.

However, the Intended Parents shall keep all personal and identifying information furnished under this Agreement confidential and shall not discuss or disclose any private or confidential medical and/or psychological information contained therein with any other individual or entity with the exception of the medical or other professionals contemplated herein. This shall not be meant to limit the Parties discussing their journey with any of their family or friends so long as they do not give any identifying information away about the other Parties without the other Parties' written consent.

PARAGRAPH 7

Prohibited Conduct. The Carrier further agrees to adhere to all reasonable medical instructions given to them by Medical Professionals. Whether or not expressly forbidden by their Medical

Initials:

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Surrogacy Agreement

_____/_____/_____/_____

Professional, the Carrier also agrees not to use tobacco products, use, or consume any illegal drugs or other substances that may be harmful to the Child commencing with the execution of this Agreement and continuing through their pregnancy. The Carrier also agrees not to use any prescribed or over-the-counter medication, creams, or ointments without prior written consent of the above physicians and notice to and consultation with the Intended Parents.

During the course of their pregnancy and for any period of time the Carrier is providing breast milk to the Intended Parents, the Carrier agrees to not take any medication that, as of the date of this Agreement, are not currently classified as Category A and/or Category B by the Food and Drug Administration. Additionally, the Carrier agrees not to consume alcoholic beverages commencing upon confirmation of pregnancy and continuing through the gestational term. To avoid contracting communicable diseases, the Carrier agrees not to obtain any permanent body tattooing or pierce any body part during the term of this Agreement.

Upon confirmation of pregnancy and continuing until the birth of the Child or termination of this Agreement, whichever comes first, the Carrier also agrees to refrain from the following unless authorized in writing by their Medical Professional and consented to by the Intended Parents:

- a) Participating in any dangerous sports or activities including but not limited to, four-wheeling; motorcycle riding; and all other activities prohibited by their Medical Professionals. Further the Carrier shall only exercise within the restrictions and limits set forth by their Medical Professionals;
- b) Using nicotine products or remaining in the prolonged presence of second-hand smoke;
- c) Applying hair dye or permanent solution during the first twenty (20) weeks of pregnancy and, thereafter, only in a properly ventilated area;
- d) Lifting any weight (including children) in excess of the restrictions set forth by their Medical Professionals
- e) Drinking more than one cup of caffeinated beverage per day;
- f) Taking hot tubs or saunas;
- g) Handling or changing cat litter;
- h) Ingesting medicinal herbs, exposure to essential oils and aromatherapy, New Age medicine, saccharine, or other artificial sweeteners;
- i) Consuming tile fish, raw shellfish, mackerel, raw fish, smoked salmon, or swordfish, at any time, or more than six ounces of tuna per week. Consuming, at any time, mold-ripened soft cheese, including, but not limited to, brie, camembert, chevre, blue cheese, and gorgonzola. Further, consuming, at any time, raw or partially cooked eggs, raw or

Initials:

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Surrogacy Agreement

_____/_____/_____/_____

undercooked meat, cold deli meats, hot dogs, any and all live products (excluding yogurt), all pates, meat spreads, liver, supplements containing Vitamin A (unless otherwise approved in writing by the Carrier's Physician), raw peanuts, unpasteurized dairy and juices, raw sprouts and any unwashed fruits and vegetables;

- j) Engaging in activities that require the breaking of skin such as tattooing, body piercing, elective and/or cosmetic surgery, except for emergency medical procedures and those required in fulfillment of their responsibilities under this Agreement. Further, the Carrier agrees not to have any vaccinations without the prior written approval of their Medical Professionals and the Intended Parents;
- k) Home pesticide application from the time period commencing at least one month prior to the insemination until completion of the first trimester of pregnancy or other termination of pregnancy;
- l) Prolonged exposure to chemical cleansers, hair spray, pesticides and other aerosol sprays, paint fumes, paint stripper fumes without adequate ventilation;
- m) Applying medicinal ointments/creams including, but not limited to, retinol and antibiotics (unless otherwise approved in writing by the Carrier's Physician);
- n) Undergoing x-rays (except in the event of a medical emergency or airplane travel; however, in the case of airplane travel the Carrier agrees to use their best efforts to undergo a hand body search);
- o) Undergoing chiropractic treatment without physician's consent;
- p) Receiving manicures and/or pedicures without wearing a protective mask;
- q) Handling rodents;
- r) Undergoing chemical teeth whitening;
- s) Donating or selling blood or plasma;
- t) Using the services of a tanning salon;
- u) Taking any opiates without prior written permission of their Medical Professionals

In addition to the foregoing, the Carrier agrees not to travel outside the state of Ohio after ultrasound confirmation of pregnancy and before the commencement of the twenty-fourth (24th) week of pregnancy without prior notice to the Intended Parents and without having received written authorization from the Carrier's Medical Professional.

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Further, to protect the health of the Child and to avoid any insurance coverage issues, the Carrier agrees to not leave the United States, including but not limited to travel to Mexico and Canada, during the term of this Agreement. Additionally, the Carrier understands and agrees that the Intended Parents will not be financially responsible for any additional costs incurred as a result of the Carrier's travel, including but not limited to reduced medical insurance coverage and lost wages.

PARAGRAPH 8

Medical Instructions. The Carrier agrees that following execution of this Agreement until either the birth of the Child or termination of this Agreement (whichever occurs later), they shall only receive medical care for the pregnancy from a physician, perinatologist or other physician or medical professional previously disclosed in writing to the Intended Parents. The Parties agree that the birth may occur in the home of the Carrier. Nothing herein shall be construed to deny the Carrier the ability to have the birth in a hospital environment, especially in the case of a medical emergency where a hospital would be a more appropriate environment.

The Carrier further agrees to follow the advice of their physician regarding prenatal care, including but not limited to, diet, exercise and refraining from activities that could be harmful to the Child.

It is understood and agreed by Carrier that in the event of pregnancy complications, the physician could recommend that the Child be delivered via a cesarean section as opposed to a vaginal delivery. It is agreed by the Parties that Carrier will comply with the physician's recommendation. In the event of a complication(s) as a result of the delivery, Carrier will agree to any additional tests which could reveal the cause of the complication(s). The Carrier also agrees to consult with a designated high-risk physician (in addition to their own physician), perinatologist or other specialist during the pregnancy upon the request of the Intended Parents and/or the advisement of their physician.

PARAGRAPH 9

Pregnancy/Termination of Pregnancy/Medical Emergency. The Parties agree that the Carrier's labor will not be induced except for medical necessity as advised by the Carrier's physician or upon mutual consent of all Parties. The Carrier agrees to regularly notify the Intended Parents of the status of their pregnancy, their expected delivery date, and changes thereto. In the event the Parties agree to undergo a repeat insemination following a pregnancy termination as described below, this Agreement shall remain in full force and effect.

The Carrier agrees that they will not abort or undergo a selective or fetal reduction of the Child except as specifically stated herein. If in the opinion of the treating physician or their physician there is potential physical harm to the Carrier, above and beyond the generally accepted risks associated with pregnancies, the decision to abort or not to abort is to be made by the Carrier. In the event the Child has been determined to be physiologically, genetically, or chromosomally abnormal, the decision to abort or not to abort is to be made by the Intended Parents, and, in such a case the Carrier agrees to abort, or not to abort in accordance with the Intended Parents' decision. The Carrier agrees to carry out a multiple pregnancy. Carrier specifically acknowledges and agrees that any decision: (i) to abort because of

potential harm to the Child, or (ii) to reduce the number of fetuses for any reason whatsoever, is to be made by the Intended Parents, except in a medical emergency (meaning imminent loss of life or severe physical harm) and where the Intended Parents are unavailable after at least four (4) attempts to contact and/or locate them (*i.e.*, at least one attempt by phone, email and text messaging), in which case said decision shall be made by the Carrier's attending physician.

In the event of a miscarriage or abortion as described herein, no funds paid by the Intended Parents to the Carrier shall be returned. If such an event occurs, the Agreement shall be deemed terminated with no further liability by any Party other than the Intended Parents still remaining liable for such costs incurred to date by the Carrier or required to be paid pursuant to the terms of this Agreement. However, in the event the Parties choose to resume their Carrier arrangement with each other after an abortion or miscarriage, this Agreement shall remain in full force and effect and the termination is deemed waived, and financial considerations between the Intended Parents and the Carrier shall begin anew. Notwithstanding the foregoing or anything to the contrary, all Parties understand that a pregnant woman has the absolute right to abort, or not abort, any fetus they are carrying and any promise to the contrary may be unenforceable. In all events, the Carrier's right to make decisions regarding their body and to safeguard their health shall not be limited by anything in this Agreement.

The Carrier agrees in the event they are seriously injured or suffers a life-threatening illness, if medically necessitated and advisable, the Carrier shall be sustained with life support equipment to protect the fetus' viability and promote a healthy birth. The Intended Parents agree to pay the cost of any associated medical costs for life support that are not covered by the Carrier's health insurance and that are associated with maintaining the Carrier's pregnancy and in connection with the Child. The Carrier's treating physician in consultation with the physician shall determine the optimal time for birth.

PARAGRAPH 10

Assumption of Risks. The Carrier warrants that they have consulted with a physician and is aware of all medical risks, including death, which may result from the acts contemplated by this Agreement, including, but not limited to, risks involved in medical examinations, insemination, pregnancy, childbirth, and postpartum complications. Said risks have been explained to the Carrier by a physician following the thorough medical examination of the Carrier by said physician. The Carrier agrees to assume all the above-stated risks and to release the Intended Parents, their attorneys, their agents, and employees, including the professionals and others contemplated hereby and/or involved in any aspect of this Agreement from any legal liability except professional malpractice (malfeasance or negligence).

The Attorneys, or any agent or employee of any said entity are not responsible for any medical advice and/or information which may be given or should have been given to the Intended Parents and the Carrier. Advice and/or information regarding the risks of all medical testing and procedures is the individual responsibility of the Intended Parents, the Carrier, and the physician. Informed consent for all medical testing and procedures is the individual responsibility of the Carrier, the Intended Parents, and the physician.

The Carrier represents that reimbursement of Carrier's uncovered medical expenses is adequate

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compensation for assuming the risks set forth in this Agreement and inherent to the performance of Carrier's obligations under this Agreement. While this provision releases Intended Parents from a potential wrongful death claim brought by Carrier's heirs and estate, nothing in this provision shall be construed to limit the liability of any medical provider for medical malpractice or negligence.

PARAGRAPH 11

Insurance. The Carrier agrees to promptly and timely present to the Intended Parent's Attorney proper evidence, documentation, or verifiable information that the Carrier has incurred or will incur the following kinds of expenses relating to the pregnancy and the birth of the Child, as described herein, for which the Intended Parents shall pay forthwith from the Intended Parents: Obstetrical, Nursing, Hospital and Maternity care, pharmaceutical, pediatrics, or other costs payable under this Agreement and Exhibit "A" by the Intended Parents. Payments for expenses not yet incurred by the Carrier shall only be made when advance payment is necessary or appropriate.

The Carrier agrees to submit all bills as described above to applicable insurance carriers prior to submission for payment to the Intended Parents. Said claims are to be filed within ten (10) days after receipt of medical or other billing or expense. The Carrier's insurance is deemed primary insurance. The Intended Parents shall be responsible for all non-covered medical expenses, fees, costs and/or services relating to the pregnancy and the birth of the Child not paid by the Carrier's medical insurance (e.g. co-payments and deductibles), but in no event shall the Intended Parents be responsible for these non-covered medical expenses, fees, costs and/or services more than one (1) year from the date of delivery of the Child.

In the event the Carrier has existing medical insurance and their participation in the Carrier program does not increase premiums, the Carrier shall NOT receive reimbursement for said premiums. In no event shall the Intended Parents be considered third party payors.

PARAGRAPH 12

Medical Insurance. The Carrier shall maintain their existing medical insurance plan so that it is kept in full force and effect during the entire term of this Agreement, including but not limited to making timely premium payments. The Carrier agrees that they will not act in an intentional, willful, or negligent manner that could jeopardize their medical insurance. In the event the Carrier's medical insurance is terminated due to a change in employment or termination of employment, and through no fault of the Carrier, the Intended Parents shall be responsible for continued coverage under COBRA or to secure alternate insurance coverage for the Carrier as required under this Agreement. COBRA payments shall only be that portion of payments attributable to the Carrier's coverage and not for any other member of their family. The Intended Parent's Attorney shall immediately be informed via certified mail, return receipt requested at 560 E. Town St. Columbus Ohio 43215, of any and all notices received by or that come to the attention of the Carrier or any Party, regarding said insurance coverage. These notices include but are not limited to cancellation notices, past payment due notices, and changes in coverage (amendments). If an intentional, negligent, or willful act by the Carrier is the cause for the loss of the Carrier's existing medical insurance, then the Carrier shall be responsible for the COBRA payments.

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The Carrier agrees to use verified in-network medical providers in the performance of their obligations under this Agreement, unless otherwise requested or approved by the Intended Parents in writing. The Carrier also agrees not to cancel or otherwise render ineffective said medical insurance through any fault of their own and to stay within the geographic area of coverage throughout the pregnancy until delivery of the Child. The Carrier shall be responsible for payment of any medical expenses incurred outside of Ohio which are denied by their insurance because the charges were incurred outside these states. Similarly, the Carrier shall be responsible for any other costs and expenses of any type that arise because the charges were incurred outside the states of Ohio.

If the Carrier's employer changes health insurance carriers, Carrier must notify the Intended Parent's Attorney immediately. Further, the Carrier shall immediately apply for either COBRA or purchase a health insurance policy that does not exclude surrogacy. The Carrier agrees that the Intended Parents shall select which of the foregoing options to undertake. Additionally, the Carrier must immediately notify the Intended Parent's Attorney, the Intended Parents, and their attorney in writing of any changes or proposed changes to their insurance.

In the event it is necessary to purchase new or additional medical insurance pursuant to this Agreement, the Intended Parents shall be responsible for the cost of said medical coverage beginning when the Intended Parents request the Carrier apply for insurance coverage. The Intended Parents shall be able to select the insurance company and the insurance plan. The Carrier is responsible for filling in all forms in connection with securing medical insurance. Coverage under this insurance plan shall commence prior to the insemination and continue until Carrier receives a post-partum medical clearance but under no circumstances shall coverage continue for longer than one year following delivery or the cessation of the pregnancy. However, in the event the Carrier has an ongoing medical complication caused by their obligation under the Carrier Agreement, then said coverage will continue until said complication is resolved but under no circumstances shall coverage be paid for longer than one year after the earlier of (i) the termination of this Agreement between the Carrier and the Intended Parents, or (ii) delivery or cessation of pregnancy. The Carrier agrees to keep the Intended Parents routinely updated as to the status of medical complications. Additionally, the Carrier must immediately notify the Intended Parents and their attorney in writing of any changes or proposed changes to their insurance. The Carrier cannot proceed with this Agreement if they do not have medical insurance to cover their pregnancy.

The Intended Parents intend on using the Carrier's insurance policy for the purposes of their performance hereunder for the Carrier's related medical bills for the pregnancy and delivery. This policy has not yet been reviewed by a professional but will be once a policy booklet is available. The Intended Parents have been advised by their Attorneys that they can purchase a Lloyds of London "back-up" plan or primary plan (or the equivalent) which is specifically underwritten for surrogacy cases. The Intended Parents and the Carrier have been advised of the risks and wish to proceed with the Carrier's existing medical insurance plan. The Intended Parents hereby acknowledge that they jointly assume any risk that this policy will not cover the pregnancy and related medical costs. In no event will the Carrier's insurance be used to cover the Child. The Intended Parents will place their Child on their own private policy as soon as practicable after the delivery /or will purchase an insurance plan for the Child or negotiate with the hospital directly.

PARAGRAPH 13

Entitlement to Reimbursement and Payment of Expenses. The Parties agree that Intended Parents' reimbursements and payments of certain expenses associated with the pregnancy to the Carrier under this Agreement constitute a reasonable amount to reimburse Carrier for pre-pregnancy and pre-birth child support expenses and post-birth expenses including reasonable and necessary living expenses, and for all of Carrier's foreseen and unforeseen losses, costs, and expenses incurred in carrying out their obligations in this Agreement. It is expressly understood and agreed that Intended Parents' payment of fees and expenses for legal, medical, and other miscellaneous expenses, on behalf of Carrier shall in no way be construed as a fee for termination of Carrier's parental rights or a payment in exchange for surrender of a Child, Carrier's placement of a Child with Intended Parents or for consent to an adoption. Additionally, no payments shall be construed as compensation for services and all Parties agree that all payments are to be construed as reimbursements and/or payments for expenses.

In recognition of the Intended Parents' obligation as set forth under Ohio law, to support this Child from the time pregnancy is diagnosed, the Intended Parents agree to pay such reimbursements and payments for expenses as are indicated in Exhibit "A" attached hereto and incorporated herein by this reference. The Carrier shall be entitled to these reimbursements and expenses pursuant to Exhibit "A" notwithstanding the fact that the Child is stillborn or diagnosed to have a terminal condition.

PARAGRAPH 14

Independent Legal Counsel. The Intended Parents on the one hand, and the Carrier and the Carrier's Spouse on the other hand, shall be represented by separate counsel. The Intended Parents warrant that they have consulted independent legal counsel, _____ and have been advised regarding the terms, conditions, rights, duties, and liabilities arising under the conduct contemplated by this Agreement. The Carrier warrants that they have retained and consulted independent legal counsel and has been advised regarding the terms, conditions, rights, duties, and liabilities, arising under the conduct contemplated by this Agreement.

The Intended Parents agree to pay the cost of independent legal counsel for the Carrier and the Carrier's Spouse as provided for in Exhibit "A" hereto. The amount of reimbursement is not intended to indicate that adequate representation has been obtained for the sum paid. Obtaining qualified, independent legal counsel is the sole responsibility of the Carrier and the Carrier's Spouse. The Carrier further acknowledges that they have the right to counsel in their own selection.

All Parties understand that when one Party's attorney is paid by the other Party, a potential conflict of interest is created because the payment could induce the Carrier's attorney to favor the person paying the fees rather than vigorously representing the Carrier and the Carrier's Spouse. The Carrier has been advised of this potential conflict of interest and has been informed that they have the right to consult with and pay for any attorney of their own choosing, without reimbursement by the Intended Parents in order to avoid the potential conflict. All Parties waive the potential conflict of interest in order that the Carrier's legal expenses, as set forth herein, may be paid for or reimbursed by the Intended Parents.

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PARAGRAPH 15

Postpartum Contact. Except as otherwise provided in this Agreement, the Carrier and the Carrier's Spouse each agrees that they will not seek to contact the Child after the Child's hospital stay nor will the Carrier or Carrier's Spouse seek to view or meet with the Intended Parents or their families, unless a different understanding is made between the Parties.

PARAGRAPH 16

Duty to Finalize Parental Rights. It is the intention and responsibility of each Party to this Agreement to promptly facilitate the procedural aspects of the process in order for the Intended Parents to be legally established as the parents of the Child and their names entered on the Child's birth certificate as the legal parents. To accomplish this, the Carrier agrees to promptly provide birth certificates, marriage and divorce certificates or any other documentation requested by the Intended Parents or the Intended Parents' attorney. The Carrier further agrees to cooperate fully and execute any and all required or appropriate documents, consents, affidavits, pleadings and/or declarations, including adoption surrenders, abandonments and other documents to the Intended Parents in order to effectuate the finalization of the Intended Parents parental rights. Further, the Carrier agrees to assist the Intended Parents in any legal proceedings designed to finalize the Intended Parents' parental rights in Ohio or any other jurisdiction worldwide. Further, the Parties further acknowledge and agree that a court's determination of legal parentage, pursuant to the Uniform Parentage Act as adopted by the states of Ohio, is the functional equivalent of an adoption under Ohio laws.

The Intended Parents shall reimburse the Carrier, if necessary, for the travel and other expenses involved with the said proceedings.

PARAGRAPH 17

Duties in Perpetuity. During the term of this Agreement, each Party agrees to immediately inform the other Parties and their respective attorneys in writing of any material change in their circumstances which may reasonably affect this Agreement. These changes include, but are not limited to, change of address, illness or death of a Party, loss of employment, changes in insurance coverage, and exposure to communicable illness. However, any such changes of circumstances shall not invalidate, cancel, or affect this Agreement, or the Intended Parents' financial obligations under this Agreement unless such change of circumstance constitutes a material breach of contract which is not subject to cure as more specifically set forth in the Material Breach section of this Agreement.

PARAGRAPH 18

Privacy. This Agreement requires the Parties to disclose personal information to each other. The Parties mutually promise that this information will be held by each other in the utmost confidence and privacy. The Parties believe that it is in the best interests of the Child to preserve each other's right to privacy. The details surrounding the Child's conception shall remain private, and disclosure of Intended Parents' involvement in a Child Carrier Agreement shall be left to the Intended Parents' discretion.

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Therefore, the Parties shall respect this privacy and refrain from disclosing each other's identities to anyone other than those directly involved in the Child Carrier Agreement, without prior written consent.

The Parties further agree that they will not provide, nor allow to be provided, any information to the public, news media, social media or any other individual which could lead to the identity of the other Party without express written permission and consent of all Parties. Further, the Parties agree to maintain in confidence any information obtained by them as a result of any medical or psychological testing, communication or learned from any report or evaluation prepared in furtherance of the conduct contemplated herein. The Parties understand that confidentiality as described herein does not contemplate speaking with friends and relatives about their own involvement in a surrogacy process. Such conversations are permitted and do not constitute a breach of confidentiality, provided that the identity of the other Parties is not disclosed. The duty to maintain confidentiality shall exist in perpetuity and shall survive the termination or expiration of this Agreement.

Notwithstanding the foregoing, the Parties agree that the Intended Parents may tell the Child, at any age they deem appropriate and without notice to the Carrier, that the Child's birth was the result of their participation in a Child Carrier Agreement and may provide the Child with identifying information about the Carrier. The Parties further agree that disclosure of the Carrier's role and their identity is at the sole discretion of the Intended Parents.

PARAGRAPH 19

Confidentiality. In the event any mediation, arbitration, or court proceeding, (whether stipulated or adversarial), arises out of this Agreement, the Parties, their heirs, assigns and representatives shall take all reasonable steps to preserve the Parties' confidentiality and privacy rights, including, but not limited to: (a) requesting that any court records be sealed and any hearings be kept confidential; (b) requesting the court to impose gag orders; and (c) requesting that the court take all necessary steps to protect the identities of the Parties to this Agreement from disclosure to the public or the news media. The duty to maintain confidentiality shall exist in perpetuity and shall survive the termination or expiration of this Agreement.

PARAGRAPH 20

Termination of Agreement. If in the opinion of the Parties the contemplated pregnancy has not occurred within a reasonable time, this Agreement may be terminated by any Party giving notice to all Parties and Intended Parents' attorney. In addition, the Parties, individually or collectively, may withdraw their consent to this Agreement and may terminate this Agreement without further obligation, upon ten (10) days written notice to the other Party/Parties, any time prior to the insemination. If the Intended Parents terminate this Agreement upon ten (10) days written notice, following commencement of medication but prior to any transfer/insemination, the Intended Parents shall be responsible to the Carrier for any expenses or costs already incurred associated with the pregnancy. Carrier shall have 10 days from the date of receipt of written notice to terminate from the intended parents to provide documentation for reimbursement to the Intended Parent's attorney for payment.

PARAGRAPH 21

Misrepresentations. The Parties expressly represent and warrant that all information provided to the Intended Parents, insurance companies and/ or any professional in connection with this Agreement is true and correct. The Parties further warrant that they have not knowingly omitted or misrepresented or misstated any information to any other party or professional. In the event either Party suffers damage as a result of a breach of this Paragraph, the breaching party shall hold the other Parties, and all professionals harmless from liability and indemnify them for any damages incurred.

PARAGRAPH 22

Material Breach. In the event that any Party materially violates any of the provisions contained herein without legal excuse, such violation shall constitute a material breach, and in addition to all other remedies available at law or equity, this Agreement may be terminated forthwith at the option of the aggrieved Party without further liability on the part of the aggrieved non-breaching Party. In the event that the Carrier materially breaches this Agreement without legal excuse or engages in behavior prior to pregnancy, which is determined to be unacceptable, the Intended Parents shall be under no obligation to reimburse any of their expenses incurred. In addition, the Carrier must reimburse the Intended Parents for all sums expended pursuant to this Agreement, plus interest at the maximum allowable rate at the time the breach was discovered. In the event the Intended Parents materially breach the contract without legal excuse, the Carrier shall still receive all reimbursements due to them under the terms of this Agreement. Further, if a child has been born as a result of the anticipated insemination, the Intended Parents shall be responsible for the entire support of said Child, during its minority, and all of said Child's needs including health, education and general welfare until the Child reaches the age of majority.

As a precondition to any violation constituting a breach, the Party committing the violation shall be given written notice of such alleged violation, within a reasonable time after discovery, and shall have a reasonable opportunity to cure the alleged violation, if possible.

Subject to cure, a breach by either of the Intended Parents shall constitute a breach by both.

Subject to cure, a breach by either the Carrier or the Carrier's Spouse shall constitute a breach by both.

Any violation of an express warranty contained herein shall constitute a material breach. The continued performance of an aggrieved Party following a material breach shall not constitute a waiver, and all rights accruing or retained by the aggrieved Party shall remain in full force and effect. In the event a material breach is subject to cure, and said cure is effectuated, the continued performance of an aggrieved Party shall then constitute a waiver.

PARAGRAPH 23

Breach. In the event of a breach by the Intended Parents or the Carrier, all provisions of this Agreement relating to the legal recognition of the Intended Parents' parentage of the Child shall remain in effect.

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PARAGRAPH 24

Agents. The Intended Parents and the Carrier and the Carrier's Spouse recognize and acknowledge that the Attorney for the Intended Parents shall act as an agent for the Intended Parents, and that the Attorney for the Carrier and Carrier's Spouse shall act as an agent for the Carrier and the Carrier's Spouse in all matters pertaining to this Agreement in order to maintain confidentiality and to expedite administration of this Agreement. It is understood that while the Attorneys may act as their respective Party's agent, they are not a Party to nor third party beneficiaries of this Agreement.

PARAGRAPH 25

Medical Appointments, Labor & Delivery. The Carrier agrees to inform the Intended Parents of all pregnancy related medical appointments scheduled during the term of this Agreement. The Carrier agrees to use their best efforts to provide the Intended parents with at least seven (7) days' notice of any scheduled major medical appointments so as to give the Intended Parents the option to arrange their schedule(s) to attend said appointments. The Carrier agrees to allow the Intended Parents to be present during such appointments with due respect for the Carrier's privacy.

The Carrier agrees to allow the Intended Parents to be present during the birth of the Child, with due respect for the Carrier's privacy and upon authorization of the Carrier's medical Professional. Upon the advisement of the Carrier's medical professional, designated high-risk physician or perinatologist, the Carrier agrees to deliver at a designated hospital with neonatal intensive care available. The Intended Parents agree to pay for any such medical costs that are not covered by the Carrier's medical insurance policy. Upon the request of the Intended Parents, the Carrier agrees to execute any informed consent documents necessary to enable the Intended Parents to retrieve and preserve cord blood for future medical purposes.

PARAGRAPH 26

Second Medical Opinion. Intended Parents shall have the right to obtain a second opinion from another Physician or perinatal specialist of their choice (hereinafter "Specialist") concerning any aspect of the medical care (including bed rest or restriction of activities) and treatment of the Carrier that may impact the health and safety of the Child. Should Intended Parents choose a Specialist not covered by Carrier's medical insurance policy, then Intended Parents shall be responsible to pay any uncovered medical expenses directly. Carrier shall cooperate with any testing, examination or medical appointment required by the Specialist and shall accept the first available appointment with Specialist. In the event the opinion of the Specialist is in conflict with Carrier's Physician or Medical Professional, then the Intended Parents and Carrier shall cooperate and provide Carrier's Physician with the diagnosis and/or opinion of the Specialist for reconsideration and consult with said Physician to determine the best course of action. Carrier agrees to facilitate any consultation with their Physician in a timely manner. If the Physician is not persuaded by the opinion of the Specialist and/or the Parties cannot reach an agreement on the Carrier's care, then the Parties shall accept the opinion and course of care recommended by the Specialist.

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PARAGRAPH 27

Decision Making Authority. The Parties agree that it is the exclusive right of the Intended Parents to name their Child. The Carrier and Carrier's Spouse shall cooperate with the hospital staff, the Intended Parents, their attorney and any other individual or entity to ensure that the name selected by the Intended Parents is placed on their Child's birth certificate.

The Parties further agree that decisions regarding medical procedures and treatments prior to the birth of the Child shall be made as described below, as long as said decisions are approved by the Carrier's physician and any high-risk physician selected by the Intended Parents:

- a) The Carrier shall undergo a fetal monitoring protocol that is in accordance with the recommendations of their physician. The Carrier shall make all other decisions regarding the use of nonsurgical procedures related to the birth of the Child, including pain medication, intravenous injections, enemas, and other medications. It is agreed that said decisions shall be made primarily in the best interests and health of the Carrier and, secondarily, in the best interests of the unborn Child.
- b) In the event the Carrier is mentally or physically incapable of making health care decisions, such decisions shall be made by an appointed representative selected by the Carrier and disclosed in advance to the Intended Parents and their Attorney.
- c) In the event said medical decisions will have no adverse effect on the Carrier's health, as determined by the Carrier's physician, the Intended Parents shall jointly make said decisions prior to the birth according to the best interests of the unborn Child. Intended Parents shall make all medical decisions regarding the Child's medical treatment post birth.
- d) In the event additional medical procedures are necessary to save the life of the unborn Child, said medical decisions shall be made by the Intended Parents with the approval of the Carrier and Carrier's physician.
- e) With the exception of those procedures that are elements of usual obstetrical practice (*i.e.*, cesarean delivery and fetal monitoring), in the event medical decisions pertaining to the pregnancy or health of the fetuses could cause severe or long-term adverse effects regarding the Carrier's current or future health, the Carrier may refuse said procedure or treatment.

PARAGRAPH 28

Reimbursement For Losses. In the event the Carrier receives or is entitled to receive payments from a third party (*e.g.* worker's compensation, arbitration, or damages award) due to injury to the Carrier during the term of this Agreement, the Intended Parents shall be entitled to reimbursement from the Carrier for losses sustained, limited to the actual costs and expenses paid by the Intended Parents to the Carrier under the terms of this Agreement and specifically received by the Carrier as part of the third-party

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payment. Further, should the Carrier receive payments from a third party due to injury to the unborn or born Child, the Intended Parents shall be entitled to be reimbursed for the full amount of such payments.

PARAGRAPH 29

Time Is Of The Essence. The Parties have been advised that “time is of the essence” in the performance of their obligations under this Agreement and they agree to fulfill their duties and obligations herein in a timely manner. The Carrier agrees to attend all scheduled appointments in a timely manner. The Carrier agrees to take all prescribed medications as prescribed by their Medical Professional. Failure to perform these obligations in a timely manner shall be considered a breach of this Agreement.

PARAGRAPH 30

Agency. Notwithstanding the agency created in the Paragraph 32 above, no agency, partnership, employment or joint venture is created or intended to be created between the Parties.

PARAGRAPH 31

No Warranties or Guaranties. The Parties expressly understand and agree that neither the Attorneys nor the professionals whose services are contemplated under this Agreement guarantee or warrant any of the following:

- a) that the Carrier will in fact successfully carry any fetus to term;
- b) that the Child, if conceived and carried, will be a physically and mentally healthy Child free of birth or congenital defects;
- c) that any of the Parties will comply with the terms and conditions of this Agreement;
- d) that any of the representations made by any of the Parties is true and correct;
- e) that the Carrier has and/or obtains medical insurance that will cover any or all of the procedures contemplated by this Agreement, the pregnancy and/or any complications arising from the conduct contemplated by this Agreement; or
- f) that adequate insurance is in place and/or is obtained to cover the Child.

PARAGRAPH 32

Limitation of Services. Neither Attorney is giving any of the Parties legal advice on insurance, or taxation matters. The Parties should consult independent counsel regarding insurance, or tax matters that may arise. It is the responsibility of any Party receiving payment or other benefits pursuant to this Agreement to report receipt of said payments or benefits to the proper taxing authorities, state, federal, or otherwise.

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PARAGRAPH 33

Written Contract. This Agreement shall be amended only by a written agreement signed by all the Parties.

PARAGRAPH 34

Counterparts. This Agreement may be executed in two or more identical counterparts, each of which shall be deemed to be an original, but all of which shall be deemed to constitute one instrument. The original of the respective counterparts shall be maintained by the Attorney for the Intended Parents for the benefit of all Parties.

PARAGRAPH 35

Integrated Agreement. This Agreement sets forth the entire agreement between the Parties. All agreements, covenants, representations and warranties, express and implied, oral and written, of the Parties are contained herein. No other agreements, covenants, representations, nor warranties, express or implied, oral or written, have been made by any Party to the other(s) with respect to this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants and warranties with respect to this Agreement are waived, merged and superseded. This is an integrated Agreement.

PARAGRAPH 36

Interpretation. No provision of this Agreement is to be interpreted for or against any Party because that Party or that Party's legal representative drafted the provisions.

PARAGRAPH 37

Severability. In the event any of the provisions, whether sentences or entire Paragraphs, of this Agreement are deemed to be invalid or unenforceable, the same shall be deemed severable from the remainder of this Agreement and shall not cause the invalidity of the remainder of this Agreement. If such provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

PARAGRAPH 38

Voluntary Act. Each Party acknowledges that it fully understands the terms and legal effect of this Agreement and that said Agreement is being signed freely and voluntarily and that no Party has any reason to believe that any other Party did not freely and voluntarily execute this Agreement.

PARAGRAPH 39

Choice of Law & Venue. This Agreement has been drafted in Columbus, Ohio, the Parties have availed themselves of professionals based in Ohio and, as such, it is the express intent of the Parties and a material term of this Agreement that this Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Ohio.

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Surrogacy Agreement

_____/_____/_____/_____

The Parties acknowledge and agree that pursuant to the Ohio Revised Code, the Intended Parents may file a parentage action in the county where the Child is anticipated to be born, the county where the Carrier resides, the county where the Intended Parents reside, the county where the assisted reproduction Agreement is executed, or the county where the medical procedures to the Agreement are to be performed. The Parties stipulate and agree to submit to any venue and jurisdiction within the State of Ohio that conforms to the requirements of the Ohio Revised Code. If necessary, all Parties hereby further stipulate and agree to execute any additional court documents, including but not limited to a Stipulation and Order, that outlines the legal justifications for the selected venue, whether based on the anticipated location for the birth of the Child, the county where the Carrier resides, the county where the Intended Parents reside, or the county where the agreement is executed, which, for the purposes of this Agreement, shall be the location of any of the Parties' attorneys' offices, or the county where the medical procedures are to be performed.

STATE OF OHIO

FRANKLIN COUNTY, SS:

IN WITNESS WHEREOF, the undersigned, free from all restrain and being of sound mind and memory, have hereunto subscribed their names this ____ day of _____, 2023.

CARRIER

CARRIER'S SPOUSE

BE IT REMEMBERED , that on this ____ day of _____, 2023, before me, a Notary Public, in and for said County and State, personally appeared the above-named Carrier and Carrier's Spouse, two of the parties to the foregoing agreement, each of whom hereby acknowledges that the signing of the foregoing document was of their own free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal to this instrument.

Notary Public

Initials:

Page 19 of 20

Surrogacy Agreement

_____/_____/_____/_____

STATE OF OHIO

FRANKLIN COUNTY, SS:

IN WITNESS WHEREOF, the undersigned, free from all restraint and being of sound mind and memory, have hereunto subscribed their names this __ day of _____, 2023.

INTENDED FATHER

INTENDED MOTHER

BE IT REMEMBERED , that on this ____ day of _____, 2023, before me, a Notary Public, in and for said County and State, personally appeared the above-named Intended Father and Intended Mother, two of the parties to the foregoing agreement, each of whom hereby acknowledges that the signing of the foregoing document was of his own free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal to this instrument.

Notary Public

Initials:

Page 20 of 20

Surrogacy Agreement

_____/_____/_____/_____

Section 3111.95 | Husband considered natural father - child natural child.

Effective:

March 22, 2001

Latest Legislation:

Senate Bill 180 - 123rd General Assembly

PDF:

Download Authenticated PDF

(A) If a married woman is the subject of a non-spousal artificial insemination and if her husband consented to the artificial insemination, the husband shall be treated in law and regarded as the natural father of a child conceived as a result of the artificial insemination, and a child so conceived shall be treated in law and regarded as the natural child of the husband. A presumption that arises under division (A)(1) or (2) of section [3111.03](#) of the Revised Code is conclusive with respect to this father and child relationship, and no action or proceeding under sections [3111.01](#) to [3111.18](#) or sections [3111.38](#) to [3111.54](#) of the Revised Code shall affect the relationship.

(B) If a woman is the subject of a non-spousal artificial insemination, the donor shall not be treated in law or regarded as the natural father of a child conceived as a result of the artificial insemination, and a child so conceived shall not be treated in law or regarded as the natural child of the donor. No action or proceeding under sections [3111.01](#) to [3111.18](#) or sections [3111.38](#) to [3111.54](#) of the Revised Code shall affect these consequences.

In the matter of: _____

Plaintiff/Petitioner

VS.

Defendant/Petitioner

SEPARATION AGREEMENT

This Separation Agreement is being entered into at Columbus, Ohio, on this ____ day of _____ 2023, by and between _____ (hereinafter referenced to as "Party 1"), _____ (hereinafter referenced as "Party 2"), _____ (hereinafter referenced as "Party 3") collectively referred to as "parties." Party 1, Party 2, and Party 3 represent that:

1. This Separation Agreement is being entered into pursuant to Sections 3103.05 and 3103.06 of the Ohio Revised Code;
2. Irreconcilable differences have arisen between Parties causing them to be incompatible as defined by Ohio law, not denied by either party, rendering it impractical for them to live together; they shall continue to reside separate and apart from each other; and
3. Parties confirm that they have segregated and disentangled their property as well as assigned their remaining debts, liabilities, and financial obligations in an equitable and reasonable manner as required by Section 3105.171(B) of the Ohio Revised Code.
4. Parties have reviewed/considered all the terms, provisions, and conditions contained/stated herein; they independently acknowledge that the terms, provisions, and content of this Separation Agreement are equitable.
5. The parties shall live and reside separate and apart from each other. Parties shall go their own way without direction, control, or interference from the other.

NOW, THEREFORE, in consideration of the foregoing and the expressed mutual promises hereinafter set forth, Parties agree and contract with each other as follows:

SEPARATION AGREEMENT

FINAL SEGREGATION AND DISENTANGLEMENT OF PROPERTY

1. REAL PROPERTY LOCATED AT 419 SHELDON AVE COLUMBUS OH 43207:

The parties agree that the real property loan will be assumed by Party 2 and Party 3 and that the equity from the assumption of the home loan shall be divided equally between the parties within thirty (30) days of closing. Once the equity is distributed, Party 1 agrees to sign a Real Property Quitclaim Deed to remove her from the property title.

2. PERSONAL PROPERTY

The parties have completely segregated all items of personal property. Party 1 shall therefore retain as her own, free and clear from any present and/or future claims by Party 2 and Party 3, any and all items of personal property in her possession or under her control. Party 2 shall therefore retain as his own, free and clear from any present and/or future claims by Party 1 and Party 3, any and all items of personal property in his possession or under his control. Party 3 shall therefore retain as his own, free and clear from any present and/or future claims by Party 1 and Party 2, any and all items of personal property in his possession or under his control.

3. LAW APPLICABLE

All articles and provisions in this Separation Agreement shall be construed and enforced in accordance with the applicable laws of the State of Ohio.

4. MODIFICATION BY PARTIES

This Separation Agreement shall not be altered nor modified unless the same is done in writing, signed by Party 1, Party 2, and Party 3 and their signatures are duly witnessed and notarized.

5. PERFORMANCE OF NECESSARY ACTS

Party 1, Party 2, and Party 3 shall, upon request by the other, timely execute, acknowledge, and deliver to the other party any deeds, bills of sale, or other instruments of release and/or conveyance to enable the other party to sell, convey, or otherwise dispose of his/her own real and personal property, free and clear from any claims by the other party. Upon request by the other party, Party 1, Party 2, and Party 3 shall also timely sign such instruments and papers which may be necessary to effectuate, implement and carry out the terms, conditions, and provisions of this Separation Agreement.

6. DETERMINATION OF RIGHTS

Except for adherence to and compliance with the terms and provisions outlined in this Separation Agreement, Party 1, Party 2, and Party 3 shall release and discharge the other party from any obligations of support and maintenance, and any other claims, rights, or duties arising out of their relationship. Party 1, Party 2, and Party 3 shall hereafter sell or dispose of his/her own real or personal property by gift, deed, last will, and testament, or otherwise, free and clear from any claims by the other party. Party 1, Party 2, and Party 3 shall be forever barred from asserting against the other party any rights and/or claims by way of dower, inheritance, descent, distribution, and/or from making any claims as a widow, widower, heir, distribute, survivor, or next of kin; and/or from asserting any rights in or against the other party's property, whether real or personal,

now owned or hereafter acquired. Party 1, Party 2, and Party 3 waive the right he/she may have had to administer the estate of the parties.

7. LEGAL EFFECT OF THIS SEPARATION AGREEMENT

Upon signing this Separation Agreement, every term, condition, and provision of this instrument shall immediately become binding and controlling upon both Party 1, Party 2, and Party 3 his/her executors, and/or his/her administrators. The terms, conditions, provisions, and content expressed in this Separation Agreement shall be admissible into evidence without objection from the other party; shall be probative in any proceedings [adversarial or otherwise] between Party 1, Party 2, and Party 3 and shall be judicially enforceable in any domestic relations or probate court of competent jurisdiction.

8. FULL UNDERSTANDING

Party 1, Party 2, and Party 3 have voluntarily signed this Separation Agreement after carefully reading the same, fully considering and appreciating all of the terms, conditions, and provisions. The signing of this Separation Agreement constitutes Party 1's, Party 2's, and Party 3's intentional act and deed without reliance upon statements or representations by the other party or by the other party's attorney or agents, other than those expressly outlined in this Separation Agreement.

Party 1, Party 2, and Party 3 further attest to his/her acceptance of the meaning, purpose, and importance of this Separation Agreement; the terms and provisions stated herein constitute the understanding between them. Both

Party 1, Party 2, and Party 3 hereby signify his/her approval of this separation Agreement by affixing his/her signature hereon.

IN WITNESS WHEREOF, the parties have hereunto set their hands to this agreement.

Executed this ____ day of _____ 2023.

Party 1

Party 2

Party 3

Signed and Acknowledged in the presence of:

STATE OF OHIO

COUNTY OF FRANKLIN, ss:

Before me, a Notary Public in and for said County personally appeared the above-named _____ known to me to be the Party 1 described herein and who executed the foregoing instrument and acknowledged that she executed the same of her free act and deed, for the uses and purposes therein mentioned.

, Party 1

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal at Columbus, Ohio this ____ day of _____ 2023.

NOTARY PUBLIC

Signed and Acknowledged in the presence of:

STATE OF OHIO

COUNTY OF FRANKLIN, ss:

Before me, a Notary Public in and for said County personally appeared the above-named _____ known to me to be the Party 2 describe herein and who executed the foregoing instrument and acknowledged that he executed the same of his own free act and deed, for the uses and purposes therein mentioned.

Party 2

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal at Columbus, Ohio this ____ day of _____ 2023..

NOTARY PUBLIC

Signed and Acknowledged in the presence of:

STATE OF OHIO

COUNTY OF FRANKLIN, ss:

Before me, a Notary Public in and for said County personally appeared the above-named known to me to be the Party 2 describe herein and who executed the foregoing instrument and acknowledged that he executed the same of his own free act and deed, for the uses and purposes therein mentioned.

Party 3

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal at Columbus, Ohio this 6th day of January 2023.

NOTARY PUBLIC

No Contest

My estate plan was arranged after careful consideration and reflection, with the advice of my attorney, who prepared the dispositive documents at my direction. I request that the members of my family not named in this will honor and respect my wishes and allow my plan to be carried out.

To that end, it is my wish that the validity of my dispositive documents not be challenged on any ground, including, but not limited to fraud, duress, mistake, lack of capacity, or undue influence. If any beneficiary contest or initiate proceeding to contest the validity of this Will or to prevent any provision herein from being carried out in accordance with its terms (whether or not in good faith and with probable cause), then all the benefits provided for such contesting beneficiary in this Will, including their Descendants, shall be revoked and annulled.

The share to which such contesting beneficiary would otherwise have been entitled shall be distributed to such persons and in such manner as if such contesting beneficiary and all of such beneficiary's Descendants had died immediately prior to such division without exercising any power of appointment which they might otherwise have under this Will.

If all of the persons who are beneficiaries of this Will join in such contest or proceeding, my estate shall be distributed to any of those persons who are not contesting beneficiaries and who would otherwise be entitled thereto under the laws of descent and distribution of the State of Ohio, as if I had died intestate at that time owning such property in fee simple.

POWER OF ATTORNEY FOR MINOR CHILD

I, the undersigned, residing at _____, in the county of _____, state of _____, hereby appoint, _____, residing at _____, in the county of _____, in the state of Ohio, with whom the child of whom I am the parent, guardian, or custodian is residing, my attorney in fact to exercise any and all of my rights and responsibilities regarding the care, physical custody, and control of the child, _____, born _____, having social security number (optional) _____, except my authority to consent to marriage or adoption of the child _____, and to perform all acts necessary in the execution of the rights and responsibilities hereby granted, as fully as I might do if personally present. The rights I am transferring under this power of attorney include the ability to enroll the child in school, to obtain from the school district educational and behavioral information about the child, to consent to all school-related matters regarding the child, and to consent to medical, psychological, or dental treatment for the child. This transfer does not affect my rights in any future proceedings concerning the custody of the child or the allocation of the parental rights and responsibilities for the care of the child and does not give the attorney in fact legal custody of the child. This transfer does not terminate my right to have regular contact with the child.

I hereby certify that I am transferring the rights and responsibilities designated in this power of attorney because one of the following circumstances exists:

1. I am: (a) Seriously ill, incarcerated, or about to be incarcerated, (b) Temporarily unable to provide financial support or parental guidance to the child, (c) Temporarily unable to provide adequate care and supervision of the child because of my physical or mental condition, (d) Homeless or without a residence because the current residence is destroyed or otherwise uninhabitable, or (e) In or about to enter a residential treatment program for substance abuse;
2. I am a parent of the child, the child's other parent is deceased, and I have authority to execute the power of attorney; or
3. I have a well-founded belief that the power of attorney is in the child's best interest.

I hereby certify that I am not transferring my rights and responsibilities regarding the child for the purpose of enrolling the child in a school or school district so that the child may participate in the academic or interscholastic athletic programs provided by that school or district.

I understand that this document does not authorize a child support enforcement agency to redirect child support payments to the designated as attorney in fact. I further understand that to have an existing child support order modified or a new child support order issued administrative or judicial proceedings must be initiated.

If there is a court order naming me the residential parent and legal custodian of the child who is the subject of this power of attorney and I am the sole parent signing this document, I hereby certify that one of the following is the case:

1. I have made reasonable efforts to locate and provide notice of the creation of this power of attorney to the other parent and have been unable to locate that parent;
2. The other parent is prohibited from receiving a notice of relocation; or
3. The parental rights of the other parent have been terminated by order of a juvenile court.

This POWER OF ATTORNEY is valid until the occurrence of whichever of the following events occurs first: (1) I revoke this POWER OF ATTORNEY in writing and give notice of the revocation to the designated as attorney in fact and the juvenile court with which this POWER OF ATTORNEY was filed; (2) the child ceases to reside with the designated as attorney in fact; (3) this POWER OF ATTORNEY is terminated by court order; (4) the death of the child who is the subject of the power of attorney; or (5) the death of the designated as the attorney in fact.

WARNING: DO NOT EXECUTE THIS POWER OF ATTORNEY IF ANY STATEMENT MADE IN THIS INSTRUMENT IS UNTRUE. FALSIFICATION IS A CRIME UNDER SECTION [2921.13](#) OF THE REVISED CODE, PUNISHABLE BY THE SANCTIONS UNDER CHAPTER 2929. OF THE REVISED CODE, INCLUDING A TERM OF IMPRISONMENT OF UP TO 6 MONTHS, A FINE OF UP TO \$1,000, OR BOTH.

Witness my hand this _____ day of _____, _____

Parent/Custodian/Guardian's Signature

Parent's signature

State of Ohio)

ss:

County of _____)

Subscribed, sworn to, and acknowledged before me this _____ day of _____,

Notary Public

Per Curiam

SUPREME COURT OF THE UNITED STATESMARISA N. PAVAN, ET AL. *v.* NATHANIEL SMITHON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME
COURT OF ARKANSAS

No. 16–992. Decided June 26, 2017

PER CURIAM.

As this Court explained in *Obergefell v. Hodges*, 576 U. S. ____ (2015), the Constitution entitles same-sex couples to civil marriage “on the same terms and conditions as opposite-sex couples.” *Id.*, at ____ (slip op., at 23). In the decision below, the Arkansas Supreme Court considered the effect of that holding on the State’s rules governing the issuance of birth certificates. When a married woman gives birth in Arkansas, state law generally requires the name of the mother’s male spouse to appear on the child’s birth certificate—regardless of his biological relationship to the child. According to the court below, however, Arkansas need not extend that rule to similarly situated same-sex couples: The State need not, in other words, issue birth certificates including the female spouses of women who give birth in the State. Because that differential treatment infringes *Obergefell*’s commitment to provide same-sex couples “the constellation of benefits that the States have linked to marriage,” *id.*, at ____ (slip op., at 17), we reverse the state court’s judgment.

The petitioners here are two married same-sex couples who conceived children through anonymous sperm donation. Leigh and Jana Jacobs were married in Iowa in 2010, and Terrah and Marisa Pavan were married in New Hampshire in 2011. Leigh and Terrah each gave birth to a child in Arkansas in 2015. When it came time to secure birth certificates for the newborns, each couple filled out paperwork listing both spouses as parents—Leigh and Jana in one case, Terrah and Marisa in the other. Both

Per Curiam

times, however, the Arkansas Department of Health issued certificates bearing only the birth mother's name.

The department's decision rested on a provision of Arkansas law, Ark. Code §20–18–401 (2014), that specifies which individuals will appear as parents on a child's state-issued birth certificate. “For the purposes of birth registration,” that statute says, “the mother is deemed to be the woman who gives birth to the child.” §20–18–401(e). And “[i]f the mother was married at the time of either conception or birth,” the statute instructs that “the name of [her] husband shall be entered on the certificate as the father of the child.” §20–18–401(f)(1). There are some limited exceptions to the latter rule—for example, another man may appear on the birth certificate if the “mother” and “husband” and “putative father” all file affidavits vouching for the putative father's paternity. *Ibid.* But as all parties agree, the requirement that a married woman's husband appear on her child's birth certificate applies in cases where the couple conceived by means of artificial insemination with the help of an anonymous sperm donor. See Pet. for Cert. 4; Brief in Opposition 3–4; see also Ark. Code §9–10–201(a) (2015) (“Any child born to a married woman by means of artificial insemination shall be deemed the legitimate natural child of the woman and the woman's husband if the husband consents in writing to the artificial insemination”).

The Jacobses and Pavans brought this suit in Arkansas state court against the director of the Arkansas Department of Health—seeking, among other things, a declaration that the State's birth-certificate law violates the Constitution. The trial court agreed, holding that the relevant portions of §20–18–401 are inconsistent with *Obergefell* because they “categorically prohibi[t] every same-sex married couple . . . from enjoying the same spousal benefits which are available to every opposite-sex married couple.” App. to Pet. for Cert. 59a. But a divided

Per Curiam

Arkansas Supreme Court reversed that judgment, concluding that the statute “pass[es] constitutional muster.” 2016 Ark. 437, 505 S. W. 3d 169, 177. In that court’s view, “the statute centers on the relationship of the biological mother and the biological father to the child, not on the marital relationship of husband and wife,” and so it “does not run afoul of *Obergefell*.” *Id.*, at 178. Two justices dissented from that view, maintaining that under *Obergefell* “a same-sex married couple is entitled to a birth certificate on the same basis as an opposite-sex married couple.” 505 S. W. 3d, at 184 (Brill, C. J., concurring in part and dissenting in part); accord, *id.*, at 190 (Danielson, J., dissenting).

The Arkansas Supreme Court’s decision, we conclude, denied married same-sex couples access to the “constellation of benefits that the Stat[e] ha[s] linked to marriage.” *Obergefell*, 576 U. S., at ____ (slip op., at 17). As already explained, when a married woman in Arkansas conceives a child by means of artificial insemination, the State will—indeed, *must*—list the name of her male spouse on the child’s birth certificate. See §20–18–401(f)(1); see also §9–10–201; *supra*, at 2. And yet state law, as interpreted by the court below, allows Arkansas officials in those very same circumstances to omit a married woman’s female spouse from her child’s birth certificate. See 505 S. W. 3d, at 177–178. As a result, same-sex parents in Arkansas lack the same right as opposite-sex parents to be listed on a child’s birth certificate, a document often used for important transactions like making medical decisions for a child or enrolling a child in school. See Pet. for Cert. 5–7 (listing situations in which a parent might be required to present a child’s birth certificate).

Obergefell proscribes such disparate treatment. As we explained there, a State may not “exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples.” 576 U. S., at ____ (slip op.,

Per Curiam

at 23). Indeed, in listing those terms and conditions—the “rights, benefits, and responsibilities” to which same-sex couples, no less than opposite-sex couples, must have access—we expressly identified “birth and death certificates.” *Id.*, at ____ (slip op., at 17). That was no accident: Several of the plaintiffs in *Obergefell* challenged a State’s refusal to recognize their same-sex spouses on their children’s birth certificates. See *DeBoer v. Snyder*, 772 F.3d 388, 398–399 (CA6 2014). In considering those challenges, we held the relevant state laws unconstitutional to the extent they treated same-sex couples differently from opposite-sex couples. See 576 U.S., at ____ (slip op., at 23). That holding applies with equal force to §20–18–401.

Echoing the court below, the State defends its birth-certificate law on the ground that being named on a child’s birth certificate is not a benefit that attends marriage. Instead, the State insists, a birth certificate is simply a device for recording biological parentage—regardless of whether the child’s parents are married. But Arkansas law makes birth certificates about more than just genetics. As already discussed, when an opposite-sex couple conceives a child by way of anonymous sperm donation—just as the petitioners did here—state law requires the placement of the birth mother’s husband on the child’s birth certificate. See *supra*, at 2. And that is so even though (as the State concedes) the husband “is definitively not the biological father” in those circumstances. Brief in Opposition 4.* Arkansas has thus chosen to make its birth certif-

*As the petitioners point out, other factual scenarios (beyond those present in this case) similarly show that the State’s birth certificates are about more than genetic parentage. For example, when an Arkansas child is adopted, the State places the child’s original birth certificate under seal and issues a new birth certificate—unidentifiable as an amended version—listing the child’s (nonbiological) adoptive parents. See Ark. Code §§20–18–406(a)(1), (b) (2014); Ark. Admin. Code 007.12.1–5.5(a) (Apr. 2016).

Per Curiam

icates more than a mere marker of biological relationships: The State uses those certificates to give married parents a form of legal recognition that is not available to unmarried parents. Having made that choice, Arkansas may not, consistent with *Obergefell*, deny married same-sex couples that recognition.

The petition for a writ of certiorari and the pending motions for leave to file briefs as *amici curiae* are granted. The judgment of the Arkansas Supreme Court is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

GORSUCH, J., dissenting

**SUPREME COURT OF THE UNITED
STATES**

MARISA N. PAVAN, ET AL. *v.* NATHANIEL SMITH

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME
COURT OF ARKANSAS

No. 16–992. Decided June 26, 2017

JUSTICE GORSUCH, with whom JUSTICE THOMAS and JUSTICE ALITO join, dissenting.

Summary reversal is usually reserved for cases where “the law is settled and stable, the facts are not in dispute, and the decision below is clearly in error.” *Schweiker v. Hansen*, 450 U. S. 785, 791 (1981) (Marshall, J., dissenting). Respectfully, I don’t believe this case meets that standard.

To be sure, *Obergefell* addressed the question whether a State must recognize same-sex marriages. But nothing in *Obergefell* spoke (let alone clearly) to the question whether §20–18–401 of the Arkansas Code, or a state supreme court decision upholding it, must go. The statute in question establishes a set of rules designed to ensure that the biological parents of a child are listed on the child’s birth certificate. Before the state supreme court, the State argued that rational reasons exist for a biology based birth registration regime, reasons that in no way offend *Obergefell*—like ensuring government officials can identify public health trends and helping individuals determine their biological lineage, citizenship, or susceptibility to genetic disorders. In an opinion that did not in any way seek to defy but rather earnestly engage *Obergefell*, the state supreme court agreed. And it is very hard to see what is wrong with this conclusion for, just as the state court recognized, nothing in *Obergefell* indicates that a birth registration regime based on biology, one no doubt with

GORSUCH, J., dissenting

many analogues across the country and throughout history, offends the Constitution. To the contrary, to the extent they speak to the question at all, this Court's precedents suggest just the opposite conclusion. See, *e.g.*, *Michael H. v. Gerald D.*, 491 U. S. 110, 124–125 (1989); *Tuan Anh Nguyen v. INS*, 533 U. S. 53, 73 (2001). Neither does anything in today's opinion purport to identify any constitutional problem with a biology based birth registration regime. So whatever else we might do with this case, summary reversal would not exactly seem the obvious course.

What, then, is at work here? If there isn't a problem with a biology based birth registration regime, perhaps the concern lies in this particular regime's exceptions. For it turns out that Arkansas's general rule of registration based on biology does admit of certain more specific exceptions. Most importantly for our purposes, the State acknowledges that §9–10–201 of the Arkansas Code controls how birth certificates are completed in cases of artificial insemination like the one before us. The State acknowledges, too, that this provision, written some time ago, indicates that the mother's husband generally shall be treated as the father—and in this way seemingly anticipates only opposite-sex marital unions.

But if the artificial insemination statute is the concern, it's still hard to see how summary reversal should follow for at least a few reasons. First, petitioners didn't actually challenge §9–10–201 in their lawsuit. Instead, petitioners sought and the trial court granted relief eliminating the State's authority under §20–18–401 to enforce a birth registration regime generally based on biology. On appeal, the state supreme court simply held that this overbroad remedy wasn't commanded by *Obergefell* or the Constitution. And, again, nothing in today's opinion for the Court identifies anything wrong, let alone clearly wrong, in that conclusion. Second, though petitioners' lawsuit didn't

GORSUCH, J., dissenting

challenge §9–10–201, the State has repeatedly conceded that the benefits afforded nonbiological parents under §9–10–201 must be afforded equally to both same-sex and opposite-sex couples. So that in this particular case and all others of its kind, the State agrees, the female spouse of the birth mother must be listed on birth certificates too. Third, further proof still of the state of the law in Arkansas today is the fact that, when it comes to adoption (a situation not present in this case but another one in which Arkansas departs from biology based registration), the State tells us that adopting parents are eligible for placement on birth certificates without respect to sexual orientation.

Given all this, it seems far from clear what here warrants the strong medicine of summary reversal. Indeed, it is not even clear what the Court expects to happen on remand that hasn't happened already. The Court does not offer any remedial suggestion, and none leaps to mind. Perhaps the state supreme court could memorialize the State's concession on §9–10–201, even though that law wasn't fairly challenged and such a chore is hardly the usual reward for seeking faithfully to apply, not evade, this Court's mandates.

I respectfully dissent.

Section 3111.03 | Presumption of paternity.

Effective:

June 15, 2006

Latest Legislation:

House Bill 102 - 126th General Assembly

PDF:

[Download Authenticated PDF](#)

(A) A man is presumed to be the natural father of a child under any of the following circumstances:

(1) The man and the child's mother are or have been married to each other, and the child is born during the marriage or is born within three hundred days after the marriage is terminated by death, annulment, divorce, or dissolution or after the man and the child's mother separate pursuant to a separation agreement.

(2) The man and the child's mother attempted, before the child's birth, to marry each other by a marriage that was solemnized in apparent compliance with the law of the state in which the marriage took place, the marriage is or could be declared invalid, and either of the following applies:

(a) The marriage can only be declared invalid by a court and the child is born during the marriage or within three hundred days after the termination of the marriage by death, annulment, divorce, or dissolution;

(b) The attempted marriage is invalid without a court order and the child is born within three hundred days after the termination of cohabitation.

(3) An acknowledgment of paternity has been filed pursuant to section [3111.23](#) or former section [5101.314](#) of the Revised Code and has not become final under former section [3111.211](#) or [5101.314](#) or section [2151.232](#), [3111.25](#), or [3111.821](#) of the Revised Code.

(B) A presumption that arises under this section can only be rebutted by clear and convincing evidence that includes the results of genetic testing, except that a presumption that is conclusive as provided in division (A) of section [3111.95](#) or division (B) of section [3111.97](#) of the Revised Code cannot be rebutted. An acknowledgment of paternity that becomes final under section [2151.232](#), [3111.25](#), or [3111.821](#) of the Revised Code is not a presumption and shall be considered a final and enforceable determination of paternity unless the acknowledgment is rescinded under section [3111.28](#) or [3119.962](#) of the Revised Code. If two or more conflicting

presumptions arise under this section, the court shall determine, based upon logic and policy considerations, which presumption controls.

(C)(1) Except as provided in division (C)(2) of this section, a presumption of paternity that arose pursuant to this section prior to March 22, 2001, shall remain valid on and after that date unless rebutted pursuant to division (B) of this section. This division does not apply to a determination described in division (B)(3) of this section as division (B)(3) of this section existed prior to March 22, 2001.

(2) A presumption of paternity that arose prior to March 22, 2001, based on an acknowledgment of paternity that became final under former section [3111.211](#) or [5101.314](#) or section [2151.232](#) of the Revised Code is not a presumption and shall be considered a final and enforceable determination of paternity unless the acknowledgment is rescinded under section [3111.28](#) or [3119.962](#) of the Revised Code.

PROBATE COURT OF FRANKLIN COUNTY, OHIO

ROBERT G. MONTGOMERY, JUDGE

IN THE MATTER OF THE ADOPTION OF _____
Name after adoption

CASE NO. _____

CONSENT TO ADOPTION

[R.C. 3107.06, 3107.08, & 3107.081]

The undersigned _____

[check one of the following seven capacities by which your consent is given]

- ☐ Mother
- ☐ Father
- ☐ Putative father who has registered under R.C. 3107.062 (for a minor born on or after January 1, 1997)
- ☐ Putative father (for a minor born before January 1, 1997)
- ☐ Agency having permanent custody
- ☐ Minor, who is more than twelve years of age (this consent must be executed in the presence of the Court)
- ☐ Other

hereby waives notice of the hearing on the Petition for Adoption filed, or to be filed in the Court, and consents to the adoption of _____
Name before adoption

as proposed in the petition.

The undersigned further states that this consent is voluntarily executed irrespective of disclosure of the name or other identification of the prospective adopting parents.

Signature

Typed or Printed Name

Street Address

City, State, Zip Code

Area Code & Telephone Number

Sworn to before me and signed in my presence this _____ day of _____, 20 _____

Person authorized pursuant to R.C. Chapter 3107
to take this acknowledgment

Title

RULE 2.2 Impartiality and Fairness

A judge shall uphold and apply the *law*, and shall perform all duties of judicial office fairly and *impartially*.

Comment

[1] To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.

[2] Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.

[3] When applying and interpreting the law, a judge sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this rule.

[4] To ensure self-represented litigants the opportunity to have their matters fairly heard, a judge may make reasonable accommodations to a self-represented litigant consistent with the law. See also Rule 2.6, Comment [1A].

Comparison to Ohio Code of Judicial Conduct

Rule 2.2 is comparable to Ohio Canons 3(B)(2) and (B)(5). Canon 3(B)(2) specifies a judge's duty to be competent in the law and avoid being swayed by outside influences, and the first sentence of Canon 3(B)(5) requires a judge to perform judicial duties without bias or prejudice. By contrast, Rule 2.2 addresses these duties in terms of a judge's responsibility to uphold and apply the law and perform all judicial duties fairly and impartially. Avoiding external influences and maintaining competency are addressed by Rules 2.4 and 2.5, respectively.

Comparison to ABA Model Code of Judicial Conduct

Rule 2.2 is the same as Model Rule 2.2. Comment [4] is modified to be consistent with Ohio law concerning a judge's duties toward self-represented litigants.

RULE 2.3 Bias, Prejudice, and Harassment

(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

(C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others.

(D) The restrictions of divisions (B) and (C) of this rule do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

Comment

[1] A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.

[2] Examples of manifestations of bias or prejudice include, but are not limited to: epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.

[3] Harassment, as referred to in divisions (B) and (C), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.

[4] Sexual harassment includes, but is not limited to, sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome.