

# Delaware

PAGE 1

*The First State*


I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "THE HENRIETTA LACKS FOUNDATION, INC.", FILED IN THIS OFFICE ON THE TWENTY-SEVENTH DAY OF JANUARY, A.D. 2010, AT 3 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

4781889 8100

100079207



  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 7783591

DATE: 01-27-10

**CERTIFICATE OF INCORPORATION**

**OF**

**THE HENRIETTA LACKS FOUNDATION, INC.**

FIRST: The name of the corporation is The Henrietta Lacks Foundation, Inc. (the "Corporation").

SECOND: The address of the registered office of the Corporation in the State of Delaware is Corporation Service Company, 2711 Centerville Road, Suite 400, City of Wilmington, County of New Castle, Delaware 19808. The name of its registered agent at such address is Corporation Service Company.

THIRD: The Corporation shall be a nonprofit corporation and shall be operated exclusively for charitable, scientific and educational purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986 (as now in effect or as may hereafter be amended) (the "Code"). The purposes include the following:

- (a) to provide financial support to needy individuals or persons who have made contributions to scientific research, including without limitation contributions of biological material made unwillingly or unknowingly, as well as the family members of such persons;
- (b) to analyze public policies and legislation relating to the use of human biological materials in scientific research (including cell lines, blood samples, and all other human biological materials) and other scientific approaches to disease prevention in order to promote public awareness regarding these issues;
- (c) to promote public discourse concerning the role of contributions of biological material to scientific research and disease prevention, particularly with regard to contributions made unwillingly or unknowingly; and
- (d) to conduct any other activities and to perform any and all acts which may be necessary, useful, suitable or proper for the accomplishment of the Corporation's purposes and objectives that are permitted by applicable law.

FOURTH: The Corporation shall not have any capital stock.

FIFTH: The Corporation is to have perpetual existence.

SIXTH: In furtherance and not in limitation of the powers conferred by the State of Delaware:

1. The management of the business and the conduct of the affairs of the Corporation shall be vested in its board of directors (the "Board"). The number of directors which shall constitute the whole Board shall be fixed by, or in the manner provided in, the Corporation's by-laws (the "By-laws"). No election of directors need be by written ballot unless the By-laws shall so provide.
2. The Board is expressly authorized to adopt, amend or repeal the By-laws.
3. The books and records of the Corporation may be kept at such place within or without the State of Delaware as the By-laws may provide or as may be designated from time to time by the Board.

SEVENTH: To the fullest extent permitted by law, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the General Corporation Law of the State of Delaware (the "DGCL") or any other law of the State of Delaware is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL as so amended. Any repeal or modification of the foregoing provisions of this Article SEVENTH shall not adversely affect any right or protection of a director of the Corporation existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director occurring prior to, such repeal or modification.

EIGHTH: To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Corporation (and any other persons to which the DGCL permits the Corporation to provide indemnification) through By-law provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the DGCL. Any amendment, repeal or modification of the foregoing provisions of this article eighth shall not adversely affect any right or protection of any director, officer or other agent of the Corporation existing at the time of such amendment, repeal or modification.

NINTH: The personal liability of the directors of the Corporation is hereby eliminated to the fullest extent permitted by the provisions of paragraph (7) of subsection (b) of section 102 of the DGCL, as the same may be amended and supplemented. Any repeal or modification of the foregoing portion of this paragraph by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

TENTH: The powers and activities of the Corporation shall be subject to the following restrictions and limitations:

- (a) No part of the net earnings of the corporation shall inure to the benefit of any director or officer of the Corporation or any private individual, except that reasonable compensation may be paid for services rendered to or for the Corporation in furtherance of one or more of its purposes. No director or officer of the Corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation.
- (b) No substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting to influence legislation, except as otherwise provided in Section 501(h) of the Code. The Corporation shall not participate in or intervene in (including the publication or distribution of statements concerning) any political campaign on behalf of or in opposition to any candidate for public office.
- (c) During such time as the Corporation is categorized as a private foundation under the Code, for any reason, the following provisions shall apply:
  - (1) The Corporation shall distribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by section 4942 of the Code;
  - (2) The Corporation shall not engage in any act of self-dealing as defined in section 4941(d) of the Code;
  - (3) The Corporation shall not retain any excess business holdings as defined in section 4943(c) of the Code;
  - (4) The Corporation shall not make any investments in such manner as to subject it to tax under section 4944 of the Code; and
  - (5) The Corporation shall not make any taxable expenditures as defined in section 4945(d) of the Code.
- (d) Notwithstanding any other provision of these articles, the Corporation is organized exclusively for one or more of the following purposes: religious, charitable, scientific, testing for public safety, literary, or educational purposes, as specified in Section 501(c)(3) of the Code. The Corporation shall not carry on any activities not permitted to be carried on (i) by a corporation exempt from federal income tax under Section 501(c)(3) of the Code or (ii) by a corporation contributions to which are deductible under Section 170(c)(2) of the Code.

ELEVENTH: In the event of the liquidation, dissolution, or winding up of the Corporation, whether voluntary or involuntary or by operation of law, all of the remaining assets and property of the Corporation shall, after paying or making provision for all liabilities of the Corporation for necessary expenses thereof, be distributed to one or more organizations with

similar purposes and objects which are then qualified under Section 501(c)(3) of the Code. Any such distribution shall be made in accordance with Delaware Law and Section 501(c)(3) of the Code.

TWELFTH: From time to time any of the provisions of this Certificate of Incorporation may be amended, altered or repealed, and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted in the manner and at the time prescribed by said laws. The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation in the manner now or hereafter prescribed in the By-Laws of the Corporation, subject to applicable statutes, provided that no amendment, alteration, change or repeal shall be effected which shall result in the denial of tax-exempt status to the Corporation under Code Section 501(c)(3) and the regulations thereunder.

THIRTEENTH: The name and the mailing address of the sole incorporator are as follows:

<u>NAME</u>	<u>MAILING ADDRESS</u>
Ethan A. Skerry, Esq.	Lowenstein Sandler PC 65 Livingston Avenue Roseland, New Jersey 07068

**I, THE UNDERSIGNED**, being the sole incorporator hereinabove named, for the purpose of forming a nonstock, nonprofit corporation pursuant to the General Corporation Law of the State of Delaware, do make this certificate, hereby declaring and certifying that this is my act and deed and the facts herein stated are true, and accordingly have hereunto set my hand this 27<sup>th</sup> day of January, 2010.

/s/ Ethan A. Skerry  
Ethan A. Skerry, Esq.  
Sole Incorporator