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For Those Not John Edwards: More and Better Paternity Acknowledgments at Birth

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**FOR THOSE NOT JOHN EDWARDS:
MORE AND BETTER PATERNITY ACKNOWLEDGMENTS
AT BIRTH**

Jeffrey A. Parness and Zachary Townsend

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I. INTRODUCTION

When former U.S. Senator and presidential candidate John Edwards finally declared his biological paternity of Quinn, born of sex to Rielle Hunter, a former staffer, many assumed he could then begin to raise and financially support the child he once publicly shunned. Many assumed legal paternity could arise through a court order, if not Rielle's wishes. Had he been on the Maury Povich television show, the positive genetic tests would have prompted the host to declare John not only liable for the expenses of upbringing, but also responsible for parenting in other ways. Yet notwithstanding these declarations, there would be no child rearing by John if Rielle determined he should have no contact with Quinn, even if Rielle sought child support from John and even if Quinn's best interests to disinterested observers, like trial court judges and child psychologists, favored contact between John and Quinn. For genetic fathers like John whose bedmates are not like Rielle, there are often no opportunities to present Christmas gifts and otherwise associate with their offspring.

Because John and Rielle were never married, and because Rielle was not married to another, Quinn was a nonmarital child with no federal constitutional legal father at birth.¹ Before or at birth, John may still have had a federal constitutional opportunity interest in establishing parentage under law, seized by stepping up to parental responsibilities.² Yet, because John only declared biological

1. See *Lehr v. Robertson*, 463 U.S. 248, 261–62 (1983).

2. Genetic fathers of children born of sex to unwed mothers only acquire substantial federal constitutional child rearing interests after they form a "significant custodial, personal, or financial relationship" with their offspring. *Id.* In some states, male parental opportunity interests can be lost at least sometimes through prebirth failures of support. For example, prebirth support failures by genetic fathers can prompt the loss of participation rights in adoption proceedings involving their offspring born of sex to unwed mothers. See, e.g., *In re Matter of Adoption of Doe*, 543 So. 2d 741, 746 (Fla. 1989) (holding that a genetic father has no participation rights in adoption as he failed, as required by statute, to provide sufficient prebirth support even though he provided some support and was thwarted in his efforts to provide further support by the mother); *In re Adoption of Byrd*, 552 S.E.2d 142, 148 (N.C. 2001) (involving an adoption initiated by an unwed mother a day after birth, where participation rights of father were dependent upon his providing child support within his financial means before any adoption proceeding had begun). Regardless of prebirth acts, the act of childbirth prompts legal parentage for mothers. See, for example, *Caban v. Mohammed*, 441 U.S. 380, 397 (1979) where the court said:

Parental rights do not spring full-blown from the biological connection between parent and child. They require relationships more enduring. The mother carries and bears the child, and in this

paternity two years after birth, after denying paternity and prompting another man to declare his genetic ties with Quinn, he may have been too late to seize the federal opportunity interest in order to fully parent Quinn without Rielle's cooperation.³ Only with Rielle's consent could John now complete a voluntary paternity-acknowledgment, a prerequisite to placing John on Quinn's birth certificate.⁴ And with Rielle's opposition, any paternity lawsuit by John to establish regular contacts with Quinn would most likely fail even though any paternity lawsuit (by Rielle or by a state) to establish John's financial support of Quinn would most likely succeed.⁵

Popular misconceptions about legal paternity for nonmarital children born of sex largely arise due to confusion over, and ignorance of, voluntary paternity-acknowledgments.⁶ Our exploration of federal and state acknowledgment laws reveals that a John Edwards is often not considered a new father with legal child-rearing rights. So, without a Rielle Hunter's help in the acknowledgment process, his support of a Quinn would often be limited to checks in the mail.⁷

Voluntary acknowledgment laws are especially important today in the United States because about 1.7 million nonmarital children are born each year and about one-third, like Quinn, have no legal father at birth.⁸ In 1940, there were only about 90,000 nonmarital children born in the United States.⁹ Like Quinn, some of today's fatherless children have late-arriving declarations about genetic ties, and

sense her parental relationship is clear. The validity of the father's parental claims must be gauged by other measures. By tradition, the primary measure has been the legitimate familial relationship he creates with the child by marriage with the mother In some circumstances the actual relationship between father and child may suffice to create in the . . . father parental interests.

3. See Jeffrey A. Parness, *Systematically Screwing Dads: Out of Control Paternity Schemes*, 54 WAYNE L. REV. 641, 657 (2008) (noting that many laws require a putative father to acknowledge paternity "before or shortly after birth, regardless of circumstances").
4. See 42 U.S.C. § 666(a)(5)(D)(i)(I)–(II) (2006).
5. See Parness, *supra* note 3, at 654.
6. See Jeffrey A. Parness, *No Genetic Ties, No More Fathers: Voluntary Acknowledgment Rescissions and Other Paternity Disestablishments Under Illinois Law*, 39 J. MARSHALL L. REV. 1295, 1314–15 (2006).
7. See *Lehr*, 463 U.S. at 261–62.
8. CARMEN SOLOMON-FEARS, CONG. RESEARCH SERV., RL 34756, NONMARITAL CHILDBEARING: TRENDS, REASONS, AND PUBLIC POLICY INTERVENTIONS 21–23 (2008).
9. *Id.* at 56 tbl.A-1.

perhaps, paternal childcare.¹⁰ Far more nonmarital children remain fatherless, or are only the subject of later paternity suits against recalcitrant genetic fathers seeking child support with no realistic expectation of accompanying paternal custody or visitation.¹¹

Many nonmarital children will be born fatherless under law even though both federal and all state governments proclaim that in most instances, such children should have both a mother and father under law at birth.¹² Could voluntary paternity-acknowledgment laws better promote dual parentage? Could they better articulate when late arrivals, like a John Edwards, are still eligible for all that legal parenthood might entail? After reviewing contemporary acknowledgment standards, we suggest how new laws could result in more, and more reliable, paternity acknowledgments and thus more legal fathers at birth.

II. FEDERAL MANDATES ON VOLUNTARY PATERNITY ACKNOWLEDGMENTS

American state voluntary paternity-acknowledgment standards flow from the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.¹³ There, Congress replaced the Aid to Families with Dependent Children (AFDC) program, contained in the Social Security Act, with a program of block grants to the states for Temporary Assistance for Needy Families (TANF).¹⁴ State participation in the TANF and AFDC program is, and was, voluntary and requires compliance with guidelines in Title IV-D of the Social Security Act and with any accompanying federal regulations, including mandates on paternity establishment.¹⁵ American states have not only chosen to participate in TANF, but also have employed the same paternity-acknowledgment standards for all births, not just births to families involved in TANF and AFDC.¹⁶

10. See, e.g., *Quilloin v. Walcott*, 434 U.S. 246, 249–50 (1978).

11. SOLOMON-FEARS, *supra* note 8, at 21–23.

12. See Parness, *supra* note 6, at 1295.

13. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-93, 110 Stat. 2105 (codified in scattered sections of 42 U.S.C.).

14. Temporary Assistance for Needy Families Act, 42 U.S.C. § 601 (2006).

15. See *People ex rel. Dep't of Pub. Aid v. Smith*, 818 N.E.2d 1204, 1213 (Ill. 2004); see, e.g., 42 U.S.C. § 654(20) (2006) (child support enforcement effectiveness); 42 U.S.C. § 666(a)(2) (2006) (expedited administrative and judicial procedures for establishing paternity). The limits on federal funding programs conditioned on compliance with Congressional mandates are reviewed in *South Dakota v. Dole*, 483 U.S. 203, 207–08 (1987).

16. See, e.g., COLO. REV. STAT. ANN. § 25-2-112(3.5) (West 2008) (“Upon the birth of a child to an unmarried woman in an institution, the person in charge of the institution

Through Title IV-D, Congress sought to improve and increase the use of state paternity-establishment mechanisms, in large part to facilitate increased child-support payments by fathers of children aided by TANF.¹⁷ One key provision requires most unwed mothers receiving public aid to cooperate “in good faith” in establishing legal paternity in the genetic father.¹⁸ This covers most unmarried mothers receiving public aid who bear children as a result of consensual sexual intercourse between adults.¹⁹ Another Title IV-D provision addresses voluntary acknowledgments of paternity,²⁰ setting forth both general responsibilities and strict guidelines.²¹ Federal law requires states to establish procedures for a “simple civil process for voluntarily acknowledging paternity.”²² Another, more specific, federal law declares that states should have procedures for a “hospital-based program for the voluntary acknowledgment of paternity focusing on the period immediately before or after the birth of a child.”²³ Yet another statute says “the State agency responsible

or that person’s designated representative shall provide an opportunity for the child’s mother and natural father to complete a written acknowledgment of paternity on the form prescribed and furnished by the state registrar.”); DEL. CODE ANN. tit. 16 § 3121(c)(2) (2003) (“When a child is born to an unmarried woman in an institution, the person responsible for completing the birth certificate, or the person’s designated representative, shall . . . [p]rovide the mother and putative father the opportunity to sign an acknowledgment of paternity . . .”).

17. 42 U.S.C. § 651 (2006).

18. *Id.* § 654(29)(A).

19. Parness, *supra* note 6, at 1298.

20. See 42 U.S.C. § 666(a)(5)(C)-(E); see also Jayna Morse Cacioppo, Note, *Voluntary Acknowledgments of Paternity: Should Biology Play a Role in Determining Who Can Be a Legal Father?*, 38 IND. L. REV. 479, 486–88 (2005) (reviewing the guidelines and their history).

21. See, e.g., 42 U.S.C. § 666(a)(5)(C) (requiring a state to provide the opportunity in a hospital or in a state agency office); *id.* § 666(a)(5)(D)(iii) (stating that after sixty days acknowledgments may be challenged only for “fraud, duress, or material mistake of fact”; the terms are undefined by federal laws so that the states are only generally guided on the basis for challenges). Incidentally, federally driven paternity-acknowledgments can go by different names. See, e.g., N.J. STAT. ANN. § 9:17-41(b) (West 2002) (“Certificate of Parentage”); N.J. STAT. ANN. § 26:8-28.1 (West 2007) (“A Certificate of Parentage . . . shall serve as the voluntary acknowledgment of paternity by a father.”); IDAHO VITAL RECORDS, FORM NO. HWWP001, ACKNOWLEDGMENT OF PATERNITY (rev. Aug. 1, 2005) [hereinafter IDAHO ACKNOWLEDGMENT OF PATERNITY]; NEVADA VITAL RECORDS, FORM NO. NSPO, DECLARATION OF PATERNITY (rev. July 2008) [hereinafter NEVADA DECLARATION OF PATERNITY].

22. 42 U.S.C. § 666(a)(5)(C)(i).

23. *Id.* § 666(a)(5)(C)(ii).

for maintaining birth records must offer voluntary paternity-establishment services.”²⁴ States must follow these federal laws in order to continue participation in Title IV-D programs.²⁵ States must also achieve high rates of paternity establishment in TANF settings in order to continue receiving TANF funds.²⁶

Federal law also requires that states develop procedures to include the name of the father on the birth certificate of a child of unmarried parents, but only if “the father and mother have signed a voluntary acknowledgment of paternity” or if “a court or an administrative agency of competent jurisdiction has issued an adjudication of paternity.”²⁷ Where the mother is married, but her husband is not the genetic (biological or natural) father, federal norms guide the procedures for paternity acknowledgments by the unwed fathers.²⁸ One law says that once husbands and wives have filed declarations of nonpaternity, unwed fathers and mothers can then acknowledge paternity.²⁹ Yet, federal law recognizes that state law can foreclose such disestablishments of husbands as fathers of children born to their wives.³⁰

In recognizing that states may foreclose paternity disestablishments by husbands whose wives bear children from extramarital sex, federal law defers to state law on paternity.³¹ This deference may be constitutionally required.³² The United States Supreme Court has held that states may, at their discretion, create irrebuttable

24. *Id.* § 666(a)(5)(C)(iii)(I).

25. *Id.* § 666(a). Mandated guidelines can be either statutory—for example, parent’s social security numbers—or regulatory, established by the Secretary of the Department of Health and Human Resources. *See, e.g., id.* §§ 652(a)(7), 666(a)(5)(c)(iii)(II) (2006).

26. *Id.* § 652(g)(1) (requiring ninety percent paternity-establishment rate, or at least steady improvement). As well, states are rewarded with incentive payments as paternity-establishment rates increase. *Id.* § 658a(b)(6) (2006).

27. *Id.* § 666(a)(5)(D)(i)(I)–(II).

28. *See* Leslie Joan Harris, *A New Paternity Law for the Twenty-First Century: Of Biology, Social Function, Children’s Interests, and Betrayal*, 44 WILLAMETTE L. REV. 297, 313–14 (2007) (citing various subsections of 42 U.S.C. § 666).

29. *See* 410 ILL. COMP. STAT. ANN. 535/12(4) (West 2005).

30. 42 U.S.C. § 666(a)(5)(G) (declaring that state procedures, “at the option of the state,” can create a “conclusive presumption of paternity upon genetic testing results indicating a threshold probability that the alleged father is the father of the child,” assuming that testing need not actually be taken and that testing results are assumed to indicate irrebuttably natural (biological or genetic) fatherhood in the husbands).

31. *Id.*

32. *See* United States v. Morrison, 529 U.S. 598, 615–16 (2000).

presumptions of legal paternity in husbands within the confines of federal constitutional substantive due process.³³

For children born from consensual sex to unmarried mothers, the United States Supreme Court has recognized some limits on state discretion regarding legal paternity.³⁴ In particular, the Court has declared that genetic fathers only have a federal constitutional opportunity interest at birth in the legal fatherhood of children born of sex to unwed mothers, with the techniques for seizing such interests subject to interstate variations.³⁵ Yet, under Supreme Court precedents, all states must accommodate at least a minimum level of this paternity opportunity interest; thus state paternity schemes cannot systematically deny genetic fathers chances to step up to legal fatherhood for children born of consensual sex with unmarried mothers.³⁶

To date, the Supreme Court has not recognized a similar paternity opportunity interest for all men who are not genetic fathers of newborns yet nevertheless supported pregnancies, declared parental interests in the community, and began to child rear at birth.³⁷ Yet, in many states such nongenetic fathers are recognized in certain settings.³⁸ For example, in adoptions in many states, nongenetic fathers who have held themselves out in their communities as parents before and after births must be notified of and have the chance to participate in any adoption proceedings.³⁹ They may even have veto powers over such adoptions by others, including genetic strangers.⁴⁰ And perhaps nongenetic fathers who supported the pregnancies of unwed mothers bearing children from sex seemingly are allowed to sign voluntary paternity-acknowledgments.⁴¹ This seems reasonable

33. Michael H. v. Gerald D., 491 U.S. 110, 120–21 (1989).

34. Lehr v. Robertson, 463 U.S. 248, 256–59 (1983).

35. See *id.* at 261–62.

36. Parness, *supra* note 3, at 642 (analyzing *Lehr* and *Michael H.*).

37. See Cynthia C. Siebel, Note, *Defining Fatherhood: Emerging Case Law Reflections of Changing Societal Realities*, 2 WHITTIER J. CHILD & FAM. ADVOC. 125, 133–34 (2003).

38. See Cacioppo, *supra* note 20, at 493.

39. See, e.g., CAL. FAM. CODE §§ 7611(d), 7660 (West 2004).

40. On notice, Nongeneticnongenetic fathers have participatory and veto rights in adoptions by Nongeneticnongenetic fathers of children born to unwed mothers. See, e.g., Laura Oren, *Thwarted Fathers or Pop-Up Pops?: How to Determine When Putative Fathers Can Block the Adoption of Their Newborn Children*, 40 FAM. L.Q. 153, 173–74 (2006).

41. In 2002, the National Conference of Commissioners on Uniform State Laws, within its Uniform Parentage Act (UPA), recognized that federal statutes do not explicitly require that a man acknowledging parentage necessarily “assert” his genetic

only when the men have also promised to rear the children with the mothers after birth and only when the paternity opportunity interests of the genetic fathers have been lost or waived.⁴² Otherwise, those paternity opportunity interests would be systematically denied and thus be unconstitutional.⁴³

Another federal law on voluntary paternity-acknowledgments of nonmarital children says that states must consider a signed acknowledgment to be a legal finding of paternity.⁴⁴ This legal finding can be easily rescinded, however, within the earlier of: (1) sixty days of the signing; or (2) “the date of an administrative or judicial proceeding relating to the child (including a proceeding to establish a support order) in which the signatory is a party.”⁴⁵ Thereafter, under federal law, such a signed voluntary paternity-acknowledgment may be rescinded only on the “basis of fraud, duress, or material mistake of fact, with the burden of proof upon the challenger.”⁴⁶

Neither federal law⁴⁷ nor federal regulations⁴⁸ define the terms “fraud,” “duress,” or “material mistake of fact.” Further, the legislative history of the Social Security Act provides little help.⁴⁹ One federal regulation does say that when there are allegations that “fraud has been practiced” in a TANF program, the “definition of fraud . . . will be determined in accordance with State law.”⁵⁰

parentage. UNIF. PARENTAGE ACT § 301 & cmt. (2000). It recommended that “in order to prevent circumvention” of adoption laws, only a man “claiming to be the genetic father” should be able to sign a paternity acknowledgment “with intent” to establish paternity. *Id.* Some states have not followed the UPA suggestion, as will be demonstrated.

42. *Id.* §§ 302–05.

43. *Id.*

44. 42 U.S.C. § 666(a)(5)(D)(ii) (2006).

45. *Id.* § 666(a)(5)(D)(ii)(I)–(II).

46. *Id.* § 666(a)(5)(D)(iii). The implementation of these rescission standards, on occasion, proves to be challenging. *See* N.J. STAT. ANN. § 9:17-41b (West 2002) (providing for rescission within sixty days); N.J. STAT. ANN. § 26:8-30 (West 2007) (declaring that rescission may occur within sixty days only for “fraud, duress, or material mistake of fact”).

47. *See* 42 U.S.C. § 666(a)(5)(D)(iii) (referencing “fraud, duress, [and] material mistake of fact” without definition); 11 U.S.C. § 1144 (2000) (providing another example where fraud is a key part of the federal law but is not defined).

48. *See, e.g.,* 45 C.F.R. § 235.110 (2009) (deferring to state law for the definition of fraud).

49. GEOFFREY KOLLMANN & CARMEN SOLOMON-FEARS, CONG. RESEARCH SERV., RL 30920, MAJOR DECISIONS IN THE HOUSE AND SENATE ON SOCIAL SECURITY: 1935–2000 (2001).

50. 45 C.F.R. § 235.110.

However, in other federal programs, similar terms have been specifically, though not similarly, defined. For example, when the Department of Housing and Urban Development seeks a recovery based on fraud, it is defined, in part, as “a single act or pattern of actions . . . [t]hat constitutes false statement, omission, or concealment of a substantive fact, made with intent to deceive or mislead.”⁵¹ And, when an individual represents a client before the United States Patent and Trademark Office, fraud means “conduct having a purpose to deceive and not merely negligent misrepresentation or failure to apprise another of relevant information.”⁵²

Thus, it remains unclear whether with fraud and mistake of fact there must be a bad intent or purpose or whether an omission of a material fact suffices to rescind a paternity acknowledgment more than sixty days after completion.⁵³ Because federal lawmakers have not defined fraud, duress, and material mistake of fact in voluntary paternity-acknowledgment settings, paternity disestablishment standards can, and do, vary widely.⁵⁴ In some states, for example, a prospective mother’s failure to apprise a prospective genetic father of his ties, or his lack of genetic ties, can constitute fraud or can be dispositive on the question of material mistake of fact,⁵⁵ in other states it cannot.⁵⁶

Similarly, those who can challenge a voluntary paternity-acknowledgment after sixty days are not well described in federal law.⁵⁷ As a result, states vary regarding opportunities for challenges by children, state welfare agencies, the signing men and women, or the alleged genetic fathers who did not sign.⁵⁸

Not only is there uncertainty about the federal-law dictates for post-sixty-day rescissions of voluntary paternity-acknowledgments, there

51. 24 C.F.R. § 792.103 (2009).

52. 37 C.F.R. § 11.1 (2009).

53. See 24 C.F.R. § 792.103; 37 C.F.R. § 11.1.

54. See Parness, *supra* note 6, at 1302–15.

55. See *id.*

56. See *id.*

57. See 42 U.S.C. § 666(a)(5)(D)(ii)–(iii) (2006).

58. Compare ARIZ. REV. STAT. ANN. § 25-812(E) (2008) (stating that voluntary paternity-acknowledgment may be challenged after sixty days by “the mother, father or child, or a party” to a court proceeding involving the legal paternity of a child), with DEL. CODE ANN. tit. 13, § 8-308(a)(1) (1999 & Supp. 2008) (providing that after sixty days “a signatory” may challenge), and UTAH CODE ANN. § 78B-15-307(1) (LexisNexis 2008) (allowing sixty-day challenges only by “a signatory” or “a support-enforcement agency”).

is also at least some evidence that certain federal authorities acquiesce in allowing rescission opportunities outside these federal-law dictates.⁵⁹ In the mid-2000s, a workgroup studying paternity laws in Oregon was advised that Oregon statutes allowing a challenge to a voluntary paternity-acknowledgment within a year of signing and founded on lack of genetic ties could continue to be used by men whose children were receiving aid.⁶⁰

While the federal statutes are foundational to American state paternity-acknowledgments, federal administrative agency regulations can extend or add specificity to the congressional guidelines and mandates.⁶¹ Statutory uncertainties can be clarified. One federal regulation clarifies the statutory provision requiring hospital-based voluntary paternity-establishment services, deeming it applicable to both private and public birthing facilities;⁶² another requires states to implement procedures to ensure authentication of the signatures on paternity acknowledgments by a notary or witness(es).⁶³ Other federal regulations focus on child welfare. One regulation, aimed at improving child-support enforcement, requires states to implement expedited processes for paternity establishments and child-support requests.⁶⁴ Others require states to implement garnishment and lien procedures on the properties of parents who fail to support.⁶⁵ And, there is a federal regulation requiring states to give full faith and credit to paternity determinations from other states.⁶⁶

A federal regulation can also set out requirements for American state paternity-acknowledgment laws that do not involve agency discretion.⁶⁷ Consider federal constitutional due process mandates⁶⁸: Per federal regulations, states must require that prior to signing any form establishing paternity, the mothers and prospective legal fathers be given notice in writing of their rights and responsibilities as well

59. See Harris, *supra* note 28, at 329.

60. *Id.*

61. See *infra* notes 62-66 and accompanying text.

62. 42 U.S.C. § 666(a)(5)(C)(ii); 45 C.F.R. § 303.5(g)(1)(i) (2009).

63. 45 C.F.R. § 303.5(g)(2)(iv)(4).

64. 45 C.F.R. §§ 302.70(a)(2), 303.101(b)(1) (2009) ("The State must have in effect and use . . . expedited processes . . . to establish paternity and to establish, modify and enforce support orders.").

65. *Id.* §§ 302.70(a)(1), (4).

66. *Id.* § 302.70(a)(11) (declaring that a state must implement "[p]rocedures under which the State must give full faith and credit to a determination of paternity made by any other State").

67. See *infra* notes 68-70 and accompanying text.

68. 45 C.F.R. § 303.101(c)(2) ("The due process rights of the parties involved must be protected . . .").

as the legal consequences of signing.⁶⁹ Further, states must provide the signing mother and father the “opportunity to speak with staff . . . trained to clarify information and answer questions about paternity establishment.”⁷⁰

Federal regulations further require that state paternity establishment mechanisms be made available for “any child at least to the child’s 18th birthday,” even if a local statute of limitations for a paternity court action has expired.⁷¹ Another federal regulation requires, with certain exceptions, “the child and all other parties in a contested paternity case to submit to genetic tests upon the request of such party” unless good cause for refusal can be shown.⁷²

There is a federal regulation requiring American states to implement procedures recognizing that a voluntary paternity-acknowledgment creates either a rebuttable or irrebuttable presumption of paternity, which is admissible as evidence.⁷³ Here, interstate variations are invited.⁷⁴ Another federal regulation also requires the military, under certain circumstances, to furnish the last known address of servicemen who face paternity allegations.⁷⁵ Finally, some federal regulatory directives are exempted from use where a state shows that “the program’s effectiveness would not improve by using [federal] procedures.”⁷⁶

III. STATE PATERNITY-ACKNOWLEDGMENT FORMS AND PROCEDURES

Given these federal laws, paternity-acknowledgment laws and forms unsurprisingly differ significantly from state to state and,

69. 45 C.F.R. §§ 302.70(a)(5)(iii), 303.5(d)(1) (2009).

70. *Id.* § 303.5(g)(2)(i)(D).

71. *Id.* § 302.70(a)(5)(i).

72. *Id.* § 302.70(a)(5)(ii).

73. *Id.* § 302.70(a)(5)(iv).

74. Arguably no national standards could operate even if federal lawmakers wished, as the status of a male signatory as a legal father may be a matter of state law, dictated by the reservation of certain rights to the states under the Tenth Amendment to the Federal Constitution and by United States Supreme Court precedents recognizing state law domination in family law matters. *See, e.g., Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) (“[T]he state as *parens patriae* may restrict the parent’s control by requiring school attendance, regulating or prohibiting the child’s labor, and in many other ways.” (footnotes omitted)).

75. 32 C.F.R. § 81.3(c)(2) (2009).

76. 45 C.F.R. § 302.70(d)(2) (2009).

within a single state, from context to context.⁷⁷ Contexts in which the forms are employed include births of children to both married and unmarried mothers.⁷⁸ Paternity forms can be utilized to establish paternity initially, to rescind an earlier paternity acknowledgment, or to rebut a paternity presumption arising from marriage even though a paternity form was not earlier employed. The following sections illustrate interstate and intrastate variations.⁷⁹

A. Marital Children

As noted, federal law recognizes that states may create a “conclusive presumption of paternity upon genetic testing results.”⁸⁰ Actually, state conclusive presumptions of genetic ties often arise without any testing, such as when husbands are automatically deemed the genetic fathers of children born to their wives.⁸¹ States have recognized a paternity presumption for men married to new mothers at the time of birth, at some point during the pregnancy,⁸² or at some point after birth.⁸³ These presumptions of genetic ties between husband and child typically arise without actual genetic testing.⁸⁴

77. See, e.g., ALASKA BUREAU OF VITAL STAT., FORM NO. 06-5376 VS FORM 16, AFFIDAVIT OF PATERNITY (rev. Jan. 2009) [hereinafter ALASKA AFFIDAVIT OF PATERNITY] (providing for inclusion of the father’s name on the birth certificate of the child depending on when the parents married).

78. See *id.*

79. Our illustrations derive from our survey of state vital records officials regarding their state paternity-acknowledgment laws and statistics, as well as their state paternity-acknowledgment forms. Questionnaires distributed by Professor Jeffrey A. Parness in the Fall of 2009 were followed up with occasional phone calls and emails by both authors in late 2009 and early 2010. See *infra* Part IV.

80. 42 U.S.C. § 666(a)(5)(G) (2006). Such presumptions might operate only in certain settings, as with adoptions (who gets notice) or with support duties (who pays).

81. See, e.g., DEP’T OF HEALTH, COMMONWEALTH OF PUERTO RICO, CERTIFICATE OF PARENTAGE [hereinafter PUERTO RICO CERTIFICATE OF PARENTAGE].

82. Such presumptions are sometimes noted on voluntary paternity-acknowledgment forms. See, e.g., ALASKA AFFIDAVIT OF PATERNITY, *supra* note 77 (explaining that “if the mother was married at conception, during the pregnancy, or at the birth, Alaska law specifies that the name of the husband shall be entered on the certificate of birth as the father of the child”); BUREAU OF VITAL RECORDS, MISSOURI DEP’T OF HEALTH AND SENIOR SERVS., FORM NO. MO 580-0651, AFFIDAVIT ACKNOWLEDGING PATERNITY (rev. Nov. 2001) [hereinafter MISSOURI AFFIDAVIT ACKNOWLEDGING PATERNITY] (“If the mother was married at the child’s conception, during the pregnancy or at the time of the child’s birth, the husband/ex-husband is the presumed father”); PUERTO RICO CERTIFICATE OF PARENTAGE, *supra* note 81 (explaining that “parents who are married to each other do not need to sign this form because their child’s paternity is already established”).

83. Such a presumption is sometimes noted on the voluntary acknowledgment form. See, e.g., TEXAS FAM. CODE ANN. § 160.204(a)(4) (2008) (A man is the presumed father

Where any marital presumption is not conclusive⁸⁵ and where the legal fatherhood of the husband can be rebutted,⁸⁶ the genetic father and the mother can sometimes utilize a paternity-acknowledgment form to disestablish a presumption of fatherhood.⁸⁷ Genetic tests recognized in judicial proceedings can override marital presumptions.⁸⁸ Additionally, forms signed by wives and husbands indicating that the husbands are not the genetic fathers are available

when he married the mother after the child's birth and "promised in a record to support the child as his own."); VITAL STAT. UNIT, TEXAS DEP'T OF STATE HEALTH SERVS., FORM NO. VS-159.1M, ACKNOWLEDGMENT OF PATERNITY (rev. Sept. 2005) [hereinafter TEXAS ACKNOWLEDGMENT OF PATERNITY].

84. See, e.g., IND. CODE ANN. § 31-14-7-1(1) (LexisNexis 2007) ("A man is presumed to be a child's biological father" if the man and mother were married at the time of birth.); N.M. STAT. ANN. § 40-11-5 (2006) ("A man is presumed to be the natural father of a child" if the man, "while the child is under the age of majority . . . openly holds out the child as his natural child and has established a personal, financial or custodial relationship with the child."). At times, two different men can be presumed fathers under state statute; here, a court might choose the legal father from the two, *In re Jesusa V.*, 85 P.3d 2 (Cal. 2004), or declare dual paternity, *T.D. v. M.M.M.*, 98-C-0167 (La. 03/02/99); 730 So. 2d 873.
85. See, e.g., MISSOURI PATERNITY AFFIDAVIT, *supra* note 82 (explaining that "if the mother was married at the child's conception, during the pregnancy or at the time of the child's birth, the husband/ex-husband is the presumed father unless court states otherwise."); IDAHO PATERNITY ACKNOWLEDGMENT, *supra* note 21 ("When you sign this affidavit, you agree that the legal father (husband) will have NO parental rights and responsibilities to this child.").
86. Where a husband's presumed paternity may be rebutted, not everyone may have standing to seek rebuttal. See, e.g., *Beckwith v. Quinn*, No. 292354, 2009 WL 3837450, at *1-2 (Mich. Ct. App. Nov. 17, 2009) ("[T]he current state of the law in Michigan is that a putative father of a child born in wedlock has no constitutional liberty interest relative to commencing a paternity action and requesting custody or parenting time regardless of biological connection to the child and the presence of a parent-child relationship." (quoting *Sinicropi v. Mazurek*, 729 N.W.2d 25 (Mich. Ct. App. 2006))).
87. See OFFICE OF THE INSPECTOR GEN., OEI-06-98-00053, PATERNITY ESTABLISHMENT: USE OF VOLUNTARY PATERNITY ACKNOWLEDGEMENTS (April 2000), available at www.oig.hhs.gov/oei/reports/oei-06-98-00053.pdf. In 2000, the Inspector General of the U.S. Department of Health and Human Services found that "ten state voluntary acknowledgment forms have included space for the signature of the husband of a mother who is married to someone other than the biological father of the child," allowing "the husband to relinquish his parental rights at the same time the natural father's paternity is established." *Id.* at 3. As well, it was found that "another ten states have developed a separate form for the husband, typically called a Denial of Paternity, which releases the husband from parental responsibility *without* establishing paternity for the natural father." *Id.* at 3-4.
88. See, e.g., MO. ANN. STAT. § 210.822 (West 2004).

in some states.⁸⁹ Here, as with the creation of marital presumptions, genetic testing may not be required.⁹⁰

Forms that allow disestablishment of the husband's paternity vary interstate. In Minnesota, it is called the "Husband's Non-Paternity Statement."⁹¹ In Montana, it is called an "Affidavit of Non-paternity."⁹² In North Dakota,⁹³ as in Colorado,⁹⁴ there is a "Denial of Paternity" form. These forms are not always separate from voluntary paternity-acknowledgment forms.⁹⁵ Denials of marital paternity are sometimes limited. In a few states, including Arkansas,⁹⁶ West Virginia,⁹⁷ and New Jersey,⁹⁸ husbands cannot rebut the marital paternity presumption with a form unless another man is prepared to establish paternity. In Illinois, upon the rescission of a second father's paternity establishment, "the husband/ex-husband is legally responsible for the support of the child."⁹⁹ Minnesota denial forms include similar language, declaring that a husband's denial of paternity "becomes invalid" when a subsequent

89. See, e.g., HEALTH STAT. AND VITAL RECORDS, COLORADO DEP'T OF PUB. HEALTH & ENV'T, VOLUNTARY ACKNOWLEDGMENT OF PATERNITY (rev. 2003) [hereinafter COLORADO VOLUNTARY ACKNOWLEDGMENT OF PATERNITY].

90. See, e.g., *id.*

91. OFFICE OF THE STATE REGISTRAR, MINNESOTA DEP'T OF HEALTH, FORM NO. DHS-3159C-ENG, MINNESOTA VOLUNTARY RECOGNITION OF PARENTAGE: HUSBAND'S NON-PATERNITY STATEMENT (rev. Apr. 2009) [hereinafter MINNESOTA HUSBAND'S NON-PATERNITY STATEMENT].

92. OFFICE OF VITAL STAT., STATE OF MONTANA DEP'T OF PUB. HEALTH AND HUMAN SERVS., AFFIDAVIT OF NONPATERNITY [hereinafter MONTANA AFFIDAVIT OF NONPATERNITY].

93. DIV. OF VITAL RECORDS, NORTH DAKOTA DEP'T OF HEALTH, FORM NO. SFN 8195, ACKNOWLEDGMENT OF PATERNITY (rev. Aug. 2005) [hereinafter NORTH DAKOTA ACKNOWLEDGMENT OF PATERNITY] ("Denial of Paternity" is Section III).

94. COLORADO VOLUNTARY ACKNOWLEDGMENT OF PATERNITY, *supra* note 89.

95. See, e.g., *id.*

96. DIV. OF VITAL RECORDS, ARKANSAS DEP'T OF HEALTH, ACKNOWLEDGMENT OF PATERNITY (rev. Jan. 2009) [hereinafter ARKANSAS ACKNOWLEDGMENT OF PATERNITY].

97. VITAL REGISTRATION OFFICE, WEST VIRGINIA DEP'T OF HEALTH AND HUMAN RES., VOLUNTARY DENIAL OF PATERNITY/AFFIDAVIT OF NONPATERNITY (rev. Oct. 13, 2006) [hereinafter WEST VIRGINIA DENIAL OF PATERNITY] ("[T]his Voluntary Denial of Paternity may only be executed by the Vital Registration office when the man named below: (1) is not already named as the father on my child's birth certificate AND (2) a Declaration of Paternity Affidavit is submitted which acknowledges the true paternity of my child.").

98. STATE OF NEW JERSEY, AFFIDAVIT OF DENIAL OF PATERNITY [hereinafter NEW JERSEY DENIAL OF PATERNITY].

99. DIV. OF VITAL RECORDS, ILLINOIS DEP'T OF PUB. HEALTH, FORM NO. HFS 3416D, DENIAL OF PATERNITY (rev. Oct. 2006) [hereinafter ILLINOIS DENIAL OF PATERNITY].

voluntary paternity-establishment is revoked.¹⁰⁰ Paternity disestablishment forms in other states, such as Idaho,¹⁰¹ Montana,¹⁰² and South Dakota,¹⁰³ make no indication that another man must be prepared to establish paternity before the husband or presumed father can disestablish.

Other significant interstate variations exist in forms that rebut marital paternity presumptions. As to witnesses and notaries, the “Husband’s Denial of Paternity” form in Washington requires a notary,¹⁰⁴ as do the forms in Idaho¹⁰⁵ and North Dakota.¹⁰⁶ In Illinois, the “Denial of Paternity” form requires only a witness.¹⁰⁷ A notary or a Justice of the Peace is sufficient in New Hampshire.¹⁰⁸

There are different types of assertions about the husband’s non-paternity. In Montana, the form insists the husband declare that “although legally married at the time of this birth, I am not the father of the named child, I request that my name not be listed on the birth certificate.”¹⁰⁹ The assertion in Washington, by contrast, says the husband declares that he is “not the natural father.”¹¹⁰ In Minnesota, the signer must “give up all rights to a legal father and child relationship with this child.”¹¹¹

Montana requires that the wife sign a declaration of a husband’s non-paternity.¹¹² Other states, including North Dakota,¹¹³

100. MINNESOTA HUSBAND’S NON-PATERNITY STATEMENT, *supra* note 91.

101. IDAHO ACKNOWLEDGMENT OF PATERNITY, *supra* note 21.

102. MONTANA AFFIDAVIT OF NONPATERNITY, *supra* note 92.

103. SOUTH DAKOTA DEP’T OF HEALTH, HUSBAND’S PATERNITY DENIAL AFFIDAVIT [hereinafter SOUTH DAKOTA PATERNITY DENIAL AFFIDAVIT].

104. CTR. FOR HEALTH STAT., WASHINGTON STATE DEP’T OF HEALTH, FORM NO. DOH/CHS 021, PATERNITY AFFIDAVIT (rev. Sept. 2007) [hereinafter WASHINGTON PATERNITY AFFIDAVIT].

105. IDAHO ACKNOWLEDGMENT OF PATERNITY, *supra* note 21 (including a paternity-denial section on the paternity-acknowledgment form).

106. NORTH DAKOTA ACKNOWLEDGMENT OF PATERNITY, *supra* note 93.

107. ILLINOIS DENIAL OF PATERNITY, *supra* note 99. The Illinois denial-of-paternity form also explains that upon rescission of a voluntary acknowledgment form by the unwed father and the wife, “the husband/ex-husband is legally responsible for the support of the child.” *Id.*

108. DIV. OF CHILD SUPPORT SERVS., NEW HAMPSHIRE DEP’T OF HEALTH AND HUMAN SERVS., FORM NO. DCSS s698, AFFIDAVIT OF PATERNITY (rev. Aug. 2006) [hereinafter NEW HAMPSHIRE AFFIDAVIT OF PATERNITY] (including a place for a husband to deny paternity).

109. MONTANA AFFIDAVIT OF NONPATERNITY, *supra* note 92.

110. WASHINGTON PATERNITY AFFIDAVIT, *supra* note 104.

111. MINNESOTA HUSBAND’S NON-PATERNITY STATEMENT, *supra* note 91.

112. MONTANA AFFIDAVIT OF NONPATERNITY, *supra* note 92.

113. NORTH DAKOTA ACKNOWLEDGMENT OF PATERNITY, *supra* note 93.

Washington,¹¹⁴ and Minnesota,¹¹⁵ require only the signature of the husband.

State forms also differ in their explicit recognition of penalties flowing from inaccuracies. In Washington, men who sign the "Husband's Denial of Paternity" must "declare under penalty of perjury" that the information provided is "true and correct."¹¹⁶ In North Dakota, husbands sign "under penalties of perjury."¹¹⁷ The Illinois "Denial of Paternity"¹¹⁸ and the Montana "Affidavit of Nonpaternity"¹¹⁹ forms have no similar provisions.

In some states, including Minnesota¹²⁰ and Oklahoma,¹²¹ forms by husbands denying paternity can themselves be rescinded. To revoke a Minnesota "Non-Paternity Statement," the signer "must state in writing that I am revoking . . . in front of a notary public; and file the revocation with the Minnesota Department of Health by fax or mail" within sixty days of filing.¹²² Oklahoma allows a man to withdraw his denial of paternity, through a "Rescission of a Denial of Paternity" form, within sixty days of the filing of the correlating "Voluntary Acknowledgment of Paternity."¹²³ In West Virginia, a "Denial of Paternity" "may only be rescinded (voided) by order of a court of competent jurisdiction upon showing of fraud, duress, or material mistake of fact."¹²⁴ In Illinois, the "Denial of Paternity" form reminds signers that there exists a sixty-day time period to rescind a "Voluntary Acknowledgment of Paternity" form, but makes no mention of the opportunity to rescind a "Denial of Paternity" by a husband.¹²⁵ Denial forms for husbands in South Dakota,¹²⁶ New Jersey,¹²⁷ and Montana¹²⁸ fail to mention any opportunity to rescind.

114. WASHINGTON PATERNITY AFFIDAVIT, *supra* note 104.

115. MINNESOTA HUSBAND'S NON-PATERNITY STATEMENT, *supra* note 91.

116. WASHINGTON PATERNITY AFFIDAVIT, *supra* note 104.

117. NORTH DAKOTA ACKNOWLEDGMENT OF PATERNITY, *supra* note 93.

118. ILLINOIS DENIAL OF PATERNITY, *supra* note 99.

119. MONTANA AFFIDAVIT OF NONPATERNITY, *supra* note 92.

120. MINNESOTA HUSBAND'S NON-PATERNITY STATEMENT, *supra* note 91.

121. DIV. OF VITAL RECORDS, OKLAHOMA DEP'T OF HUMAN SERVS., FORM NO. 03PA210E (CSED-209-D), DENIAL OF PATERNITY (rev. Nov. 1, 2006) [hereinafter OKLAHOMA DENIAL OF PATERNITY].

122. MINNESOTA HUSBAND'S NON-PATERNITY STATEMENT, *supra* note 91.

123. OKLAHOMA DENIAL OF PATERNITY, *supra* note 121.

124. WEST VIRGINIA DENIAL OF PATERNITY, *supra* note 97.

125. ILLINOIS DENIAL OF PATERNITY, *supra* note 99.

126. SOUTH DAKOTA PATERNITY DENIAL AFFIDAVIT, *supra* note 103.

127. NEW JERSEY DENIAL OF PATERNITY, *supra* note 98.

128. MONTANA AFFIDAVIT OF NONPATERNITY, *supra* note 92.

Denial of Paternity forms for husbands also vary on the necessary length of time between the birth of the child and the denial. In West Virginia, a “Voluntary Denial of Paternity” “must be submitted within ONE YEAR of the date of birth.”¹²⁹ To file a “Denial of Paternity in Oklahoma,” the child “must be less than two years old.”¹³⁰ By contrast, a husband in Washington may submit a “Denial or Acknowledgment¹³¹ of Paternity” form even after the child’s eighteenth birthday, as the form states that “the adult child must complete item #43 and sign before a notary public.”¹³²

Although some husbands use forms to rebut the paternity presumption, other husbands use different forms to affirm that presumption.¹³³ Marital parents occasionally establish paternity through voluntary-acknowledgment forms.¹³⁴ While most states seemingly exclude marital children from voluntary-acknowledgment processes, some do not.¹³⁵ Wisconsin has a separate and unique acknowledgment form, called “Acknowledgment of Marital Child.”¹³⁶ By contrast, the acknowledgment form in Georgia explains that it “cannot be completed if the mother was married to anyone within the 10 months prior to the birth of this child.”¹³⁷ Mothers signing in Massachusetts must attest, “I swear . . . I was not married.”¹³⁸ Pennsylvania excludes marital children by captioning the form “Acknowledgment of Paternity for a Child Born to an Unmarried Woman.”¹³⁹ In simpler and perhaps less exclusive terms,

129. WEST VIRGINIA DENIAL OF PATERNITY, *supra* note 97.

130. OKLAHOMA DENIAL OF PATERNITY, *supra* note 121.

131. WASHINGTON PATERNITY AFFIDAVIT, *supra* note 104.

132. *Id.*

133. See, e.g., OFFICE OF VITAL RECORDS PATERNITY REGISTRY, CONNECTICUT DEP’T OF PUB. HEALTH, FORM NO. VS-56, ACKNOWLEDGMENT OF PATERNITY (rev. Jan. 15, 2002) [hereinafter CONNECTICUT ACKNOWLEDGMENT OF PATERNITY].

134. See, e.g., *id.*

135. See, e.g., DIV. OF PUB. HEALTH, WISCONSIN DEP’T OF HEALTH SERVS., FORM NO. F-05023, ACKNOWLEDGMENT OF MARITAL CHILD (rev. Nov. 2008) [hereinafter WISCONSIN ACKNOWLEDGMENT OF MARITAL CHILD].

136. *Id.*

137. VITAL RECORDS, GEORGIA DEP’T OF HUMAN RES., FORM NO. 3940, PATERNITY ACKNOWLEDGMENT (rev. June 2009) [hereinafter GEORGIA PATERNITY ACKNOWLEDGMENT].

138. CHILD SUPPORT ENFORCEMENT DIV., MASSACHUSETTS DEP’T OF REVENUE, FORM NO. R-132-04, VOLUNTARY ACKNOWLEDGMENT OF PARENTAGE (rev. Oct. 2004) [hereinafter MASSACHUSETTS ACKNOWLEDGMENT OF PARENTAGE].

139. BUREAU OF CHILD SUPPORT ENFORCEMENT, PENNSYLVANIA DEP’T OF PUB. WELFARE, FORM NO. PA/CS 611, ACKNOWLEDGMENT OF PATERNITY FOR A CHILD BORN TO AN

the Oklahoma form is entitled, "Acknowledgment of Paternity."¹⁴⁰ It does not expressly exclude usage by married parents, but does declare, "Use this form to establish paternity for a child born to parents who were not married to each other when the child was conceived or born."¹⁴¹

B. Acknowledging Nonmarital Children

American states now provide unwed mothers and genetic fathers of children born of sex with methods of voluntary paternity-acknowledgment around the time of birth.¹⁴² The relevant forms, designed to establish paternity outside of court proceedings, vary interstate though they are all driven by TANF guidelines.¹⁴³ The Florida,¹⁴⁴ Mississippi,¹⁴⁵ Nebraska,¹⁴⁶ and New York¹⁴⁷ forms are captioned "Acknowledgment of Paternity." Alaska,¹⁴⁸ Wyoming,¹⁴⁹ and Washington¹⁵⁰ call their forms an "affidavit," emphasizing the need for accuracy a bit more. Nevada uses a "Declaration of

UNMARRIED WOMAN (rev. July 2006) [hereinafter PENNSYLVANIA ACKNOWLEDGMENT OF PATERNITY].

140. DIV. OF VITAL RECORDS, OKLAHOMA DEP'T OF HUMAN SERVS., FORM NO. 03PA209E (CSED-209), ACKNOWLEDGMENT OF PATERNITY (rev. Nov. 1, 2006) [hereinafter OKLAHOMA ACKNOWLEDGMENT OF PATERNITY].

141. *Id.*

142. Many of the acknowledgment forms are found at https://ocse.acf.hhs.gov/necsr/pubs/vap_forms/ (last visited Nov. 16, 2010).

143. See 42 U.S.C. § 666(a)(5)(C) (2006).

144. OFFICE OF VITAL STAT., FLORIDA DEP'T OF HEALTH, FORM NO. DH FORM 432, ACKNOWLEDGMENT OF PATERNITY (rev. Nov. 2004) [hereinafter FLORIDA ACKNOWLEDGMENT OF PATERNITY].

145. VITAL RECORDS, MISSISSIPPI STATE DEP'T OF HEALTH, FORM NO. 564, ACKNOWLEDGMENT OF PATERNITY (rev. Jan. 15, 2008) [hereinafter MISSISSIPPI ACKNOWLEDGMENT OF PATERNITY].

146. VITAL RECORDS MGMT., NEBRASKA HEALTH AND HUMAN SERVS. SYS., FORM NO. CSE-11, ACKNOWLEDGMENT OF PATERNITY: PATERNITY ESTABLISHMENT/BIRTH CERTIFICATE AMENDMENT (rev. Nov. 2006) [hereinafter NEBRASKA ACKNOWLEDGMENT OF PATERNITY].

147. OFFICE OF TEMP. AND DISABILITY ASSISTANCE, NEW YORK STATE DEP'T OF HEALTH, FORM NO. LDSS-4418, ACKNOWLEDGMENT OF PATERNITY (rev. Aug. 1998) [hereinafter NEW YORK ACKNOWLEDGMENT OF PATERNITY].

148. ALASKA AFFIDAVIT OF PATERNITY, *supra* note 77.

149. VITAL RECORDS SERVS., STATE OF WYOMING, AFFIDAVIT ACKNOWLEDGING PATERNITY [hereinafter WYOMING PATERNITY AFFIDAVIT].

150. WASHINGTON PATERNITY AFFIDAVIT, *supra* note 104.

Parentage,”¹⁵¹ while Alabama employs a “Request to Change Birth Certificate-Acknowledgment of Paternity.”¹⁵²

Responsibility for development of state voluntary paternity-acknowledgment forms falls to varying agencies.¹⁵³ The Department of Economic Security issues forms in Arizona,¹⁵⁴ while the Department of Job and Family Services issues forms in Ohio.¹⁵⁵ Iowa takes a common approach, as its forms originate in the Department of Public Health.¹⁵⁶ It is unclear whether the choice of agency responsible for paternity acknowledgments says anything important about whom the state encourages or prompts to acknowledge paternity and for what purpose(s) (welfare-payment reimbursement, parental child-rearing interests, child welfare independent of any state welfare funds, or any combination of the three).¹⁵⁷

Ease of access to voluntary paternity-acknowledgment forms also varies among states. Some states usually only provide forms to parents who wish to establish paternity.¹⁵⁸ Other states, like Colorado¹⁵⁹ and Louisiana,¹⁶⁰ make voluntary paternity-acknowledgment forms retrievable online.

151. NEVADA DECLARATION OF PATERNITY, *supra* note 21.

152. CTR. FOR HEALTH STAT., ALABAMA DEP’T OF PUB. HEALTH, FORM NO. ADPH-HS-22, REQUEST TO CHANGE BIRTH CERTIFICATE—ACKNOWLEDGMENT OF PATERNITY (rev. Oct. 1, 2009) [hereinafter ALABAMA ACKNOWLEDGMENT OF PATERNITY].

153. 42 U.S.C. § 666(a)(5)(C)(iii)(I) (2006) (“Such procedures must require the State agency responsible for maintaining birth records to offer voluntary paternity establishment services.”).

154. *See* DIV. OF CHILD SUPPORT ENFORCEMENT, ARIZONA DEP’T OF ECON. SECURITY, FORM NO. CS-127, ACKNOWLEDGMENT OF PATERNITY (rev. Apr. 2007) [hereinafter ARIZONA ACKNOWLEDGMENT OF PATERNITY].

155. *See* OFFICE OF CHILD SUPPORT, OHIO DEP’T OF JOB AND FAMILY SERVS., FORM NO. JFS 07038, ACKNOWLEDGMENT OF PATERNITY AFFIDAVIT (rev. Dec. 2006) [hereinafter OHIO ACKNOWLEDGMENT OF PATERNITY AFFIDAVIT].

156. *See* BUREAU OF VITAL RECORDS, IOWA DEP’T OF PUB. HEALTH, FORM NO. BVR#588-0037, VOLUNTARY PATERNITY AFFIDAVIT (rev. Apr. 2009) [hereinafter IOWA PATERNITY AFFIDAVIT].

157. *Compare* ARIZONA ACKNOWLEDGMENT OF PATERNITY, *supra* note 154 (“Department of Economic Security”), *with* IOWA PATERNITY AFFIDAVIT, *supra* note 156 (“Department of Public Health”).

158. Some responses to our survey seeking copies of state acknowledgment and rescission forms indicated that many forms were not usually made available to just anyone.

159. HEALTH STAT. AND VITAL RECORDS, COLORADO DEP’T OF PUB. HEALTH & ENV’T, VOLUNTARY ACKNOWLEDGMENT OF PATERNITY, *available at* http://www.cdphe.state.co.us/certs/paternity_acknowl.pdf (last visited Dec. 16, 2010).

Forms also vary among states based on the relationship required between the signer and the child before the signer can acknowledge his paternity.¹⁶¹ Several state paternity-acknowledgment forms, including those in Alaska¹⁶² and Nevada,¹⁶³ do not address whether genetic ties are required, or even preferred, to establish paternity. Thus, the signing man in those states is described as “father.”¹⁶⁴ Other states seemingly invite voluntary paternity-acknowledgments only by genetic fathers, though they may not expressly exclude nongenetic fathers.¹⁶⁵ Thus, in Wyoming¹⁶⁶ and Washington,¹⁶⁷ the forms consistently refer to the man as “natural father.” Although each form includes supplemental instructions indicating the need for a genetic relationship, the forms themselves do not require an explicit affirmation of genetic ties.¹⁶⁸

An express affirmation of genetic ties is the preferred approach, and it may be constitutionally required.¹⁶⁹ In Mississippi, the male signatory certifies and acknowledges that he is the “natural father.”¹⁷⁰ In Connecticut, the male signer attests he is “the biological father of the child named above.”¹⁷¹ Other state forms expressly prohibit nongenetic fathers from signing. The West Virginia form explains: “If the man named above is not the biological father of the child, do not sign the document.”¹⁷² Similarly, instructions accompanying the Washington form state in bold: “Sign this form only if you are sure

160. LOUISIANA DEP’T OF HEALTH AND HOSPS., ACKNOWLEDGEMENT OF PATERNITY AFFIDAVIT FORMS (rev. Apr. 2005), available at <http://www.dhh.louisiana.gov/publications.asp?ID=252&Detail=1047>.

161. See, e.g., NEW HAMPSHIRE AFFIDAVIT OF PATERNITY, *supra* note 108 (allowing posthumous paternity establishment).

162. ALASKA AFFIDAVIT OF PATERNITY, *supra* note 77.

163. NEVADA DECLARATION OF PATERNITY, *supra* note 21.

164. See *supra* notes 162–63 and accompanying text.

165. See *infra* notes 166–68 and accompanying text.

166. WYOMING PATERNITY AFFIDAVIT, *supra* note 149.

167. WASHINGTON PATERNITY AFFIDAVIT, *supra* note 104.

168. See *id.*; WYOMING PATERNITY AFFIDAVIT, *supra* note 149.

169. See, e.g., *Lehr v. Robertson*, 463 U.S. 248, 262–64 (1983) (stating that an adoption scheme would be “procedurally inadequate” if it failed to notify putative “responsible fathers” for reasons beyond their control); Parness, *supra* note 3, at 650–64 (describing procedurally adequate paternity schemes and finding American state birth-record systems are often inadequate).

170. VITAL RECORDS, MISSISSIPPI STATE DEP’T OF HEALTH, FORM NO. 514, LEGITIMATION – A (rev. Jan. 14, 2008).

171. CONNECTICUT ACKNOWLEDGMENT OF PATERNITY, *supra* note 133.

172. VITAL REGISTRATION OFFICE, WEST VIRGINIA DEP’T OF HEALTH AND HUMAN RES., FORM NO. WVDHHR, DECLARATION OF PATERNITY AFFIDAVIT (rev. Aug. 2007) [hereinafter WEST VIRGINIA DECLARATION OF PATERNITY AFFIDAVIT].

that you are the only possible biological parent of this child.”¹⁷³ And in Maine, the form warns that it is “a crime for you to sign this form knowing that the man signing is not the biological father of the child.”¹⁷⁴

Further distinctions between state forms exist. The acknowledgment forms in Maine¹⁷⁵ and Indiana¹⁷⁶ afford parents the opportunity to use a single form to establish paternity for multiple children. Other state forms do not permit paternity establishment for two or more children.¹⁷⁷ In Arizona, the form expressly states that, “in cases of multiple births, a separate Acknowledgment for each child must be completed.”¹⁷⁸

There are also differences in timing. In Texas, an acknowledgment form can be completed up to 300 days before birth, a fact noted on the form.¹⁷⁹ In contrast, the New York acknowledgment form states: “You may only sign an Acknowledgment of paternity **after** the birth of the child.”¹⁸⁰ Similarly, the Colorado acknowledgment form states that it “may not be completed before the birth of the child.”¹⁸¹ But the instructions for the Colorado form declare that “it is strongly encouraged, when possible, to provide these materials [information packets and brochures] early in the pregnancy.”¹⁸²

Acknowledgment forms also vary in their approaches to state citizens who bear children outside the state. The Missouri form says, “[T]his Affidavit may be signed for any child who was born in

173. WASHINGTON PATERNITY AFFIDAVIT, *supra* note 104.

174. OFFICE OF VITAL RECORDS, MAINE DEP’T OF HEALTH AND HUMAN SERVS., FORM NO. VS-27C, VOLUNTARY ACKNOWLEDGMENT OF PATERNITY (rev. Oct. 2005).

175. *Id.*

176. INDIANA DEP’T OF HEALTH – VITAL RECORDS, FORM NO. 44780, PATERNITY AFFIDAVIT (rev. Mar. 1, 2007) [hereinafter INDIANA PATERNITY AFFIDAVIT]. Chris Worden criticized the Indiana acknowledgment process in *Rethinking the Paternity Affidavit*, 52 RES GESTAE 14 (2009).

177. See, e.g., DIV. OF VITAL RECORDS, MARYLAND DEP’T OF HEALTH AND MENTAL HYGIENE, FORM NO. DHR/CSEA 1040, AFFIDAVIT OF PARENTAGE (rev. Mar. 2005) [hereinafter MARYLAND AFFIDAVIT OF PARENTAGE].

178. ARIZONA ACKNOWLEDGMENT OF PATERNITY, *supra* note 154.

179. TEXAS ACKNOWLEDGMENT OF PATERNITY, *supra* note 83.

180. NEW YORK ACKNOWLEDGMENT OF PATERNITY, *supra* note 147.

181. COLORADO VOLUNTARY ACKNOWLEDGMENT OF PATERNITY, *supra* note 89.

182. *Id.* Prebirth acknowledgments are permitted in South Carolina and the District of Columbia as well. See DIV. OF PUB. RECORDS, SOUTH CAROLINA DEP’T OF HEALTH AND ENV’T CONTROL, PATERNITY ACKNOWLEDGMENT (containing a section entitled, “To Be Completed When Father Acknowledges Paternity Prior to the Birth of the Child”); see also D.C. CODE § 16-909.03(b)(1)(G) (LexisNexis 2010).

Missouri.”¹⁸³ The Michigan form is similar.¹⁸⁴ The first statement beneath the title of the form in New Mexico says: “In the matter of the acknowledgment of paternity of a child born in the State of New Mexico.”¹⁸⁵ In Arkansas, the form is “for children born in Arkansas,” as the form says that “parents of children born in another state should complete that state’s form.”¹⁸⁶ By contrast, Illinois affords paternity-acknowledgment opportunities for children born outside of Illinois; the Illinois form includes separate filing instructions for out-of-state births.¹⁸⁷ A Colorado statute provides that “when a birth occurs on a moving conveyance within the United States and the child is first removed from the conveyance in Colorado, the birth shall be registered in Colorado.”¹⁸⁸ However, the Colorado acknowledgment forms are silent on this issue.¹⁸⁹ Some state forms ask the signers to provide the name of the city of the child’s birth¹⁹⁰ or the name of the birthing facility. The Nevada¹⁹¹ and South Dakota¹⁹² forms ask for the state of the child’s birth. The Rhode Island form also asks for the child’s place of birth, but the words “Rhode Island” are pre-printed in the address section.¹⁹³ The Massachusetts¹⁹⁴ form must be filed at the “office for the city or town where the child was born,” seemingly precluding paternity acknowledgments for out-of-state births to couples from Massachusetts.¹⁹⁵

183. MISSOURI AFFIDAVIT ACKNOWLEDGING PATERNITY, *supra* note 82.

184. VITAL RECORDS AND HEALTH DATA DEV., MICHIGAN DEP’T OF CMTY. HEALTH, FORM NO. DCH-0682, AFFIDAVIT OF PARENTAGE (rev. June 2006) [hereinafter MICHIGAN AFFIDAVIT OF PARENTAGE].

185. BUREAU OF VITAL RECORDS AND HEALTH STAT., NEW MEXICO DEP’T OF HEALTH, ACKNOWLEDGMENT OF PATERNITY STATEMENT.

186. ARKANSAS ACKNOWLEDGMENT OF PATERNITY, *supra* note 96.

187. DIV. OF VITAL RECORDS, ILLINOIS DEP’T OF PUB. HEALTH, FORM NO. DPA 3416BC4, VOLUNTARY ACKNOWLEDGMENT OF PATERNITY (rev. Aug. 2000) [hereinafter ILLINOIS ACKNOWLEDGMENT OF PATERNITY].

188. COLO. REV. STAT. ANN. 25-2-112(1) (West 2008).

189. COLORADO VOLUNTARY ACKNOWLEDGMENT OF PATERNITY, *supra* note 89.

190. Washington, D.C. goes even further: their acknowledgment form is preprinted with “Washington D.C.” in the address section. See DISTRICT OF COLUMBIA VITAL RECORDS DIV., ACKNOWLEDGMENT OF PATERNITY.

191. NEVADA DECLARATION OF PATERNITY, *supra* note 21.

192. SOUTH DAKOTA DEP’T OF HEALTH, FORM NO. HAS-0260, VOLUNTARY ACKNOWLEDGMENT OF PATERNITY (rev. Jan. 2009) [hereinafter SOUTH DAKOTA ACKNOWLEDGMENT OF PATERNITY].

193. STATE OF RHODE ISLAND, VOLUNTARY AFFIDAVIT OF PATERNITY FOR UNMARRIED PARENTS [hereinafter RHODE ISLAND AFFIDAVIT OF PATERNITY].

194. MASSACHUSETTS ACKNOWLEDGMENT OF PARENTAGE, *supra* note 138.

195. See *id.*

Paternity-acknowledgment forms typically require the signature of a witness or witnesses, or a notary. Nevada,¹⁹⁶ New York,¹⁹⁷ and North Dakota¹⁹⁸ use witnesses. South Dakota,¹⁹⁹ Wisconsin,²⁰⁰ and Wyoming²⁰¹ use notaries. The Texas acknowledgment form makes no explicit mention of notaries or witnesses, but the “document requires an Entity Code completed in the lower right corner by an individual certified by the Office of the Attorney General to administer Acknowledgments of Paternity.”²⁰² Florida²⁰³ and Alaska²⁰⁴ allow parents the option of using either witnesses or notaries. In Missouri, either two witnesses or a notary suffice.²⁰⁵ In Oregon²⁰⁶ and California,²⁰⁷ a notary is required for parents who complete the form outside of a healthcare facility, but only a witness is required for parents who complete the form in a healthcare facility. In New Hampshire, either a notary or justice of the peace will suffice.²⁰⁸

In Florida, when parents use the witness option, each parent must furnish picture identification.²⁰⁹ The forms in Iowa,²¹⁰ Georgia,²¹¹ and Missouri²¹² also specify that all parents must submit identification. Signers in Iowa must furnish current government-

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196. NEVADA DECLARATION OF PATERNITY, *supra* note 21.
 197. NEW YORK ACKNOWLEDGMENT OF PATERNITY, *supra* note 147.
 198. NORTH DAKOTA ACKNOWLEDGMENT OF PATERNITY, *supra* note 93.
 199. SOUTH DAKOTA ACKNOWLEDGMENT OF PATERNITY, *supra* note 192.
 200. WISCONSIN ACKNOWLEDGMENT OF MARITAL CHILD, *supra* note 135.
 201. WYOMING PATERNITY AFFIDAVIT, *supra* note 149.
 202. TEXAS ACKNOWLEDGMENT OF PATERNITY, *supra* note 83.
 203. FLORIDA ACKNOWLEDGMENT OF PATERNITY, *supra* note 144.
 204. ALASKA AFFIDAVIT OF PATERNITY, *supra* note 77.
 205. MISSOURI AFFIDAVIT ACKNOWLEDGING PATERNITY, *supra* note 82.
 206. CTR. FOR HEALTH STAT., OREGON DEP’T OF HUMAN SERVS., FORM NO. 45-31, VOLUNTARY ACKNOWLEDGMENT OF PATERNITY AFFIDAVIT (rev. Jan. 2008) [hereinafter OREGON ACKNOWLEDGMENT OF PATERNITY].
 207. CALIFORNIA DEP’T OF CHILD SUPPORT SERVS., HEALTH AND HUMAN SERVS. AGENCY, FORM NO. CS 909, DECLARATION OF PATERNITY (rev. Dec. 2008) [hereinafter CALIFORNIA DECLARATION OF PATERNITY]. On the California Declaration of Paternity form, a witness is also sufficient, and thus, a notary is not required when the witness is a public-agency official. *See id.*
 208. NEW HAMPSHIRE AFFIDAVIT OF PATERNITY, *supra* note 108.
 209. FLORIDA ACKNOWLEDGMENT OF PATERNITY, *supra* note 144 (“If signatures of mother and father have been witnessed, please provide picture identification for each parent . . . Acceptable forms are a driver’s license, passport, state identification card or military identification card.”).
 210. IOWA PATERNITY AFFIDAVIT, *supra* note 156.
 211. GEORGIA PATERNITY ACKNOWLEDGMENT, *supra* note 137.
 212. MISSOURI AFFIDAVIT ACKNOWLEDGING PATERNITY, *supra* note 82.

issued identifications.²¹³ Signers in Missouri can use school identification cards.²¹⁴ In Hawaii, parents who are not U.S. citizens must attach “a Xerox copy of identification being used as evidence” of foreign citizenship.²¹⁵ By comparison, the North Dakota form includes no identification requirement for forms witnessed or otherwise authenticated.²¹⁶

Some states demand that witnesses meet certain criteria. In New York, for instance, an “Acknowledgment of Paternity” must be witnessed by two persons “not related to the mother or father.”²¹⁷ In Oklahoma, parents “cannot witness each other’s signatures.”²¹⁸ In Arizona, witnesses must be “at least 18 years of age and not related by blood or marriage.”²¹⁹ In California, the witness must be from the hospital or agency accepting the form.²²⁰

Many states require that witnesses have reached the age of majority.²²¹ Other states have less rigorous criteria.²²² In Colorado, for example, a witness “may be any age” and the parents “may witness each other, but a third party witness is preferable.”²²³ The Colorado form further explains that the section for the witness is “mandatory” and advises that “there are penalties including those pursuant to C.R.S. 18-5-114 for falsely witnessing.”²²⁴

States take varying measures to ensure accuracy. Some employ threats of punishment.²²⁵ In Nebraska, signers are informed on the form of a “penalty of prosecution.”²²⁶ In Oregon, signers are told on

213. IOWA PATERNITY AFFIDAVIT, *supra* note 156.

214. MISSOURI AFFIDAVIT ACKNOWLEDGING PATERNITY, *supra* note 82.

215. VITAL STAT. OFFICE, HAWAII DEP’T OF HEALTH, FORM NO. DOH, VOLUNTARY ESTABLISHMENT OF PATERNITY BY PARENTS (rev. Oct. 2008) [hereinafter HAWAII ESTABLISHMENT OF PATERNITY].

216. NORTH DAKOTA ACKNOWLEDGMENT OF PATERNITY, *supra* note 93.

217. NEW YORK ACKNOWLEDGMENT OF PATERNITY, *supra* note 147.

218. OKLAHOMA ACKNOWLEDGMENT OF PATERNITY, *supra* note 140.

219. ARIZONA ACKNOWLEDGMENT OF PATERNITY, *supra* note 154.

220. CALIFORNIA DECLARATION OF PATERNITY, *supra* note 207.

221. *See, e.g.*, ARIZONA ACKNOWLEDGMENT OF PATERNITY, *supra* note 154.

222. COLORADO VOLUNTARY ACKNOWLEDGMENT OF PATERNITY, *supra* note 89.

223. *Id.*

224. *Id.*

225. *See, e.g.*, MICHIGAN AFFIDAVIT OF PARENTAGE, *supra* note 184; MISSOURI AFFIDAVIT ACKNOWLEDGING PATERNITY, *supra* note 82; NEBRASKA ACKNOWLEDGMENT OF PATERNITY, *supra* note 146; OREGON ACKNOWLEDGMENT OF PATERNITY, *supra* note 206; RHODE ISLAND AFFIDAVIT OF PATERNITY, *supra* note 193; TEXAS ACKNOWLEDGMENT OF PATERNITY, *supra* note 83; WISCONSIN ACKNOWLEDGMENT OF MARITAL CHILD, *supra* note 135.

226. NEBRASKA ACKNOWLEDGMENT OF PATERNITY, *supra* note 146.

the form that a false statement is a “Class C felony.”²²⁷ In Michigan, the form states that, “[the] making of false statements with the affidavit for purposes of deception is a crime.”²²⁸ A warning of “penalties for making false entries or providing false information” is printed vertically on the edge of the Texas acknowledgment form.²²⁹ In Rhode Island, signers are told of “a penalty of one thousand dollars (\$1,000) or a one (1) year imprisonment, or both, for furnishing false information.”²³⁰ In Wisconsin, the form expressly indicates that providing false information is a “Class 1 felony [punishable by a fine of not more than \$10,000 or imprisonment of not more than three years and six months or both, per section 69.24(1), Wisconsin Stats.].”²³¹ The Missouri form warns of a possible \$5,000 fine and up to ten years in prison for knowingly supplying false information.²³² By contrast, a few states say nothing explicit about possible penalties. In Illinois²³³ and South Dakota,²³⁴ signers simply declare that they “acknowledge” and “understand” the legal ramifications of paternity.

Some states impose more modest affirmations of accuracy. Signers in Hawaii²³⁵ and Ohio²³⁶ are considered to be “under oath.” In Idaho, the mother and father must each “depone” that the man named is in fact the genetic father.²³⁷ New Jersey,²³⁸ Mississippi,²³⁹ Arkansas,²⁴⁰ New York,²⁴¹ and Alaska²⁴² require parents to “certify.” Connecticut requires parents to “attest” that the information provided is truthful.²⁴³ Minnesota forms require parents to “declare” the information

227. OREGON ACKNOWLEDGMENT OF PATERNITY, *supra* note 206.

228. MICHIGAN AFFIDAVIT OF PARENTAGE, *supra* note 184.

229. TEXAS ACKNOWLEDGMENT OF PATERNITY, *supra* note 83.

230. RHODE ISLAND AFFIDAVIT OF PATERNITY, *supra* note 193.

231. WISCONSIN ACKNOWLEDGMENT OF MARITAL CHILD, *supra* note 135.

232. MISSOURI AFFIDAVIT ACKNOWLEDGING PATERNITY, *supra* note 82.

233. ILLINOIS ACKNOWLEDGMENT OF PATERNITY, *supra* note 187.

234. SOUTH DAKOTA ACKNOWLEDGMENT OF PATERNITY, *supra* note 192.

235. HAWAII ESTABLISHMENT OF PATERNITY, *supra* note 215.

236. OHIO ACKNOWLEDGMENT OF PATERNITY AFFIDAVIT, *supra* note 155.

237. IDAHO ACKNOWLEDGMENT OF PATERNITY, *supra* note 21.

238. STATE OF NEW JERSEY, CERTIFICATE OF PARENTAGE [hereinafter NEW JERSEY CERTIFICATE OF PARENTAGE].

239. MISSISSIPPI ACKNOWLEDGMENT OF PATERNITY, *supra* note 145.

240. ARKANSAS ACKNOWLEDGMENT OF PATERNITY, *supra* note 96.

241. NEW YORK ACKNOWLEDGMENT OF PATERNITY, *supra* note 147.

242. ALASKA AFFIDAVIT OF PATERNITY, *supra* note 77.

243. CONNECTICUT ACKNOWLEDGMENT OF PATERNITY, *supra* note 133.

provided is true and correct.²⁴⁴ And in Kansas, fathers simply “acknowledge” parentage.²⁴⁵

Accuracy is also promoted in some states through explicit warnings. In Florida, the paternity form says: “If you do not understand it, do not sign it.”²⁴⁶ In Wisconsin, the form says: “If you don’t understand this form, ask for help before signing.”²⁴⁷ The Florida form is atypical because it requires signing parents to affirm their understanding of the form itself, and then to sign again to acknowledge paternity.²⁴⁸ The Louisiana form asks signing parents to initial a separate “notice of alternatives, rights and responsibilities.”²⁴⁹

Paternity-acknowledgment forms often do not preclude paternity establishment because of a parent’s mental state or age.²⁵⁰ Exceptions are found in Tennessee,²⁵¹ New Hampshire,²⁵² Vermont,²⁵³ and Utah,²⁵⁴ where a parent or guardian must consent for acknowledging mothers who have not reached the age of majority. Acknowledgment forms are generally silent on these issues.²⁵⁵ However, the Maryland form expressly recognizes that underage mothers may establish paternity without consent of a parent or guardian.²⁵⁶

244. OFFICE OF THE STATE REGISTRAR, MINNESOTA DEP’T. OF HUMAN SERVS., FORM NO. DHS-3159-ENG, MINNESOTA VOLUNTARY RECOGNITION OF PARENTAGE (rev. Apr. 2009) [hereinafter MINNESOTA VOLUNTARY RECOGNITION OF PARENTAGE].

245. OFFICE OF VITAL STAT., KANSAS DEP’T OF HEALTH AND ENV’T, FORM NO. VS241, PATERNITY CONSENT FORM FOR BIRTH REGISTRATION (rev. July 1997).

246. FLORIDA ACKNOWLEDGMENT OF PATERNITY, *supra* note 144.

247. DIV. OF PUB. HEALTH, WISCONSIN DEP’T OF HEALTH SERVS., FORM NO. F-05024, VOLUNTARY PATERNITY ACKNOWLEDGMENT (rev. Nov. 2008) [hereinafter WISCONSIN VOLUNTARY PATERNITY ACKNOWLEDGMENT].

248. FLORIDA ACKNOWLEDGMENT OF PATERNITY, *supra* note 144.

249. VITAL RECORDS REGISTRY, STATE OF LOUISIANA, FORM NO. VRR-44 2-P, ACKNOWLEDGMENT OF PATERNITY AFFIDAVIT: CHILD BORN OUTSIDE OF MARRIAGE (rev. Jan. 2005).

250. *See, e.g.*, MARYLAND AFFIDAVIT OF PARENTAGE, *supra* note 177.

251. OFFICE OF VITAL RECORDS, TENNESSEE DEP’T OF HEALTH, FORM NO. PH-2595, VOLUNTARY ACKNOWLEDGMENT OF PATERNITY (rev. Jan. 2004) [hereinafter TENNESSEE VOLUNTARY ACKNOWLEDGMENT OF PATERNITY].

252. NEW HAMPSHIRE AFFIDAVIT OF PATERNITY, *supra* note 108.

253. OFFICE OF VITAL RECORDS, VERMONT DEP’T OF HEALTH, VOLUNTARY ACKNOWLEDGMENT OF PARENTAGE (rev. Jan. 2009) [hereinafter VERMONT VOLUNTARY ACKNOWLEDGEMENT OF PATERNITY].

254. UTAH DEP’T OF HEALTH, VOLUNTARY DECLARATION OF PATERNITY BY PARENTS [hereinafter UTAH VOLUNTARY DECLARATION OF PATERNITY]. Utah also requires the signature of a “parent/legal guardian” for a parent under age 18 to rescind. *Id.*

255. *See, e.g.*, COLORADO VOLUNTARY ACKNOWLEDGMENT OF PATERNITY, *supra* note 89.

256. MARYLAND AFFIDAVIT OF PARENTAGE, *supra* note 177.

Age is sometimes addressed in supplemental material rather than on the acknowledgment form itself.²⁵⁷ According to the “State of Colorado Instruction Manual” for voluntary acknowledgments of paternity, “parents do not have to be of legal age to sign the AOP.”²⁵⁸ Similarly, a supplement to the Ohio acknowledgment form explains: “Yes, minors can sign the Affidavit.”²⁵⁹

Most state forms include a telephone number for those seeking information.²⁶⁰ Often, the numbers connect to automated recordings.²⁶¹ But some numbers can connect callers with a live person.²⁶² The acknowledgment form in Minnesota includes telephone numbers that connect callers with recorded translations of the form’s text.²⁶³ Many states, including California, make paternity-acknowledgment forms available in Spanish.²⁶⁴ Forms for Puerto Rico are unique in that every acknowledgment form includes Spanish and English instructions side by side.²⁶⁵

States, including Nebraska,²⁶⁶ New York,²⁶⁷ and North Dakota,²⁶⁸ also explicitly urge that uncertain prospective signers seek legal advice. Thus, in Nebraska the form says: “Since this form has legal consequences, you may want to consult an attorney before signing.”²⁶⁹ Signers in California are advised: “If any part of this form does not make sense to you, talk to your Local Child Support Agency or a lawyer before signing the form.”²⁷⁰ In almost every state, the form conveys its seriousness by proclaiming, “[T]his is a legal document.”²⁷¹ This proclamation appears in varying locations; it is sometimes underlined, printed in bold, or both. For example, in Washington, the phrase “this is a legal document” is printed in bold

257. See, e.g., COLORADO VOLUNTARY ACKNOWLEDGMENT OF PATERNITY, *supra* note 89.

258. *Id.* at 5.

259. OHIO ACKNOWLEDGMENT OF PATERNITY AFFIDAVIT, *supra* note 155.

260. See, e.g., CALIFORNIA DECLARATION OF PATERNITY, *supra* note 207; WYOMING PATERNITY AFFIDAVIT, *supra* note 149.

261. See, e.g., ILLINOIS ACKNOWLEDGMENT OF PATERNITY, *supra* note 187.

262. See, e.g., WYOMING PATERNITY AFFIDAVIT, *supra* note 149.

263. MINNESOTA VOLUNTARY RECOGNITION OF PARENTAGE, *supra* note 244.

264. CALIFORNIA DEP’T OF CHILD SUPPORT SERVS., HEALTH AND HUMAN SERVS. AGENCY, FORM NO. CS 909-SPANISH, DECLARACIÓN DE PATERNIDAD (rev. Nov. 2007).

265. PUERTO RICO CERTIFICATE OF PARENTAGE, *supra* note 81.

266. NEBRASKA ACKNOWLEDGMENT OF PATERNITY, *supra* note 146.

267. NEW YORK ACKNOWLEDGMENT OF PATERNITY, *supra* note 147.

268. NORTH DAKOTA ACKNOWLEDGMENT OF PATERNITY, *supra* note 93.

269. NEBRASKA ACKNOWLEDGMENT OF PATERNITY, *supra* note 146.

270. CALIFORNIA DECLARATION OF PATERNITY, *supra* note 207.

271. See, e.g., NEW JERSEY CERTIFICATE OF PARENTAGE, *supra* note 238.

capital letters near the title of the form.²⁷² Printed near the signature portion of the Montana form is: "This is a legally binding document," which is underlined and bolded.²⁷³

In almost every state, the form makes it clear that by signing, child-support duties will arise for the fathers.²⁷⁴ Thus, in Montana the form says: "Upon signing this declaration, it becomes your duty under law to provide support and care for the child as the parent."²⁷⁵

Some states have specific words of caution. A brochure that accompanies the Hawaii acknowledgment form warns: "[I]f there has been abuse in the relationship between the mother and the natural father, the abused parent may not want to voluntarily establish paternity."²⁷⁶

Children born to American Indians or to same-sex couples are sometimes subject to different paternity procedures. Some state forms ask whether the child is American Indian, and, if so, which tribe is involved.²⁷⁷ Instructions on the Colorado paternity-acknowledgment form say that the form "may not be used for same sex parents."²⁷⁸

State acknowledgment forms can serve naming purposes as well. For instance, the Alabama forms include a space for the "Full Name of Child at Birth" as well as a space for "Full Name of Child After Paternity."²⁷⁹ Likewise, the West Virginia form asks, "[H]ow should the child's name appear on the birth certificate after the father is added?"²⁸⁰ The Mississippi form explains that "the birth certificate will record the last name of the child to be the same as that of the acknowledged father."²⁸¹

272. WASHINGTON PATERNITY AFFIDAVIT, *supra* note 104.

273. VITAL RECORDS AND STAT. BUREAU, MONTANA DEP'T OF PUB. HEALTH AND HUMAN SERVS., PATERNITY ACKNOWLEDGMENT [hereinafter MONTANA PATERNITY ACKNOWLEDGMENT].

274. *See, e.g.*, WASHINGTON PATERNITY AFFIDAVIT, *supra* note 104 ("Signatures of the parents below establish paternity and create legally binding duties upon both parents for the child named in this affidavit, including the duty for both parents to financially support the child."). An acknowledgment form that is silent on child support duties operates in Mississippi. MISSISSIPPI ACKNOWLEDGMENT OF PATERNITY, *supra* note 145.

275. MONTANA PATERNITY ACKNOWLEDGMENT, *supra* note 273.

276. HAWAII ESTABLISHMENT OF PATERNITY, *supra* note 215.

277. *See, e.g.*, OKLAHOMA ACKNOWLEDGMENT OF PATERNITY, *supra* note 140.

278. COLORADO VOLUNTARY ACKNOWLEDGMENT OF PATERNITY, *supra* note 89.

279. ALABAMA ACKNOWLEDGMENT OF PATERNITY, *supra* note 152.

280. WEST VIRGINIA DECLARATION OF PATERNITY AFFIDAVIT, *supra* note 172.

281. MISSISSIPPI ACKNOWLEDGMENT OF PATERNITY, *supra* note 145.

Some states require that all signers of paternity-acknowledgment forms receive certain supplemental instructions.²⁸² There is an informational video in Arkansas²⁸³ and an instructional brochure in Hawaii.²⁸⁴ In Iowa, “[a]nyone who wants to complete a paternity affidavit must be given a copy” of an informational pamphlet.²⁸⁵

The Iowa instructional brochure is exemplary; it is thorough and succinct.²⁸⁶ It explains how paternity is established, as well as the rights, responsibilities, and benefits that accompany paternity establishment.²⁸⁷ The Iowa brochure also includes bullet points and uses bolded, underlined, and italicized font for emphasis.²⁸⁸ The brochure encourages paternity establishment while also encouraging signers to seek legal advice.²⁸⁹ Further, the Iowa brochure informs the reader on the procedures to rescind a paternity affidavit and provides a hypothetical example.²⁹⁰ Notice of the opportunity to rescind is also included on the Iowa form itself, but most of the information in the pamphlet is not included on the form.²⁹¹ The Iowa form reminds the signers that their “rights, responsibilities and benefits are explained in the informational material provided with this affidavit.”²⁹² The Iowa form also warns: “[P]lease read . . . carefully before you sign this affidavit.”²⁹³

So, there are disparities among state paternity-acknowledgment forms for nonmarital children. Some of the differences seem insignificant when considered separately. But in totality, small differences can result in significant contrasts. The “Declaration of Paternity” form in California includes requirements of genetic ties, warnings about perjury, a toll-free phone number for assistance, and

282. See, e.g., WASHINGTON PATERNITY AFFIDAVIT, *supra* note 104 (“By signing this form you agree that . . . [y]ou have received oral information about your rights and responsibilities.”).

283. ARKANSAS ACKNOWLEDGMENT OF PATERNITY, *supra* note 96.

284. See HAWAII ESTABLISHMENT OF PATERNITY, *supra* note 215.

285. IOWA DEP’T OF HUMAN SERVS., ESTABLISHING PATERNITY BY AFFIDAVIT (rev. Jan. 2008) [hereinafter IOWA ESTABLISHING PATERNITY BY AFFIDAVIT].

286. See *id.*

287. *Id.*

288. *Id.*

289. *Id.*

290. *Id.*

291. Compare IOWA PATERNITY AFFIDAVIT, *supra* note 156 (explaining the right to rescind the affidavit within sixty days), with IOWA ESTABLISHING PATERNITY BY AFFIDAVIT, *supra* note 285 (providing a comprehensive explanation of signers’ rights and responsibilities).

292. IOWA PATERNITY AFFIDAVIT, *supra* note 156.

293. *Id.*

an explanation of a signer's opportunity to rescind within sixty days.²⁹⁴ The California form must be notarized unless signed by a witness at a hospital.²⁹⁵ Further, the California form clearly explains what it means to acknowledge paternity and how doing so will benefit the child.²⁹⁶ By contrast, the Alaska form is quite simple; it makes no mention of genetic ties, language translations, or penalties for providing false information.²⁹⁷ The Alaska form may be employed with either a notary or witness.²⁹⁸ It fails to provide information on what it means to establish paternity and how paternity establishment can benefit a child.²⁹⁹

The tones and emphases of the various state forms prompt different impressions. The first word on the Vermont form is "confidential," printed in bold capital letters.³⁰⁰ The Vermont form further explains that the "rights and responsibilities which attach are serious, and you should not sign this form unless you understand them."³⁰¹ The acknowledgment form in Guam differs, with the phrases "Love Your Kids" and "thank you for taking responsibility for your child."³⁰² The Pennsylvania form conveys a serious tone, as the five-page document is rich with information and contains several carbon copies.³⁰³ The Rhode Island acknowledgment form consists of one single-sided page, seemingly devised long ago.³⁰⁴

C. Rescissions and Contests Involving Paternity Acknowledgments of Nonmarital Children

Under federal law, paternity-acknowledgment forms for children born to unwed mothers can be rescinded within sixty days of signing, assuming no pending related administrative or judicial proceeding.³⁰⁵ Some paternity-acknowledgment forms expressly note this option,

294. CALIFORNIA DECLARATION OF PATERNITY, *supra* note 207.

295. *See id.*

296. *Id.*

297. ALASKA AFFIDAVIT OF PATERNITY, *supra* note 77.

298. *See id.*

299. *See id.*

300. VERMONT VOLUNTARY ACKNOWLEDGEMENT OF PATERNITY, *supra* note 253.

301. *Id.*

302. OFFICE OF THE ATT'Y GEN., GUAM DEP'T OF PUB. HEALTH AND SOCIAL SERVS., DECLARATION OF PATERNITY.

303. *See* PENNSYLVANIA ACKNOWLEDGMENT OF PATERNITY, *supra* note 139.

304. *See* RHODE ISLAND AFFIDAVIT OF PATERNITY, *supra* note 193.

305. 42 U.S.C. § 666(a)(5)(D)(ii)(I)–(II) (2006).

while others do not.³⁰⁶ The Illinois acknowledgment-of-paternity form says that “either the mother or father may withdraw the action by signing a Rescission of VAP.”³⁰⁷ The form continues: “Rescission must be signed and received by the Department within 60 days [of] signing the VAP or the date of a proceeding relating to the child.”³⁰⁸ The Mississippi acknowledgment form includes the federal rescission guidelines; there is a separate form parents use to rescind.³⁰⁹ The Arkansas rescission form asks for basic information regarding the mother and the rescinding party, which is not uncommon among states. But the Arkansas rescission form also asks for basic information about the father of the child.³¹⁰ Such information can aid states who pursue child support reimbursement.

Where the federal rescission laws are not fully noted on the paternity-acknowledgment forms, some states mention opportunities for rescission in less certain terms. For example, the Michigan form explains that in order to revoke an acknowledgment of parentage, “an individual must file a claim as provided under Michigan Compiled Law 722.1011.”³¹¹ Similarly, the Colorado form explains that the “mother and/or the father may change their mind about acknowledging paternity after signing this form [In which case,] they must contact their county Child Support Enforcement office or a private attorney or the court within 60 days.”³¹² The Wyoming form simply declares, “If either person changes their mind, that person may bring a court action within sixty (60) days of the date the form is filed . . . to rescind the affidavit of paternity.”³¹³ It goes on: “After the sixty (60) days the affidavit may be challenged only in very limited circumstances.”³¹⁴ In some states, like New Jersey, the paternity-acknowledgment form makes no mention of any rescission

306. Compare ALASKA AFFIDAVIT OF PATERNITY, *supra* note 77 (stating that the form can be rescinded within sixty days), with ALABAMA ACKNOWLEDGMENT OF PATERNITY, *supra* note 152 (omitting notice of the ability to rescind within sixty days).

307. ILLINOIS ACKNOWLEDGMENT OF PATERNITY, *supra* note 187.

308. *Id.*

309. MISSISSIPPI ACKNOWLEDGMENT OF PATERNITY, *supra* note 145; VITAL RECORDS, MISSISSIPPI STATE DEP'T OF HEALTH, FORM NO. 513, RESCISSION OF ACKNOWLEDGMENT OF PATERNITY (issued Oct. 8, 1999) [hereinafter MISSISSIPPI RESCISSION OF ACKNOWLEDGMENT OF PATERNITY].

310. DIV. OF VITAL RECORDS, ARKANSAS DEP'T OF HEALTH, ARKANSAS RESCISSION OF ACKNOWLEDGMENT OF PATERNITY (rev. Dec. 2005) [hereinafter ARKANSAS RESCISSION OF ACKNOWLEDGEMENT OF PATERNITY].

311. MICHIGAN AFFIDAVIT OF PARENTAGE, *supra* note 184.

312. COLORADO VOLUNTARY ACKNOWLEDGMENT OF PATERNITY, *supra* note 89.

313. WYOMING PATERNITY AFFIDAVIT, *supra* note 149.

314. *Id.*

opportunity.³¹⁵ Rescissions of voluntary acknowledgement of paternity have varying effects on birth records. In California, signers of rescission forms are told that submitting the form “will not automatically remove a man’s name from the birth certificate,”³¹⁶ as a court order is required. In contrast, rescission forms in Illinois explain that the Department of Public Health “will be notified to remove the father’s name from the child’s birth certificate.”³¹⁷

The titles of the rescission forms also vary. For example, the form in Minnesota is called a “Voluntary Recognition of Parentage Revocation Form.”³¹⁸ In Mississippi, the form is simply a “Rescission of Acknowledgment of Paternity.”³¹⁹ In Montana, the form is entitled a “Notice of Withdrawal of Paternity Acknowledgment.”³²⁰

Typically, rescission forms specify that either the mother or the father can independently withdraw paternity acknowledgment.³²¹ In New Jersey, the form includes blank signature lines for both the mother and the father.³²² It is unclear from some state forms whether a third party, such as the genetic father of the child or the child itself, can rescind a paternity acknowledgment.³²³ Many state rescission forms employ language suggesting that any rescission opportunity is afforded exclusively to signing parents.³²⁴ But some state forms

315. NEW JERSEY CERTIFICATE OF PARENTAGE, *supra* note 238.

316. CALIFORNIA DEP’T OF CHILD SUPPORT SERVS., HEALTH AND HUMAN SERVS. AGENCY, FORM NO. CS 915, DECLARATION OF PATERNITY RESCISSION (rev. Apr. 2008) [hereinafter CALIFORNIA DECLARATION OF PATERNITY RESCISSION].

317. DEP’T OF HEALTHCARE & FAMILY SERVICES, STATE OF ILLINOIS, FORM NO. HFS 3416, RESCISSION OF ILLINOIS VOLUNTARY ACKNOWLEDGMENT OF PATERNITY (rev. Mar. 2006) [hereinafter RESCISSION OF ILLINOIS VOLUNTARY ACKNOWLEDGMENT OF PATERNITY].

318. OFFICE OF THE STATE REGISTRAR, MINNESOTA DEP’T OF HEALTH, FORM NO. DHS-3159B-ENG, MINNESOTA VOLUNTARY RECOGNITION OF PARENTAGE REVOCATION FORM (rev. Mar. 2006) [hereinafter MINNESOTA PARENTAGE REVOCATION FORM].

319. MISSISSIPPI RESCISSION OF ACKNOWLEDGEMENT OF PATERNITY, *supra* note 309.

320. OFFICE OF VITAL STAT., MONTANA DEP’T OF PUB. HEALTH AND HUMAN SERVS., NOTICE OF WITHDRAWAL OF PATERNITY ACKNOWLEDGMENT (rev. Feb. 2005) [hereinafter MONTANA NOTICE OF WITHDRAWAL OF PATERNITY ACKNOWLEDGMENT].

321. *See, e.g.*, KENTUCKY REGISTRAR OF VITAL STAT., FORM NO. VS-8E, RESCISSION OF ACKNOWLEDGMENT OF PATERNITY (rev. Apr. 1999).

322. STATE OF NEW JERSEY, RESCISSION OF CERTIFICATE OF PARENTAGE [hereinafter NEW JERSEY RESCISSION OF CERTIFICATE OF PARENTAGE].

323. *See, e.g.*, RHODE ISLAND AFFIDAVIT OF PATERNITY, *supra* note 193.

324. *See, e.g.*, DIV. OF VITAL RECORDS, OKLAHOMA DEP’T OF HUMAN SERVS., FORM NO. 03PA211E (CSED-209-R), RESCISSION OF ACKNOWLEDGMENT OF PATERNITY (issued Nov. 1, 2006) [hereinafter OKLAHOMA RESCISSION OF ACKNOWLEDGMENT OF PATERNITY] (indicating the signature line with the language “[r]escinding parent’s

address the rescinding party in broader terms, asking for the "[n]ame of [p]erson [w]ithdrawing"³²⁵ rather than for the "rescinding parent's signature."³²⁶

There are some very different state statutes on who may contest an acknowledgment after sixty days. The relevant federal statute says only that after sixty days, there is a court proceeding where "the burden of proof" is "upon the challenger."³²⁷ In Delaware, after sixty days "a signatory . . . may commence a proceeding to challenge the acknowledgement or denial."³²⁸ In Utah, after sixty days, challenges may be brought by "a signatory" or "a support-enforcement agency."³²⁹ In Arizona, after sixty days "the mother, father or child, or a party" to a parentage case may challenge.³³⁰

Some states require rescission forms to be notarized.³³¹ In Oklahoma, a notary is not necessary because an ordinary witness is sufficient.³³² Rescission forms in some states also include penalty warnings to deter signers from providing false information.³³³ Signers of the rescission form in California declare "under penalty of perjury" that the information provided is "true and correct."³³⁴ In Wisconsin, the rescission form warns signers that providing false information is a "Class 1 felony" punishable by up to three years in prison, the same penalty noted on the Wisconsin "Voluntary Paternity

signature"); NEW JERSEY RESCISSION OF CERTIFICATE OF PARENTAGE, *supra* note 322 (indicating the signature lines with "Signature of Mother" and "Signature of Father").

325. RESCISSION OF ILLINOIS VOLUNTARY ACKNOWLEDGMENT OF PATERNITY, *supra* note 317.

326. OKLAHOMA RESCISSION OF ACKNOWLEDGMENT OF PATERNITY, *supra* note 324.

327. 42 U.S.C. § 666(a)(5)(D)(iii) (2006) (stating that after sixty days, the term rescission is not employed, as the statute speaks of a "[c]ontest" or a court challenge to an acknowledgment).

328. DEL. CODE ANN. tit. 13, § 8-308(a)(1) (Supp. 2008).

329. UTAH CODE ANN. §§ 78B-15-306 to -307 (LexisNexis 2008). The Utah form says that "any signatory may rescind," but the form is silent with respect to the opportunity of a challenge brought by a "support enforcement agency." UTAH VOLUNTARY DECLARATION OF PATERNITY, *supra* note 254.

330. ARIZ. REV. STAT. ANN. §25-812(e) (2007). The Arizona form says that "either parent can rescind this form," but the form makes no mention of the opportunity for any other party to rescind. ARIZONA ACKNOWLEDGMENT OF PATERNITY, *supra* note 154.

331. See, e.g., CALIFORNIA DECLARATION OF PATERNITY, *supra* note 207.

332. OKLAHOMA RESCISSION OF ACKNOWLEDGMENT OF PATERNITY, *supra* note 324.

333. DIV. OF PUB. HEALTH, WISCONSIN DEP'T OF HEALTH AND FAMILY SERVS., FORM NO. DPH 5029, REQUEST TO WITHDRAWAL VOLUNTARY PATERNITY ACKNOWLEDGMENT (rev. Nov. 2007) [hereinafter WISCONSIN VOLUNTARY PATERNITY WITHDRAWAL].

334. CALIFORNIA DECLARATION OF PATERNITY RESCISSION, *supra* note 316.

Acknowledgment" form.³³⁵ In contrast, the Montana voluntary paternity-acknowledgment mentions the "penalty of perjury," which goes unmentioned on the state rescission form.³³⁶ A father signing a Montana rescission form states that he "hereby withdraw[s], cancel[s] and rescind[s]" his acknowledgment, with no mention of possible penalties.³³⁷ Some states promote accuracy in rescission forms, but stop short of including penalty warnings. For instance, the Minnesota form reminds parents they are signing "under oath."³³⁸ Forms in other states include less powerful language. In Mississippi, a signing father simply confirms that he "understand[s]" he is no longer the legal father.³³⁹

Some states, like Maine, inform one rescinding party that the other interested party will be notified of the rescission.³⁴⁰ Other states, like California, require the rescinding party to notify the other party.³⁴¹

Rescission forms are often not emphatic in making parents aware of the legal consequences of their signatures. The phrase "[t]his is a legal document," quite common on forms for voluntary paternity-acknowledgments, is less common on rescission forms.³⁴² However, the California rescission form includes a disclaimer in bold that says: "Do not sign this form if you do not understand what it means."³⁴³

335. Compare WISCONSIN VOLUNTARY PATERNITY ACKNOWLEDGMENT, *supra* note 247, with WISCONSIN VOLUNTARY PATERNITY WITHDRAWAL, *supra* note 333 (both reading as follows: "Any person who willfully and knowingly supplies any false information with the intent that the information be used in the preparation or amendment of a birth certificate is guilty of a Class 1 felony [a fine of not more than \$10,000 or imprisonment of not more than three years and six months, or both, per s. 69.24(1), Wis. Stats.].").

336. Compare MONTANA PATERNITY ACKNOWLEDGMENT, *supra* note 273, with MONTANA NOTICE OF WITHDRAWAL OF PATERNITY ACKNOWLEDGMENT, *supra* note 320.

337. MONTANA NOTICE OF WITHDRAWAL OF PATERNITY ACKNOWLEDGMENT, *supra* note 320.

338. MINNESOTA PARENTAGE REVOCATION FORM, *supra* note 318.

339. MISSISSIPPI RESCISSION OF ACKNOWLEDGEMENT OF PATERNITY, *supra* note 309.

340. OFFICE OF VITAL RECORDS, MAINE DEP'T OF HEALTH AND HUMAN SERVS., FORM NO. VS-27B, VOLUNTARY ACKNOWLEDGMENT OF PATERNITY RESCISSION/REMOVAL (rev. May 1999).

341. CALIFORNIA DECLARATION OF PATERNITY RESCISSION, *supra* note 316.

342. Compare, e.g., MONTANA PATERNITY ACKNOWLEDGMENT, *supra* note 273 (stating that it is a legally binding document), with MONTANA NOTICE OF WITHDRAWAL OF PATERNITY ACKNOWLEDGMENT, *supra* note 320 (omitting language regarding its legally binding effect).

343. CALIFORNIA DECLARATION OF PATERNITY RESCISSION, *supra* note 316. The New Jersey rescission form is atypical with respect to informing signers of legal rights, as it explains that rescinding fathers are "not waiving" their rights to "later bring a legal action to establish paternity." NEW JERSEY RESCISSION OF CERTIFICATE OF PARENTAGE, *supra* note 322.

Under federal law, paternity-acknowledgment forms for children born to unwed mothers can be contested more than sixty days after signing only in a court challenge with a showing of “fraud, duress, or material mistake of fact” and with “the burden of proof upon the challenger.”³⁴⁴ Because such a showing involves fact-finding, these rescissions cannot be done simply by signing forms. Post-sixty-day challenges thus are unlike at least some processes for rebutting marital paternity presumptions.³⁴⁵

While the federal statutory threshold of “fraud, duress, or material mistake of fact” applies in challenges to acknowledgments in all states after sixty days, interstate variations nevertheless exist.³⁴⁶ According to the forms, signers in Ohio,³⁴⁷ Minnesota,³⁴⁸ and Massachusetts³⁴⁹ have one year to bring a legal action to contest the acknowledgment. In Oklahoma³⁵⁰ and Wyoming,³⁵¹ challenges noted in the form are barred after two years. In Texas, according to the form, a lawsuit challenging a paternity acknowledgment “must be filed within four years of the date the party became an adult” if a minor is a party to the document on the date the document is signed.³⁵² Signers challenging an acknowledgment in Tennessee typically must do so within five years under its form.³⁵³

Some states also vary on the effective dates of acknowledgments of paternity and thus on the timing requirements for any rescission or contest. In Illinois, “paternity is not conclusive until six months after the younger of the two parents turns 18” when the signing parents are minors.³⁵⁴ A similar rule applies to minor parents in Minnesota.³⁵⁵ In Oklahoma, however, the sixty-day rescission period begins to run when parents reach eighteen-years-old.³⁵⁶

344. 42 U.S.C. § 666(a)(5)(D)(iii) (2006).

345. Marital paternity presumptions can be overcome without court proceedings in Missouri. *See, e.g.,* MISSOURI AFFIDAVIT ACKNOWLEDGING PATERNITY, *supra* note 82.

346. *Compare* OHIO ACKNOWLEDGMENT OF PATERNITY AFFIDAVIT, *supra* note 155 (stating that challenges must be brought within one year), *with* OKLAHOMA ACKNOWLEDGMENT OF PATERNITY, *supra* note 140 (providing two years to bring a legal action contesting the acknowledgment).

347. OHIO ACKNOWLEDGMENT OF PATERNITY AFFIDAVIT, *supra* note 155.

348. MINNESOTA HUSBAND’S NON-PATERNITY STATEMENT, *supra* note 91.

349. MASSACHUSETTS ACKNOWLEDGMENT OF PARENTAGE, *supra* note 138.

350. OKLAHOMA ACKNOWLEDGMENT OF PATERNITY, *supra* note 140.

351. WYOMING PATERNITY AFFIDAVIT, *supra* note 149.

352. TEXAS ACKNOWLEDGMENT OF PATERNITY, *supra* note 83.

353. TENNESSEE VOLUNTARY ACKNOWLEDGMENT OF PATERNITY, *supra* note 251.

354. ILLINOIS ACKNOWLEDGMENT OF PATERNITY, *supra* note 187.

355. MINNESOTA VOLUNTARY RECOGNITION OF PARENTAGE, *supra* note 244.

356. OKLAHOMA ACKNOWLEDGMENT OF PATERNITY, *supra* note 140.

IV. USES OF STATE PATERNITY-ACKNOWLEDGMENT FORMS

A. National Overview

In 2007, the number of children in the United States born out of wedlock exceeded 1.7 million, more than nineteen times the estimated number of children born out of wedlock in 1940.³⁵⁷ The number of nonmarital children in 2007 was more than double the number reported in 1980.³⁵⁸ Further, the number of children born to unwed mothers increased by 26% from 2002–2007.³⁵⁹ Nearly all of the 1.7 million children born out of wedlock in 2007 had legal mothers at birth, while roughly a million had legally recognized fathers at birth.³⁶⁰

The majority of births to teenagers in the United States (86% in 2007) are nonmarital.³⁶¹ For women aged 20–24, about 60% of births are nonmarital.³⁶² About one-third of the children of unwed mothers who are 25–29 are born out of wedlock.³⁶³ Although the majority of teenage mothers give birth out of wedlock, most children born out of wedlock are not born to teenagers.³⁶⁴ In the past, unmarried mothers were disproportionately teenagers, so “references to births to unmarried women and births to teenagers were considered one and the same.”³⁶⁵ Today, this is not true,³⁶⁶ in part because the number of unmarried women of childbearing age has increased.³⁶⁷ One report

357. STEPHANIE J. VENTURA, U.S. DEP'T OF HEALTH AND HUMAN SERVS., CHANGING PATTERNS OF NONMARITAL CHILDBEARING IN THE UNITED STATES 1–2 (2009), available at <http://www.cdc.gov/nchs/data/databriefs/db18.htm>.

358. *Id.* at 2.

359. *Id.*

360. See, e.g., Jeffrey A. Parness, *New Federal Paternity Laws: Securing More Fathers at Birth for the Children of Unwed Mothers*, 45 BRANDEIS L.J. 59, 62 n.10 (2006) (stating that in the author's survey of all state vital records, offices revealed about one-third of all nonmarital children had no designated legal father at birth because there was no voluntary paternity-acknowledgment). A 2009 survey by the authors, described herein, reveals a similar educated guess.

361. VENTURA, *supra* note 357, at 1.

362. *Id.*

363. *Id.* at 3.

364. *Id.* at 1.

365. *Id.* at 4.

366. *Id.* at 6.

367. JOYCE A. MARTIN ET AL., U.S. DEP'T OF HEALTH AND HUMAN SERVS., BIRTHS: FINAL DATA FOR 2006, at 11 (2009).

declares the number of children born to unmarried women over age thirty rose by 290% from 1980–2002.³⁶⁸

Black women bear children out of wedlock at a lesser rate (7.2% of births) than Hispanic women (10.6% of births).³⁶⁹ Non-Hispanic white women and Asian or Pacific Islander women give birth out of wedlock at even lower rates (3.2% and 2.6% respectively).³⁷⁰

While the number of children born to unwed mothers has increased, a considerable number of nonmarital births are to women cohabiting with the fathers; according to one estimate the figure is 40%.³⁷¹

B. Individual State Experiences

The number of unmarried parents who use voluntary paternity-acknowledgment forms is unclear; some states do not record the numbers, and others do not release the recorded numbers.³⁷² On many occasions, paternity is measured by the presence of a father's name on the birth certificate of a child born to unmarried parents, rather than by the presence of the father's name on an acknowledgment,³⁷³ perhaps because acknowledgments usually are reflected on birth certificates.³⁷⁴ No federal law arising from the TANF program mandates significant recordkeeping on the uses of voluntary paternity-acknowledgments and their equivalents.³⁷⁵ Because the federal government has not exercised authority, most of the data available appears in records kept pursuant to state laws.

368. Katharine K. Baker, *Bionormativity and the Construction of Parenthood*, 42 GA. L. REV. 649, 652 n.9 (2008) (citing Lori Gottlieb, *The XY Files*, ATLANTIC MONTHLY (Sept. 2005), <http://www.theatlantic.com/magazine/print/2005/09/the-xy-files/4172/>).

369. VENTURA, *supra* note 357, at 3.

370. *Id.*

371. *Id.* at 6 (citing NAT'L CTR. FOR HEALTH STAT., U.S. DEP'T OF HEALTH AND HUMAN SERVS., FERTILITY, FAMILY PLANNING, AND REPRODUCTIVE HEALTH OF U.S. WOMEN: DATA FROM THE 2002 NATIONAL SURVEY OF FAMILY GROWTH 9–10 (2005)).

372. In both our survey and independent research, we found little information on the numbers of paternity-acknowledgment rescissions involving nonmarital children or of marital paternity presumption rebuttals via forms.

373. *Focus . . . Acknowledgment of Paternity in Missouri*, 32 MONTHLY VITAL STATS. 3, May 1998, <http://www.dhss.mo.gov/FOCUS/yh98.html> [hereinafter *Acknowledgment of Paternity in Missouri*].

374. *See, e.g.*, ALABAMA ACKNOWLEDGMENT OF PATERNITY, *supra* note 152; NEBRASKA ACKNOWLEDGMENT OF PATERNITY, *supra* note 146; ALASKA AFFIDAVIT OF PATERNITY, *supra* note 77 (“[T]his Affidavit of Paternity form serves the purpose of adding the name of the legal father of the birth certificate.”).

375. *See, e.g.*, 7 U.S.C. § 2015 (2006).

Although some states do not record or release data on the use of paternity-acknowledgment forms, some states do.³⁷⁶

The proportion of children born out of wedlock varies dramatically among American states. For example, recently, 25% of all births in Idaho were to unmarried women;³⁷⁷ over 44% of all births in Arkansas were to unmarried women;³⁷⁸ and 34% of all births in Oregon were to unmarried women.³⁷⁹ In 2008, the percentage of children born out of wedlock in Missouri was 40%.³⁸⁰ There, 87% of children born to women under the age of twenty in 2008 were born out of wedlock.³⁸¹ In New Jersey, 89% of children born to mothers under the age of twenty were born out of wedlock.³⁸²

As well, in Missouri from 1995–1997, 43.1% of unmarried births in more metropolitan counties had acknowledgments of paternity while 55.8% of unmarried births in nonmetropolitan areas had acknowledgments of paternity.³⁸³ Similarly, nonmarital children in more metropolitan counties in Delaware are more likely to lack a legal father than nonmarital children born in less metropolitan areas.³⁸⁴ In the less metropolitan Delaware counties of Kent and Sussex, the percentages of nonmarital children with paternity acknowledgments are 43% and 45%, respectively.³⁸⁵ In the more

376. See, e.g., PATRICIA R. BROWN & STEVEN T. COOK, INST. FOR RESEARCH ON POVERTY, UNIV. OF WISCONSIN-MADISON, A DECADE OF VOLUNTARY PATERNITY ACKNOWLEDGMENT IN WISCONSIN: 1997–2007, at 13–14 (2008).

377. Letter from Gregory E. Heitman, Senior Field Coordinator, Idaho Dep't of Health & Welfare, to Jeffrey A. Parness, Professor Emeritus N. Ill. Univ. Coll. of Law (June 5, 2009) (on file with author).

378. Letter from Steve Whisnant, Field Representative, Vital Records, Ark. Dep't of Health, to Jeffrey A. Parness, Professor Emeritus N. Ill. Univ. Coll. of Law (September 11, 2009) (on file with author).

379. See OREGON DEP'T OF HUMAN SERVS., OREGON VITAL STATISTICS REPORT 2006, at 5 tbl.2 (2006).

380. See *Birth: Residents of Missouri Year 2008*, MISSOURI DEP'T OF HEALTH AND SENIOR SERVS., <http://www.dhss.mo.gov/mica/birth.php> (under "Step One" select "Marital Status"; then under "Step Two" select "Age"; then skip "Step Three"; then under "Step Four" select "2008"; then click "Submit") (last visited Dec. 16, 2010).

381. See *id.*

382. See *Birth Statistics for the State of New Jersey Year 2005*, CTR. FOR HEALTH STAT., NEW JERSEY DEP'T OF HEALTH AND SENIOR SERVS., <http://njshad.doh.state.nj.us/birth.html> (under "Step One" select "Marital Status" and "Age"; then under "Step Two" select "2005"; then under "Step Three" select "10-14," "15-17," and "18-19" under "Age"; then under "Step Six" click "Submit") (last visited Nov. 16, 2010).

383. *Acknowledgment of Paternity in Missouri*, *supra* note 373.

384. See E-mail from Dizon Maridelle, Del. Dep't of Health & Social Servs., to Jeffrey A. Parness, Professor Emeritus N. Ill. Univ. Coll. of Law (June 2, 2009, 2:35 PM) (on file with author).

385. See *id.*

metropolitan county of New Castle, only 12% of nonmarital children have paternity acknowledgments.³⁸⁶

Figures on the use of acknowledgment forms by race also indicate disparities. In Delaware, about 17% of children born to unmarried black women have acknowledgments of paternity while about 31% of children born to unmarried white women have acknowledgments of paternity.³⁸⁷ Usages of paternity acknowledgments in Missouri by race have not been released,³⁸⁸ but the rate of births to unwed mothers by race informs. In Missouri in 2008, 79% of births to black women were out of wedlock and 34% of births to white women were out of wedlock.³⁸⁹ The 2005 birth statistics from New Jersey are similarly disproportionate on the basis of race. In New Jersey, 66% of births to black women were out of wedlock and 27% of births to white women were out of wedlock.³⁹⁰ Thus, black children in certain areas are more likely to be born without a father under law than white children.³⁹¹

For nonmarital children, the rates of paternity establishments at hospitals around the time of birth through acknowledgments, certificates, and the like also vary greatly.³⁹² Recently, in Arkansas, about half of children born to unwed mothers had paternity established at birth.³⁹³ In New Jersey, only about one-quarter of nonmarital children had such paternity establishments.³⁹⁴ In Minnesota, about 80% of children born to unmarried parents had

386. *See id.*

387. *See id.*

388. *See* E-mail from Colleen Bullock, Research Manager, Mo. Dep't of Health & Senior Servs., to Jeffrey A. Parness, Professor Emeritus N. Ill. Univ. Coll. of Law (Aug. 14, 2009, 11:29 AM) (on file with author).

389. *See Birth: Residents of Missouri Year 2008*, *supra* note 380 (under "Step One" select "Marital Status"; then under "Step Two" select "Race"; then skip "Step Three"; then under "Step Four" select "2008"; then click "Submit") (last visited Dec. 16, 2010).

390. *See Birth Statistics for the State of New Jersey Year 2005*, *supra* note 382 (under "Step One" select "Marital Status" and "Race"; then under "Step Two" select "2005"; then under "Step Six" click "Submit") (last visited Dec. 16, 2010).

391. *See supra* notes 387–90 and accompanying text.

392. *See* ELAINE SORENSEN & MARK TURNER, NAT'L CTR. FOR FATHERS AND FAMILIES, BARRIERS IN CHILD SUPPORT POLICY: A LITERATURE REVIEW 9 (2d prtg. May 1996), available at <http://www.ncoff.gse.upenn.edu/sites/ncoff.messageagency.com/files/sb-litrev.pdf>.

393. Letter from Steve Whisnant to Jeffrey A. Parness, *supra* note 378.

394. *See* E-mail from Darrin Goldman, N.J. Dep't of Health & Senior Servs., to Jeffrey A. Parness, Professor Emeritus N. Ill. Univ. Coll. of Law (Aug. 7, 2009, 10:13 AM) (on file with author).

fathers who acknowledged paternity.³⁹⁵ About 78% of children born out of wedlock in California have a legally recognized father.³⁹⁶ In both Virginia³⁹⁷ and West Virginia,³⁹⁸ 67% of nonmarital births have a father who acknowledged paternity. In Wyoming,³⁹⁹ as well as Ohio,⁴⁰⁰ about 59% of children born out of wedlock have fathers with legally acknowledged paternity.

V. SECURING MORE, AND MORE RELIABLE, PATERNITY ACKNOWLEDGMENTS

Securing more, and more reliable, paternity acknowledgments at birth for children born to unwed mothers would promote the federal and state policies supporting a single female mother and a single male father to be designated as legal parents for most every child born of consensual sex.⁴⁰¹ At-birth designations are also important to the people directly involved in birth as well as to governments. A 1992 federal study nicely summarized the private interests:

Parentage determination does more than provide genealogical clues to a child's background; it establishes fundamental emotional, social, legal and economic ties between parent and child. It is a prerequisite to securing financial support for the child and to developing the heightened emotional support the child derives from enforceable custody and visitation rights. Parentage determination also unlocks the door to government provided

395. See E-mail from Linda Loftus, Minn. Dep't of Health, to Jeffrey A. Parness, Professor Emeritus N. Ill. Univ. Coll. of Law (Aug. 3, 2009, 9:48 AM) (on file with author).

396. See E-mail from Karen Roth, Unit Chief, Office of Vital Records, Cal. Dep't of Pub. Health, to Jeffrey A. Parness, Professor Emeritus N. Ill. Univ. Coll. of Law (June 10, 2009, 09:07 AM) (on file with author).

397. See E-mail from Diane Terrell, Va. Dep't of Health, to Jeffrey A. Parness, Professor Emeritus N. Ill. Univ. Coll. of Law (June 5, 2009, 11:55 PM) (on file with author).

398. See E-mail from Tom Light, Programmer, W. Va. Health Stats. Center, to Jeffrey A. Parness, Professor Emeritus N. Ill. Univ. Coll. of Law (Sept. 11, 2009, 09:24 AM) (on file with author).

399. E-mail from Gladys Breeden, Wyo. Dep't of Health, to Jeffrey A. Parness, Professor Emeritus N. Ill. Univ. Coll. of Law (July 27, 2009 12:49 PM) (on file with author).

400. E-mail from Mark Kassouf, Assistant State Registrar, Ohio Dep't of Health, to Jeffrey A. Parness, Professor Emeritus N. Ill. Univ. Coll. of Law (June 3, 2009, 2:15 PM) (on file with author).

401. Exceptions might include (depending, in part, on the meaning of consensual) births resulting from incest or statutory rape. A history of these policies, as well as a description of their justifications and rejections elsewhere in the world, appears in Baker, *supra* note 368, at 656–71.

dependent's benefits, inheritance, and an accurate medical history for the child.⁴⁰²

American state laws are comparable. For example, public and private interests are recognized in a California Family Code provision that says:

There is a compelling state interest in establishing paternity for all children. Establishing paternity is the first step toward a child support award, which, in turn, provides children with equal rights and access to benefits, including . . . social security, health insurance . . . and inheritance rights. Knowledge of family medical history is often necessary for correct medical diagnosis and treatment. Additionally, knowing one's father is important to a child's development.⁴⁰³

A. *More Paternity Acknowledgments*

i. Enhancing Public Understanding

More voluntary paternity-acknowledgments of nonmarital children would be completed in the United States if all Americans were more familiar with acknowledgment opportunities, procedures, and effects.⁴⁰⁴ For many, it is still assumed that hospitals will record birth-certificate recognition of both genetic parents when they are known, or believed to be known to hospital personnel.⁴⁰⁵ The voluntary-acknowledgment scheme is relatively recent.⁴⁰⁶ Many believe, often prompted by Maury Povich, that in the absence of

402. U.S. COMM'N ON INTERSTATE CHILD SUPPORT, SUPPORTING OUR CHILDREN: A BLUEPRINT FOR REFORM 120 (1992).

403. CAL. FAM. CODE § 7570(a) (West 2004).

404. See PAULA ROBERTS, CTR. FOR LAW & SOCIAL POLICY, VOLUNTARY PATERNITY ACKNOWLEDGMENT: AN UPDATE OF STATE LAW 1-3 (2006), *available at* <http://www.clasp.org/admin/site/publications/files/0333.pdf> (noting the successes of voluntary paternity-acknowledgments when they are made available).

405. See Jeffrey A. Parness, *Designating Male Parents at Birth*, 26 U. MICH. J.L. REFORM 573, 576-78 (1993) (noting public confusion regarding birth certificates).

406. For a review of some common nonjudicial paternity-establishment standards that preceded the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, see, for example, *id.*

adoption, legal paternity for nonmarital children is solely determined by genetic ties.⁴⁰⁷

Federal regulations for TANF states requiring greater educational efforts should pose no Tenth Amendment or other serious problems.⁴⁰⁸ Greater public understanding is needed for not only the Title IV-D mandates, but also the interstate variations on substantive paternity-law matters.⁴⁰⁹ These efforts should include educational initiatives on marital presumptions and their possible rebuttals, because marital children in many American states can easily become children with no legal fathers.⁴¹⁰

Public awareness would be promoted, we believe, if states compiled statistics on the number of nonmarital children who are born without a legal father and who remain fatherless three and six months after birth. The data should also reflect the state in which such fatherless children are more frequently born.

ii. Educating Expectant Parents

More, and more informed, paternity acknowledgments of nonmarital children would also be prompted by better educating expectant parents about paternity-acknowledgment opportunities. As noted, a federal regulation requires states to give written notice to mothers and prospective fathers regarding parental rights and

407. See *infra* text accompanying notes 419–25 and Part V.B.i (discussing the use of the voluntary paternity-acknowledgment system as a means of reconciling the misconceptions about genetic ties and legal paternity).

408. See 2010–2011 *Policies for the Jurisdiction of the Law and Criminal Justice Committee: Child Support Enforcement*, NAT'L CONF. OF ST. LEGS., http://www.ncsl.org/default.aspx?TabID=773&tabs=855,27,671#Child_Support_Enforcement (last visited Dec. 16, 2010) (supporting “sorting of responsibilities in a reasonable and rational fashion”).

409. See ROBERTS, *supra* note 404, at 4–18 tbl.2 (providing a table with the interstate variations); see also *supra* text accompanying notes 13–26 and Part III.A–B (discussing state participation and compliance with Title IV-D mandates as well as addressing interstate and intrastate variations on paternity-law matters with respect to marital and nonmarital children).

410. See 45 C.F.R. § 302.70(a)(5)(iv)–(vi) (2009) (discussing procedures under which the voluntary acknowledgment of paternity, as well as genetic testing, can create a rebuttable or conclusive presumption of paternity); see also Parness, *supra* note 405, at 575–76 (noting that governments do little to assure that birth records include the names of fathers at the time of birth and thus, many children are without legal designation of paternity for extended periods of time, while other children may never receive legal paternal designations); see also *supra* text accompanying notes 80–90 (discussing state-created conclusive presumptions of paternity, absent genetic testing and the use of genetic testing to override rebuttable, non-conclusive marital presumptions).

responsibilities as well as the consequences of acknowledgments.⁴¹¹ This often occurs shortly or immediately before acknowledgments are signed.⁴¹² Our review of acknowledgment forms and accompanying brochures suggests to us more and better education is needed.⁴¹³ Our review of state experiences suggests to us that greater, and at times different, educational efforts are needed in certain communities, especially where language barriers can present problems for those given forms in English; where fatherless nonmarital children are born in much greater numbers; and where mothers of nonmarital children often are very young.⁴¹⁴

Expectant parents frequently visit medical professionals regarding future childbirth, childcare, and maternal and child welfare. At such visits, informational brochures and compact discs on acknowledgment procedures could be made freely available at little cost to governments.⁴¹⁵ In Colorado, the instructions for the acknowledgment form “strongly” encourage that relevant materials be provided “early in pregnancy.”⁴¹⁶

Federal regulators should demand greater educational initiatives, including brochures—as in Iowa—that are both thorough and succinct.⁴¹⁷ Because state laws will likely continue to differ on the scope of paternal opportunity interests of genetic fathers in nonmarital children born of sex and of marital presumptions, a federally mandated “one size fits all” brochure and form could not be used. Yet, whatever the state laws on paternity, early and broad distributions of information on both the standards and procedures for paternity establishments and disestablishments can be required of states involved in TANF, which realistically would likely mean greater educational opportunities for all expectant parents.⁴¹⁸

For many nonmarital genetic parents of children born of sex, the aforementioned educational initiatives on paternity acknowledgments alone are insufficient. Many presume, prompted by Maury Povich, among others, that for men, biological ties necessarily mean legal

411. See 45 C.F.R. §§ 302.70(a)(5)(iii), 303(g)(5)–(6) (2009).

412. See *supra* text accompanying notes 142, 179–82.

413. See *supra* text accompanying notes 275–304.

414. See *supra* text accompanying notes 373–91.

415. See *infra* text accompanying notes 416–18.

416. COLORADO VOLUNTARY ACKNOWLEDGMENT OF PATERNITY, *supra* note 89.

417. See IOWA ESTABLISHING PATERNITY BY AFFIDAVIT, *supra* note 285.

418. See *supra* Part II.

paternity.⁴¹⁹ This is often not true under state law.⁴²⁰ And it need not be true under the federal constitutional precedents on the paternity opportunity interests of unwed genetic fathers.⁴²¹ Before birth, if possible, certain expectant parents of future nonmarital children should be afforded special chances to learn about what, beyond genetic ties, will or might secure future or present legal parenthood for unwed fathers of children born of sex with unwed mothers.⁴²² These chances to learn should follow, at the least, demonstrations that the legal consequences of male genetic ties are, or are likely, misunderstood.

As well, expectant genetic parents of children born to married women of sex outside the marriage should at times also be afforded special opportunities to learn about any marital presumptions of paternity as well as any vehicles for their override.⁴²³ Here, special learning opportunities should depend, in part, on whether there are, or appear to be, intact marriages or pregnancies resulting from extramarital sex.⁴²⁴

Enhanced understanding by expectant genetic parents and maternal spouses of the laws on the significance of genetic ties and marriage to legal paternity will help secure more reliable, if not numerically more, voluntary paternity-acknowledgments.⁴²⁵ Paternity acknowledgments by nongenetic fathers of children born to unwed mothers should be discouraged, not encouraged, and should not be left to the uneducated.⁴²⁶

iii. Extending Time Limits

Extending the time limits for completing the forms would also prompt more paternity acknowledgments of children born to unwed

419. See, e.g., *DNA Proved Edwin Fathered 4 Babies from 3 Women . . . Did He Step Up?*, MAURY POVICH SHOW, Sept. 29, 2009, <http://www.mauryshow.com/story/dna-proved-edwin-fathered-4-ba.php>.

420. See *supra* Part III.A.

421. See *Lehr v. Robertson*, 463 U.S. 248, 261 (1983) (explaining that an unwed genetic father must demonstrate a “full commitment to the responsibilities of parenthood” before his interest with the child merits constitutional protection).

422. See *id.*

423. See *supra* Part III.A (discussing marital presumptions of paternity and some possible overrides).

424. See *Michael H. v. Gerald D.*, 491 U.S. 110, 129–30 (1989) (discussing the presumptions and competing interests that arise with respect to children born to married women from sex outside of the marriage).

425. See SORENSEN & TURNER, *supra* note 392, at 9.

426. See OFFICE OF THE INSPECTOR GEN., *supra* note 87, at 11.

mothers.⁴²⁷ Prebirth time constraints deter acknowledgments without good reason by some genetic fathers who are not able to be present for their children's births.⁴²⁸ Acknowledgment procedures are far less costly and far more convenient than later paternity court cases.⁴²⁹ The Colorado⁴³⁰ and New York⁴³¹ bars to prebirth acknowledgments serve no rational purpose. Acknowledgers typically are no more certain about genetic ties before birth than shortly after birth.⁴³² Prebirth acknowledgment opportunities would accommodate, for example, men serving for extended times in Iraq and Afghanistan.⁴³³ As well, prebirth acknowledgments should lead to greater, and more instances of, male prebirth pregnancy support, both financially and otherwise.⁴³⁴

Federal legislators should extend the time limits for undertaking prebirth acknowledgments.⁴³⁵ For us, there are few federalism concerns about national standards. There are already national time limits on rescissions of voluntary paternity-acknowledgments of nonmarital children in place.⁴³⁶

The Texas standard of allowing a paternity acknowledgment three hundred days before an expected birth seems too long.⁴³⁷ Federal, and often state, constitutional privacy interests of expectant mothers are far greater than comparable interests for new mothers, especially early in pregnancies.⁴³⁸ Third-trimester acknowledgments are less likely to interfere with such prebirth interests.⁴³⁹

As to post-birth acknowledgments, federal regulations require that states make available paternity-establishment mechanisms for "any

427. See *supra* text accompanying notes 179–82.

428. Parness, *supra* note 3, at 665.

429. See *supra* note 344 and accompanying text.

430. COLORADO VOLUNTARY ACKNOWLEDGMENT OF PATERNITY, *supra* note 89.

431. NEW YORK ACKNOWLEDGMENT OF PATERNITY, *supra* note 147.

432. See Parness, *supra* note 6, at 1334 (highlighting cases where men thought they were the fathers but later discovered they had no biological link to the child).

433. See 32 C.F.R. § 81.3 (2009) (providing a system to notify active duty soldiers of paternity allegations).

434. See Jeffrey A. Parness, *Pregnant Dads: The Crimes and Other Misconduct of Expectant Fathers*, 72 OR. L. REV. 901, 916 (1993).

435. Parness, *supra* note 360, at 94.

436. 42 U.S.C. § 666(a)(5)(D)(ii)–(iii) (2006).

437. TEXAS ACKNOWLEDGMENT OF PATERNITY, *supra* note 83.

438. See Jeffrey A. Parness, *Abortions of the Parental Prerogatives of Unwed Natural Fathers: Deterring Lost Paternity*, 53 OKLA. L. REV. 347, 347 (2000) (citing R.R. v. M.H., 689 N.E.2d 790 (Mass. 1998)).

439. See John E. Fennelly, *Step Up or Step Out: Unwed Fathers Parental Rights Post-Doe and E.A.W.*, 8 ST. THOMAS L. REV. 259, 278 (1996); Parness, *supra* 440, at 347.

child at least to the child's 18th birthday," even if local limits on paternity cases have expired.⁴⁴⁰ Should acknowledgments be available as one avenue until the eighteenth birthday? We think not, even if acknowledgers must attest to paternal genetic ties and even where genetic testing confirms the child's ties to the prospective male signer. Under U.S. Supreme Court federal constitutional precedents, states must only accord genetic fathers of nonmarital children born of sex reasonable opportunities to gain the rights of legal fatherhood,⁴⁴¹ even though new mothers automatically gain legal maternity status.⁴⁴² Should men not secure these rights by stepping up to parenthood prebirth or shortly after birth, states need not accord parental rights to all men arriving some time after birth, even when the child still has no other legal father. State policies vary on the minimum time during which a genetic father needs to step up to parent his nonmarital child.⁴⁴³ We believe men should be afforded no less than three months; a time which Congress could mandate in the Social Security Act, employing its federal constitutional Fourteenth Amendment power to provide legislation for the enforcement of federal constitutional rights, including rights regarding paternity opportunities.⁴⁴⁴ Thereafter, paternity lawsuits could be pursued.

B. More Reliable Paternity Acknowledgments

i. Genetic Ties at Birth

Paternity acknowledgments must be reliable and relatively free from later assaults. We believe they must require very likely genetic

440. 45 C.F.R. § 302.70(a)(5)(i) (2009).

441. *See, e.g., Michael H. v. Gerald D.*, 491 U.S. 110, 128–29 (1989). Under certain American state laws, the failures of unwed fathers to gain legal rights does not preclude judicial establishments of legal responsibilities, particularly child support. *See, e.g., In re Ryan B.*, 686 S.E.2d 601, 608 (W. Va. 2009) (holding that even where parents are found guilty of statutory child abuse and stripped of their parental rights, those parents are not relieved of child support duties—except when not in the best interest of the child); *Howard v. Webb*, No. 3:09cv00351, 2009 WL 3720662, at *2 (S.D. Ohio Nov. 5, 2009) (finding no federal constitutional impediment to assessing child support against a parent so neglectful the parent's child is in state custody); *Ex parte M.D.C.*, No. 1071625, 2009 WL 3152233, at *2 (Ala. Sept. 30, 2009) (stating that parental support obligations are not extinguished notwithstanding removal of parental rights via state child protection).

442. *See, e.g., Caban v. Mohammed*, 441 U.S. 380, 397 (1979) ("Parental rights do not spring full-blown from the biological connection between parent and child. They require relationships more enduring. The mother carries and bears the child, and in this sense her parental relationship is clear.").

443. *See supra* Part III.B.

444. *See* U.S. CONST. amend. XIV, § 5; *supra* Part II.

ties between children and male signers. Otherwise, there will often be trouble ahead—including battles not only between mothers, males who sign without genetic ties, and genetic fathers, but also between governments and male acknowledgers who are not genetic fathers.⁴⁴⁵ Paternity acknowledgments for nonmarital children by nongenetic fathers allow circumvention of adoption laws, which seek to assure that when legal parentage is accorded to men and women with no preexisting parental interests, the children's best interests are served.⁴⁴⁶ Further, the federal constitutional paternity opportunity interests of genetic fathers in nonmarital children at the time of birth can only be safeguarded if likely genetic ties are required of male signatories.⁴⁴⁷ Some recommend that genetic testing precede any voluntary paternity-acknowledgment.⁴⁴⁸ In a case where a mother sought to vacate a two-year-old acknowledgment based on lack of genetic ties, one family court judge opined:

This paternity vacature case is a case which never should have happened. It would be helpful if the legislature were to enact a law which would not allow any acknowledgment of paternity to be effective until actual biological paternity is established by the simple, routine use of a genetic marker test. Then a man who is willing to step up to the plate and be a father would only be allowed to do that via an acknowledgment of paternity if he is indeed the biological father. The Family Court has far too many cases of this nature and they could all be easily eliminated by having the genetic marker test done up front.⁴⁴⁹

Cost considerations aside, we fear such a mandate would diminish too many acknowledgments by actual genetic fathers. If more than a

445. For example, governments may use the acknowledgments by Nongeneticnongenetic fathers to secure child support orders against the Nongeneticnongenetic fathers in order to lessen/reimburse governmental expenditures for childcare. *See, e.g.,* Daniel T.W. v. Joni K.W., 2009 WI App 13, ¶ 5, 315 Wis. 2d 181, 762 N.W.2d 444 (county child support agency succeeds in having child support assessed against a man who signed an affidavit of parentage though he knew he was not the genetic father because as to him, there was no fraud, mistake, or duress; success by the agency results from arguments presented by the child's guardian *ad litem* against allowing the man to contest paternity).

446. *See supra* note 41 and accompanying text.

447. *See supra* note 2 and accompanying text.

448. Monroe Cnty. Dep't of Human Servs. v. Joshua B., No. F-11842-08, 2009 WL 4673757, at *9 (N.Y. Fam. Ct. Dec. 1, 2009).

449. *Id.*

few days have elapsed since birth, some men, though present at birth, would not return for genetic testing, let alone find their way to government offices to officially register and acknowledge their paternity.⁴⁵⁰ Other men would not trust the government with a blood sample, even when promised that DNA samples would be used only for paternity-test purposes.⁴⁵¹ And some genetic fathers, estranged from the child and mother during the time after birth, may purposefully avoid establishing paternity by genetic testing because of the child-support consequences of a positive result.⁴⁵²

ii. Curbing Misrepresentations About Male Genetic Ties

With requirements on the very likely genetic ties between acknowledging men and nonmarital children who are subject to voluntary paternity-acknowledgments, three types of misrepresentations about such ties can arise: wholly unintentional, partially unintentional and partially intentional, and wholly intentional.⁴⁵³

Wholly unintentional misrepresentations occur when both the mother and the male signer are mistaken about the very likely male genetic ties, though each had a good faith belief in the strong possibility of such ties.⁴⁵⁴ Such misrepresentations can be diminished if acknowledgment forms emphasized that significant probability, rather than some chance, of male genetic ties were needed.⁴⁵⁵ We recognize that more may be deterred from acknowledging before birth or in hospitals shortly after birth.⁴⁵⁶ These men and women can be encouraged to seek genetic testing.⁴⁵⁷ We urge serious consideration of our proposal that government-funded genetic testing be freely available at birth hospitals immediately after birth to all who are in doubt, and that conditional voluntary-acknowledgment forms be allowed to be signed by these doubters, before or after birth,

450. See Jeffrey A. Parness, *Lost Paternity in the Culture of Motherhood: A Different View of Safe Haven Laws*, 42 VAL. U. L. REV. 81, 96–97 (2007); Parness, *supra* note 3, at 654.

451. See, e.g., Jason Tarricone, Note, “An Ordinary Citizen, Just Like Everyone Else”: The Indefinite Retention of Former Offenders’ DNA, 2 STAN. J. C.R. & C.L. 209, 242 (2005).

452. See Parness, *supra* note 3, at 654.

453. See *infra* notes 454–71.

454. See, e.g., *In re Paternity of M.M.*, 889 N.E.2d 846, 848–49 (Ind. Ct. App. 2008).

455. See *supra* notes 447–49 and accompanying text.

456. See *Monroe Cnty. Dep’t of Human Servs. v. Joshua B.*, No. F-11842-08, 2009 WL 4673757, at *9 (N.Y. Fam. Ct. Dec. 1, 2009).

457. See *supra* note 448 and accompanying text.

with the acknowledgments only taking effect should the testing results confirm male genetic ties.⁴⁵⁸

Partially unintentional misrepresentations occur when either the mother or the prospective male signer, but not both, know that male genetic ties are unlikely.⁴⁵⁹ Mothers know of their sexual activities around nine months before birth. Men know of their vasectomies more than nine months before birth. To discourage signatures by those who know that male genetic ties are unlikely, or not very likely, we urge that separate informational brochures be conveyed to women and men before signing, with each urging that more than *de minimis* doubts be eliminated by testing.⁴⁶⁰ A woman need not admit to, or even imply, sex with other males to urge that testing be required. Testing avoids future legal issues, like the possible mental incapacities of the signers or paternity suits by other men claiming to be genetic fathers.⁴⁶¹ Positive tests would satisfy U.S. Supreme Court precedents on the federal constitutional paternity opportunity interests of genetic fathers in nonmarital children born of sex.⁴⁶²

Wholly intentional misrepresentations occur when both the mother and the prospective male signer know there are very likely no male genetic ties.⁴⁶³ Separate informational brochures can inform both men with vasectomies and women of available adoption opportunities where no male genetic ties are required.⁴⁶⁴ They can warn men that later challenges to legal paternity determinations based on lack of genetic ties often are not available so that escape from legal fatherhood is not as easy as Maury Povich often implies.⁴⁶⁵ Brochures can warn women that, at times, courts will allow genetic fathers opportunities to child rear some time, if not long, after erroneous paternity acknowledgments are completed by nongenetic fathers.⁴⁶⁶ And, brochures can emphasize the penalties as well as the

458. See Parness, *supra* note 3, at 665–66.

459. See, e.g., *Karen P. v. Christopher J.B.*, 163 Md. App. 250, 255, 878 A.2d 646, 649 (Md. 2005).

460. See, e.g., OFFICE OF CHILD SUPPORT, OHIO DEP'T OF JOB AND FAMILY SERVS., FORM NO. JFS 08079, PATERNITY ENHANCEMENT PROGRAM (rev. Jan. 2008); see also *supra* notes 282–93 (providing examples of state informational materials).

461. See *Monroe Cnty.*, 2009 WL 4673757, at *9.

462. See *supra* note 441 and accompanying text.

463. See *supra* text accompanying notes 161–74.

464. See Parness, *supra* note 405, at 575; see also Parness, *supra* note 360, at 64.

465. See *supra* note 445 and accompanying text; see also Parness, *supra* note 360, at 67–69.

466. See *supra* notes 34–36 and accompanying text.

family disruptions that can arise from erroneous acknowledgments.⁴⁶⁷ Today, some state paternity acknowledgment forms clearly and strongly warn of penalties for making false entries.⁴⁶⁸ Others say little or nothing.⁴⁶⁹ As well, some forms emphasize the legal consequences flowing from acknowledgments while others do not.⁴⁷⁰ More detailed information on the possible consequences and penalties flowing from acknowledgments by nongenetic fathers should deter misrepresentations.⁴⁷¹

iii. Rescissions and Contests Involving Paternity Acknowledgments

As in Arkansas, voluntary acknowledgement rescission forms in all states should request, though not require, basic information about the biological father.⁴⁷² Such requests would aid states who seek child support reimbursements as well as at times significantly serve their public's interest. Also, men or women should also be permitted to rescind their signatures without facing estoppel or equitable parentage determinations by courts.⁴⁷³ Where a woman rescinds in the absence of genetic tests showing the male signatory is not the natural father, he should be informed that with a positive test, his parental rights can be restored, though here we could support a time limit, no less than sixty days, on any such mandatory revival.⁴⁷⁴

As to who can rescind within sixty days of signing, we believe only the signatories should have standing.⁴⁷⁵ The term rescission suggests

467. See, e.g., IOWA ESTABLISHING PATERNITY BY AFFIDAVIT, *supra* note 285.

468. See, e.g., MISSOURI AFFIDAVIT ACKNOWLEDGING PATERNITY, *supra* note 82.

469. See, e.g., KENTUCKY REGISTRAR OF VITAL STAT., FORM NO. VS-8, DECLARATION OF PATERNITY (rev. Jan. 2002).

470. Compare MARYLAND AFFIDAVIT OF PARENTAGE, *supra* note 177 (stating the legal consequences at the top of the form in large text), with INDIANA PATERNITY AFFIDAVIT, *supra* note 176 (providing legal consequences in small font near the bottom of the form).

471. Compare PENNSYLVANIA ACKNOWLEDGMENT OF PATERNITY, *supra* note 139 (stating the "rights, responsibilities, and obligations" of signing the form and "that false statements made . . . are subject to" criminal penalties), and NEW YORK ACKNOWLEDGMENT OF PATERNITY, *supra* note 147 (stating that the legal rights and consequences that result from signing the form), with NEW JERSEY CERTIFICATE OF PARENTAGE, *supra* note 238 (stating only that "THIS IS A LEGAL DOCUMENT").

472. ARKANSAS RESCISSION OF ACKNOWLEDGEMENT OF PATERNITY, *supra* note 310.

473. See *Monmouth Cnty. Div. of Social Servs. v. R.K.*, 757 A.2d 319, 324 (N.J. Super. Ct. Ch. Div. 2000).

474. See, e.g., MASS. GEN. LAWS ANN. ch. 209C, § 11 (West 2009).

475. See 42 U.S.C. § 666(a)(5)(D)(ii) (2006). Under federal statute there is usually a "right" of "any signatory" to rescind within sixty days. *Id.* (providing no right to rescind once there is commenced "an administrative or judicial proceeding related to the child . . . in which the signatory is a party").

an act by one earlier directly involved in the conduct for which rescission is sought.⁴⁷⁶ Though an acknowledgment “is considered a legal finding of paternity,”⁴⁷⁷ this finding can be, and at times under federal constitutional precedents must be, overcome in “an administrative or judicial proceeding.”⁴⁷⁸ Such a proceeding can involve a non-signatory.⁴⁷⁹

Under federal statute, once sixty days have passed since signing, there is no longer a signatory’s right to rescind.⁴⁸⁰ But then, a voluntary paternity-acknowledgment “may be challenged in court only on the basis of fraud, duress, or material mistake of fact, with the burden of proof upon the challenger.”⁴⁸¹ In such a “contest,” non-signatories may be involved.⁴⁸² Challengers are not described in federal law, effectively leaving many of the guidelines involving post-sixty-day acknowledgment contests to state lawmakers;⁴⁸³ though some guidelines are dictated by the federal constitutional paternal opportunity interest.⁴⁸⁴ We support this approach so that state laws would guide those looking to establish legal parentage later in a child’s life, including a late-arriving genetic father, a prospective adoptive father, often a stepfather, or an equitable parent, who may have gained rights by statute or precedents through parenting during a relationship with the child’s mother and the child.⁴⁸⁵

As noted, some states have a time bar to challenging an acknowledgment.⁴⁸⁶ We are wary of any such limit: an actual genetic father may be unfairly, and at times unconstitutionally, denied the opportunity to establish legal parentage.⁴⁸⁷ In most states, at any one

476. See BLACK’S LAW DICTIONARY 1420–21 (9th ed. 2009) (defining “rescission” as an act by a “party” involved in the transaction).

477. 42 U.S.C. § 666(a)(5)(D)(ii).

478. *Id.* § 666(a)(5)(D)(ii)(II) (making no direct mention of who might initiate such a proceeding, though noting such a proceeding could involve a request for a child support order, which can involve such non-signatories as a state or local social service agency or a genetic father).

479. See *id.*; see also *supra* text accompanying note 478.

480. 42 U.S.C. § 666(a)(5)(D)(ii)(II).

481. *Id.* § 666(a)(5)(D)(iii).

482. See Parness, *supra* note 360, at 92.

483. See *id.* at 91–93.

484. See *id.* at 97 n.277.

485. See Lawrence Schlam, *Standing in Third-Party Custody Disputes in Arizona: Best Interests to Parental Rights-And Shifting the Balance Back Again*, 47 ARIZ. L. REV. 719, 748, 764–65 (2005).

486. See Parness, *supra* note 360, at 93.

487. See Jeffrey A. Parness, *Unfairness Persists*, NAT’L L.J., Feb. 4, 2008, at 23; see also Parness, *supra* note 3, at 662 (noting that Florida provides no notice protection to

time, a nonmarital child born of sex may have, at best, only one father and one mother under law.⁴⁸⁸ Without the opportunity for undoing an acknowledgment by a nongenetic father, a genetic, as well as a prospective adoptive father ready to parent may be thwarted.

As to the federal statutory mandate of "fraud, duress, or material mistake of fact" necessary to undo a paternity acknowledgment more than sixty days after signing, we favor a clearer nationwide standard, preferably enacted by Congress.⁴⁸⁹ To date, state courts have taken very different views.⁴⁹⁰ We hope that with new reforms aimed at securing more reliable in-hospital voluntary paternity-acknowledgments, there will be far fewer contests over such acknowledgments well after birth.

We do not believe any uniform standard on post-sixty-day contests involving paternity acknowledgments should be tied to fraud, duress, or mistake as the terms are now interpreted.⁴⁹¹ Late-arriving genetic fathers of nonmarital children born of sex should, at times, be able to contest successfully a voluntary paternity-acknowledgment by a nongenetic father where the mother and the male signer knew at the signing that the man had no genetic ties and that he had otherwise not developed a relationship with the child and mother (i.e., during pregnancy) sufficient to prompt any federal or state protected parental interests.⁴⁹² Federal constitutional precedents, and American state law policies on the legal interests of genetic fathers in nonmarital children born of sex, demand that such opportunities sometimes be available.⁴⁹³ Fraud could thus include, at times, fraud by both signatories.⁴⁹⁴ Mistake could thus include mistake as to genetic ties even where both signatories were not mistaken about actual genetic ties.⁴⁹⁵

unwed genetic fathers before allowing a mother to execute consent for adoption of her newborn).

488. See, e.g., *Smith v. Cole*, 533 So.2d 847, 849–54 (La. 1989) (noting that in Louisiana there can be, at the same time, dual paternity for a single child).

489. See *supra* notes 344, 444 and accompanying text.

490. See, e.g., *Parness*, *supra* note 6, at 1302–15.

491. See *id.* at 1304–15.

492. See *id.* at 1314–15; see also *Parness*, *supra* note 3, at 643–50 (stating that unwed genetic fathers have constitutionally protected interests in offspring born of sex to unwed mothers).

493. See *Parness*, *supra* note 6, at 1300–02.

494. See *id.*

495. See *supra* notes 481, 488–91 and accompanying text; see also *Parness*, *supra* note 6, at 1302–15.

VI. CONCLUSION

Too many nonmarital children born of sex in the United States have no legal father at birth, though both federal and state governments usually desire one mother and one father under law at birth for every child.⁴⁹⁶ Too many genetic fathers of nonmarital children born of sex have more trouble than John Edwards in gaining legal paternity. Many of these men are more deserving of legal fatherhood because they did not publicly shun their offspring or declare for some time that other men take on parental responsibilities.⁴⁹⁷ Too many genetic fathers, and new mothers, are also unaware of voluntary paternity-acknowledgment opportunities for genetic fathers to establish legal paternity.⁴⁹⁸ Even when aware of these opportunities, too many parents do not, through no significant personal fault, fully comprehend the realities of nonmarital paternity. Many believe Maury Povich's repeated admonitions that genetic fathers, once found, can step up to parenthood in ways that go beyond financial support.⁴⁹⁹ Reforms of voluntary acknowledgment laws and forms are needed to secure more, and more reliable, designations of legal paternity at birth for nonmarital children born of sex.

496. See *supra* notes 357–60, 401–03 and accompanying text.

497. See *supra* note 487 and accompanying text.

498. See *supra* notes 404–411 and accompanying text.

499. See *supra* notes 408–16 and accompanying text.

