NEW FEDERAL PATERNITY LAWS: SECURING MORE FATHERS AT BIRTH FOR THE CHILDREN OF UNWED MOTHERS

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I. INTRODUCTION

Public policy within the United States supports early, accurate, informed, and conclusive legal designations of parenthood as of the time of birth. For births to unwed mothers, genetic ties often help determine legal parentage. Where such births result from sexual intercourse between consenting adults, genetic ties almost always themselves determine legal motherhood, but often only help determine legal fatherhood.

1 A 1992 federal study, entitled “Supporting Our Children,” said this: 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 dependent’s benefits, inheritance, and an accurate medical history for the child.

U.S. COMM’N ON INTERSTATE CHILD SUPPORT, SUPPORTING OUR CHILDREN: A BLUEPRINT FOR REFORM 120 (U.S. Government Printing Office 1992). See also, e.g., Ragin v. Lee, 829 A.2d 93, 101 (Conn. App. 2003) (“We hold that a child who is the subject of a paternity action has a fundamental interest in an accurate determination of paternity that is independent of the state’s interest in establishing paternity for the benefit of obtaining payment for the child’s care and any interest that the parents may have in the child.”); CAL. FAM. CODE § 7570 (2006) wherein the Legislature found and declared:

(a) 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, but not limited to, social security, health insurance, survivors’ benefits, military benefits, 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.

2 Thus, even where conduct during pregnancy (e.g., drug abuse) may be used to terminate maternal rights shortly after birth, legal motherhood is usually first established by genetic ties alone. See, e.g., Caban v. Mohammed, 441 U.S. 380, 397 (1979) (Stewart, J., dissenting) (“Parental rights do not spring full-blown from the biological connection . . . . They require relationships more enduring. The mother carries and bears the child, and in this sense her parental relationship is clear.”) Any later involuntary termination of maternal rights usually
While maternity and paternity laws are largely determined by state lawmakers, states participating in certain federal welfare programs under the Social Security Act must take account of federal paternity law guidelines. Since the mid-1990s, participating states must require unwed mothers receiving aid to cooperate "in good faith" in helping to establish legal paternity. States must also have child support plans providing "services relating to the establishment of paternity" for children to whom financial assistance is provided. Paternity establishments through voluntary acknowledgments are contemplated. Such acknowledgments have only recently become a major avenue for establishing legal paternity. They are now employed for all children born to unwed mothers, as acknowledgment opportunities generally are made requires significant proof. See, e.g., Santosky v. Kramer, 455 U.S. 745, 747-48 (1982) (holding that clear and convincing evidence of unfitness is needed before state may sever completely and irrevocably parental rights in their natural children).

3 In re Estate of Poole, 799 N.E.2d 250, 256, 259 (Ill. 2003) (stating that a parent and child relationship does not arise under law for a man simply because no one disputes biological parentage and that statutes often seek to insure that legal fathers "are parents in more than the genetic sense").


5 Id. § 654(29)(A). Herein, I employ the phrase "legal paternity" (as well as "legal fatherhood," "genetic father in law," and "father in law") to encompass legal designations of fatherhood as of the time of birth, whether or not such designations are made at birth or later and whether or not they are founded on circumstances existing at the time of birth (e.g., genetic ties or marriage) or thereafter (e.g., actual parenting). I assume here that only a man (whether or not impotent) may be subject to a legal paternity designation. Incidentally, in most, but not all, states, there can be legal paternity for only one man for every child born, though there need not be any man ever assigned paternity under law (as when birth results from the rape by a genetic father of an unmarried woman). But see Smith v. Cole, 553 So. 2d 847, 849-50 (La. 1989) (recognizing "dual paternity" in Louisiana) compare Smith with In re Jesusa V., 85 P.3d 2, 29 (Cal. 2004) (recognizing that there can be two competing paternity presumptions at birth, though only one man is then deemed by a court to be a father under law).


available to all unwed mothers whether or not there is state assistance. The number of children born in the United States to unwed mothers has also grown recently, making voluntary acknowledgment procedures even more important to American paternity laws. "In 1950, a mere 4 percent of all children born in the United States had unmarried mothers; in 1970, the percentage had risen to slightly less than 11 percent; in 1980, it jumped to 18 percent . . . ."8 Today, over one third of the children born in the United States are born to unwed mothers, with the total number of children exceeding 1.4 million a year.9 While a voluntary acknowledgment is, by far, the most common way that the paternity of a child born to an unwed mother is established, about one third of the children born to unwed mothers in the United States have no designated legal father at the time of birth.10

This Article begins by reviewing the federal mandates on both maternal good faith cooperation and voluntary paternity acknowledgments. It illustrates the nationwide confusion and uncertainties about these mandates. The Article concludes with suggested reforms of both federal and state laws aimed at securing more fathers in law at birth for children born out of wedlock in the United States.11

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8 MARTIN GUGGENHEIM, WHAT'S WRONG WITH CHILDREN'S RIGHTS 62 (Harv. Univ. Press 2005) (citing U.S. Census Bureau data).
9 Births to Unwed Women Set Record in '04, CHI. TRIB., Oct. 29, 2005, 1, at 11 (report of National Center for Health Statistics states there were over 1.4 million such births, accounting for over thirty-five percent of all births in the United States). Teen mothers now account for about a fourth of all unwed births, down from about a half in 1970. Id.
10 In the fall of 2005, the author surveyed all state Vital Records offices. Responses indicated that, in Alabama, fifty-five percent of children did not have a legal father, with thirty-one percent in Arizona, seventy-six percent in Delaware, forty-one percent in Florida, twenty-eight percent in Idaho, thirty-four percent in Indiana, at least twenty-five percent in Maine, thirty-seven percent in Michigan, forty-two percent in Mississippi, twenty-eight percent in New Mexico, thirty-five percent in Pennsylvania, eleven percent in South Carolina, and about thirty-five to forty percent in Washington. State Vital Records Survey, supra note 7. The results suggest a need for future inquiry into the reasons for interstate differences. Results also indicate that in certain communities within a state, far more children born to unwed mothers are fatherless at birth than elsewhere in the state. For example, compare Kent and Sussex Counties in Delaware with Newcastle County. Id. Future inquiry seems warranted here as well.

The author also surveyed, during the same period, all birthing facilities in Illinois. As with the states, the responses on how many children born to unwed mothers have no acknowledged father at birth varied between hospitals (from four to forty percent). Jeffrey Parness, Illinois Hospital Survey (2005) (unpublished, on file with author).
11 Early, accurate, informed, and conclusive legal paternity designations are crucial not only to genetic fathers and non-genetic fathers who actually parent from birth, but also to mothers, to their children, and to American government. See, e.g., James A. Gaudino Jr. et al.,
II. FEDERAL MANDATES ON MATERNAL GOOD FAITH COOPERATION IN NAMING GENETIC FATHERS

Federal statutes within the Social Security Act demand that state governments participating in certain federal assistance programs serving needy children have child support plans permitting "the establishment of the paternity of a child at any time before the child attains 18 years of age," providing "services relating to the establishment of paternity" for children for whom assistance is provided, and requiring mothers receiving assistance on behalf of their children to cooperate "in good faith" in establishing legal paternity.

Governmental encouragement of women to divulge information about potential fathers in law is not unusual, though it must be undertaken with care.
as informational\textsuperscript{17} and other\textsuperscript{18} privacy interests are frequently in play. For example, unwed women who place their children for adoption often must cooperate in naming the genetic fathers who have actually parented the children so that opportunities for notice and a hearing can be provided prior to the termination of any paternal rights preceding adoption.\textsuperscript{19} Women involved in marriage dissolution proceedings usually must indicate whether they are pregnant.\textsuperscript{20} In addition, continuing pregnancies often must be revealed for inheritance purposes when expectant genetic fathers (or other men with assumed blood ties) pass away.\textsuperscript{21}

\textsuperscript{17} In order to pass constitutional muster, information on intimate or very personal matters gathered by the government must be securely held and made available only for limited use by a few. There are times when governmental authority may be used to obtain highly personal information. See, e.g., Tucson Woman's Clinic v. Eden, 379 F.3d 531, 550 (9th Cir. 2004). We balance the following factors to determine whether the governmental interest in obtaining information outweighs the individual's privacy interest: (1) the type of information requested, (2) the potential for harm in any subsequent nonconsensual disclosure, (3) the adequacy of safeguards to prevent unauthorized disclosure, (4) the degree of need for access, and (5) whether there is an express statutory mandate, articulated public policy, or other recognizable public interest militating toward access. Id. at 551.

For statutory recognition, see, e.g., ME. REV. STAT. ANN. tit. 19-A, § 1506 (2006) (inquiries regarding sexual activity of recipient of public assistance are limited to those necessary to resolve genuine disputes about parentage) and 42 U.S.C. § 654(26) (2000).

\textsuperscript{18} See, e.g., Coe v. Mathews, 426 F. Supp. 774 (D.D.C. 1976) (describing statutory "good cause" exception to cooperation duty, which presumably includes matters such as potential abuse and past rape).

\textsuperscript{19} On the differing forms of cooperation required by states, see, e.g., Cecily L. Helms & Phyllis C. Spence, Take Notice Unwed Fathers: An Unwed Mother’s Right to Privacy in Adoption Proceedings, 20 WIS. WOMEN’S L.J. 1, 10–23 (2005) (arguing against mandatory maternal disclosure laws; finding there are alternative means of identifying putative fathers).

\textsuperscript{20} See, e.g., Hamilton County Court of Common Pleas, Domestic Relations Division, Local Rules, 1.24 ("Pregnancy Disclosure").

\textsuperscript{21} See, e.g., 755 ILL. COMP. STAT. 5/2–3 (2006) ("A posthumous child of a decedent shall receive the same share of an estate as if the child had been born in the decedent’s lifetime.").
III. FEDERAL MANDATES ON VOLUNTARY PATERNITY ACKNOWLEDGMENTS

A. Executing Voluntary Paternity Acknowledgments

Federal mandates on voluntary paternity acknowledgments came in 1996 under the Personal Responsibility and Work Opportunity Reconciliation Act.\(^2\) There, Congress replaced the federal Aid to Families with Dependent Children program, contained in Title IV-A of the Social Security Act, with a program of block grants to the states for Temporary Assistance for Needy Families (TANF).\(^3\) Although state participation in the TANF program is voluntary, a participating state must comply with the requirements of Title IV-D and its accompanying regulations, including rules on voluntary paternity establishment.\(^4\)

Within Title IV-D, Congress enacted guidelines to improve both paternity establishment techniques and enforcement of child support orders. One key section, as noted, requires genetic mothers receiving public aid to cooperate "in good faith" in establishing legal paternity of the genetic father when appropriate (as with unwed mothers who bear children as a result of consensual sexual intercourse between adults as compared to unwed mothers who bear children as a result of rape).\(^5\) Another section concerns voluntary acknowledgments of paternity by putative fathers.\(^6\) Congress enumerated various methods by which a participating state must provide putative fathers with an opportunity to execute a voluntary acknowledgment.\(^7\) For example, one...
provision requires that states establish procedures for "a simple civil process for voluntarily acknowledging paternity." Another, more specific provision demands that states 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." Yet another dictates that "the State agency responsible for maintaining birth records [must] offer voluntary paternity establishment services." States must conform to these general federal requirements in order to participate in Title IV-D programs.

A related federal law declares that states must 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." Because most birth certificates in the United States are dependent upon information gathered by hospital personnel before or shortly after in-hospital births, in-hospital voluntary acknowledgment procedures have been increasingly, and frequently, employed recently to secure fathers under law for children born to unwed mothers.

B. Rescinding Voluntary Paternity Acknowledgments

In addition to the federal laws on executing voluntary paternity acknowledgments, there are also federal laws on rescinding voluntary paternity acknowledgments. One statute dictates that a participating state must consider a signed, voluntary acknowledgment of paternity a legal finding of paternity. This legal finding of paternity can be rescinded 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."\(^{35}\) Thereafter, a signed voluntary acknowledgment of paternity can be challenged "only on the basis of fraud, duress, or material mistake of fact, with the burden of proof upon the challenger."\(^{36}\) Such challenges are typically made by acknowledged unwed fathers who later allege no genetic ties.\(^{37}\)

Federal statutes have never provided meaning for the terms "fraud," "duress," or "material mistake of fact." Furthermore, neither the pertinent regulations nor the legislative history of the Social Security Act offer much insight. One federal regulation states 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."\(^{38}\) Incidentally, in other federal programs, similar terms have been specifically 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."\(^{39}\) 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."\(^{40}\)

While federal lawmakers have remained silent on the meanings of fraud, duress, and material mistake of fact in voluntary paternity acknowledgment settings, the federal mandate surely has made some paternity disestablishments more difficult since 1996. A Maine case illustrates an earlier, more sympathetic attitude. The case involved Jerome Blaisdell, who lived with Pamela Flewelling beginning in 1991.\(^{41}\) Between 1993 and 1996 Jerome worked away during the week, returning home to Pamela only on weekends.\(^{42}\) In 1994,

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\(^{35}\) Id. § 666(a)(5)(D)(i)–(II).

\(^{36}\) Id. § 666(a)(5)(D)(iii). Implementation of these rescission standards, on occasion, proves challenging. See, e.g., N.J. STAT. ANN. § 9:17-41(b) (2006) (rescission within sixty days) and § 26:8-30 (declaring, seemingly, that rescission may occur within sixty days only for fraud, duress, or material mistake of fact).

\(^{37}\) It is unclear what differences arise for acknowledging fathers (with or without actual genetic ties) seeking rescission where the acknowledging mothers lied about marital status so that the challengers were unaware that there were presumed fathers prior to the acknowledgments.


\(^{39}\) 24 C.F.R. § 792.103.

\(^{40}\) 77 C.F.R. § 11.1.

\(^{41}\) Dep't. of Human Services v. Blaisdell (Blaisdell I), 816 A.2d 55, 55–56 (Me. 2002).

\(^{42}\) Dep't. of Human Services v. Blaisdell (Blaisdell II), 847 A.2d 404, 405 (Me. 2004).
Pamela gave birth to a son, Ryan.\textsuperscript{43} A trial court found that at the time of birth, Jerome "was aware of the possibility" that he was not Ryan's genetic father.\textsuperscript{44} Nevertheless, in the fall of 1996, Jerome signed papers acknowledging paternity.\textsuperscript{45} Later that year, the Maine Department of Human Services commenced a paternity proceeding.\textsuperscript{46} In doing so, it advised Jerome he "could undergo genetic testing."\textsuperscript{47} Jerome declined and a trial court ordered him to pay past and future child support.\textsuperscript{48} In June of 1999, the relationship between Jerome and Pamela ended, a relationship that the Maine high court later said Jerome "believed" to be "monogamous."\textsuperscript{49} At the time of the breakup, Pamela shocked Jerome by telling him "he was not Ryan's [genetic] father."\textsuperscript{50} As time passed, Jerome heard "persistent rumors"\textsuperscript{51} that finally prompted him to "obtain DNA testing" in 2001.\textsuperscript{52} After testing demonstrated no genetic ties, Jerome moved in March of 2001 to modify the 1996 judgment under a civil procedure rule allowing a remedy for a "reason justifying relief."\textsuperscript{53}

The trial court granted the motion and the parties agreed that the trial court "acted within its discretion in amending the 1996 judgment to indicate that Blaisdell [was] not the child's father."\textsuperscript{54} There was no mention of fraud, duress, or material mistake of fact; of the true genetic father (and whether he had ever stepped up to, or was forced into, parental responsibilities); of the reasonableness of the timing of Jerome's suspicion; of any time lag in Jerome's pursuit of testing once he had cause for suspicion; or, of Pamela's or Ryan's stance regarding disestablishment.\textsuperscript{55} Today, under TANF-driven mandates in

\textsuperscript{43} Blaisdell I, 816 A.2d at 55.

\textsuperscript{44} Blaisdell II, 847 A.2d at 404.

\textsuperscript{45} Id. at 405.

\textsuperscript{46} Id.

\textsuperscript{47} Id.

\textsuperscript{48} Id.

\textsuperscript{49} Id.

\textsuperscript{50} Id. at 405–06 (also finding that DHS has a "vested right to the overdue payments," though Jerome would have no new support obligations).

\textsuperscript{51} See id. at 405–06. Pamela and Ryan—upon high court directive in Blaisdell I—"participated" in the proceeding involving Jerome's request for modification of the 1996 judgment, but may not have been included within the "parties" who agreed the trial court acted "within its discretion" in granting the request. Id.

\textsuperscript{52} Id.; Blaisdell II, 847 A.2d at 405.

\textsuperscript{53} Blaisdell I, 816 A.2d at 56; ME. R. Civ. P. 60(b)(6).

\textsuperscript{54} Blaisdell II, 847 A.2d at 405–06 (also finding that DHS has a "vested right to the overdue payments," though Jerome would have no new support obligations).
New Federal Paternity Laws

IV. STATE LAWS ON MATERNAL GOOD FAITH COOPERATION IN NAMING GENETIC FATHERS

Missouri regulations illustrate well the contours of a detailed maternal good faith cooperation duty involving the identification of genetic fathers of children who receive federally-subsidized, state-distributed governmental support. The state requires applicants/recipients to provide the Division of Child Support Enforcement with certain "information pertaining to the noncustodial parent (NCP) or alleged father (AF)" as well as to assist in establishing paternity and child support orders. Information relating to NCPs and AFs include men's names, ages, social security numbers, addresses, and employment records; school, club, and union memberships; friends and relatives; physical traits; and vehicles and other property. Circumstances excusing maternal cooperation include physical or emotional harm to a child or a mother; domestic violence; incest or rape; or a pending adoption proceeding. Pleas regarding these "good cause" excuses must be supported by specific allegations and "corroborative evidence."

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56 ME. REV. STAT. ANN. tit. 19-A, § 1616(1) (2006). After sixty days, rescission requires fraud, duress, or material mistake of fact. Id.
57 Not all court-labeled paternity acknowledgments may be subject to federal guidelines. See 42 U.S.C. § 666(a)(5)(C)(I)-(iii) (2000) The "simple civil process for voluntarily acknowledging paternity" subject to federal limitations seemingly extends only to "hospital-based" acknowledgments "immediately before or after" birth, and to "State agency... voluntary paternity establishment services." Id. Thus, for example, acknowledgments during in-court paternity proceedings may not be limited by federal rescission guidelines. See, e.g., F.B. v. A.L.G., 821 A.2d 1157, 1159, 1163 (N.J. 2003) (man who "acknowledged under oath" that he was the genetic father during a "typical paternity and support action" against him, also described as having "signed... sworn Admission of Paternity," could seek disestablishment under the law on relief from judgments, N.J. R. 4:50-1; no mention made of N.J. STAT. ANN. § 9:17-41(b) (West 2006) which deals with rescissions of voluntary acknowledgments on fraud, duress, or mistake grounds, though fraud was relevant in a Rule 4:50-1 analysis). It is unclear where Jerome Blaisdell signed the acknowledgment.
58 Mo. CODE REGS. ANN. tit. 13, § 30-8.010(1) (2006) (cooperation duty of applicants/recipients receiving public assistance involving benefits from certain programs funded under Title IV of the federal Social Security Act).
59 Id. § 30-8.010(2).
60 Id. § 30-8.010(2)(A).
61 Id. § 30-8.010(3)(C)(1-5).
62 Id. § 30-8.010(3)(C).
In Arizona, the maternal good faith cooperation duty is governed by far less detailed written laws. A mother seeking cash assistance in Arizona must cooperate by "[i]dentifying and locating the parent of a child for whom [cash assistance] is requested."\(^{63}\) She must also cooperate in "[e]stablishing the paternity of a child born out-of-wedlock, for whom [cash assistance] is requested."\(^{64}\) Cooperation includes completing "an affidavit of paternity" or voluntarily acknowledging paternity with the father "in a signed, notarized statement."\(^{65}\)

In many TANF participating states, there appear to be no easily-accessed written laws on maternal good faith cooperation. This enables significant intrastate variations flowing from the broad discretion allotted lower level state officials.\(^{66}\)

V. STATE LAWS ON EXECUTING AND RESCINDING VOLUNTARY PATERNITY ACKNOWLEDGMENTS

A. Executions

As noted, under federal statutes, the states participating in the TANF program must provide avenues for voluntary paternity acknowledgments in both hospitals and agency offices.\(^{67}\) To date, Congressional directives have not been read to bar other state-created avenues for voluntary acknowledgments. Thus, in various settings, men may prompt their own legal paternity by admitting, claiming, or otherwise acknowledging genetic ties with children born to unmarried women. Although its practices are not duplicated everywhere, the Illinois system illustrates the varying possible forms of voluntary paternity acknowledgment.


\(^{64}\) Id. § 6-12-311(F)(2).

\(^{65}\) Id. § 6-12-311(F)(2)(a)–(b).

\(^{66}\) In Illinois, paternity establishment liaison officers within the Department of Health and Family Services have responsibilities that include educating and training hospital personnel regarding in-hospital acknowledgments. According to Maggie Tuerk, one such officer (out of eight or nine statewide), these officers do little about children born to unwed mothers not involved with public aid who leave hospitals without designated legal fathers for their children. See e-mail from Maggie Tuerk, Paternity Establishment Liaison, to Jeffrey A. Parness (Nov. 4, 2005) (on file with author).

1. In-Hospital Voluntary Acknowledgments

In Illinois, a parent-child relationship may be “established” voluntarily by the “signing and witnessing” of a voluntary acknowledgment of paternity at a hospital, in accordance with the Illinois Public Aid Code. If the parties are applicants or recipients of public aid. If the mother of the child was not married to the alleged father at either the time of conception or birth, the name of the father is entered on the birth certificate only if the mother and the alleged father have signed a voluntary acknowledgment of parentage. In the event the mother was married at the time of conception or birth, and the mother’s husband is not (or is not said to be) the genetic father, the alleged genetic father may be entered on the birth certificate only if he and the mother sign a voluntary acknowledgment of paternity after the mother and her husband (a presumed father under law) sign a denial of the husband’s paternity. In either setting, a voluntary acknowledgment means the signing “man is presumed to be the natural father” and usually “conclusively establishes a parent and child relationship.” With an in-hospital voluntary acknowledgment, neither a judicial nor an administrative proceeding is required. Yet, notwithstanding its “conclusive” status, a voluntary acknowledgment usually may be rescinded within sixty days. After sixty days, it may be challenged in court “on the basis of fraud, duress or material mistake of fact.”

The in-hospital voluntary acknowledgment procedures used in other states are comparable. There are differences between states, however, on such
matters as whether the acknowledgments (1) must be notarized, (2) must be filed with a court, (3) must contain information as to any genetic testing, and (4) can be returned prior to birth.

2. In-Agency Voluntary Acknowledgments

Paternity may also be established in Illinois through a statutory form of voluntary acknowledgment that prompts a paternity presumption, but does not involve personnel at a hospital or other location where birth occurs. Under the Vital Records Act, a "local registrar or county clerk after the birth shall" provide the opportunity for genetic parents unmarried to each other "to sign an acknowledgment of parentage" on a form supplied by the Illinois Department of Healthcare and Family Services (formerly the Department of Public Aid). As with a voluntary acknowledgment in a hospital, there is a presumption that the signing man is "the natural father." The "signing and witnessing of the acknowledgment of parentage . . . conclusively establishes a parent and child relationship." An in-agency acknowledgment may only be rescinded in the way that an in-hospital acknowledgment may be rescinded, meaning that a showing of fraud, duress, or material mistake of fact is required after sixty

77 In Illinois, the statute is silent. See id. at 45/6(c). Notarized statements are expressly required in such states as Idaho and Minnesota. IDAHO CODE ANN. § 7-1106(1) (2006); MINN. STAT. § 257.75(1) (2006).

78 In Illinois, no judicial (or administrative) proceeding is required. 750 ILL. COMP. STAT. 45/6(c); see also 13 DEL. CODE ANN. tit. 13, § 8-302(a) (2006) (paternity acknowledgment must be "in a record"). Compare ARIZ. REV. STAT. ANN. § 25-812(A) (2006) (filed with court).

79 In Illinois there is no such express requirement and the relevant form has no mention of testing. 410 ILL. COMP. STAT. 535/12(5); Form HFS 3416B (R-7-05)/IL 478-2370 (Illinois Healthcare and Family Services Department), available at http://www.ilchildsupport.com/assets/082905_3416b.pdf (last visited July 22, 2006). Compare with TEX. FAM. CODE ANN. § 160.302(a)(4) (Vernon 2005) and UTAH CODE ANN. § 78-45g-302(1)(e) (2005).

80 Compare HAW. REV. STAT. ANN. § 584-3.5 (2005) (immediately prior to or following the child's birth); UTAH CODE ANN. § 78-45g-304(2) (2005) (after birth).

81 See, e.g., 410 ILL. COMP. STAT. 535/12(4)–(5) (placing responsibilities for registering a live birth to an unmarried woman or to a married woman where her husband is not the "biological father" at the time of birth on "the institution" where birth occurred and "after birth" on the "local registrar or county clerk").

82 Id. at 535/1–535/29.

83 Id. at 535/12(5)(a)(i)–(ii) (the mother may be married to another man).

84 Id.

85 750 ILL. COMP. STAT. 45/5(a)(4).

86 410 ILL. COMP. STAT. 535/12(5)(a). See also 750 ILL. COMP. STAT. 45/5(a)(4), (b) (acknowledgment under Vital Records Act).
days. While in-hospital and in-agency acknowledgments are similar in many respects, only the latter are technically deemed available to unmarried couples not involved with public aid or state child support services. Yet, as a practical matter, in-hospital paternity acknowledgment processes are made available for all births to unmarried women in Illinois.

As with in-hospital acknowledgments, in-agency acknowledgments outside of Illinois are often quite comparably executed. Yet, there are some differences. For instance, state officials rather than local officials may be utilized, notarizations may be mandated, and information on any genetic testing may be required.

As with some locations in other states, in certain Illinois communities there are many more in-hospital than in-agency paternity acknowledgments executed for children born to unmarried mothers.

87 750 ILL. COMp. STAT. 45/5(b) (sixty-day limit); 410 ILL. COMp. STAT. 535/12(7) ("fraud, duress, or material mistake of fact," with no time limit set out).
88 Compare 750 ILL. COMp. STAT. 45/6(a) and 305 ILL. COMp. STAT 5/10-17.7 (in-hospital) with 410 ILL. COMp. STAT. 535/12(5) (in-agency).
89 In the fall of 2005 the author performed a letter survey of most birthing facilities in Illinois. The responses unanimously confirmed that all unmarried mothers were similarly treated. Illinois Hospital Survey, supra note 10.
90 See, e.g., ARK. CODE ANN. § 9-10-120(c) (2006) ("Department of Health shall offer voluntary paternity establishment services in all of its offices").
92 See, e.g., TEx. FAm. CODE ANN. § 160.302(a)(4) (Vernon 2005) (testing); id. § 160.305 (2005) (filing with bureau of vital statistics).
93 State Vital Records Survey, supra note 7.
Forty-three percent of the counties established paternity at a rate of 1.5 to 1.99 establishments for every out-of-wedlock birth. Another 26 percent of counties established paternity at a rate of 2 to 2.49 for every out-of-wedlock birth. Fourteen percent of counties established paternity at a rate of over 5 for every out-of-wedlock births [sic]. In two counties the paternity establishment rate was greater than 50.

Counties with very high paternity establishment rates had very low numbers of out-of-wedlock births. In fact, all of the counties with fewer than 50 out-of-wedlock births had paternity establishment rates greater than 5; none of the counties with more than 50 out-of-wedlock births had paternity establishment rates this high. For the counties with very few out-of-wedlock births, dividing the number of cases that established paternity by the low number of out-of-wedlock births led to very high paternity establishment rates.
3. Common Law Voluntary Acknowledgments

Besides Vital Records and Public Aid acknowledgments in Illinois, at times common law voluntary acknowledgments can also prompt legal paternity for children born to unmarried women. For example, in Jackson v. Newsome, an Illinois appellate court found in 2001 that Anthony Newsome had signed papers acknowledging paternity. This finding led to an agreed court order dated January 22, 1992, entered in a parentage case brought by Elma Jackson on December 6, 1991. In seeking to disestablish his paternity of Alecia Jackson, born December 17, 1989, Anthony sued Elma in February, 2000. The appeals court held that his acknowledgment was comparable to an acknowledgment filed with a local registrar or county clerk under the Vital Records Act and, thus, similarly prompted a presumption of natural fatherhood under the Parentage Act. The court then said Anthony could seek to undo the acknowledgment under the conditions set out in the Parentage Act that allow a suit to declare the non-existence of a parent-child relationship with DNA tests, since there had been an earlier “adjudication” of paternity as required by the Act. DNA testing was performed on December 29, 1998. The statutory provision on a declaration of no parent-child relationship was available to Anthony as long as he acted within two years of obtaining

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94 Illinois Hospital Survey, supra note 10.
95 These forms are not limited to births resulting from consensual sex between adults. The Illinois Supreme Court has recognized a common law paternity claim involving an unwed man’s actual consent to artificial insemination even though there was no compliance with the guidelines within the Illinois Parentage Act on children conceived artificially by married couples. In re Parentage of M.J., 787 N.E.2d 144 (Ill. 2003).
97 Id. at 344.
98 Id. Before suing, Anthony sought post-judgment relief in Elma’s parentage case in December 1997 (as well as an order for “blood testing” in May 1997), but he lost in April 1998. Id. at 344–45.
99 Id. at 348. The only differences involved “minute and ministerial technical requirements.” Id.
100 Id. (citing the Parentage Act, 750 ILL. COMP. STAT. 45/7(b-5)) (2006).
101 Id. (citing the Parentage Act, 750 ILL. COMP. STAT. 45/7(b-5)).
102 Id. at 351.
"knowledge of relevant facts." This two-year period could be tolled during any time "the natural mother or the child refuses to submit" to DNA tests.°

The Jackson precedent suggests that, in Illinois, other common law forms of voluntary paternity acknowledgment are possible. It can be reasonably read to recognize in-court acknowledgments during paternity establishment cases involving unwed couples not involved with public aid, as well as during marriage dissolution cases as long as the in-agency acknowledgment procedures of the Vital Records Act are substantially followed. The Jackson ruling also suggests that in-hospital acknowledgments can be undertaken by individuals not involved with public aid or state child support services, as long as Public Aid Code procedures are substantially followed.° Finally, the Jackson precedent may even allow other forms of non-statutory paternity acknowledgments (outside of hospitals, agencies, and courts). For example, acknowledgments in lawyers' offices might be legally binding at times, as long as accompanied by fair procedures modeled on those in the Public Aid Code.

Outside of Illinois, common law voluntary acknowledgments are also recognized when there are agreements or other circumstances relating to the genetic ties between men and unmarried women who engaged, or may have engaged, in consensual sexual intercourse leading to birth. Acknowledgments are often not truly voluntary, informed, or knowing. They can arise in parentage cases like and unlike Newsome. For example, legal paternity for a man can arise by default when he fails to appear in a parentage case.° It has been reported that paternity was established by default in about seventy percent of

103 750 ILL. COMP. STAT. 45/8(a)(4). The court in Jackson found that Anthony had acted within two years because his "knowledge of relevant events" only arose when he completed the DNA tests, not when he first asked a court to order tests. Jackson v. Newsome, 758 N.E.2d 342, 351 (Ill. App. Ct. 2001). This decision rested, in part, on the proposition that Anthony could not begin a disestablishment proceeding without DNA tests, id. at 351–52, a proposition now in doubt under the ruling in In re Parentage of John M., 817 N.E.2d 500, 506 (providing a different reading of 750 ILL. COMP. STAT. 45/11(a)).

104 This occurs today according to the results of the author's fall 2005 survey of Illinois birthing facilities. Illinois Hospital Survey, supra note 10.

105 Compare Fed. R. Civ. P. 8(d) (pleading averments "are admitted when not denied" in the responsive pleading) with Cal. R. of Ct. 5.122 (petitioner who applies for relief at the time a default is entered "must" submit "proof... of the facts stated in the petition"). See also Cal. Form FL-230, available at http://www.courtinfo.ca.gov/forms/fillable/fl230.pdf (last visited July 22, 2006) (declaration of paternity resulting from a default or uncontested judgment; petitioner for default judgment "declares" under "penalty of perjury" that the information in the petition or complaint to establish parental relationship is "true and correct").
the parentage cases in California in 2000. Also, legal paternity can arise for a man when there are pleading allegations and related admissions as to the required genetic ties. Pleadings are often not verified, but simply reflect an attorney’s belief that there is “evidentiary support” for the alleged genetic bond between a man and a child.

While the Jackson precedent suggests that, in Illinois, the standards for executing in-hospital or in-agency acknowledgments substantially guide the executions of voluntary acknowledgments in-court and elsewhere, the ruling indicates that the Title IV-D standards on rescissions do not apply to non-hospital and non-agency acknowledgments when they are sought to be voided. Anthony Newsome did not have to demonstrate fraud, duress, or material mistake of fact. As illustrated by the cases in the next section, while other states also look to the federal standards to guide executions of in-court acknowledgments, they too do not always use them to guide rescissions of these acknowledgments.

D. Rescissions

The lack of articulated federal standards on fraud, duress, and material mistake of fact has led to quite different state law standards on rescinding voluntary paternity acknowledgments. These standards often arise without

106 Leonard Post, Low Turnout for Paternity ‘Amnesty’, 27 NATE‘L L.J. 39, June 6, 2005, at 4 (citing 2003 study by the Urban Institute). By comparison, New York’s default rate was about ten percent. Id. Concerns about the fairness of defaults in California led to an amnesty program from 2005 to 2006 under which unwed non-genetic fathers could challenge default paternity judgments long after the normal time for challenge had expired. Id.; see also State ex rel. Sanders v. Sauer, 183 S.W.3d 238 (Mo. 2006) (earlier paternity default judgment can prompt criminal prosecution for nonsupport of child where defendant was not entitled to DNA testing).


109 Differences between and within states also arise on occasion because the applicability of the federally-prompted guidelines on rescissions, incorporated into state laws, is not recognized. See, e.g., Gebler v. Gatti, 895 A.2d 1 (Pa. Super. 2006) (employing fraud together with “paternity by estoppel” doctrine rather than the statute on rescission, 23 PA. CONS. STAT. 5103(g) (2005)).
much inquiry into the balance of federal and state governmental interests. Such interests include: the desirability of nationwide uniformity via the use of federal law; federal constitutional equal protection limits; the traditional federal governmental deference to state laws on family matters; and, the prominence of the child's-best-interest test in state laws. The current diverse standards for rescinding voluntary paternity acknowledgments based upon a lack of genetic ties are troubling. At times, they seemingly preclude certain non-genetic fathers from pursuing rebuttal even when other similarly situated non-genetic fathers, as well as children, mothers, or state welfare agencies may pursue it. Of course, any legal distinctions, as between genetic mothers and genetic fathers, or between categories of non-genetic or genetic fathers, must be reasonable and comport with federal and state constitutional safeguards. The following cases illustrate the interstate differences on fraud, duress, and material mistake of fact, as well as some of the resulting problems.

I. Illinois

In September of 2004, the Illinois Supreme Court decided People v. Smith. The case involved Romel Smith, an unwed man who sought to rescind his October 11, 1997 in-hospital voluntary acknowledgment of paternity

111 Standards can be common law or statutory. See, e.g., County of Fresno v. Sanchez, 37 Cal. Rptr. 3d 192 (Cal. Ct. App. 2005) (reviewing how intermediate appellate court decision led to differing standards adopted by the General Assembly).

112 There are other interstate differences on rescissions of federally-guided voluntary paternity acknowledgments. For example, in some, but not all, states there are time limits on presenting fraud, duress, or material mistake challenges to earlier acknowledgments. Compare, e.g., MASS. GEN. LAWS ch. 209C, § 11 ("challenge within one year") and 13 DEL. CODE REGS. § 8-302(a)(5) (Weil 2006) (within two years) with 750 ILL. COMP. STAT. 45/6(d) (no time limit mentioned) and N.Y. Family Court Act § 516-a(b) (McKinney) (no time limit mentioned). See also, e.g., PA. CONS. STAT. 5103(g) (2005) (challenger must show "clear and convincing evidence"); KAN. STAT. ANN. § 38-1138(b)(1) (2005) (where parent was under eighteen at time of birth, rescission sought for a child who is more than a year old must include hearing regarding child's best interest); IDAHO CODE ANN. § 7-1106 (2004) (rescission must be notarized); ALA. CODE § 26-17-22 (2005) (no notarization needed).

113 Rescission petitions usually are presented in trial court proceedings, most often by non-genetic fathers seeking paternity disestablishment. These proceedings can begin as child support claims presented against non-genetic fathers. Thus, in the next case discussed, Romel Smith sought to rescind his voluntary acknowledgment of paternity dated October 11, 1997 in a proceeding begun on December 3, 1997, by the State of Illinois for child support on behalf of his alleged daughter, Kendra. People v. Smith, 818 N.E.2d 1204, 1205–06 (Ill. 2004).

114 818 N.E.2d 1204 (Ill. 2004).
of Kendra Smith, who was born two days earlier. The rescission request was based on an allegedly erroneous "representation" of his genetic ties made by the unwed mother, Valerie Dawson. Romel attempted rescission after undertaking DNA testing in 2002. Romel's request was opposed by the state, which had secured a court order of child support against Romel on behalf of the Department of Public Aid in 1998. Romel lost in his effort to rescind because the high court determined that section 5(b) of the Illinois Parentage Act made conclusive the presumption of natural fatherhood arising from Romel's voluntary acknowledgment of paternity. Under that provision, there could be no easy rescission if the acknowledgment was not challenged before the earlier of: (1) sixty days after the acknowledgment was signed or (2) the date of an administrative or judicial proceeding involving the child in which the signatory was a party. After that, section 6(d) of the Act only allows a challenge by a presumed natural father, like Romel, "on the basis of fraud, duress, or material mistake of fact." The court did not rule on whether fraud, duress, or material mistake of fact applied to Romel as these issues had not been properly raised. It did say,

115 Id. at 1205. Romel signed the acknowledgment at the hospital; this acknowledgment was on a two-sided legal form developed by the Illinois Department of Public Aid. Brief of the Plaintiff-Appellee People of the State of Illinois at *4, People v. Smith, No. 97 F 329 (Ill. March 2, 2004), found at 2004 WL 3221803 [hereinafter Illinois Brief].

116 Smith, 818 N.E.2d at 1206. The form was also signed by Valerie, who therein claimed that Romel was "the biological father of this child." Petition for Leave to Appeal from the Appellate Court of Illinois at *6, People v. Smith, No. 2-03-0418 (Ill. Oct. 10, 2003), found at 2003 WL 24033201 [hereinafter Illinois Petition].

117 Smith, 818 N.E.2d at 1206. Romel undertook testing because Kendra "did not share any of his physical characteristics." Id. The testing evidently was done "without Valerie's permission or knowledge" during a period when Romel had visitation. Illinois Petition, supra note 116, at *7.

118 Smith, 818 N.E.2d at 1206–07.

119 Id. at 1213.

120 750 ILL. COMP. STAT. 45/5(a)(3)–(b) (2006). The same standard applies to a voluntary acknowledgment of parentage. Id. at 45/5(a)(4)–(b) (an acknowledgment of parentage occurs under the Vital Records Act, 410 ILL. COMP. STAT. 535/12, while an acknowledgment of paternity occurs under the Public Aid Code, 305 ILL. COMP. STAT. 5/10-17.7, as well as supplementary administrative agency rules). Parentage acknowledgments seemingly differ from paternity acknowledgments as only the former are tied to birth certificate practices around the time of birth. Id. at 535/12(4); id. at 5/10-17.7.

121 750 ILL. COMP. STAT. 45/6(d) (the challenger has the burden of proof).

122 Smith, 818 N.E.2d at 1208 n.1 (Rome did not amend his complaint); see also Illinois Brief, supra note 115, at *9 (Rome "urged the court to consider whether his complaint contained an allegation of fraud.").
however, that any post-sixty-day attack on these grounds would be governed, in part, by the Civil Procedure Code provision on relief from judgments. The court also suggested that if the legal paternity of Romel had been established in some other way, as through a marriage between Romel and Valerie, the sixty-day period would not have applied. In fact, married men subject to legal paternity through marital presumptions in Illinois now have well over sixty days to seek disestablishment based on the lack of genetic ties. Thus, it would have mattered if Romel had been married to Valerie and had sought disestablishment as well as divorce upon learning of her infidelity.

2. Connecticut

In Rivera v. Gonzalez, in 2002, a Connecticut Superior Court addressed a rescission request based on material mistake of fact and duress. At the time of the birth of Jose Luis Gonzalez to Ervaris Rivera in August of 1989, there was no designated paternity. In April of 1991, Jose R. Gonzalez (Jose Sr.) and Ervaris each signed a paternity acknowledgment under oath naming Jose

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123 Smith, 818 N.E.2d at 1210 (735 ILL. COMP. STAT. 5/2-1401(a), which was amended at the time 750 ILL. COMP. STAT. 45/6(d) was added to account for Section 45/6(d) petitions). On fraud in Section 5/2-1401 proceedings, see, e.g., Falcon v. Faulkner, 567 N.E.2d 686, 694-95 (Ill. App. Ct. 1991) (need to distinguish between intrinsic fraud and extrinsic fraud); see also Temple v. Archambo, 161 S.W.3d 217 (Tex. App. 2005) (using an extrinsic/intrinsic fraud analysis when a former husband sought to disestablish paternity arising out of an eleven-year-old consent decree; court found no extrinsic fraud, though there was intrinsic fraud; former husband lost).

124 Smith, 818 N.E.2d at 1210 (mentioning marriage dissolution cases). Romel, in fact, urged that he had more time under 750 ILL. COMP. STAT. 45/7(b-5), Smith, 818 N.E.2d at 1207, because he had been “adjudicated” to be the father in a “judgment” since his voluntary acknowledgment had, by statute, “the same effect as a judgment.” Id. at 1209-10. He lost on that argument. Id.

125 Under 750 ILL. COMP. STAT. 45/8(a)(3) (presumption with no adjudication) and 45/8(a)(4) (presumption with an adjudication), a presumed father has two years to seek disestablishment from the time he obtains “knowledge of relevant facts.”

126 The statutory provision on declaring no parent-child relationship was also unavailable to Romel Smith as his acknowledgment had not been accompanied by any “adjudication of paternity.” Smith, 818 N.E.2d at 1207. But for Valerie Dawson’s poverty and, thus, reliance on public aid, Romel Smith likely would have acknowledged paternity only when sued for support; like Anthony Newsome, see Jackson v. Newsome, 758 N.E.2d 342, 351 (Ill. App. Ct. 2001), he then probably would have been able to disestablish paternity because he acted within two years of learning he was not Kendra’s genetic father.


128 See id. at *1.
Sr. as the father. These affirmations were then filed with the Superior Court and a child support order followed upon the application by the State of Connecticut. Jose Sr. petitioned the same court in February of 2002 to open the paternity judgment because "the true biological father ha[d] come forth." Because of the length of time between the acknowledgment and the challenge, under statute, Jose Sr. needed to show fraud, duress, or material mistake of fact, which might have involved evidence of a lack of genetic ties. The court found Jose Sr. could not rescind, as no prerequisite element was proven. It also noted that even with a proven element, countervailing factors such as laches, estoppel, or unclean hands might well have negated any possible rescission.

On the issue of mistake, the court did not use a "bright line standard." Instead, it adopted a case-by-case approach, though commenting that the Connecticut statute on voluntary paternity acknowledgments "is instructive in determining what constitutes a 'mistake.'" The court cautioned that the statutory standards, including "evidence that [a person] is not the father," are not conclusive, but are only factors that should be considered. The court held that the signing of a paternity acknowledgment where both signatories "intended the consequences of their act, namely that the defendant would be established as the child's legal father," was not a mistake that could prompt a rescission. The court emphasized the facts that the child bore Jose Sr.'s "surname" and "given name."

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129 Id.
130 Id.
131 Id. As early as April of 2001, Jose Sr. sought to open the paternity judgment, but his earlier efforts failed on procedural grounds. Id.
132 Id. at *2. The statute, which spoke to acknowledgments occurring between 1981 and 1997, was applied to the in-court acknowledgment. Id. For acknowledgments prior to July 1, 1997, such proof was unnecessary if attempts to reopen paternity acknowledgments were made within three years. Id. Since 1997, attempts must be made within sixty days. Id. (citing CONN. GEN. STAT. § 46b-172(c) (2002)).
133 Id. at *3-*7.
134 Id. at *3, *8.
135 Id. at *5.
136 Id. at *6.
137 Id.
138 Id.
139 Id.
On duress, the court applied "contracts" principles to determine that Jose Sr. was under no duress.\textsuperscript{140} It held that to be under duress, "one must prove (1) a wrongful act or threat, (2) that left the victim no reasonable alternative, and (3) to which the victim in fact acceded, and that (4) the resulting transaction was unfair to the victim."\textsuperscript{141} Here, Jose Sr. was not "pressured."\textsuperscript{142} He willingly participated, in his own words, "as an accommodation because 'nobody knew who was the father of the child'" and perhaps because he wished to "'prevent the child from being fatherless until the true biological father appeared.'\textsuperscript{143} The court did note that Ervaris did not oppose Jose Sr.'s motion.\textsuperscript{144}

On fraud, the court found that Jose Sr. "colluded" with Ervaris "to perpetuate" an "untruth" and that there was no "alleged false representation" by Ervaris.\textsuperscript{145} In denying rescission, the trial court also considered Connecticut's and Jose Luis's financial interests.\textsuperscript{146}

Several years later, a Connecticut Superior Court, in \textit{Thompson v. Fulse},\textsuperscript{147} ruled on a motion to reopen a December 4, 1989 Connecticut court judgment that was based on a voluntary acknowledgment signed in Florida by Willie Fulse on October 16, 1989,\textsuperscript{148} about seven months after the birth of Rishawn Fulse to Andrea Thompson in Connecticut.\textsuperscript{149} As to fraud, the Connecticut court held that a challenger must prove the following elements:

\begin{enumerate}
\item a false representation was made as a statement of fact; 
\item it was untrue and known to be untrue by the party making it; 
\item it was made to induce the other party to act upon it; and 
\item the other party did so act upon the false representation to his detriment.\textsuperscript{150}
\end{enumerate}

\textsuperscript{140} Id. at *6-7.
\textsuperscript{141} Id.
\textsuperscript{142} Id. at *7.
\textsuperscript{143} Id. at *4.
\textsuperscript{144} Id. at *1.
\textsuperscript{145} Id. at *4-5.
\textsuperscript{146} Id. at *8.
\textsuperscript{148} Id. at *1. Willie went to a Florida college for five years, presumably starting in the fall of 1989. Id.
\textsuperscript{149} Id. Rishawn was born in Hartford, Connecticut while his parents "were 17-year-old high school students." Id.
\textsuperscript{150} Id. at *2. The burden is heavy; it requires "clear and satisfactory evidence" which is more than a preponderance. Id.
Willie failed to show fraud because Andrea did not "intentionally" keep her sexual liaisons with Trevor, her former boyfriend, from Willie.\textsuperscript{151} While she was pregnant, she had told Willie he was the father, but, around March of 1990, Willie learned from Andrea that he "was not Rishawn's father."\textsuperscript{152} Willie did not then seek rescission of his voluntary paternity acknowledgment because he thought "the matter had been taken care of" by Andrea.\textsuperscript{153} Willie only realized that it had not been taken care of on April 21, 2003, when he was served with papers to appear in a Connecticut child support proceeding, seemingly prompted by Andrea’s receipt of state assistance.\textsuperscript{154} Before then, Willie "had some minimal contact" with Rishawn but had never been asked by Andrea for child support.\textsuperscript{155}

While Willie failed to prove fraud (though it seems established under \textit{Rivera}), the trial court said he might still obtain a rescission due to a material mistake of fact. In this "unique" setting, the court found Willie's arguments "slightly more persuasive, particularly from Rishawn's point of view" because the child might be helped "from a medical history standpoint" if Trevor was named the legal father.\textsuperscript{156} The trial court retained jurisdiction and ordered genetic testing of Andrea, Willie, and Rishawn.\textsuperscript{157}

3. \textit{Tennessee}

In Tennessee, a man can rescind a voluntary acknowledgment of paternity (as well as other legal paternity designations by consent) on the basis of extrinsic or intrinsic fraud, as well as on the basis of duress or material mistake of fact.\textsuperscript{158} In \textit{Granderson v. Hicks}, a mother, Lisa Stephens Hicks, and a putative father, Larry C. Granderson, entered into "a voluntary consent order of paternity" in 1986 in a paternity case involving Myisha Stephens, who was then about four months old.\textsuperscript{159} In 1997, Larry sought to set aside related paternity and child support orders or, in the alternative, to require blood tests, after Lisa

\textsuperscript{151} Id. at *3 (though Andrea "may have failed to disclose").
\textsuperscript{152} Id. at *1 (Willie could not be the genetic father as Rishawn had sickle cell anemia).
\textsuperscript{153} Id.
\textsuperscript{154} See id.
\textsuperscript{155} Id. at *1-2.
\textsuperscript{156} Id. at *5.
\textsuperscript{157} Id. at *6.
\textsuperscript{158} TENN. CODE ANN. § 24-7-118(e) (Supp. 1998).
sought an increase in child support. Larry so moved because Lisa had told a third party that the third party was Myisha’s father and had “openly held out to others that the third party [was] Myisha’s father.” The trial court denied Larry’s request without an evidentiary hearing on the alleged “fraud.”

An appeals court reversed. Initially, it noted that a Tennessee statute allows a trial court hearing a “question of parentage” to order, when “equitable,” testing “for purposes of establishing or disproving parentage.” Yet, it also said that this statute “must be construed along with” the statutory provisions on undoing voluntary paternity acknowledgments, which may be challenged for fraud, duress, or mistake within five years, or beyond five years where there is “fraud in the procurement of the acknowledgment by the mother” and where “the requested relief will not affect the interest of the child, the state, or any Title IV-D agency.” The appeals court ultimately concluded that “an evidentiary hearing” should have been ordered on the allegation of “fraud in the procurement of the Consent Order.”

In 2005, the Granderson ruling was applied in State ex rel. Taylor v. Wilson. There, in December of 2003, Cedrick Cortez Wilson sought “to rescind his voluntary legitimation of [his] child,” Cortarius Tyrez Taylor, who was born in 1999. He did not seek a similar remedy regarding Cedrick Cortez Wilson, Jr., who was born in 1995. Both boys were born to Brandi Shantika Taylor and were determined to be Cedrick’s sons under a juvenile court order from February of 2002. The paternity findings were based on Cedrick’s “voluntary legitimation” during the pendency of the Juvenile Court case where child support was sought for the two boys. The rescission request

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160 Id.
161 Id.
162 Id.
163 Id. at *4
164 Id. at *2 (quoting TENN. CODE ANN. § 24-7-112(a)(2) (2005)).
165 Id. at *4.
166 Id. at *3 (citing TENN. CODE ANN. § 24-7-118(e)(1)–(2) (Supp. 1998)).
167 Id. (quoting TENN. CODE ANN. § 24-7-118(e)(2)).
168 Id. at *4.
170 Id.
171 Id.
172 Id. Had Cedrick, for example, voluntarily acknowledged paternity of Cedrick, Jr. at the hospital shortly after birth, the civil procedure rule would have been much less relevant than the Tennessee Code provision noted in Granderson that spoke directly to rescinding such an
to end Cedrick’s child support obligations for Cortarius was prompted when Brandi informed Cedrick “there was a possibility that he was not the father.”

In June of 2003, a trial court denied the petition to disestablish paternity, and it recognized custody of both boys in Cedrick, who then took the boys “to his home in California.” Cedrick later had testing of both boys performed, which confirmed genetic ties only between himself and Cedrick, Jr. Cortarius was returned to Brandi in July of 2003.

Accordingly, in December of 2003, Cedrick filed “a Petition to Rescind Voluntary Legitimation” of Cortarius as well as to modify related custody and support orders. On January 9, 2004, the rescission petition was dismissed by the trial court. On January 22, 2004, Brandi sought custody of Cortarius based on DNA testing showing no genetic ties between him and Cedrick. Cedrick appealed the dismissal, urging that a Tennessee civil procedure rule allowed him to obtain relief from the February 2002 order. The rule allows relief “within a reasonable time” when “it is no longer equitable that a judgment should have prospective application.”

The appeals court reversed and granted Cedrick’s rescission petition after “analyzing the burdens . . . on all who ha[d] an interest,” which it said included Cedrick, Brandi, Cortarius, and the State of Tennessee. Interestingly, when it ruled, Brandi and Cortarius were likely living in Mississippi, and Cedrick and Cedrick, Jr. apparently were living in California. The interest analysis was undertaken against a backdrop of several Tennessee cases, including Granderson, which the court said “strongly” established the state policy “favoring the requiring of biological parents to bear responsibility for their own children.” Upon analysis, the appeals court ruled that “the trial...
court abused its discretion in failing to grant relief to [Cedrick]." In doing so, it revealed the "suggestion in the record" that the genetic father of Cortarius was then "incarcerated in Oklahoma." It also found it "unlikely" that the existing relationships between Cortarius and the two Cedricks would be severed as Cortarius still had a half-brother, Cedrick, Jr., who was fathered by Cedrick, Sr. While referencing Granderson and its use of Title IV-D voluntary paternity acknowledgment standards for in-court paternity acknowledgments, the Taylor court also seemed to allow easier rescissions of in-court concessions, given its interest analysis and the non-exclusiveness of the federally-mandated standards.

4. New York

The New York voluntary paternity acknowledgment statute declares that sixty days after signing, a father "may challenge the acknowledgment of paternity in court only on the basis of fraud, duress, or material mistake of fact, with the burden of proof on the party challenging the voluntary acknowledgment." The statute further states that upon receiving such a challenge, "the court shall order genetic marker tests or DNA tests for the determination of the child's paternity and shall make a finding of paternity, if appropriate." In a 1999 case, Wilson v. Lumb, a trial judge required "genetic marker tests or DNA tests" on behalf of a man who had signed a voluntary acknowledgment shortly after birth, but who later "became suspicious of the child's parentage." The challenge came during a proceeding in which the man was sued for child support. While ruling that genetic testing should precede any "hearing on fraud, duress or material mistake of fact," the trial court noted

186 Id. at *5.
187 Id.
188 Id.
189 Id. at *3.
190 N.Y. FAM. CT. ACT § 516-a(b) (Gould 2006).
191 Id.
193 Id. at 401.
194 Id. at 399. "[S]ometime later" suspicion arose when relatives told the man and/or his mother that "he might not be the baby's father" and when the man found a letter addressed to the mother about nine months before the baby's birth. Id.
195 Id.
196 Id. at 401. Contra Hammack v. Hammack, 737 N.Y.S.2d 702, 703 (N.Y. App. Div. 2002) (finding that a different New York statute, N.Y. FAM. CT. ACT § 418(a) (Gould 2006), was applicable when a divorced man sought to undo paternity (2000) established during an
the "lack of case precedent" on the statute "which may not be clearly worded," as well as the absence of any express direction that the best interests of the child be considered before testing is ordered. It also said that while "blood test results" alone do not always "establish biological parentage," voluntary paternity acknowledgments may be "more easily set aside" with such negative results than at least certain court orders of filiation, especially those accompanied by "stricter, more comprehensive" waivers of rights. Seemingly, the New York court in Lumb was more sympathetic to rescissions of out-of-court voluntary acknowledgments while the Tennessee court in Taylor was more open to rescissiins of in-court acknowledgments.

5. Oklahoma

In a case reminiscent of Romel Smith's Illinois case, an Oklahoma appellate court ruled on a rescission plea by Billy J. Chisum who sought disestablishment of a voluntary paternity acknowledgment that was signed on the date of the child's birth, June 7, 1999, and used in a 2000 administrative child support order. The rescission request came in April of 2001 after Chisum had private testing done that was prompted by the mother's statement earlier marriage dissolution proceeding (1998) for children born (between 1984 and 1993) during a marriage (1976); reading § 418(a) to require denial of requested testing when not in children's best interests); Martin D. v. Lucille F., 800 N.Y.S.2d 902, 904–05 (N.Y. Fam. Ct. 2005) (no testing in 2005 even where mom's lies may have prompted voluntary acknowledgment in 1997 and agreed child support order in 1998, since man "was warned before the child was born that he may not be the father"; collateral estoppel and equitable estoppel each in play).

197 Wilson, 696 N.Y.S.2d at 400.
198 Id. at 401 (opining that perhaps legislators thought "[a]ctive misrepresentation or wrongdoing" by a mother is enough "justification" for a rescission). Contra Melissa B. v. Robert W.R., 803 N.Y.S.2d 672 (N.Y. App. Div. 2005).
199 Id. at 400 (citing Clara C. v. William L., 692 N.Y.S.2d 569, 579 (N.Y. Fam. Ct. 1999)). A more recent New York case (where notwithstanding the lack of genetic ties, a man may be a legal father if a child's best interests are served) is Charles v. Charles, 745 N.Y.S.2d 572 (N.Y. App. Div. 2002).
200 Id. at 401 (citing Ulster City Dep't v. Soc. Serv. v. Wilbert D., 546 N.Y.S.2d 787, 788 (N.Y. Fam. Ct. 1989)). Of course, there may not be such "stricter" waivers in filiation proceedings if the cases are simply based on previous acknowledgments of paternity, as in Mark D. v. Marion M., 785 N.Y.S.2d 204, 205–06 (N.Y. App. Div. 2004) (differing from the Wilson case in that the acknowledged father seeking disestablishment proceeded on a motion for relief from a filiation judgment that he himself pursued eight years earlier, arguing "newly discovered evidence" of infertility under N.Y. C.P.L.R. 5015(a)(2) (McKinney 2006); denying the father's motion without DNA or other testing ever being ordered).
201 Dep't of Human Serv. v. Chisum, 85 P.3d 860, 861 (Okla. Civ. App. 2004). The administrative order was also "docketed" in a trial court in May 2000. Id.
that “Chisum was not the father.”\textsuperscript{202} The appellate court found there was a “material mistake of fact” even though Chisum could have insisted on genetic testing before his acknowledgment.\textsuperscript{203} It found no “neglect” by Chisum due to his failure to act earlier regarding testing.\textsuperscript{204} It reasoned that any testing at birth would “likely . . . inject an element of hostility into . . . oftentimes already volatile emotional relationships,” would be “expensive,” and may prompt unfortunate perceptions as a result of “an attack on the mother’s veracity and an attempt to shirk responsibility for the child.”\textsuperscript{205} The court rejected arguments about the applicability of a child’s best interest or an equitable estoppel analysis.\textsuperscript{206}

6. \textit{Louisiana}

In Louisiana, the standards for rescinding voluntary paternity acknowledgments are different in that they vary depending upon whether the acknowledging man was married to the mother and whether TANF services were in play. In October of 2000, a Louisiana appeals court ruled on an attempt by Ray Faucheux to void a paternity acknowledgment due to “fraud and duress.”\textsuperscript{207} The acknowledgment covered Carley, a daughter born to Amy Faucheux before Ray and Amy had even met.\textsuperscript{208} One relevant statute said that an acknowledgment may be rescinded more than sixty days after the signing only if it “was induced by fraud, duress, or material mistake of fact, or [when] the father is not the biological father.”\textsuperscript{209} Another provided “for the acknowledgment of an illegitimate child by authentic act,”\textsuperscript{210} while another said “every claim, set up by illegitimate children, may be contested by those who have any interest therein.”\textsuperscript{211} Given these laws, the appeals court found “there is no prescriptive period for filing an action to rescind an acknowledgment”\textsuperscript{212}

\begin{footnotes}
\item[202] Id. at 861 n.1.
\item[203] Id. at 862 (quoting \textsc{Okla. Stat. Ann.} tit. 10, § 70(B)(1)(a)(2) (West 2006)).
\item[204] Id.
\item[205] Id. at 862 n.2. This is so “at least where there is evidence that the mother has made positive assertions to the putative father concerning his paternity.” \textit{Id.} at 862.
\item[206] Id. at 862–63 (noting, however, that some precedents outside Oklahoma support such approaches, including \textit{Monmouth City Div. of Soc. Serv.} v. \textit{R.K.}, 757 A.2d 319, 324 (N.J. Super. Ct. Ch. Div. 2000)).
\item[208] Id.
\item[209] Id. at 239 (quoting \textsc{La. Rev. Stat. Ann.} § 9:392(7)(b) (2006)).
\item[210] Id.
\item[211] Id.
\item[212] Id.
\end{footnotes}
and that an acknowledgment usually cannot be valid where the acknowledging man is not the biological father.\textsuperscript{213}

The \textit{Faucheux} court cited to a 1997 Louisiana Supreme Court decision,\textsuperscript{214} which opined that an acknowledgment of an illegitimate child, executed in connection with a Title IV-D proceeding,\textsuperscript{215} only creates a presumption of biological parentage which can be overridden whenever genetic ties are lacking, "absent some overriding concern of public policy."\textsuperscript{216} The \textit{Rousseve} court recognized that when such an acknowledgment formed the basis of a court judgment for child support, Louisiana law expressly allowed an attack on the judgment if procured "by fraud or ill practice ... within a year of the discovery of the fraud or ill practice."\textsuperscript{217} By contrast, the \textit{Rousseve} court also noted that an action to disavow the paternity of a child by a man who was at some time the husband of the mother "generally must be filed within 180 days after the husband learned ... of the birth of the child."\textsuperscript{218} Yet, where such a husband "erroneously believed, because of misrepresentation, fraud, or deception by the mother, that he was the father of the child, then the time for filing suit for disavowal of paternity shall be suspended during the period of such erroneous belief or for ten years, whichever ends first."\textsuperscript{219}

Because unwed Matthew Rousseve had not yet proven his allegations "that he had just become aware of fraud or misrepresentation by the child's mother"\textsuperscript{220} when he sought paternity disavowal involving a court judgment, the high court remanded the case "to the trial court for a hearing."\textsuperscript{221} Clearly though, because Matthew had never been married to the mother, he had more
time to “sit on” his newfound discovery of non-paternity (one year) than a married man would have had (180 days).\footnote{222}

7. New Jersey

A New Jersey Superior Court decision demonstrates that even where fraud, duress, or material mistake of fact is proven, rescission may still be denied.\footnote{223} In \textit{Monmouth County Division of Social Services v. R.K.},\footnote{224} a married woman gave birth in July of 1989, with her paramour present and named on the birth certificate and with her husband consenting to the paramour’s name on the birth certificate.\footnote{225} About a month before the birth, in June of 1989, the wife and paramour had begun to live together.\footnote{226} A divorce followed in December of 1989.\footnote{227}

Less than a year after the birth, in March of 1990, a county social services agency filed a complaint for support and paternity against both the paramour and the husband.\footnote{228} Then, the paramour signed an admission of paternity and a consent order for child support; the claim against the husband was dismissed.\footnote{229} This case was closed in May of 1992, because child support arrears were paid and the child was no longer receiving governmental aid.\footnote{230} The paramour and mother continued to live together, for the most part, between 1989 and 1994.\footnote{231}

After the mother received public aid again (intermittently) from 1993 to 1995, the state again sought a child support order against the paramour in May


\footnote{225} \textit{Id.} at 321.

\footnote{226} \textit{Id.}

\footnote{227} \textit{Id.}

\footnote{228} \textit{Id.}

\footnote{229} \textit{Id.}

\footnote{230} \textit{Id.}

\footnote{231} \textit{Id.}
of 1995.\textsuperscript{232} In June of that year, the paramour consented to a child support order, leading to a judgment on behalf of the state and against him in 1997.\textsuperscript{233}

In March of 1999, after the mother sought an order increasing child support, the paramour sought increased child visitation.\textsuperscript{234} A consent order followed in August of 1999, without the consent of the state social service agency, wherein the mother and paramour agreed, inter alia, to genetic testing; to joint legal custody; and, to distributions of certain child-related expenses.\textsuperscript{235} Testing occurred in October of 1999 and excluded the paramour as the genetic father.\textsuperscript{236} Nevertheless, the paramour continued his relationship with the child; in fact, in December of 1999, he sought in court papers not only to continue with joint legal custody and with the shared parenting arrangement, but also to terminate his child support and to have the child participate as the paramour’s best man in the paramour’s upcoming wedding, as well as accompany the paramour on his honeymoon to Disney World.\textsuperscript{237}

In March of 2000, genetic testing excluded the husband as the genetic father and the mother admitted in a plenary hearing that she went on a drinking binge late in 1988 and “could not... account for her activities on [a particular] night.”\textsuperscript{238}

In June of 2000, the trial court denied the paramour’s request to end child support.\textsuperscript{239} It found that “fraud, duress or a material mistake of fact” was needed.\textsuperscript{240} It proceeded to find that the paramour had “arguably” shown mistake—“that mistake being that he was the biological father.”\textsuperscript{241} Nevertheless, although it perhaps could have voided the original adjudication of paternity based on mistake, it chose not to do so because the paramour had accepted paternity knowing he might not be genetically tied. The genetic father could not now be easily located, and it would not be in the child’s best interests

\begin{footnotesize}
\begin{enumerate}
\item\textsuperscript{232} Id.
\item\textsuperscript{233} Id. at 321–22.
\item\textsuperscript{234} Id. at 322.
\item\textsuperscript{235} Id.
\item\textsuperscript{236} Id.
\item\textsuperscript{237} Id. at 322.
\item\textsuperscript{238} Id. at 322–23.
\item\textsuperscript{239} Id. at 332.
\item\textsuperscript{240} Id. at 324.
\item\textsuperscript{241} Id.
\end{enumerate}
\end{footnotesize}
to allow rescission. Thus, the paramour was subject to equitable estoppel and there was no disestablishment.

8. Summary of State Rescission Laws

There is significant diversity in the state courts on how fraud, duress, or material mistake of fact may be used by men to undo their Title IV-D guided voluntary paternity acknowledgments. Are there five years to act or ten years to act, or is there no real time limit on action? Is there usually a material mistake when a man is wrong about genetic ties, though there is no fraud? Can laches, estoppel, unclean hands, or a child's best interests bar a man's attempt at rescission even though fraud, duress, or mistake is shown? Should a Title IV-D agency's interests be considered when determining whether a genetic father can pursue rescission? The absence of federal guidelines invites the lack of uniformity in the states.

Beyond these variations in the state procedures available to non-genetic fathers seeking to rescind earlier acknowledgments, there seems to be no doubt as to whether these same procedures apply when others (including, but not limited to, signing mothers) contest paternity acknowledgments. Under federal statute "any signatory" has a right to rescind a voluntary paternity acknow-

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242 Id. at 330.
243 Id.
245 Recall, for example, the dicta in *Monmouth County* in New Jersey regarding mistake. At times, the impact of Title IV-D guidelines on state laws go unnoted. *See, e.g., Ohio Rev. Code Ann. § 3119.962 (West 2006); State ex rel. Loyd v. Lovelady, 840 N.E.2d 1062 (Ohio 2006)* (man with no genetic ties might be able to gain relief from earlier child support order founded on a voluntary paternity acknowledgment as long as he did not know that he was not the genetic father at the time he signed; no discussion of potential conflict between Ohio relief from judgment statute and federal guidelines).
246 In similar settings, interstate differences may flourish where absent federal guidelines do not invite (and where, constitutionally, federal laws may be unable to harmonize). For example, the marital presumption (assuming a husband is the genetic father) seems solely a matter for state law, as an area reserved to the states under the Tenth Amendment to the U.S. Constitution. *See, e.g., Michael M. v. Superior Court, 450 U.S. 464 (1981)* (deferring to California marital presumption laws); *Ankenbrandt v. Richards, 504 U.S. 689 (1992)* (family matter exception to diversity statute). Consider, for example, whether fraud can later undo a voluntary adoption by a lesbian or gay "life-time" partner when the genetic parent splits upon revealing (or rediscovering) heterosexuality. *Mariga v. Flint, 822 N.E.2d 620, 624, 629 (Ind. Ct. App. 2005)* (no undoing where no proof as to fraud at the time of adoption).
ledgment within a certain time, often sixty days. Thereafter, states participating in TANF “must have in effect laws” allowing a post-sixty day “contest” of a signed voluntary acknowledgment of paternity where the “challenger” must show “fraud, duress, or material mistake of fact” and where “the legal responsibilities . . . of any signatory” usually continue “during the challenge.” Does federal law require fraud and the like only of signatories who contest after sixty days, or must anyone who so challenges meet the requirements? Federal statutes use different terms: “signatory” and “challenger.”

If a child challenges (for example, in order to establish parentage in the genetic father), it seems difficult for the child to have to meet a burden of proof involving “fraud, duress or material mistake of fact” since it occurred, if at all, to another. But, if a mother has custody of the acknowledged child, she might be able to challenge on the child’s behalf when she herself could not challenge due to the absence of fraud, duress, or mistake.

Further, if a real unwed genetic father challenges (for example, to establish his own parentage), would only fraud, duress, or mistake personal against him be sufficient, or could he rely, for example, on fraud committed on the acknowledging dad? Should the real genetic father be allowed to interfere long after birth and when an intact family relationship involving the non-genetic acknowledged father, the mother, and the child exists? If fraud and the like is not required in a challenge by the real genetic father, applicable limits would presumably arise under state laws, because federal law is silent. Thus, a wide range of diverse approaches would likely develop regarding non-signatory challenges to federally-guided executions of voluntary paternity acknowledgments.

Some written state laws do exist regarding challenges by non-signatories to voluntary paternity acknowledgments guided by the Social Security Act; these laws vary from state to state. In Arizona, “the mother, father or child, or a

247 42 U.S.C. § 666 (a)(5)(D)(ii) (2000) (if earlier, any signatory may only rescind by the date of an administrative or judicial proceeding relating to the child (i.e., parentage claim) if “the signatory is a party”).
248 Id. § 666(a)(5)(D)(iii) (legal responsibilities, including child support, may be “suspended during the challenge . . . for good cause shown”).
249 Id.
250 See, e.g., In re Westchester County Dep’t of Soc. Servs. v. Robert W.R., 803 N.Y.S.2d 672 (N.Y. App. Div. 2005) (county sued in paternity on behalf of mother (who had herself sued three earlier times) and child; best interests hearing required even if fraud in voluntary paternity acknowledgment shown).
party” to a court proceeding involving legal parentage for the child “may challenge . . . after the sixty day period only on the basis of fraud, duress or material mistake of fact.”251 In Virginia, fraud and the like are required of “the person challenging” the “voluntary statement acknowledging paternity.”252 In Wisconsin, “a determination of paternity” arising from a statement acknowledging paternity “may be voided at any time upon a motion or petition stating facts that show fraud, duress or a mistake of fact.”253 In Delaware, after sixty days, “a signatory of an acknowledgment of paternity . . . may commence a proceeding to challenge . . . on the basis of fraud, duress or material mistake of fact.”254 In Michigan, revocation of a parentage acknowledgment may be sought by the mother, the signing man, the child, or a prosecuting attorney.255 In Utah, after sixty days, challenges may only be brought by “a signatory” or “a support-enforcement agency.”256

There are other differences in state laws on the rescinding, contesting, and/or challenging of voluntary paternity acknowledgments whose executions are, or may be, guided by the Social Security Act. For example, there are time limits that differ from those applied in the prior noted cases. Even with fraud, duress, or material mistake of fact, challenges must be commenced within a year in Massachusetts,257 within two years in Delaware,258 and within four years in Texas.259 In Utah, a challenge may be made “at any time” on the ground of fraud or duress, but a four-year period operates for material mistake of fact.260

VI. REFORMING MATERNAL GOOD FAITH COOPERATION STANDARDS

Federal paternity law mandates should extend beyond the current maternal good faith cooperation and voluntary paternity acknowledgment standards.261

252VA. CODE ANN. § 63.2-1913 (2006).
255MICH. COMP. LAWS § 722.1011(1) (2006). See also OHIO REV. CODE ANN. § 3111.28 (West 2006) (presumed father who did not sign, either signer, or a guardian or legal custodian of the child may seek rescission).
256UTAH CODE ANN. §§ 78-45g-306(1) to 78-45g-307(1) (2006).
259TEX. FAM. CODE ANN. § 160.308(a) (Vernon 2005) (unless signer was a minor). See also id. § 160.609 (nonsigner has four years to seek rescission).
Federal statutes demand that participating states have child support plans permitting "the establishment of the paternity of a child at any time before the child attains 18 years of age;"\(^{262}\) providing "services relating to the establishment of paternity" for children for whom assistance is provided;\(^{263}\) and requiring mothers receiving aid to cooperate "in good faith" in establishing paternity.\(^{264}\) Considering new federal norms to promote more maternal good faith cooperation in naming fathers, as well as related efforts in securing more fathers at birth for children born to unwed mothers, Congress should look to three different time periods: pre-birth, at birth, and post-birth. In addition, Congress should expressly encourage (as it may not be able to dictate)\(^{265}\) explicit paternity designation guidelines that cover all children born to unwed mothers in the United States, not just those involved with public assistance.\(^{266}\) Finally, to facilitate greater maternal cooperation and related efforts to secure more informed and correct paternity designations at birth, Congress should generally promote a greater public understanding of legal paternity consequences following births to unwed mothers.

In the pre-birth setting, Congress should do more to assure that known expectant fathers be notified of impending births.\(^{267}\) Then, Congress should

\(^{262}\) Id. § 666(a)(5)(A)(i); see also id. § 654(20).

\(^{263}\) Id. § 654(4)(A).

\(^{264}\) Id. § 654(29)(A).


\(^{266}\) These new mechanisms must fully respect maternal interests. See, e.g., G.P. v. State, 842 So. 2d 1059 (Fla. Dist. Ct. App. 2003) (Florida Adoption Act provisions on locating and notifying natural fathers of possible adoptions stricken as unduly restrictive of natural mothers' rights in choosing adoption and in maintaining privacy regarding intimate personal information); see also Helms & Spence, supra note 19 (criticizing, on privacy grounds in adoption settings, state laws promoting strongly or mandating that unwed birth mothers disclose the identities of putative genetic fathers so that the men can be given notice).

\(^{267}\) There are some state law duties now owed by pregnant women to inform genetic fathers of impending births, but they typically cover only married women. See, e.g., HAMILTON Co. R. CIV. P. 1.24 (in an action for divorce, pleading shall set forth any "pregnancy and husband's paternity status vis-à-vis the unborn child"); compare id. with UTAH CODE ANN. § 78-30-4.12(4) (2005) (in adoption arena: "The Legislature finds that an unmarried mother has a right of privacy with regard to her pregnancy and adoption plan, and therefore has no legal obligation to disclose the identity of an unmarried biological father prior to or during an adoption proceeding,"
promote expanding efforts to educate known expectant fathers about the legal consequences of birth. State-administered programs, guided by federal laws, could convey information to expectant parents on such matters as pre-birth and post-birth parental responsibilities; paternity designation mechanisms, including the consequences that flow from any failures to act affirmatively; and, substantive state law guidelines on paternity, with explanations of important differences between certain settings, such as child support obligations and participation rights in adoptions. In particular, more expectant parents should learn that failure to secure, or loss of, paternity rights does not eliminate the possibility of parental responsibilities, especially child support orders, long after birth. Some states already require that pregnant women and certain family members receive counseling as well as instruction on nutrition and the birthing process during prenatal care.268 Similarly, during the pre-birth period, states could require that healthcare providers (or their designees) distribute educational materials (including the addresses of relevant government agents or agencies) to expectant unwed mothers and men identified as expectant fathers.269 One state now prepares “pamphlets that discuss the benefit of establishing a parent and child relationship, the proper procedure for establishing a parent and child relationship between a father and his child, and a toll-free telephone number that interested persons may call for more information regarding the procedures for establishing a parent and child relationship.”270 Another state requires prenatal clinics to “offer prospective parents the opportunity to sign a voluntary declaration of paternity” before birth.271

and has no obligation to volunteer information to the court with respect to the father.”). Of course, certain genetically-tied men, such as rapists, should be excluded.

268 See, e.g., ALA. ADMIN. CODE r. 420-5-13-.05(2) (2005) (“patient and family” are counseled and instructed).

269 Of course, these materials must provide “objective and accurate” information. See, e.g., Letter from Governor Jim Doyle to Wisconsin State Senate (Jan. 6, 2006) (on file with author). When vetoing Senate Bill 138, which would have required doctors providing abortion counseling to pregnant women to tell the women about fetal pain, Governor Doyle found that there was “no conclusive scientific evidence of when a fetus first feels pain” as there was on fetal development and on the risks of abortion where information on the latter must already be conveyed in order to secure “informed consent.” Id.

270 OHIO REV. CODE ANN. § 3111.32 (LexisNexis 2006). Unfortunately, there is no requirement that these pamphlets be widely distributed pre-birth. See id. § 3111.33 (pamphlets and voluntary acknowledgment forms “shall” be made available to department of health, hospitals, and individuals who request).

271 CAL. FAM. CODE § 7571(e) (West 2006); see also TEX. FAM. CODE ANN. § 160.304(b) (Vernon 2006) (paternity acknowledgment may be signed before birth); compare id. with ALASKA STAT. § 18.50.165 (2006) (state registrar “shall” distribute voluntary paternity acknowledgment forms “to each hospital . . . to each physician . . . whose practice includes
In the at-birth setting, Congress should do more to encourage unwed mothers\textsuperscript{272} to fully complete, or help others to fully complete,\textsuperscript{273} birth certificates so that their children have fathers designated under law near the time of birth. When birth certificates lack designations of male parentage, state governments should not be content with occasional searches of paternity registers or similar governmental records when the need later arises.\textsuperscript{274} Congress should consider requiring that at the time of birth, unwed mothers and certain others in attendance receive even more information on paternity-related matters such as child support duties, paternity presumptions, and genetic testing services.\textsuperscript{275} Where new mothers contemplate adoptions, additional information should be supplied, particularly on the issues of paternity and child support.

In the post-birth setting, Congress should do more to encourage timely amendments to incomplete or inaccurate birth certificates. Periodic governmental inquiries should be made of many unwed mothers who depart childbirth facilities without any paternity designation. Similar inquiries may also be appropriate where health care providers or others have reasonable concerns about the accuracy of earlier paternity designations. Additionally, information should also be made readily available after birth about genetic testing services, alternative paternity designation procedures (such as in-agency acknowledgments and court proceedings), and government and private counseling services. Already, there are state laws that require some new mothers to receive both instructions on well-baby care and referrals to sources of pediatric care during follow-up health care visits.\textsuperscript{276}

\begin{itemize}
\item attendance at births, to each nurse-midwife \ldots and to each other interested person \ldots who requests copies\textsuperscript{\textdagger\textdagger}).
\item Unwed mothers whose pregnancies resulted from criminal sexual assault should be treated differently. \textit{See, e.g.}, \textsc{Utah Code Ann.} § 78-30-4.23 (2006) (notice and consent provisions for unwed natural fathers in adoption proceedings are inapplicable where births result from criminal sexual assaults).\textsuperscript{273}
\item Usually, natural mothers alone may not complete birth certificates. \textit{See, e.g.}, \textsc{Mont. Code Ann.} § 50-15-221(7)(b) (2005) (need “affidavit of paternity signed by the mother” as well as signature of “the person to be named as the father”).\textsuperscript{274}
\item \textit{See also}, \textit{e.g.}, Jane C. Murphy, \textit{Legal Images of Fatherhood: Welfare Reform, Child Support Enforcement, and Fatherless Children}, 81 \textsc{Notre Dame L. Rev.} 325, 376 (2005) (suggesting that genetic testing should be encouraged, but not required, at the time of birth before acknowledgments are completed).\textsuperscript{275}
\item \textit{See, e.g.}, \textsc{Mo. Code Regs. Ann.} tit. 19, § 30-30.90(5)(J) (2006).\textsuperscript{276}
\end{itemize}
VII. REFORMING VOLUNTARY PATERNITY ACKNOWLEDGMENT STANDARDS

Fundamental rights are usually involved in paternity establishment and disestablishment proceedings. When such rights are sufficiently implicated, then, under due process guarantees, any proceedings must promote only compelling public interests with laws that are narrowly tailored and that utilize the least restrictive means consistent with governmental goals. Additionally, the constitutional guarantee of equal protection requires that governments treat similarly-situated individuals equally. Unfortunately, many American laws on voluntary paternity acknowledgments fail to measure up, either procedurally or substantively, and perhaps even infringe upon “the most basic” of civil rights.

The noted cases reflect differing treatments of similarly-situated people involved in voluntary paternity acknowledgments. Lessening inequality and advancing uniformity are significant federal interests that should prompt serious consideration of nationwide standards. In their absence, proposed

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277 See, e.g., In re D.W., 827 N.E.2d 466, 481 (Ill. 2005) (“[T]he interest of parents in the care, custody, and control of their children, . . . perhaps the oldest of the fundamental liberty interests, . . . is deeply rooted in this Nation’s history and tradition.”). Paternity proceedings may also involve the paternity opportunity interest a genetic father has in his child under Lehr v. Robertson, 463 U.S. 248 (1983), though the man has not yet become a parent under law with the fundamental right to childrear. As this interest also has federal constitutional protection, there are federal due process and equal protection safeguards, though they are less than the safeguards afforded genetic fathers recognized as parents with fundamental rights under law. See, e.g., Michael H. v. Gerald D., 491 U.S. 110, 129 (1989) (stating “some protection” under the federal constitution might be required); Friehe v. Schaad, 545 N.W.2d 740, 748 (Neb. 1996) (applying federal due process protection); In re Baby Girl Eason, 358 S.E.2d 459, 462 (Ga. 1987) (recognizing federal due process protection). Paternity opportunity interests are more fully described in Jeffrey A. Parness, Federalizing Birth Certificate Procedures, 42 BRANDEIS L.J. 105, 109–17 (2003) (also comparing maternity and paternity laws).


280 Federal law standards would also obviate troubling choice of state law issues where relevant conduct occurred in several states. See, e.g., In re Adoption of Lichtenberg, No. CA2002-11-125, 2003 WL 868306 (Ohio Ct. App. Mar. 5, 2003) (uncertain whether Indiana or Ohio law applied to conduct of genetic father in an Ohio adoption case where child was born in Indiana to Indiana parents, but where an Indiana adoption agency placed the child with a prospective adoption couple in Ohio a few days after birth).
“uniform” standards available to state legislators would be helpful. Unifying federal standards, of course, would mean that individual states could no longer balance for themselves competing interests, such as: the need for more certainty in initial paternity designations; the need to continue the traditionally strong correlations between genetic ties and legal paternity, (especially since the means of proving such ties have improved (and changed) dramatically in recent years); and, the need to recognize legal paternity for men who have actually parented children from birth. Even without preemptive federal standards or uniform state law proposals, individual states should better balance the competing interests when addressing fraud, duress, and material mistake of fact in voluntary acknowledgment settings. In Illinois, for example, legislative or common law initiatives should eliminate the uncertainties arising from cases similar to Romel Smith’s case.

Beyond state law variations on fraud, duress, and material mistake of fact, federal law prompts other significant interstate differences on undoing voluntary paternity acknowledgments that further undercut comparable treatment of paternity designations for children born to unwed mothers. For example, provisions of the Social Security Act do not expressly address who has standing to seek to undo acknowledgments after sixty days. Are only

281 The available forms of the Uniform Parentage Acts fail to provide sufficient guidance. For example, the 1973 Act only recognizes that a voluntary paternity acknowledgment (which initially need not be accompanied by the mother’s consent) can prompt a presumption of natural fatherhood that may be rebutted by “clear and convincing evidence” and may be overcome by a man who also has presumed natural father status, as via a marriage, where “weightier considerations of policy and logic controls.” UNIF. PARENTAGE ACT § 4(a)(5)-(b) (1973). See also id. at Prefatory Note (“All presumptions of paternity are rebuttable in appropriate circumstances.”). The 2000 Uniform Parentage Act simply states that “fraud, duress or material mistake of fact,” as employed by Congress in allowing post-sixty day rescissions of voluntary paternity acknowledgments, are “ambiguous” terms “left to state courts to construe.” UNIF. PARENTAGE ACT § 308, § 308 cmt. (2000). See also Am. Law Inst., PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION: ANALYSIS AND RECOMMENDATIONS § 3.03(d) (LexisNexis 2002) (legal paternity (and its disestablishment by a married man) “is a matter outside the scope” of the Principles).

282 Possible Illinois law reforms are discussed in Jeffrey A. Parness, No Genetic Ties, No More Fathers: Voluntary Acknowledgement Rescissions and Other Paternity Disestablishments Under Illinois Law, J. MARSHALL L. REV. (forthcoming 2006) (suggesting that General Assembly action is preferable and that legislators should also consider related standards on repose (no rescission beyond a certain time); standing to rescind (i.e., who can sue to rescind or to establish a parent-child relationship which would necessarily undo a voluntary paternity acknowledgment); and when, if ever, a child’s best interests might foreclose an undoing of a voluntary paternity acknowledgment by a non-genetic father).

alleged genetic fathers bound by the fraud, duress, or material mistake of fact limits since the chief, if not sole, congressional intent was to secure more paternal child support, and not to secure continuing parental rights for acknowledged genetic fathers with no genetic ties? Or, are acknowledging mothers limited similarly because they too were signatories? If so, their own deceit in acknowledging men at birth would seemingly bar maternal pursuit of paternity disestablishment even where there are no genetic ties and where the child’s best interests may not be served.

Finally, federal statutes do not expressly indicate whether others directly or indirectly seeking, as a practical matter, to undo voluntary paternity acknowledgments executed at birth for children born to unwed mothers are similarly limited to fraud and the like. May the children themselves or may welfare officials ever pursue such paternity disestablishments? If so, are either or both required to demonstrate fraud, duress, or material mistake of fact, either in direct attacks, as where rescissions of acknowledgments are affirmatively sought, or in indirect attacks, as where acknowledgments are effectively superseded by later court orders in lawsuits to establish the existence or the nonexistence of legal paternity (and where court orders can result in birth certificate amendments negating earlier certifications and the voluntary paternity acknowledgments underlying them)? Of course, such attacks would be foreclosed if the federal statutory provisions were read to contain the exclusive means for anyone seeking to disestablish, through any technique, a legal paternity designation founded on a Title IV-D voluntary paternity acknowledgment. As demonstrated earlier, state statutes to date have provided differing answers.

If the foregoing issues are left to the participating individual states’ laws, variations nationally in paternity acknowledgment practices are inevitable. Some states might be most concerned with removing child support responsibilities when requested by non-genetic fathers in order to “strongly” promote the norm “favoring the] requiring [of] biological parents to bear responsibility for their own children,” at least where marital presumptions are not in play. Others might prioritize the need for the deterrence of maternal fraud, or for upholding paternal consents by non-genetic fathers only when acknowledg-

284 Interstate variations will not likely be plagued by many choice of law issues since most births are not factually related to two or more states, as long as states choose to apply the paternity acknowledgment standards of the state where the child is born. But see In re D.S., 840 N.E.2d 1216 (Ill. 2005) (exceptional case where place of birth may not be determinative).

ments were reasonably undertaken, focusing on the unfairness in holding deceived or clueless non-genetic fathers responsible for years of future child support. Yet other states might focus on children's best interests, leaving the undoing of paternity acknowledgments to case-by-case determinations. Some states might even focus on the governmental interest in the avoidance of, or the reimbursement for, financial aid for children with fathers whose mandated support could relieve public fiscal pressures.

The following more particular observations on contemporary American paternity acknowledgment and comparable admission of paternity standards suggest areas for immediate inquiry and reform by state legislatures as well as by Congress. Consider first the varying forms of statutory and common law voluntary paternity concessions, including the voluntary acknowledgments prompted and guided by the federal Social Security Act.\(^{286}\) Unfortunately, not all concessions are undertaken with the same assurances of voluntariness, informed consent, and deterrence of fraud and the like. Yet, these assurances seem important for all concessions of paternity. It should not matter whether the mother receives public assistance. American federal and state governments should be interested in designating early and accurately the legal paternity for all children; they should not simply become truly interested when financial reimbursement or reduced welfare payments come into play. Thus, a birth certificate for a child born to an unwed mother should normally contain the name of the genetic father, secured, in part, with both paternal and maternal consent founded on the reasonable belief of blood ties. This would promote the longstanding societal interest in early, accurate, informed, and conclusive designations of legal paternity. Seemingly, more voluntary paternity acknowledgments for children born to unwed mothers would be promoted if, as in California and Texas, pre-birth designations of paternity could be made. In most instances, there is as much information about likely male genetic ties before birth as there is at birth or shortly thereafter. Also, more acknowledgments would likely result if parental signatures could be secured at different times and in different places. Why should an unwed expectant parent serving in Iraq not be able to sign in Iraq while the other parent signs in the United States? Are men abroad less likely to be fully informed or more likely to be

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\(^{286}\) 42 U.S.C. § 666(a)(5)(C) (acknowledgments in hospitals, in birth record agency offices, and other entities).
deceived, or are women more likely to deceive, mislead, or be wrong about genetic ties when their lovers are away? \(^{287}\)

Alternatively, a voluntary paternity registration by the unwed mother alone, or by the unwed father alone, could be recognized and modeled on a Putative Father Registry\(^ {288}\) initiative by a man thinking that he is or will be the genetic father of a child who could be placed for adoption. The registration would represent the mother’s or the alleged father’s clear and unequivocal indication of possible or likely genetic ties between the child or future child and the named man. The man named by the woman would then be given notice so that, where appropriate, he could act to formalize paternity as well as to engage in actual parenting, or at least be made aware of potential child support responsibilities. The woman would also be notified of the man’s registration so that she could be better informed of his wishes as she contemplates her own childrearing, possible adoption, and the like.

It is important to trust unwed mothers who name genetic fathers who are absent at birth. Of course, mothers must be made fully aware of the negative consequences that might flow from any misrepresentation (as to the man and/or her certitude of paternity).\(^ {289}\) There is usually less reason to trust men who declare their genetic ties in the absence of testing and maternal cooperation, since their access to relevant information is usually incomplete.

Single registrations of paternity will help prompt more genetic fathers of children born to unwed mothers to become actual parents, whether or not they are present at the birth and whether or not they wish to be recognized under law at the time of birth.\(^ {290}\) The fact that federal statutes require a voluntary

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\(^{287}\) Of course, children could be born to American women while in Iraq when their lovers are in the United States.


\(^{289}\) These consequences should not be insignificant. \textit{See, e.g.}, Michelle Oberman, \textit{Sex, Lies and the Duty to Disclose}, 47 ARIZ. L. REV. 871 (2005) (urging that laws should comparably promote disclosures of material information during the negotiation of agreements between intimates as the laws promote disclosures when nonintimates (i.e., commercial entities) negotiate).

\(^{290}\) Of course, genetic fathers whose sexual assaults led to pregnancies or whose acts of domestic violence can be clearly anticipated are different. Such a maternal registration would not likely automatically trigger fundamental childrearing rights for the man named, as he would
paternity acknowledgment to be the equivalent of a judicial paternity determination, and thus require both maternal and paternal signatures.\textsuperscript{291} does not mean states cannot permit single registrations of possible paternity by mothers or by alleged fathers. Single registrations, of course, would not constitute conclusive findings; they would operate more like signatures in putative father registries that are tied to possible adoption proceedings.

Further, it makes little sense to treat similar paternity concessions occurring in distinct settings differently.\textsuperscript{292} Significant comparability is insured if similar acknowledgment or admission forms and accompanying procedures are utilized in hospitals, in public agency offices, in courts, and perhaps even in lawyers' offices when paternity concessions are made around the time of birth by unwed mothers and alleged fathers so that children are, at the least, born with two parents. The forms and procedures utilized in court cases certainly may need to differ in some respects, as may the guidelines, but all paternity concessions should be quite comparable in their pursuit of accurate and reasonable assents.

More uniform paternity concession procedures in different settings and greater encouragement of early paternity identification should be followed by more unified guidelines on rescission. Why should men whose children do not receive public aid have longer to rescind similar forms of paternity acknowledgment or face different rescission guidelines than men whose children do receive public aid? Why should men seeking to rescind similarly-executed paternity concessions based upon fraud, duress, or material mistake of fact face procedural and substantive standards differentiated by when or where the concessions were given?


\textsuperscript{292} Not all state-authorized, court-labeled paternity acknowledgments may be subject to federal guidelines. The "simple civil process for voluntarily acknowledging paternity" subject to federal limitations may extend only to "hospital-based" acknowledgments "immediately before or after the birth," and to "[s]tate agency... voluntary paternity establishment services." Id. § 666(a)(5)(C)(i)–(iii). Thus, for example, acknowledgments during in-court paternity proceedings may not be limited by federal rescission guidelines. See, e.g., F.B. v. A.L.G., 821 A.2d 1157 (N.J. 2003) (man who "acknowledged under oath" that he was the genetic father during a "typical paternity and support action" against him, id. at 1159, also described as having "signed... sworn Admission of Paternity," id. at 1163, could seek disestablishment under the law on relief from judgments, N.J. R. 4:50-1; no mention is made of N.J. STAT. ANN. § 9:17-41(b) (West 2006) on rescissions of voluntary acknowledgments on fraud, duress or mistake grounds, through fraud was relevant in the Rule 4:50-1 analysis).
In considering possible reforms of paternity concession standards, the respective roles of Congress, state legislatures, federal and state courts, and national and local administrative agencies must be explored. Common law developments for certain issues may be wise, especially where slowly evolving legal standards, in light of experience, are preferable to a one-statute (or one-rule) fits all approach (as when future human conduct is largely unpredictable). Localized experimentations with other issues (as with single parent registrations beyond the Putative Father Registry) should also be considered. Yet for other issues, exclusive statutory guidance by Congress will be prudent, as that will promote a desirable uniformity of standards as well as a national debate, with a resolution through national democratic processes reflecting countrywide public opinion. Finally, for other issues, regulatory initiatives would be optimal, as where technical expertise, practical experience, and the flexibility of administrative rulemaking is best suited to formulate reasoned solutions.

The time for dialogue on American paternity laws is now, because more and more children are born fatherless in the United States. A comprehensive and national discussion is in order, not continuing divergent local forays into only bits or pieces of legal fatherhood at the time of birth.

VIII. CONCLUSION

Public policy (and at times, perhaps, due process and equal protection) demands that American lawmakers, both federal and state, more vigorously promote the early, accurate, informed, and conclusive designation of fathers in law around the time children are born. There is, in particular, an urgent need to develop legal standards that better promote more birth certificate designations of paternity for children born to unwed mothers. Public policy also demands that where paternity designations do not accurately reflect the requisite genetic ties with children, paternity laws should be more fair and just in allowing disestablishment.