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# Expanding State Parent Registry Laws

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## I. INTRODUCTION

As with state recognized voluntary acknowledgements of parentage (VAPs) and state recognized assisted reproduction pacts (SRARPs) on childcare parentage for future or current children, state parent registries (PRs), often labeled putative paternity registries or putative father registries, embody declarations of expecting or current legal parenthood.[1] Yet declarations on children in PRs often involve unilateral assertions, unlike dual parenthood declarations in VAPs. Actual parenthood under law for many PR declarants is never recognized because there are no simultaneous assertions by a second expecting or existing legal parent on the declarant's parenthood, as with an assertion by an expecting or existing birth mother in a VAP.[2]

PRs are further limited.[3] They generally provide that those who register receive notice and an opportunity to be heard in any later adoption and parental rights termination proceedings[4] involving a child to be born or born to another.[5] Thus, the expecting and existing legal parenthood interests of PR declarants are protected in only discrete settings. PRs, for example, generally do not prompt a notice

1. *See, e.g.*, UNIF. PARENTAGE ACT § 402(a) (UNIF. LAW COMM'N 2017) (stating that a man must register "not later than 30 days after the birth."); MINN. STAT. § 259.52(7) (same). *But see* MONT. CODE ANN § 42-2-206(1) (stating that a man must register "not later than 72 hours after child's birth.").

2. Federal welfare subsidy requirements on VAPs, operative for states participating in the Temporary Assistance for Needy Families Program, include the mandate that VAPs be given "full faith and credit." 42 U.S.C.§ 666(a)(5)(C)(iv). Subsidy requirements operate elsewhere in family law matters. *See* Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (financial incentives for states to improve adoption rates).

3. *See* Mary Beck & Lindsay Biesterfeld, *A National Putative Father Registry - With Appendix Survey of Putative Registries by State*, 36 CAP U. L. REV. 295, 339–61 (2007) (discussing how PRs are surveyed).

4. Not only are these adoption-related registries distinct from adoption registries which facilitate information exchanges between those adopted and those who placed children up for adoption, *see, e.g.*, OR. REV. STAT. § 109.460; R.I. GEN. LAWS § 15-7.2-2, they are also distinct from child maltreatment registries, which can effectively bar listed "perpetrators" from certain employment opportunities, *see, e.g.*, Colleen Henry & Vicki Lens, *Marginalizing Mothers: Child Maltreatment Registries, Statutory Schemes, and Reduced Opportunities for Employment,* 24 CUNY L. REV. 1 (2021).

5. UNIF. PARENTAGE ACT § 407(a) (UNIF. LAW COMM'N 2017). A child subject to a PR may not be conceived yet or be born. *See, e.g.*, UNIF. PARENTAGE ACT § 402(a) (UNIF. LAW COMM'N 2000) (stating that a "man" must register regarding "a child that he may have fathered" before birth or within thirty days after birth); UNIF. PARENTAGE ACT § 402(a) (UNIF. LAW COMM'N 2017) ("man" registers in order to receive notice of a proceeding involving "his genetic child"). As no "substantive changes" were intended in 2017, a "genetic child" should encompass an actual or possible child. UNIF. PARENTAGE ACT art. 4 cmt. para. 3; § 402(a) (UNIF. LAW COMM'N 2017).

orhearing opportunity in any later probate or tort proceeding containing parentage issues.[6]

In addition, PR opportunities are not explicitly afforded to all expecting and existing legal parents whose children are or may be subject to adoptions or parental rights termination proceedings. PR laws are often limited to "paternity" or "father" registrations even though adoption and termination proceedings can also foreclose nonpaternity and nonfather parental interests (contingent or current).

State laws should be reformed so that asserted parental rights and interests in PRs can be employed in more settings. PR opportunities should also be expanded to reflect the evolving legal changes recognizing increased parenthood opportunities for those with no biological or formal adoptive ties, including both women and men.[7]

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6. In such proceedings, parentage may not have been legally determined earlier, as through birth certificates or judicial proceedings. In these proceedings, the import of an alleged parent and child relationship can arise where (a) both parent and child are alive, (b) where only an alleged parent or an alleged child is alive, or (c) where neither parent nor child are alive. As to (a), consider a case where either an alleged parent or an alleged child is harmed by tortious conduct for which an alleged child or an alleged parent seeks damages for consortium losses. *See, e.g.*, Higgins v. Intex Recreation Corp., 99 P.3d 421, 429–31 (Wash. Ct. App. 2004) (dependent stepchild has loss of consortium claim against product maker whose acts left a stepparent a quadriplegic); Berger v. Weber, 303 N.W.2d 424 (Mich. 1981) (child's claim for loss of parental society and companionship recognized); Campos v. Coleman, 123 A.3d 854 (Conn. 2015) (similar). *But see* Guenther v. Stollberg, 242 Neb. 415, 495 N.W.2d 286 (1993).

   As to (b), consider a case where either an alleged parent or an alleged child dies due to tortious conduct for which an alleged child or an alleged parent seeks damages for consortium losses, heirship recognition, or both. *See, e.g.*, Flintroy v. State of Health Sci. Ctr.-Monroe, 315 So. 3d 395 (La. Ct. App. 2021) (putative father of deceased patient must institute paternity action within a year of child's death in order to recover wrongful death or survivor damages); *In re* Succession of Morris, 131 So. 3d 274 (La. Ct. App. 2013) (putative child of deceased man must institute paternity action within a year of parent's death in order to recover Social Security benefits). When dealing with the requirements for parentage in timely filed wrongful death claims by alleged parents. *See* Udomeh v. Joseph, 103 So. 3d 343, 348 (La. 2012) (unwed sperm provider for a child born of consensual sex must show earlier child support and parental acknowledgment).

   As to (c), consider a case where an alleged parent and that person's alleged child perish in a single accident and where alleged family members of the decedents appear in a tort or a probate proceeding in order to recover damages or estate assets. For example, the parents of the alleged deceased parent can seek to recover for their own consortium losses arising from the parent's and alleged grandchild's death or to secure heirship recognition in the probating of the parent's and alleged grandchild's estate. *See, e.g.*, LA. CIV. CODE ANN. art. 2315.2(A)(2), (4) (stating who may bring suit to recover damages if a person dies "due to the fault of another.").

7. Unilateral parent registrations explored herein differ from parental registrations of two (or perhaps more) expecting or existing legal parents. *See, e.g.*, Katherine K. Baker, *Equality and Family Autonomy*, 24 U. PA J. CONST. L. 412 (2022) (explaining that instead of getting stuck in a complex system of "genetics, marriage,

The ULC and ALI pronouncements on PRs will be explored first as current state PRs often follow the suggestions of the Uniform Law Commissioners (ULCs) in their 1973, 2000 (amended 2002), or 2017 Uniform Parentage Acts (UPAs)[8] and the American Law Institute (ALI) in its 2000 Principles of the Law of Family Dissolution: Analysis and Recommendations (2000 ALI Principles), and should soon follow the ALI Restatement Draft on Children and the Law (ALI Restatement Draft). Then, the variations and limitations in state PRs will be surveyed, demonstrating how PR uses are limited and how PR opportunities for some expecting and existing legal parents are unavailable. Finally, suggestions are offered on reforming PRs to meet both constitutional and public policy concerns. Expansions are suggested on who can utilize PRs and on where PRs will be used.

## II. UNIFORM ACTS ON PARENT REGISTRIES

The 1973 UPA had no model law on PRs. For adoption proceedings, it specifically required that notice be given to "a presumed father," defined as a "man" with actual or attempted marital ties, household residential ties, or parentage acknowledgment ties.[9] Notice was also required to one determined to be a "father" by a court,[10] as well as to "a father as to whom the child is a legitimate child" under an earlier in-state law or "under the law of another jurisdiction."[11] Similar notice requirements were recognized for state parental-rights termination proceedings.[12]

Ostensibly absent from the 1973 UPA were significant notice protections to many biological fathers of children born to unwed childbearers who place their children for adoption. These include fathers who could not act unilaterally to assert parental interests and could not secure cooperation in parenting from the childbearers, as by marriage, providing child support, or paternity acknowledgment. In 1983, some of these fathers were deemed to have parental opportunity

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contract and, function," functional parents should only be recognized in the same way by taking the necessary steps of registering their relationships with the state).

8. There is no "all or nothing" approach to UPAs. Thus, state parentage acts could employ the 2017 UPA outside of PRs, but not the 1973 UPA approach to PRs.

9. UNIF. PARENTAGE ACT § 24 (UNIF. LAW COMM'N 1973). A presumed father was a man who was married to, or who tried to marry, the child bearer, as well as an alleged hold out/resident parent or a voluntary paternity acknowledger. *Id.* § 4(a).

10. *Id.* § 24(2)

11. *Id.* § 24(3).

12. *See id.* § 25(a).

interests, which could turn into constitutionally-protected childcare rights when parental opportunity interests were properly seized.[13]

Some notice protections were afforded to these unwed biological fathers (and other expecting or existing legal parents) in the 1973 UPA. It said that in parental rights termination proceedings, "the court shall cause inquiry to be made of the mother and any other appropriate person," including inquiries into whether "the mother was married at the time of conception . . . or any time thereafter;" the "mother was cohabiting with a man at the time of conception or birth;" the "mother received child support payments or promises of support;" or, there was a man who "formally or informally acknowledged or declared his possible paternity of the child."[14] The 1973 UPA gave a heretofore unidentified natural father six months from entry of an order in such a proceeding to come forward; no participation was allowed after six months, even where there was fraud, lack of actual notice or lack of subject matter jurisdiction.[15]

Protection of many biological fathers was even less recognized in the 2000 UPA and the Uniform Adoption Act of 1994 (1994 UAA) than in the 1973 UPA. The 2000 UPA contains an Article on "Registry of Paternity."[16] This registry scheme was designed to protect the parental opportunity interests of "a man who desires to be notified of a proceeding for adoption of, or termination of parental rights regarding, a child he may have fathered."[17] Registration in the "agency maintaining the registry" must occur "before the birth of the child or within 30 days after the birth."[18] Failure to register can lead to termination of the parental rights of a nonexempt "man" where the child has not attained one year of age at the time of termination.[19] Where the child is

13. Lehr v. Robertson, 463 U.S. 248, 262 (1983) ("[B]iological connection . . . offers the natural father an opportunity that no other male possesses to develop a relationship with his offspring. If he grasps that opportunity and accepts some measure of responsibility for the child's future, he may enjoy the blessings of the parent-child relationship . . . ."). *But see* Michael H. v. Gerald D., 491 U.S. 110 (1989) (the federal constitution does not require a state to afford a parental opportunity interest to a biological father whose child is born to someone married to another where the married couple chooses to raise the child).
14. UNIF. PARENTAGE ACT § 25(b) (UNIF. LAW COMM'N 1973).
15. *Id.* § 25(d).
16. UNIF. PARENTAGE ACT art. 4 (UNIF. LAW COMM'N 2000) (amended 2002).
17. *Id.* § 402(a).
18. *Id.* §§ 401–402(a).
19. *Id.* § 404. While exempted men are those who have already established "a parent-child relationship" under law or have commenced paternity cases before a parental rights termination proceeding, *see* UNIF. PARENTAGE ACT § 402(b) (UNIF. LAW COMM'N 2017), exempted men do not necessarily include those who were faultless in their failures to register in a timely way. Such men, however, are specifically included in some state PR laws, or, in the absence of statue, can be added by precedent. *See, e.g.*, VA. CODE ANN. § 63.2-1250(c) ("mother's fraud" extends the time for putative father registration); *In re* Adoption of Baby Boy B., 394 S.W.3d

one year of age or older, notices in adoption or termination proceedings are required for "every alleged father . . . whether or not he has registered."[20] Such notices are designed to protect "those fathers who may have had some informal or de facto relationship with the child or mother for some time," thus preventing "unilateral action to adversely affect" the alleged father's rights.[21] Evidently, prebirth child support and postbirth childcare and child support before a child is one year old were themselves deemed insufficient to prompt an alleged father's recognized parent-child relationship in the absence of his presence on a PR.[22] Unlike the 1973 UPA, the 2000 UPA had no provisions on court "inquiry" into paternity in parental rights termination cases.[23]

The 2000 UPA article on PR differed a bit from the "putative father registry" law in 1983 in New York whose constitutionality was sustained in the aforenoted *Lehr*.[24] Under that New York law, "persons entitled to notice" in adoption proceedings included "any person who has timely filed an unrevoked notice of intent to claim paternity of the child" placed for adoption.[25] Such a notice was to be recorded in "a putative father registry," with requisite filing mandates including the father's "current address."[26] The resulting record was to be provided upon request to "any court or authorized agency, and such information not to be divulged to any other person except upon order of a court for good cause shown."[27] The "sole purpose of notice" given to a "putative" father was to enable him "to present evidence to the court relevant to the best interests of the child."[28]

The ULC's 1994 UAA differs from both the 2000 UPA Registry of Paternity proposal and the 1983 "putative father registry" law in New

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837, 841–44 (Ark. 2012) (while statute says biological father needs a "significant" relationship with the "minor," father's consent was required as he was "thwarted" by the mother and had sought to establish a relationship before the child was born; other state cases were persuasive (citing ARK. CODE ANN. § 9-9-206(a)(2)(F))).

20. UNIF. PARENTAGE ACT § 405 cmt. (UNIF. LAW COMM'N 2000) (amended 2002).
21. *Id.*
22. Such early-life relationships are recognized in some state notification laws where alleged nonexempted parents of children under one year of age must receive notice even with no PR. *See, e.g.*, Lehr v. Robertson, 463 U.S. 248, 251 n.5 (1983) (notice to any person openly "living with the child and the child's mother" and holding out the child as one's own (citing N.Y. DOM. REL. LAW § 111-a2(e))).
23. *Compare* UNIF. PARENTAGE ACT § 25(b) (UNIF. LAW COMM'N 2000) (amended 2002) *with* UNIF. PARENTAGE ACT § 610(a) (UNIF. LAW COMM'N 2000) (amended 2002).
24. *Lehr*, 463 U.S. at 268. While the 6–3 majority found no Due Process or Equal Protection violation, the dissent argues of a "grudging and crabbed approach to due process." *Id.* at 275.
25. *Id.* at 251 n.5 (citing N.Y. DOM. REL. LAW § 111-a(2)(c)).
26. *Id.* at 250 n.4 (citing N.Y. SOC. SERV. LAW § 372-c(1) to -c(2)).
27. *Id*. (citing N.Y. SOC. SERV. LAW § 372-c(5)).
28. *Id.* at 251 n.5 (citing N.Y. DOM. REL. LAW § 111-a(3)).

York at issue in *Lehr*.[29] The 1994 UAA requires "consent to the adoption" by certain men when a child is subject to "a direct placement of a minor for adoption by a parent or guardian," including men who were married to, or attempted to marry, "the woman who gave birth;"[30] men who were judicially determined to be the father or who "signed a document" having the effect of establishing parentage, as long as these men reasonably provided support for and visited or communicated with the child, or married or attempted to marry the woman who gave birth;[31] and, a man who "received the minor child into his home and openly held out the minor as his child."[32] While recognizing that unwed biological fathers of children born of consensual sex who are placed for adoption may be "thwarted" in their attempts to parent or to establish legal parenthood,[33] the 1993 UAA says these men "may be able to assert parental rights" during an adoption proceeding.[34] Yet such assertions face difficult evidentiary and other procedural hurdles under the Act, such as how will notice of the proceeding be secured[35] and the burden to counter evidence that a "failure to terminate the relationship of parent and child would be detrimental to the child.[36] And unlike the 1973 UPA, the 1994 UAA has no provisions on court "inquiry" into paternity.[37]

The 2017 UPA generally follows the 2000 UPA on Registry of Paternity by limiting its import to cases that the child is less than one year old at the time of a court hearing on adoption or parental rights

29. *Id.*, 463 U.S. 248.

30. UNIF. ADOPTION ACT § 2-401(a)–(a)(1) (UNIF. LAW COMM'N 1994) ("[B]orn during the marriage or within 300 days after the marriage was terminated or a court issued a decree of separation"); *see also id.* § 2-401(a)(ii) (petitioned adoption may be granted "if the minor was born during attempted marriage or within 300 days after the attempted marriage was terminated.").

31. *Id.* § 2-401(a)(1)(iii).

32. *Id.* § 2-401(a)(1)(iv).

33. *Id.* § 2-401 cmt. at 37 ("thwarted father" is a man who has been prevented from meeting his parental responsibilities "because the mother did not tell him of the pregnancy or birth, lied about her plans for the child, disappeared after the child's birth, named another man as the father, or was married to another man" whose paternity was "conclusive").

34. *Id.* § 2-401 cmt, at 38.

35. *Id.* § 3-404 cmt. at 72 (stating that investigations into unknown biological fathers protect the adoptee's birth mother when asked to reveal father's information). *See also id.* § 3-707(d) (an adoption decree is not subject to challenge if beginning more than 6 months after the adoption decree is issued). *Cf.* Banach v. Cannon, 812 A.2d 435, 446 (N.J. Super. Ct. Ch. Div. 2002) (alleged unwed father secures court order that pregnant woman and her parents turn over information on mother's whereabouts and the child's birth, noting "an absence of reported decisions justifying this court's entry of such an order").

36. UNIF. ADOPTION ACT §§ 2-401(a)(i) cmt., 3-504(d)(4) & (e) (UNIF. LAW COMM'N 1994).

37. *Id.* § 2-401 cmt. at 37.

termination.[38] Further, while there are said to be no "substantive changes,"[39] the 2017 UPA replaces "gendered terms with gender-neutral ones where appropriate."[40]

The 2017 UPA, like the 2000 UPA, limits PR usage in troubling ways. It does not recognize, for example, prebirth expecting parent registrations by those whose sperm or egg donations prompted assisted reproduction conception, including donors who were also the spouses of those expecting to bear or bearing children.[41] Thus, if a child bearer placed the child for adoption by another person, like a new spouse, the state and its courts may act without knowing of the earlier donation or marriage relevant to legal parentage.[42]

Further, the 2017 UPA does not recognize expecting parent registrations by non-spousal nondonors who are consenting intended parents of children to be born to another person via nonsurrogacy assisted reproduction,[43] particularly where their consents are not in a "record." Non-record consents can prompt parentage under the 2017 UPA through proof of an express agreement by clear-and-convincing evidence.[44] The state and its courts are far less likely to know of non-record childcare pacts than of marriages in proceedings involving adoptions and parental rights terminations. Unlike the 1973 UPA, and like the 2000 UPA, the 2017 UPA contains no provisions on judicial "inquiry" into the parentage of a child involved in an adoption or termination of parental rights proceeding.[45]

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38. UNIF. PARENTAGE ACT art. 4 cmt. (UNIF. LAW COMM'N 2017).

39. *Id.*

40. *Id.*

41. UNIF. PARENTAGE ACT § 412 (UNIF. LAW COMM'N 2017) (stating that this section "does not apply to a child born through assisted reproduction"). On spousal parentage presumptions, *see id.* § 204(a)(1).

42. *See, e.g.*, UNIF. ADOPTION ACT § 3-404(b)(1) (UNIF. LAW COMM'N 1994) (inquiry into adequate notice must include a relevant marriage); *id. cmt.* at 72 ("This section protects the right of adoptee's birth mother to remain silent . . . ."). If it learns long after it acts, the court may be unwilling or unable to deem the nonchildbearing spouse a legal parent, as when the time to seek parentage has expired and a child's best interests will not then be served. *See, e.g.*, *id.* § 3-707(d) (no challenge to adoption decree more than 6 months after decree is issued); UNIF. PARENTAGE ACT § 607(b) (UNIF. LAW COMM'N 2017) (stating that a "presumption of parentage under Section 204 cannot be overcome after the child attains two years of age").

43. UNIF. PARENTAGE ACT § 412 (UNIF. LAW COMM'N 2017) (stating that the state registry as part of an adoption and parental rights termination proceeding "does not apply to a child born of assisted reproduction.").

44. UNIF. PARENTAGE ACT § 704(b)(1) (UNIF. LAW COMM'N 2017). It may also occur where nonchildbearing parents noted in a "record" are unknown to government officials involved in adoption or parental rights termination proceedings.

45. An adoption, like many stepparent adoptions, can proceed without any court-ordered termination of parental rights.

## III. CURRENT STATE LAWS ON PARENT REGISTRIES

PRs are employed by more than half of the states. The 2000 UPA noted that as of May 2000, at least twenty-eight states had enacted legislation creating paternity registries."[46] The 2017 UPA recognizes that a "substantial number of legislatures" enacted paternity registries in response to the U.S. Supreme Court's decision in *Lehr* on the constitutional interests of unwed biological fathers in adoption placements of children born of consensual sex to unwed mothers.[47] Current PRs go by different names, including "putative father registry,"[48] "fathers' adoption registry,"[49] and "centralized paternity registry."[50]

In some states where the 2017 UPA is otherwise substantially enacted, the Act's "Registry of Paternity" provisions are not included.[51] In some states, PRs are employed for purposes beyond adoption proceeding notifications, as when PR information is available to state officials and others seeking to secure child support on behalf of children[52] or seeking only to terminate parental rights.[53]

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46. UNIF. PARENTAGE ACT § 1 art. 4 cmt. (UNIF. LAW COMM'N 2000) (amended 2002). There is no indication that states have abandoned their PRs since 2000. For state PR laws, *see* CHILD WELFARE INFO. GATEWAY, *State Statutes Series,* https://www.childwelfare.gov/catalog/serieslist/?CWIGFunctionsaction=PublicationCatalog:main.dspSeriesDetail&publicationSeriesID=12 [https://perma.cc/8MBS-36W9] (last visited Aug. 14, 2022). Reform efforts have been urged in states with no PR. *See, e.g.*, Lisa Alumbaugh Kamarchick, *Sex as Constructive Notice-North Carolina's Need for a Putative father Registry*, 42 N.C. CENT. L. REV. 192 (2020).
47. UNIF. PARENTAGE ACT art. 4 cmt. (UNIF. LAW COMM'N 2000) (amended 2002) (referencing *Lehr v. Robertson*, 463 U.S. 248, 262 (1983), which found some constitutional paternity opportunity interest for a biological father in a child born of consensual sex to an unmarried childbearer).
48. *See* ARK. CODE ANN. § 20-18-702(a)(1).
49. *See* MINN. STAT. § 259.52(a).
50. *See* OKLA. STAT. ANN. § 7506-1.1(A).
51. *See, e.g.*, R.I. GEN. LAWS § 15-8.1-101 et seq. (within the state Uniform Parentage Act, no paternity registry provision within 15-8.1-101 to 15-8.1-1004). On required notice in adoption cases, see R.I. GEN. LAWS § 15-7-7 (in statutory title on Domestic Relations, Chapter on Adoption of Children, no mention of a paternity registry). In Washington, the Parentage Act, based on the 2017 UPA, appears in WASH. REV. CODE § 26.2A.115 *et seq.* (within the State Uniform Parentage Act, no paternity registry provisions within 26.26A.005 to 26.26A.904). In Vermont the Parentage Act, based on the 2017 UPA, appears in VT. STAT. ANN. tit. 15C § 101 et seq. (within the state Uniform Parentage Act, no paternity registry provisions within 15C, 101 to 15C, 809). On required notice in adoption cases, see VT. STAT. ANN. tit. 15A, §§ 2-401 and 2-402 (in the Adoption Act, no mention of paternity registry).
52. *See, e.g.*, MINN. STAT. § 259.52(3) ("[P]ublic authority responsible for child support enforcement . . . ."); ARK. CODE ANN. § 20-18-704(c) ("[A] prosecuting attorney or an attorney acting on behalf of his or her client in litigation involving the determination of paternity or support for the child or an adoption of the child . . . .").
53. MONT. CODE ANN. § 42-2-217(1).

Like the 2000 and 2017 UPAs on "Registry of Paternity," state PR laws generally address paternity declarations by putative fathers of children to be born, or born, of consensual sex to an unwed childbearer.[54] Some laws go further, however, and they vary. For example, in Alabama, the "putative father registry" can include the names of "[a]ny person adjudicated by a court . . . to be the father of a child born out of wedlock"[55] and any person who filed a VAP with the registry,[56] thus going beyond declarations by men who "may have fathered a child"[57] and going beyond unilateral declarations by men regarding their "genetic" children.[58] In Georgia, the "putative father registry" includes signed writings of "persons who acknowledge paternity of a child" and of "persons who register to indicate the possibility of paternity without acknowledging paternity."[59] In Louisiana, the "putative father registry" must "record the names and addresses of . . . any person adjudicated by a court" of Louisiana to be "father of the child," including "any person who has filed with the registry an acknowledgment by authentic act" and any "person filing "a declaration to claim paternity of a child."[60] In Oklahoma, the "centralized paternity registry" is "available," inter alia, to "any person . . . adjudicated by a court of another state or territory . . . to be the father of a minor" and to any person adjudicated in Oklahoma "to be the father of a minor born out of wedlock."[61]

State PR laws differ in other ways. For example, there are variations in the time limits for registration.[62] State PR laws also differ regarding when notices to registrants are required. The 2017 UPA speaks of notices of hearings on adoption or parental rights termina-

54. See Ivy Waisbord, Amending State Putative Father Registries: Affording More Rights and Protections to America's Unwed Fathers, 44 HOFSTRA L. REV. 565, 577–80 (2015).

55. ALA. CODE § 26-10C-1(a)(1), (3). *Compare* LA. STAT. ANN. § 9:400(A) (outlining who is required to establish a "punitive family registry"), *and* ARK. CODE ANN. § 20-18-705 ("putative father" is a man not legally presumed or adjudicated to be the biological father), *with* GA. CODE ANN. § 19-11-9(d)(1) ("[P]utative father registry shall record the name . . . of any person who claims to be the biological father but not the legal father of a child . . . .").

56. ALA. CODE § 26-10C-1(a)(4).

57. UNIF. PARENTAGE ACT § 402(a) (UNIF. LAW COMM'N 2000) (amended 2002).

58. UNIF. PARENTAGE ACT § 402(a) (UNIF. LAW COMM'N 2017).

59. GA. CODE ANN. § 19-11-9(d)(2)(A), (B). This acknowledgement seemingly encompasses a "voluntary acknowledgment of paternity." *Id.* § 19-11-9(d)(4).

60. LA. STAT. ANN. § 9:400(A)(1), (4), (B).

61. OKLA. STAT. ANN. tit. 10, § 7506-1.1 (West 1985).

62. *See generally* MINN. STAT. ANN. § 259.52(7) (West 1997) (prebirth or within thirty days after birth); MONT. CODE ANN. § 42-2-206 (West 1997) (prebirth or within seventy-two hours of birth); VA. CODE ANN. § 63.2-1250(A) (West 2006) (prebirth or within ten days after birth); IOWA CODE § 144.12A(2)(a) (West 1994) (prebirth or "no later than the date of the filing of the petition for termination of parental rights").

tion.[63] In Arkansas, "the purpose of the registry is to entitle putative fathers to notice of legal proceedings pertaining to the child for whom the putative father has registered."[64] The right to notice in Arkansas, however, is only for a putative father who has established "a significant custodial, personal, or financial relationship with the child."[65] In Arizona, the registry is maintained for a "person who is seeking paternity, who wants to receive notice of adoption proceedings and who is the father or claims to be the father."[66] In Montana, putative father registration yields notice of a parental-rights termination proceeding in contemplation of an adoption.[67] Of course, there can be a parental rights termination case without a contemplated adoption,[68] as well as a contemplated adoption without a parental rights termination case. This can happen when there is a stepparent adoption of a child alleged otherwise to have a single legal parent who is the person who gave birth.[69]

In New York, the "putative father registry" statute requires the relevant state agency to "record" not only "a notice of intent to claim paternity of the child," but also "any person adjudicated by a court" of New York "to be the father of a child born out-of-wedlock."[70] In Louisiana, an out of state adjudication of fatherhood for a child born out-of-wedlock must be recorded.[71]

As noted, the 1994 UAA recognizes, but does little to address, the difficulties facing "thwarted" unwed biological fathers whose children are placed for adoption arising from their failures to receive personal notice of adoption proceedings because their identities are unknown.[72]

63. UNIF. PARENTAGE ACT § 402(a) (UNIF. L. COMM'N 2017).
64. ARK. CODE ANN. § 20-18-702(a)(2) (West 1989).
65. *Id.* § 20-18-702(a)(3).
66. ARIZ. REV. STAT. ANN. § 8-106.01(A) (1994); *accord* FLA. STAT. ANN. § 63.504(1) (West 2003) ("[A]n unmarried biological father" registers "in order to preserve the right to notice and consent to an adoption."); 750 ILL. COMP. STAT. ANN. 50/12.1 (West 1959) ("[F]or the purpose of determining the identity and location of a putative father of a minor child who is, or is expected to be, the subject of an adoption proceeding"): IND. CODE § 31-19-5-4 (West 1997) ("A putative father . . . is entitled to notice of the child's adoption [if registered].").
67. MONT. CODE ANN. § 42-2-204(2) (West 1997).
68. For example, one parent may wish to terminate the other parent's rights to shield a child from potential harm.
69. *See, e.g.*, UNIF. ADOPTION ACT § 4-103(b)(1) (UNIF. L. COMM'N 1994) ("An adoption by a stepparent does not affect the relationship between the adoptee and the adoptee's parent who is the adoptive stepparent's spouse or deceased spouse.").
70. N.Y. SOC. SERV. LAW § 372-c(1) (McKinney 1976).
71. LA. STAT. ANN. § 9:400(A) (1989) (record established for any person "adjudicated . . . to be the father of the child" or "adjudicated by a court of another state . . . to be the father of an out of wedlock child").
72. UNIF. ADOPTION ACT § 3-404 cmt. (UNIF. L. COMM'N 1994) (section on investigations into "unknown" fathers "protects the right of the adoptee's birth mother to remain silent in response to a request to name the father or to reveal his wherea-

But some state PR laws help such fathers who desire to childrear. For example, in Arizona, a "putative father" is excused from the normal filing deadline where it "was not possible for him to file a notice" within 30 days after birth.[73] In Virginia, the normal time limit for putative father registration does not apply to a man who was "led to believe through the birth mother's fraud that (i) the pregnancy was terminated or the mother miscarried when in fact the baby was born or (ii) that the child died when in fact the child is alive."[74]

Beyond individual state PR laws that are more sympathetic to unwed biological fathers desiring to childrear, some reformers have pushed for Congressional action that would coordinate state PRs by creating a national parent registry.[75] Such a federal law proposal is envisioned to "protect the parental rights of earnest unwed fathers against interstate adoption."[76]

In neither the 2000 UPA nor the 2017 UPA, or in state laws generally, are there explicit recognitions of posthumous putative father registrations by related family members which could lead to so-called third-party child visitation orders benefitting the registrants, like grandparents.[77]

## IV. STATE PARENT REGISTRY LAW EXCLUSIONS

### A. Introduction

The 2000 and 2017 UPAs on Registry of Paternity flowed from the U.S. Supreme Court decision in *Lehr v. Robertson*.[78] In that decision,

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bouts"); *see also* UNIF. PARENTAGE ACT § 402(b) (UNIF. L. COMM'N 2000) (amended 2002) (exemptions from 30 days post birth PR requirement for fathers).

73. ARIZ. REV. STAT. ANN. § 8-106.01(B), (E), (F) (1994) ("Lack of knowledge of the pregnancy is not an acceptable reason for failure to file.").
74. VA. CODE ANN. § 63.2-1250(C) (West 2006) ("Upon discovery of the misrepresentation, the man shall register . . . within 10 days . . . ."); *accord* MO. REV. STAT. § 192.016(7) (West 1998) ("Failure to timely file . . . shall waive a man's right to withhold consent to an adoption proceeding unless the person upon the discovery of the misrepresentation or fraud satisfied the requirements . . . within fifteen days of that discovery.").
75. Mary Beck, *A National Putative Father Registry*, 36 CAP. U. L. REV. 295, 298 (2007) (describing the 2006 Senate bill).
76. *Id.*; *see also* Karen Greenberg et al., *A National Responsible Father Registry: Providing Constitutional Protections for Children, Mothers, and Fathers*, 13:1 WHITTIER J. OF CHILD & FAM. ADVOC. 84, 85 (2014) ("A [National Responsible Father Registry] would protect the right of a possible father to receive notice of any proceedings involving paternity, termination of rights, or a pending or planned adoption of a child he may have fathered.").
77. Posthumous paternity can be pursued in other settings where money, and not childcare, is at issue. *See, e.g.*, Udomeh v. Joseph, 103 So. 3d 343, 349 (La. 2012) (nonmarital biological father can pursue a wrongful death claim involving his child where there was earlier child support and parentage acknowledgment).
78. *Lehr v. Robertson*, 463 U.S. 248 (1983).

the Court recognized the constitutional parental opportunity interests of a man who fathered a child via consensual sex with a unmarried woman and described how those interests demanded protection in an adoption proceeding involving that man's biological offspring, with adequate protections provided by paternity registry schemes.[79] The Court later recognized no such interests, however, when a child is born of extramarital sex, although state lawmakers (via statutes or precedents) were deemed capable of providing such recognitions,[80] as some have done.[81]

Initially, in 1988, the UPA drafters rejected any provisions on employing paternity registries in adoption proceedings because their protections were inadequate and troublesome.[82] Taking "a much different view," the 2000 and 2017 UPAs recommend paternity registries be used in adoption cases "in which the child is less than one year of age at the time of the court hearing."[83] This age limit was not recognized in *Lehr*.[84] The one year age limit was said to recognize "the need to expedite infant adoptions," as well as to safeguard the parent interests of "nonmarital fathers who . . . have established some relationship with the child after birth."[85]

As noted, the UPA "Registry of Paternity" provisions extend limited protections to parents who desire notice of certain proceedings involving their children, as they only apply to nonmarital "fathers" of children to be born, or born, of consensual sex.[86] These "fathers" may register prebirth, when they are expecting legal parents, or postbirth

79. *Id.* at 265 ("The Constitution does not require either a trial judge or a litigant to give special notice to nonparties who are presumptively capable of asserting and protecting their own rights.").

80. Michael H. v. Gerald D., 491 U.S. 110, 129–30 (1989) ("It is a question of legislative policy and not constitutional law whether California will allow the presumed parenthood of a couple deserving to retain a child conceived within and born into their marriage to be rebutted.").

81. *See, e.g.*, Callender v. Skiles, 591 N.W.2d 182, 192 (Iowa 1999) (putative father of a child born into a marriage may have a right to standing to challenge paternity under the Iowa Constitution).

82. UNIF. PARENTAGE ACT, art. 4 cmt. (UNIF. L. COMM'N 2000) (amended 2002).

83. *Id*.

84. *Lehr*, 463 U.S. at 250 (child placed for adoption was "over two years old").

85. UNIF. PARENTAGE ACT, art. 4 cmt. (UNIF. L. COMM'N 2017) (corresponding with UNIF. PARENTAGE ACT, art. 4 cmt. (UNIF. L. COMM'N 2000) (amended 2002)).

86. UNIF. PARENTAGE ACT § 402(a) (UNIF. L. COMM'N 2000) (amended 2002) (man registers for "a child that he may have fathered") (corresponds to UNIF. PARENTAGE ACT § 402(a) (UNIF. L. COMM'N 2017)). When a child is conceived via nonconsensual sex, a demonstrated rapist will likely have very little, if any, parental childcare interests. *See, e.g.*, Pena v. Mattox, 84 F.3d 894, 900 (7th Cir. 1996) (father of child conceived during statutory rape had no constitutionally protected parental interest in child). The exception may be consensual sex with an underage minor constituting so-called statutory rape, wherein a rapist who bears a child maintains the parental rights accorded to all who give birth, as noted in Lucy O'Brien, *Mad About the Boy*, N.Y. TIMES, August 16, 1998 (Mary Kay Le Tourneau, a

as when they are either expecting or existing legal parents. Yet there are many other forms of expecting and existing legal parents who are generally ineligible to register, but who wish to be notified of proceedings involving their possible or actual children. These parents may not be notified if there is no PR. Beyond fathers via consensual sex, who else may need, and have the desire, to unilaterally register their parental interests in children?

### B. Expecting Legal Parents

Soon-to-be parents go beyond those desiring to learn of proceedings involving their children to be born of consensual sex. Such expecting parents usually would desire notifications of proceedings involving their children, including, but not limited to, cases involving adoption and parental rights termination.

Future parental rights or interests arise before birth in varying ways beyond sexual encounters, including by signing voluntary parentage acknowledgments[87] and by consenting to intended parenthood in children to be born of (surrogacy or non-surrogacy) assisted reproduction.[88] In the VAP setting, childcare rights typically arise at birth for those who properly executed prebirth acknowledgments.[89] In some assisted reproduction settings, however, certain expecting parents are usually without childcare rights at the time of birth, having instead parental opportunity interests[90] which may lead to childcare rights

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thirty-six-year-old school teacher, keeps child born of sex with her thirteen year old student).

87. *See, e.g.*, UNIF. PARENTAGE ACT § 304(b) (UNIF. L. COMM'N 2017); N.M. STAT. ANN. § 40-11A-304(B) (West 2009); DEL. CODE ANN. tit. 13, § 8-304(b) (West 1995); 15 R.I. GEN. LAWS ANN. § 15-8.1-304(b) (West 1956).

88. *See, e.g.*, UNIF. PARENTAGE ACT § 704(a)-(b) (UNIF. L. COMM'N 2017) (consent in non-surrogacy setting in a record "before, on, or after birth"); *Id.* at § 803(9) (both gestational and genetic surrogacy agreements must be executed before there is a medical procedure intended to prompt a pregnancy).

89. *See, e.g.*, *id.* at § 304(c) (acknowledgement or denial of parentage "takes effect on the birth of the child").

90. The parental opportunity interests of sperm donors in children later to be born of consensual sex to those who are unmarried were recognized as constitutionally protected. *See* Lehr v. Robertson, 463 U.S. 248, 262 (1983) ("natural father" has "an opportunity . . . to develop a relationship with his offspring"). Such interests need not be afforded by states where children are born to mothers who are then married to others (or who marry others soon after birth). State laws can disallow parental opportunity interests for those biologically tied to children who are born into the marriages of others where the marital couple opposes any attempt at rebutting spousal parentage, as such an approach was sanctioned by the U.S. Supreme Court when reviewing an earlier California law. *See* Michael H. v. Gerald D., 491 U.S. 110, 129 (1989) ("It is a question of legislative policy and not constitutional law whether California will allow the presumed parenthood of a couple desiring to retain a child conceived and born into their marriage to be rebutted"). Currently, some state laws disallow such spousal parentage rebuttals. *See, e.g.*, Strauser v. Stahr, 726 A.2d 1052, 1052–53 (Pa. 1999) (spousal presump-

after birth if the expecting parents act in certain ways. Sometimes expecting parents have even more contingent childcare interests, as when genetic surrogacy contracts may be voided by those scheduled to give, or by those who gave birth,[91] or as when earlier VAPs are rescinded by those giving birth.[92] Following is a more detailed review of prebirth parental interests for varying forms of expecting parents who could benefit from expanded PR opportunities.

*1. Expecting Voluntary Acknowledgment Parent*

For existing children, both the 1973 UPA[93] and the 2000 UPA[94] recognize that a "man" can undertake an acknowledgment of "paternity" for a child born alive. Under the 2017 UPA,[95] by contrast, "an alleged genetic father," an "intended" assisted reproduction (non-surrogacy) parent, or a "presumed parent" (spousal or residency/hold out), can sign a VAP together with the "woman who gave birth." Further, a VAP can be signed under the 2017 UPA "before . . . the birth of the child," with genetic, intended or presumed parentage taking effect "on the birth of the child" where the VAP is filed prebirth.[96] Here, VAP parentage remains contingent after birth because VAPs can be rescinded within sixty days after birth by one who earlier signed.[97] VAPs are filed with the "state agency maintaining birth records."[98]

Few states currently authorize prebirth VAPs.[99] This is unfortunate, as doing so would be a sensible public policy. The policy is best promoted, however, by a statute allowing an alleged gamete provider, that is, either an egg or sperm provider, to sign together with the person giving birth. Such a statute would benefit, for example, an egg donor who is an expecting parent, but who does not meet the statutory criteria on intended parentage via a "record" in a non-surrogacy as-

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tion of paternity bars genetic father from establishing paternity where marriage remains intact). *But see* Callender v. Skiles, 591 N.W.2d 182, 192 (Iowa 1999) (unwed biological father has Due Process liberty interest in parenting his biological child, so he could challenge spousal parentage over the husband's objection).

91. *See, e.g.*, UNIF. PARENTAGE ACT § 814(a)(2) (UNIF. L. COMM'N 2017) (allowing withdrawal of consent "any time before 72 hours after the birth").
92. *See, e.g.*, *id.* at § 308(a) (rescission of parentage acknowledgment).
93. UNIF. PARENTAGE ACT § 4(a)(5) (UNIF. L. COMM'N 1973) (presumption of paternity).
94. UNIF. PARENTAGE ACT §§ 204(a), 301 (UNIF. L. COMM'N 2000) (amended 2002) (no presumption of paternity).
95. UNIF. PARENTAGE ACT § 301 (UNIF. L. COMM'N 2017).
96. *Id.* § 304(b), (c).
97. *Id.* § 308(a). There can be three signatories at times where, for instance, a married childbearer, a spouse, and an extramarital sexual partner all sign. *See, e.g.*, *id.* § 303.
98. *Id.* § 304(a).
99. *But see* VT. STAT. ANN. tit. 15C, § 304(b) (West 2017); WASH. REV. CODE § 26.26A.200 (West 2018); 15 R.I. GEN. LAWS ANN. § 15-8.1-301 (West 2020). These jurisdictions follow the 2017 Uniform Parentage Act.

sisted reproduction setting.[100] The Connecticut Parentage Act, effective in 2022, generally follows the 2017 UPA, but it fails to recognize this policy.[101] A prebirth VAP statute would open more doors to childcare parentage after birth. Further, a prebirth VAP statute would serve governmental interests in securing monetary support promoting live and healthy births of future children,[102] as well as in identifying and remedying harms incurred by those who excitedly awaited intended parenthood during pregnancy only to have tortious acts intervene.[103]

Where prebirth VAPs are authorized, PRs should be available to prebirth VAP signatories who are expecting parents, but who will not be bearing children.[104] When infants are currently placed for adoption, usually PRs are searched, but not VAP records.

### *2. Expecting Non-surrogacy Assisted Reproduction Parent*

Children to be born of non-surrogacy assisted reproduction often have two expecting parents, sometimes recognized preconception, sometimes recognized only during a pregnancy, and sometimes only

100. Non-record parents of children born of assisted reproduction include those who executed intended parent pacts or who held out/resided with the child for the first two years of the child's life. UNIF. PARENTAGE ACT § 704(b)(1)–(2) (UNIF. L. COMM'N 2017).

101. CONN. GEN. STAT. ANN. § 46b-476 (West 2021) ("A person who gave birth to a child and an alleged genetic parent . . . a presumed parent . . . or an intended parent . . . may sign an acknowledgement of parentage to establish the parentage of the child."). Compare to states that do not follow the 2017 UPA on prebirth VAPs. *E.g.*, 15 R.I. GEN. LAWS ANN. § 15-8.1-302 (West 2020) (no VAP for "an intended parent" via assisted reproduction); VT. STAT. ANN. tit. 15C, § 310(b)(2) (West 2017) (a person who is "an intended parent" is not eligible).

102. Prebirth child support orders directed at expecting legal parents are rare, if nonexistent. *See* Jeffrey A. Parness and Matthew Timko, *De Facto Parent and Nonparent Child Support Orders*, 67 AMERICAN UNIV. L. REV. 769, 803–05 (2018) (urging broader availability). The 2017 UPA says a VAP may be signed before birth and confers all duties of a parent on the acknowledged parents. UNIF. PARENTAGE ACT §§ 304(b), 305(a) (UNIF. L. COMM'N 2017).

103. See Summerfield v. Superior Court, 698 P.2d 712, 724 (Ariz. 1985) (holding that the word "person" in the wrongful death statutes encompasses a stillborn, viable fetus); Aka v. Jefferson Hosp. Ass'n., Inc., 42 S.W.3d 508, 518 (Ark. 2001) (overruling precedent and finding viable fetus is a person under wrongful death statute); Hamilton v. Scott, 97 So. 3d 728, 736–37 (Ala. 2012) (affirmed unborn children, regardless of viability, are protected under state's wrongful death statute); Dov Fox, *Reproductive Negligence*, 117 COLUM. L. REV. 149, 161 (2017) (reproductive wrongs include deprivations of "wanted pregnancy or parenthood" including, for example, tort claims involving lost parental opportunity interests).

104. Not all signatories needed for VAPs are expecting parents, as where spouses of those carrying children conceived via extramarital sex sign VAPs in order to escape a spousal parentage presumption. *See* UNIF. PARENTAGE ACT § 303 (UNIF. L. COMM'N 2017); *accord* 15 R.I. GEN. LAWS ANN. § 15-8.1-303 (West 2020); VT. STAT. ANN. tit. 15C, § 303 (West 2017).

recognized after birth. Conduct after live births of some can bar later parentage for others who were such expecting legal parents.

In non-surrogacy settings, the 1973 UPA only recognized an assisted reproduction birth undertaken by a married, opposite sex couple who employed "a licensed physician" and "semen donated by a man" other than the husband.[105] The donor here is always "treated in law as if he were not the natural father."[106] The husband is only "treated in law as if he were the natural father" if insemination occurred "under the supervision of a licensed physician and with the consent" of the husband.[107]

The 2000 UPA expands parentage opportunities for non-spousal donors who provide sperm,[108] as well as for nondonor men who consent to non-surrogacy assisted reproduction "with the intent to be the parent."[109] Such donors and consenting nondonor men are expecting legal parents whose parentage arises when children are born.[110] The "husband" of a "wife" who gives birth via assisted reproduction has limited opportunities to "challenge his paternity"[111] in settings where there is no resulting parentage at birth for a non-spousal sperm donor or for a nondonor man who consented to assisted reproduction with "the intent to be the parent."[112]

The 2017 UPA further expands parentage opportunities in non-surrogacy assisted reproduction settings. That act is "substantially similar" to the 2000 UPA, but it is updated to apply "equally to same-sex couples."[113] Thus, an "individual" who consents to assisted reproduction by a woman with the intent to be a parent of a child conceived by the assisted reproduction is "a parent of the child."[114] Where there is a non-surrogacy assisted reproduction birth having no such person who consented with the intent to be a parent, the spouse of the person giving birth has limited opportunities to challenge parentage.[115]

The 2017 UPA expansion is laudable. But there is no explicit indication that PRs will automatically embody all who sign prebirth VAPs

105. UNIF. PARENTAGE ACT § 5(a) (UNIF. L. COMM'N 1973).
106. *Id.* § 5(b).
107. *Id.* § 5(a).
108. UNIF. PARENTAGE ACT § 703 (UNIF. L. COMM'N 2000) (amended 2002).
109. *Id.* §§ 703–04 (consent "must be in a record" that is signed).
110. *Id.* § 703 ("a parent of the resulting child").
111. *Id.* § 705(a) (opportunity to commence a proceeding brought no later than two years after the birth of the child); *id.* § 705(b) (opportunity to challenge at any time where there was either no sperm donation or no consent; no cohabitation "since the probable time of assisted reproduction;" and no open hold out of the child as one's own).
112. *Id.* § 703.
113. UNIF. PARENTAGE ACT § 623 cmt. (UNIF. L. COMM'N 2017) (original source at Unif. Parentage Act § 637 (2002)).
114. *Id.* § 703.
115. *Id.* § 705(a) (spouse "at the time of the child's birth").

where feasible,[116] or that those signing prebirth VAPs can also undertake PRs.

*3. Expecting Surrogacy Assisted Reproduction Parent*

The 1973 UPA "does not deal with many complex and serious legal problems raised by the practice of artificial insemination"[117] outside of such a practice employed by a consenting "husband" and a "wife" who act "under the supervision of a licensed physician."[118]

The 2000 UPA recognizes that a "prospective gestational mother" may agree with "intended parents" who are a "man" and a "woman" that "the intended parents become parents of the child."[119] An agreement must be validated by a court in a proceeding commenced by "the intended parents and the prospective gestational mother."[120] While there is yet no pregnancy, a validated agreement may be terminated "by the prospective gestational mother, her husband, or either of the intended parents."[121] After pregnancy, a "court for good cause shown may terminate the gestational agreement."[122] Upon the birth of a child pursuant to a validated gestational agreement, a court will issue an order "confirming that the intended parents are the parents of the child."[123] A gestational agreement "that is not judicially validated is not enforceable."[124] Should a prospective gestational mother deliver a child not conceived through assisted reproduction, "genetic testing" is used to "determine the parentage of the child."[125]

While the 2000 UPA treated comparably surrogacy agreements where the "prospective gestational mother" utilized one or two donors,[126] the 2017 UPA distinguishes the requirements for gestational (i.e., two donors)[127] and genetic (i.e., one donor)[128] surrogacy. Some

116. The integration of VAP information with PR databases would provide PR safeguards in adoption cases to all who signed VAPs. VAPs typically have the same effect as judgments. *See, e.g.*, 42 U.S.C. § 666(a)(5)(D)(ii) (VAP is considered "a legal finding of paternity" in states participating in a federal program on aid to needy families with dependent children).
117. UNIF. PARENTAGE ACT § 5 cmt. (UNIF. L. COMM'N 1973).
118. *Id.* § 5(a).
119. UNIF. PARENTAGE ACT § 801(a) (UNIF. L. COMM'N 2000) (amended 2002) (signatories also include the "husband" of the prospective gestational mother if married and "a donor or the donors").
120. *Id.* § 802(a).
121. *Id.* § 806(a).
122. *Id.* § 806(b) (cause is left undefined, per the Comment to § 806).
123. *Id.* §§ 807(a) (notice filed with court by the intended parents), 807(c) (notice filed with court by the gestational mother or the appropriate state agency).
124. *Id.* § 809(a).
125. *Id.* § 807(b).
126. *Id.* § 801(a) (written agreement including "a donor or the donors.").
127. UNIF. PARENTAGE ACT § 801(2) (UNIF. L. COMM'N 2017) (woman using "gametes that are not her own").
128. *Id.* § 801(1) (woman using "her own gamete.").

requirements for enforceable pacts are comparable,[129] while others differ, with genetic surrogacy having more stringent requirements.[130]

The 2017 UPA does not require, as the 2000 UPA does,[131] that all surrogacy agreements be validated by a court in a proceeding containing all the relevant parties.[132] Rather, a surrogacy agreement, gestational or genetic, "must be in a record signed by each party."[133] But a genetic surrogacy agreement is usually only enforceable when validated by a court "before assisted reproduction."[134]

Importantly, the 2017 UPA authorized genetic and gestational surrogacy agreements involving "one or more intended parents,"[135] as compared to 2000 UPA surrogacy agreements that encompassed "intended parents."[136]

Significant, as well, is the effective characterization in the 2017 UPA of an intended parent or intended parents in a genetic surrogacy setting as legal parents only after three days following the surrogate giving birth, since the surrogate has seventy-two hours to withdraw consent to the surrogacy agreement.[137] Upon the genetic surrogate's withdrawal of consent within the three day period, the surrogate establishes a "parent-child relationship" as the surrogate is "the individual" who gave birth to the child.[138]

But some intended parents may also establish a "parent-child relationship" even upon such withdrawals. Thus, an intended parent who is a sperm provider can become a legal parent upon birth if the sperm provider, with the genetic surrogate, signed a parentage acknowledgment before birth and the VAP remains unrescinded and unchallenged.[139]

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129. *See, e.g.*, *id.* §§ 802(a)(1)–(5) (21 years old, previously gave birth, and independent legal representation), 803 (process for executing an agreement).
130. *Compare id.* § 814(a)(2) (genetic surrogate may withdraw consent any time before 72 hours after the birth), *with* § 808(a) (gestational surrogate may terminate agreement "any time before an embryo transfer.").
131. UNIF. PARENTAGE ACT § 802(a) (UNIF. L. COMM'N 2000) (amended 2002).
132. The relevant parties include "each intended parent, the surrogate and the surrogate's spouse", if there is one. UNIF. PARENTAGE ACT § 803(3) (UNIF. L. COMM'N 2017).
133. *Id.* § 803(4)
134. *Id.* §§ 816(a), 813(a) (Exceptions include when all parties agree to validation after assisted reproduction has occurred); *see also* §§ 816(d) (outlining the enforceability of an agreement that was not properly validated), 818 (outlining the breach of an enforceable agreement).
135. *Id.* § 801(3).
136. UNIF. PARENTAGE ACT § 801(a) (UNIF. L. COMM'N 2000) (amended 2002).
137. UNIF. PARENTAGE ACT § 814(a)(2) (UNIF. L. COMM'N 2017).
138. *Id.* §§ 815(c) (upon withdrawal, "parentage of the child" is determined under Articles 1–6), 201(1) (parent-child relationship for individual who gives birth).
139. *Id.* §§ 815(c) (upon withdrawal, "parentage of the child" is determined upon Articles 1–6), 201(5) (parent-child relationship for individual who acknowledges parentage), 301 (woman giving birth and "alleged genetic father" may sign

There are laudable goals in the 2017 UPA. But there is no PR protection available to all expecting legal parents.

### C. Existing Legal Parents

Like expecting legal parents, existing legal parents usually wish to learn of adoption and parental rights termination proceedings involving their children. Are there existing legal parents who may not learn because the PR processes and the applicable notice laws in adoption and parental rights cases would not reach parentage that is established or alleged beyond court judgments and PRs?

As with expecting legal parents, assisted reproduction pacts can prompt existing legal childcare parentage, that is, childcare parentage in those who have met the applicable standards even though formal state recognitions may not yet have followed, as in a court judgment, a birth certificate, or a VAP. Further, both so-called residency/hold out parentage and de facto parentage doctrines can prompt existing legal parents, again in the childcare setting where there may not yet be formal state recognition. Here, however, there is no significant opportunity for prebirth expecting legal parentage as the childcare parent standards on hold out and de facto parenthood generally require parental-like actions following birth.[140]

#### *1. Existing Voluntary Acknowledgment Parent*

All UPAs recognize childcare parentage in those who have undertaken a VAP of a living child.[141]

The 1973 UPA recognizes "a man is presumed to be the natural father of a child" if "he acknowledges his paternity of the child in a writing" filed with the state which is not disputed by the person giving birth "within a reasonable time after being informed."[142] Presumption rebuttal occurs only with "clear and convincing evidence" of no biological ties," along with "a court decree establishing paternity of the child by another man."[143]

The 2000 UPA recognizes no parentage presumption for a VAP signor.[144] It does, however, recognize the person giving birth and "a man claiming to be the [genetic] father of the child . . . may sign an acknowledgment of paternity with intent to establish the man's pater-

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acknowledgment), 304(b)–(c) (acknowledgment signed before birth becomes effective at birth), 308–309 (procedures for rescission and challenge).

140. *See, e.g.*, *Ex parte* Z.W.E., 335 So. 3d 650 (Ala. 2021) (permitting no residency/hold out parentage based upon parental-like acts before a child's birth).

141. The 2017 Uniform Parentage Act also recognizes prebirth VAPs that take effect at birth. *See* UNIF. PARENTAGE ACT § 304(b), (c) (UNIF. L. COMM'N 2017).

142. UNIF. PARENTAGE ACT § 4(a)(5) (UNIF. L. COMM'N 1973).

143. *Id.* § 4(b).

144. UNIF. PARENTAGE ACT § 204(a) (UNIF. L. COMM'N 2000) (amended 2002).

nity."[145] That UPA declares a VAP can be rescinded within sixty days of its effective date by a "signatory."[146] Thereafter, a signatory can "challenge" the VAP in court, but only on "the basis of fraud, duress, or material mistake of fact," and then only within two years of the VAP filing.[147]

The 2017 UPA also recognizes non-presumptive parent-child relationships through VAPs.[148] Parentage can be undertaken by an expanded field of VAP signatories, including those who claim to be "an alleged genetic father" of the child born of sex;[149] a presumed parent due to an alleged or actual marriage to the person giving birth; a presumed parent due to a holding out of the child as one's own while residing in the same household with the child "for the first two years of the life of the child;"[150] and, an "intended parent" in a non-surrogacy, assisted reproduction setting.[151] A VAP is the equivalent of an adjudication of parentage of the child."[152]

As with the 2000 UPA, under the 2017 UPA, signatories may rescind VAPs within sixty days.[153] Challenges may proceed thereafter, "but not later than two years after the effective date" and "only on the basis of fraud, duress, or material mistake of fact."[154] While non-signatory VAP challenges may be pursued within "two years after the effective date of the acknowledgement," challenges will only be sustained when the child's "best interest" is served.[155] Non-signatory challengers are limited. Non-signatories with standing include the child; a parent under the 2017 UPA; "an individual whose parentage

145. *Id.* § 301. The accompanying Comment indicates that "a sworn assertion of genetic parentage of the child" is needed though not "explicitly" required by federal welfare subsidy statutes that often prompt state VAP laws, a federal statutory "omission" that is corrected in the 2000 UPA. The Comment also recognizes a male sperm donor may undertake a VAP in an assisted reproduction setting where his "partner" is the birth mother. *Id.* § 301 cmt.

146. *Id.* § 307.

147. *Id.* § 308(a).

148. UNIF. PARENTAGE ACT § 201(5) (UNIF. L. COMM'N 2017). Some marital parentage presumptions, including marriages occurring after birth, can be prompted by parentage assertions in records filed with the state. *Id.* § 204(a)(c)(i).

149. *Id.* § 301.

150. *Id.* §§ 301, 204(a).

151. *Id.* §§ 301, 703. Unlike earlier UPAs, VAPs may be signed "before" birth. *Id.* § 304(b).

152. *Id.* § 302(a)(3). *But cf.* ARK. CODE ANN. § 20-18-702(a) (within the Department of Health there is a Putative Father Registry which can entitle signing putative fathers "to notice of legal proceedings pertaining to the child for whom the putative father has registered;" but the "rights" do not attach until the putative father establishes "a significant custodial, personal, or financial relationship with the child").

153. *Id.* § 308(a)(I). The effective date of a VAP signed prebirth is the day the child is born. *Id.* § 304(c).

154. *Id.* § 309(a).

155. *Id.* §§ 309(b), 610(b)(1)–(2).

is to be adjudicated;" an adoption agency; and a child support, or other authorized, governmental agency.[156]

The 2017 UPA expressly recognizes that VAPs may be undertaken by those who know there are no biological ties to the children whom they acknowledge. The 2017 UPA invites circumvention of formal adoption laws and their safeguards, including background checks and best interest findings.

A Comment to the 2000 UPA laments that the federal statutes guiding state VAP laws do not expressly "require that a man acknowledging paternity must assert genetic paternity;" it indicates that the 2000 UPA was "designed to prevent circumvention of adoption laws by requiring a sworn assertion of genetic parentage of the child."[157] Thus, in 2017, the UPA policy on VAPs changed dramatically. The change not only impacts formal adoption laws but also prompts constitutional issues involving so-called as applied challenges.[158]

Current state laws reflect the varied VAP policies in the UPAs. Only a few states have extended VAP authority to an identified same-sex female couple where a child is born of consensual sex.[159] VAP opportunities generally could not be extended to an identified same-sex male couple where one of the men conceived a child born of sex where

156. *Id.* §§ 610(b), 602. Thus, the parents or siblings of an alleged biological father of a child born of consensual sex seemingly cannot challenge a VAP.

157. UNIF. PARENTAGE ACT art. 3 cmt. (UNIF. L. COMM'N 2000) (amended 2002).

158. Challenges would be founded on the innocent losses of the constitutional parental opportunity interests of unwed sperm donors where children are born of consensual sex to unwed persons and where donors never eschewed, and, in fact, embraced their own actual or potential parenthood. *See, e.g.,* Lehr v. Robertson, 463 U.S. 248, 262–64 (1983) ("opportunity . . . to develop a relationship with his offspring; paternity registry scheme "might be thought procedurally inadequate" if it was "likely to omit many responsible fathers" and "qualification for notice were beyond the control of an interested putative father"), as urged in Jeffrey A. Parness, *The Constitutional Limits on Custodial and Support Parentage by Consent*, 56 IDAHO L. REV. 421, 465–78 (2020).

159. *See, e.g.*, VT. STAT. ANN. tit. 15C, §§ 301(a)(4), 401(a)(1) (2021) (person married to birth mother at time child is born can undertake voluntary parentage acknowledgment); WASH. REV. CODE ANN. § 26.26A.200 (2022) (birth mother and "presumed parent" may sign acknowledgment; presumed parent includes the spouse of birth mother under § 26.26A.115(1)(a)(i)). On the need for allowing VAPs for same-sex female couples, *see* Jessica Feinberg, *A Logical Step Forward: Extending Voluntary Acknowledgments of Parentage to Female Same-Sex Couples*, 30 YALE J.L. & FEMINISM 99 (2018) (same-sex female couples who conceive children using donated sperm). On the problems with two women signing VAPs for children born of consensual sex, *see also* Jeffrey A. Parness, *Unnatural Voluntary Parentage Acknowledgments Under the 2017 Uniform Parentage Act*, 50 U. TOL. L. REV. 25 (2018) (concerns regarding lost paternity interests for unwed biological fathers involving children born of consensual sex).

the person giving birth continues to be a parent and where there cannot be three legal parents.[160]

State VAP statutes today sometimes involve parentage presumptions. With or without presumptions,[161] VAP statutes typically recognize that signed and state-filed parentage declarations establish childcare parentage for signors who are not persons giving birth. Sometimes VAPs operate without alleged biological ties.[162] VAPs operate without formal adoptions. State VAP laws vary in their disestablishment standards, though all norms, due to federal welfare subsidy mandates, must conform to the federal Social Security Act.[163]

VAP statutes most often are employed by a person giving birth and another person who seeks to establish legal parenthood.[164] VAPs are typically distinguished from birth certificate recognitions of childcare parents encompassing those married to persons giving birth, who frequently are presumed parents, but who never undertake VAPs.[165] VAP parents who also reside and hold out children as their own differ

160. In California, there can be three parents under law. CAL. FAM. CODE § 7612(c) (2022). But one such parent cannot be a parent via a VAP. *See also id.* §§ 7612(c), 7611 (voluntary parentage acknowledgment does not prompt presumed parentage).

161. State voluntary acknowledgment statutes are reviewed in Jeffrey A. Parness & Zachary Townsend, *For Those Not John Edwards: More and Better Paternity Acknowledgments at Birth*, 40 U. BALT. L. REV. 53 (2010) and Jayna Morse Cacioppo, Note, *Voluntary Acknowledgments of Paternity: Should Biology Play a Role in Determining Who Can Be a Legal Father?*, 38 IND. L. REV. 479 (2005).

162. In Alaska and Nevada, the VAP forms do not speak to biological ties. The signing man indicates only that he is the "father." *See* ALASKA BUREAU OF VITAL STAT., FORM NO. 06-5376 VS FORM 16, AFFIDAVIT OF PATERNITY (rev. Jan. 2009); NEVADA DECLARATION OF PATERNITY, NEVADA VITAL RECORDS, FORM NO. NSPO, DECLARATION OF PATERNITY (rev. July 2008). In Vermont, a woman residing with a birth mother for the first two years of a child's life is eligible to sign a VAP. VT. STAT. ANN. tit. 15C, §§ 301(a)(4), 401(a)(4) (2022). In Wyoming and Washington, there is no explicit requirement that the signing man affirm a belief in biological ties, though the signor elsewhere is referred to as the "natural father." *See* VITAL RECORDS SERVS., STATE OF WYOMING, AFFIDAVIT ACKNOWLEDGING PATERNITY; WASHINGTON PATERNITY AFFIDAVIT, CTR. FOR HEALTH STAT., WASH. DEP'T. OF HEALTH, FORM NO. DOH/CHS 021 (rev. Sept. 2007). The foregoing VAP forms, and others later referenced, are on file with the author, who assembled them while writing *For Those Not John Edwards, supra* note 161. *See generally* Cacioppo, *supra* note 161, at 489–91.

163. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104–93, 110 Stat. 2105 (1996) (codified in scattered sections of 42 U.S.C.). Disestablishment (i.e., rescissions and challenges) norms are reviewed in Paula Roberts, *Truth and Consequences: Part I. Disestablishing the Paternity of Non-Marital Children*, 37 Fam. L.Q. 35, 44–53, 82–90 (2003) (including table titled Appendix B citing all statutes).

164. *But see In re* Sebastian, 879 N.Y.S.2d 677 (N.Y. Surr. Ct. 2009) (suggesting woman whose ova was used by her partner to bear a child born of assisted reproduction might employ the voluntary acknowledgment process).

165. *See, e.g.*, Castillo v. Lazo, 386 P. 3d 839 (Ariz. App. Ct. 2016) (birth certificate naming husband is not "equivalent" to a VAP).

from residency/hold out parents who never undertake VAPs,[166] because a VAP is more difficult to challenge than is a residency/hold out parentage.[167]

In some states, information as to any completed genetic testing must accompany VAPs; may forms be used by residents for out-of-state births; must there be witnesses or notaries; and most forms require parental or guardian consent when a signing persons who gave birth is young.[168]

Notwithstanding "conclusive" status, VAPs can be rescinded by signatories within sixty days. After sixty days, VAPs can only be challenged in court on the basis of fraud, duress, or material mistake of fact. For states participating in federal welfare subsidy programs, these standards are required by the federal Social Security Act.[169] Yet, current state precedents reflect significant interstate variations in the fraud, duress, and mistake guidelines; to date there has been no congressional or federal court movement to unify state VAP challenge standards.[170]

Beyond fraud, duress, and mistake, there are other differences in state VAP challenge laws. For example, there are varied time limits on VAP challenges. Even with fraud, duress or mistake, challenges must be commenced within a year in Massachusetts,[171] within two years in Delaware,[172] and within four years in Texas.[173] In Utah, a statutory

166. *See, e.g.*, VT. STAT. ANN. tit. 15C, §§ 301(a)(4), 401(a)(4) (2022) (a presumed hold out/residency parent may, but need not, sign a VAP).

167. For example, under both the 2000 and 2017 UPA a VAP usually cannot be challenged more than sixty days after signing unless no more than two years have passed and there is shown "fraud, duress, or material mistake of fact." UNIF. PARENTAGE ACT § 308 (UNIF. L. COMM'N 2000) (amended 2002); UNIF. PARENTAGE ACT § 309(a) (UNIF. L. COMM'N 2017). For residency/hold out parentage, a proceeding "to adjudicate the parentage of a child" having such a presumed parent must be commenced within two years after a child's birth, with no showing of fraud or the like. UNIF. PARENTAGE ACT § 607(a) (UNIF. L. COMM'N 2000) (amended 2002); UNIF. PARENTAGE ACT § 608(a) (UNIF. L. COMM'N 2017)

168. The varying state forms are reviewed in Parness & Townsend*, supra* note 161, at 63–87.

169. 42 U.S.C. § 666(a)(5)(D)(ii)–(iii). At least one state statute combines its norms on disestablishing presumed marital paternity and its norms on challenging VAPs. *See* ALA. CODE § 26-17-608(a)(1) (2022) (estopping a mother or presumed father from denying parentage due to their past conduct).

170. *See, e.g.,* Jeffrey A. Parness & David A. Saxe, *Reforming the Processes for Challenging Voluntary Acknowledgments of Paternity*, 92 CHI.-KENT L. REV. 177 (2017) (discussing the abovementioned variations in state guidelines).

171. MASS. GEN. LAWS ch. 209C, § (11)(a) (2022); *see also* State v. Smith, 392 P.3d 68 (Kan. 2017) (one year (after birth) limit on signatory challenges applied though there were found technical violations (e.g., no proper notarizations) of the statute).

172. DEL. CODE ANN. tit. 13, § 8-308(a)(2) (2022); *see also* VT. STAT. ANN. tit. 15C, § 308(a)(2) (2021) (stating a proceeding to challenge an acknowledgement must be commenced within two years); Paul v. Williamson, 322 P.3d 1070 (Okla. Civ.

challenge may be made "at any time" on the ground of fraud or duress, but only within four years for material mistake of fact.[174] Where there are no written time limits, trial court discretion reigns.[175] Further, there are interstate differences in whether a successfully challenged VAP eliminates past child support arrearages.[176]

Importantly, particularly for non-signing sperm providers with children born of consensual sex, there are some VAP challenge laws on the circumstances beyond fraud, duress and mistake. There can be challenges by non-signing sperm providers who did not know that others were signing VAPs alongside those giving birth, and who did not know of, and did not reasonably foresee, for some time, their "potential parentage." In Vermont, such a sperm provider may challenge a VAP within two years after discovery of "potential parentage," as in cases where there was "concealment" of the pregnancy and of the birth even though there was no fraud, duress, or mistake.[177] Elsewhere, "concealment" of a pregnancy and of a live birth by the person giving birth (and, at times, others) may not extend the time for a sperm provider to challenge a VAP due to strict repose periods.[178]

Finally, state laws on non-signatory challenges are particularly important for non-signing sperm providers (and their family members). In Vermont, a challenge is available to "a person not a signatory."[179] Elsewhere, non-signatory standing to challenge a VAP is more limited, as some laws recognize only certain challengers, like children and governments.[180]

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App. 2014) (employing Oklahoma two-year limit against alleged biological father per OKLA. STAT. tit. 10, § 7700-609(B) (2022)). *But cf.* LA. STAT. ANN. § 9:406 (2022) (two-year prescriptive period previously imposed for revocation of authentic acts of acknowledgement was repealed in 2016).

173. TEX. FAM. CODE ANN. § 160.308(1) (2021).

174. UTAH CODE ANN. § 78B-15-307 (2022).

175. *See, e.g.*, *In re* Neal, 184 A.3d 90 (N.H. 2018) (sustainable exercise of trial court discretion where a 2009 VAP was challenged by male signatory in 2015 after a 2012 paternity test revealed that he was not the biological father; challenge brought in November 2015, after child contact was cut off in March, 2014).

176. *See, e.g.*, Adler v. Dormio, 872 N.W.2d 721 (Mich. Dist. Ct. App. 2015) (reviewing Michigan laws on when responsibility for arrearages may be eliminated).

177. VT. STAT. ANN. tit. 15C, § 308(b) (2021).

178. *See, e.g.*, Parness & Saxe, *supra* note 170, at 198–200 (also noting that VAP challenges within the relevant time limits may be foreclosed by laches or estoppel).

179. VT. STAT. ANN. tit. 15C, § 308(b) (West 2018).

180. *See, e.g.*, Parness & Saxe, *supra* note 170, at 188–94. While the 2017 UPA expressly recognizes a VAP may be challenged by a nonsignatory, the 2000 UPA only explicitly recognizes signatory challenges. *See* UNIF. PARENTAGE ACT §§ 309(b), 610 (UNIF. L. COMM'N 2017) (proceeding "brought by an individual other than the child."); UNIF. PARENTAGE ACT (2000) § 308(a) (UNIF. L. COMM'N 2000) (amended 2002); *see also* UNIF. PARENTAGE ACT §§ 4(a)(5), 6(b) (UNIF. L. COMM'N 1973) (providing that "any interested party may sue to disestablish an acknowledged father.").

Several constitutional issues arise under current VAP laws. As to the gendered terms, what is added by describing a signor as a mother or a woman, rather than as the person giving birth? What is added by describing a signor as a father or a man, or as a mother or a woman, rather than as an actual or possible gamete provider? Gamete provider laws would recognize the interests of both sperm and egg providers where genetic ties are important.[181]

Further, VAPs should encompass those who undertake voluntary parentage acknowledgment, not voluntary paternity acknowledgment, a distinction recognized in the 2017 UPA. Yet the 2017 UPA unfairly differentiates between an "alleged genetic father" who can sign a VAP for a child born of sex to another and an alleged genetic mother who cannot sign a VAP for a child delivered by another if she has not undertaken a "record" of intent to parent a child born of assisted reproduction.[182]

Finally, the VAP laws are troublesome as they differ from PRs. Only PRs might be searched during a proceeding terminating adoption or parental rights. Thus, during adoption proceedings there are statutory mandates that PR records are investigated, with no accompanying mandates on VAP record searches.[183]

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181. On the need for VAP availability for egg donors, *see, e.g.*, Feinberg, *supra* note 159, at 101–03 (female couples who have children with donated sperm employed in assisted reproduction settings). A more progressive law is VT. STAT. ANN. tit. 15C, §§ 301(a)(4), 401(a)(1) (West 2018) (person married to one bearing a child can undertake a VAP).

182. UNIF. PARENTAGE ACT § 301 (UNIF. L. COMM'N 2017) (while recognizing the availability of VAPs for identified females, the provision fails to recognize expressly VAPs for such unmarried females who have contributed eggs leading to children delivered b others; these egg donors also do not qualify as "intended" parents of children born to their partners who delivered the children where there is no effective consent under § 704; for such consent, a "record" is needed, though there may be actual consent). In nonsurrogacy assisted reproduction settings, the written "record" of consent must contain the signature of the person giving birth and the other intended parent, and can be executed "before, on, or after the birth of the child." *Id.* § 704(a). In the absence of such a "record," an individual can prove "consent to parentage" by "proving by clear and convincing evidence of the existence of an express agreement entered into before conception" as to "intended" parentage. *Id.* § 704(b)(1). Where an egg donor cannot prove a preconception express agreement, as when disputed by the person about to give or giving birth with whom the donor is no longer partnered, and cannot then undertake a VAP, as the former partner will not sign, the donor may seek an adjudication as a genetic parent, but may have to compete with another individual claiming parenthood with the person who gave birth. *Id.* §§ 607, 613. By contrast to the "record" needed by an egg donor, an "alleged genetic father" can undertake a VAP before birth, establishing parentage effective at birth, without any other "record." *Id.* §§ 201(a)(5), 301, 304(b).

183. *See, e.g.*, OHIO REV. CODE ANN. §§ 3107.63, 3107.64 (West 1996) ("Putative Father Registry" search); VA. CODE ANN. § 63.2-1252(A) (West 2022) ("Birth Father Registry" search); MONT. CODE ANN. § 42-2-217 (West 1999) ("Putative Father Regis-

*2. Existing Non-surrogacy Assisted Reproduction Parent*

The 1973 UPA does not deal with the "many complex and serious problems raised by the practice of artificial insemination."[184] It does, however, address "one fact situation that occurs frequently,"[185] a "consent" by a husband to the artificial insemination of his wife with semen donated by a man not her husband. The husband is to be "treated in law as if he were the natural father" where the consent was in writing and "signed by him and his wife," with certification undertaken and then filed with the state by the supervising "licensed physician."[186] The husband is a non-presumptive spousal parent. The semen donor who is not the husband is to "be treated in law as if he were not the natural father."[187]

With the increasing numbers of children born of assisted reproduction, both the 2000 and the 2017 UPA have distinct articles on non-surrogacy and surrogacy births. In non-surrogacy settings, the 2017 UPA "is substantially similar" to the 2000 UPA, with the "primary changes . . . intended to update the article so that it applies equally to same-sex couples."[188] The 2017 UPA recognizes that a sperm donor is not always a parent of a child conceived by assisted reproduction.[189] For two legal parents, a consent to parentage must be signed by the person giving birth and "an individual who intends to be a parent," though the "record" need not be certified by a physician.[190] Seemingly, "consent in a record" can be undertaken "before, on, or after birth of the child."[191]

The lack of this form of consent does not foreclose childcare parentage for an intended parent where there is clear-and-convincing evidence of an "express agreement" between the individual and the person giving birth "entered before conception."[192] As well, the lack of

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tration" search); IND. CODE ANN. § 31-19-5-16 (West 2021) ("Putative Father Registry" search).

184. UNIF. PARENTAGE ACT § 5 cmt. (UNIF. L. COMM'N 1973).

185. *Id.*

186. *Id.* § 5(a) (all papers and records pertaining to the insemination are to be kept confidential, though subject to inspection pursuant to a court order "for good cause shown").

187. *Id.* § 5(b).

188. UNIF. PARENTAGE ACT § 701 introductory cmt. (UNIF. L. COMM'N 2017).

189. *Id.* §§ 702–704.

190. *Id.* § 704(a).

191. *Id.* § 704(b).

192. *Id.* § 704(b)(1). It is clear why an "express agreement" undertaken postconception does not prompt comparable childcare parentage. Here, there is much greater certainty that a child will be born so that an agreement is far less speculative. Perhaps instead of a postconception agreement, the 2017 UPA contemplated a prebirth VAP, as it recognizes an "intended parent" can sign a VAP. Yet, an "intended parent" under the 2017 UPA in many states has no prebirth VAP access as the states follow the 1973 UPA or 2000 UPA which only authorize postbirth (pa-

such consent or agreement does not foreclose an individual's parentage where the child was held out as the individual's own in the child's first two years.[193] The nonparental status of one married to a person giving birth to a child born by assisted reproduction, even if a gamete donor, may be established by a showing of a lack of consent, of any agreement, and of holding out of the child as one's own.[194]

The non-surrogacy parentage norms in the UPAs are now reflected in some U.S. state statutes[195] and precedents untethered to statutes.[196] There are significant interstate variations.[197] The 2017 UPA provisions have been enacted in a few states.[198]

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ternity) VAPs. UNIF. PARENTAGE ACT § 4(b) (UNIF. L. COMM'N 1973) ("paternity" acknowledgment "of the child" in a "writing filed with" the state, which is not disputed by "the mother"); UNIF. PARENTAGE ACT § 301 (UNIF. L. COMM'N 2000) (amended 2002) ("man claiming to be the genetic father of the child" signs together with the "mother of a child").

193. Unif. Parentage Act § 704(b)(2) (Unif. L. Comm'n 2017).

194. *Id.* § 705.

195. American state statutes include TEX. FAM. CODE ANN. § 160.7031 (West 2007) (fatherhood for unwed man, intending to be father, who provides sperm to licensed physician and consents to the use of that sperm for assisted reproduction by an unwed woman, where consent is in a record signed by man and woman and kept by the physician); N.H. REV. STAT. ANN. § 5-C:30(I)(b) (2006) (unwed mother has sperm donor "identified on the birth record" where "an affidavit of paternity" has been executed); DEL. CODE ANN. § 8-704(a) (West 2013) ("Consent by a woman and an intended parent of a child conceived via assisted reproduction must be in a record signed by the woman and the intended parent."); WYO. STAT. ANN. § 14-2-904(a) (West 2003) (like Delaware); N.M. STAT. ANN. § 40-11A-703 (West 2010) ("A person who provides eggs, sperm or embryos for or consents to assisted reproduction as provided in Section 7-704 ['record signed . . . before the placement'] with the intent to be the parent of a child is a parent of the resulting child.").

196. Precedents include Shineovich v. Shineovich, 214 P.3d 29 (Or. App. 2009) (to avoid constitutional infirmity, assisted reproduction statute as written solely for married opposite sex couple applied to same sex domestic partners); Jason P. v. Danielle S., 171 Cal. Rptr. 3d 789 (Ct. App. 2014) (though the statute (both pre 2011 and post 2011) indicated explicitly a lack of paternity for this particular semen donor when his unwed partner delivered a child conceived via assisted reproduction, the statute on presumed parentage for one (either male or female) who receives a child into the home and openly holds out the child as one's own natural child can support—in certain circumstances—legal paternity for the semen donor); Ramey v. Sutton, 362 P.3d 217 (Okla. 2015) (unwritten preconception agreement prompts in loco parentis childcare status for former lesbian partner of birth mother, though she contributed no genetic material); Brooke S.B. v. Elizabeth A.C.C., 61 N.E.3d 488 (N.Y. 2016) (agreement between lesbian partners can prompt parentage in non-birth mother).

197. The laws are reviewed and critiqued in Deborah L. Forman, *Exploring the Boundaries of Families Created with Known Sperm Donors: Who's In and Who's Out?*, 19.1 UNIV. OF PA. J. OF L. AND SOC. CHANGE 41 (2016).

198. The 2017 UPA suggested assisted reproduction statutes involving no surrogates, appearing in UNIF. PARENTAGE ACT §§ 701–708 (UNIF L. COMM'N 2017), are followed in WASH. REV. CODE ANN. § 26.26A.610 (West 2019) and VT. STAT. ANN. Tit. 15C § 701 (West 2018).

Childcare parentage for intended parents in non-surrogacy settings often involve express consents. There could be, but generally are no state-required forms guiding such consents. In California, however, in non-surrogacy settings there are statutorily recommended consent forms.[199] Regardless of the non-surrogacy parentage norms, discretionary state-formulated consent forms are advisable, as informed consent would be better assured and there would be greater certainty regarding party intentions.[200] Such forms would be comparable to the required forms for VAPs.[201]

As with VAPs for children born of sex, there is nothing important added by terms like husband, wife, man and woman in non-surrogacy assisted reproduction parent laws? There could be sperm and egg donors (not intended parents) and providers (intended parents), as well as consenting, agreeing, and residing individuals. How parents and nonparents are gender-identified, publicly or personally, should not impact the implementation of public policies on childcare parentage in non-surrogacy cases.

And, as with VAPs, there can be state-filed records, as with court judgments, indicating parentage of children born of non-surrogacy assisted reproduction. Like VAPs, inquiries into those records may not be required in adoption or parental rights termination cases.

More importantly, parentage can also arise in non-surrogacy assisted reproduction settings where there are no state-filed records.[202] Here too, inquiries beyond PRs are needed, though difficult factual disputes might arise.[203]

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199. CAL. FAM. CODE § 7613.5(d) (West 2020) (forms on assisted reproduction pacts by two married or by two unmarried people, where signatories may or may not have used their own genetic material to prompt a pregnancy).

200. I urged that such forms be created in Jeffrey A. Parness, *Formal Declarations of Intended Childcare Parentage*, 92 NOTRE DAME L. REV. ONLINE 87 (2016).

201. *See, e.g.*, Parness & Townsend, *supra* note 161, at 63–87 (reviewing similarities and differences in state-generated VAP forms). At times, some written parentage acknowledgments operate though state-generated forms were not utilized. *See, e.g.*, D.C. CODE ANN. § 16-909(a)(4) (West 2016) (presumption that a man is the father of a child if he "has acknowledged paternity in writing"); N.M. STAT. ANN. § 40-11A-204(A)(4)(c) (West 2010) (a man is presumed to be the father of a child that "he promised in a record to support . . . as his own" if he married the birth mother after the child's birth); KAN. STAT. ANN. § 23-2208(a)(4) (West 1994) (a man is presumed to be the father of a child if he "notoriously or in writing recognizes paternity of the child," including but not limited to acts in accordance with the voluntary acknowledgement statutes).

202. *See, e.g.*, UNIF. PARENTAGE ACT § 704(b) (UNIF. L. COMM'N 2017).

203. *See id.* § 704(b)(1) ("clear-and-convincing evidence" of an express agreement to parent); *id.* § 704(b)(2) (hold out/residency for "the first two years of the child's life").

*3. Existing Surrogacy Assisted Reproduction Parent*

As to surrogacy, the 1973 UPA is silent.[204] The 2017 UPA, like the 2000 UPA, distinguishes between genetic ("traditional") and gestational surrogacy.[205] The surrogacy provisions are limited to instances of assisted reproduction births.[206] Unlike the 2000 UPA, the 2017 UPA does not require that all surrogacy agreements be validated by a court order prior to any medical procedures.[207] The 2017 UPA imposes differing requirements for the two surrogacy forms, however, with "additional safeguards or requirements on genetic surrogacy agreements,"[208] as only they involve a woman giving birth while "using her own gamete."[209] The 2017 UPA provision on surrogacy recognizes there can be "one or more intended parents."[210]

The two forms of surrogacy pacts have some common requirements, including signatures in a record, "attested by a notarial officer or witnesses;" independent legal counsel for all signatories; and execution before implantation.[211] Special provisions for gestational surrogacy pacts include an opportunity for "party" termination "before an embryo transfer" and opportunity for a prebirth court order declaring parentage vesting at birth.[212] Special provisions for genetic surrogacy pacts include the general requirement that "to be enforceable," an agreement must be judicially validated "before assisted reproduction" upon a finding that "all parties entered into the agreement volunta-

204. UNIF. PARENTAGE ACT § 5 cmt. (UNIF. L. COMM'N 1973) (while addressing husband-wife pacts on assisted reproduction where the wife bears the child and intends to parent, the "Act does not deal with many complex and serious legal problems raised by the practice of artificial insemination.").

205. UNIF. PARENTAGE ACT § 801 introductory cmt. (UNIF L. COMM'N 2017).

206. UNIF. PARENTAGE ACT § 801(a)(1) (UNIF. L. COMM'N 2000) (amended 2002) ("agrees to pregnancy by means of assisted reproduction"); UNIF. PARENTAGE ACT (2017) § 801(3) (surrogacy agreement on pregnancy "through assisted reproduction"). This is not to say there are no instances of surrogacy undertaken through consensual sex. *See, e.g.*, K.B. v. M.S.B., 2021 B.C.S.C. 1283 (B.C. Sup. Ct.) (parentage action by person who gave birth against sperm provider and spouse).

207. UNIF. PARENTAGE ACT § 801 introductory cmt. (UNIF L. COMM'N 2017).

208. *Id.* The common safeguards or requirements for all surrogacy pacts are found in *id.* §§ 802–807. *See also id.* §§ 808–812 (special requirements for gestational surrogacy agreements); *id.* §§ 813–818 (special requirements for genetic surrogacy agreements).

209. *Id.* § 801(1). Gestational surrogacy covers births to a woman who uses "gametes that are not her own." *Id.* § 801(2). The special rules for gestational surrogacy pacts are found in *id.* §§ 808–812, while the special rules for genetic surrogacy pacts are found in *id.* §§ 813–818.

210. *Id.* § 801(3).

211. *Id.* § 803(6), (7), (9). Thus, by definition, a person who may become pregnant through sex cannot agree to be a surrogate, as cannot a person who is pregnant and only agrees to surrogacy postpregnancy. *Id.* § 801(1)–(2) (each surrogacy form applies only to a person "who agrees to become pregnant through assisted reproduction").

212. *Id.* §§ 808(a), 811(a).

rily" and understood its terms;[213] that a genetic surrogate may withdraw consent "in a record" at any time before seventy-two hours after the birth;[214] and that a genetic surrogate cannot be ordered by a court to "be impregnated, terminate or not terminate a pregnancy, or submit to medical procedures."[215]

UPA surrogacy parentage proposals are now reflected both in state statutes[216] and precedents.[217] Certain provisions of the 2017 UPA have been enacted in a few states.[218] Elsewhere, there operate major sections of the 2000 UPA on surrogacy.[219] To date, there are no state required or suggested forms, though there are suggested forms for non-surrogacy assisted reproduction births in California.[220] New mandates on required forms or an increased availability of suggested

213. *Id.* § 813(a)–(b).

214. *Id.* § 814(a)(2). Genetic and gestational surrogates have both been recognized, however, as having federal constitutional parental opportunity interests. Lehr v. Robertson, 463 U.S. 248, 261–62 (1983); Matter of Schnitzer, 493 P.3d 1071, 1074 (Or. App. 2021).

215. UNIF. PARENTAGE ACT § 818(b) (UNIF. L. COMM'N 2017).

216. *Compare* WASH. REV. CODE ANN. § 26.26A.715 (West 2019) (gestational and genetic surrogacy pacts), *with* N.H. REV. STAT. ANN. §§ 168-B:1 to -B:11 (2014) (gestational carrier agreements differing from the 2017 UPA).

217. Precedents recognizing judicial discretion to enforce surrogacy arrangements include In re Paternity of F.T.R., 833 N.W.2d 634, 653 (Wis. 2013) (enforcing surrogacy pact between two couples as long as child's best interests were served, while urging the legislature to "consider enacting legislation regarding surrogacy" to insure "the courts and the parties understand the expectations and limitations under Wisconsin law"); *In re* Baby, 447 S.W.3d 807, 833 (Tenn. 2014) ("traditional surrogacy contracts do not violate public policy as a general rule" where surrogate artificially inseminated with sperm of intended father, who was not married to intended mother); *In re* Amadi A., No. W201401281COAR3JV, 2015 WL 1956247, at *4 (Tenn. Ct. App. Apr. 24, 2015) (gestational surrogate for married couple is placed on birth certificate, as said to be required by statute where intended father's or husband's sperm used with egg from unknown donor and intended mother/wife was recognized by all parties as legal mother; reiterates plea from *In re Baby*, that the legislature should enact a comprehensive statutory scheme); Raftopol v. Ramey, 12 A.3d 783, 804 (Conn. 2011) (biological father's male domestic partner can also be intended parent of a child born to a gestational surrogate). Beyond enforcing a surrogacy pact in the absence of statute, an intended parent (also the sperm donor) who employed a gestational surrogate was allowed in one case to adopt formally his genetic offspring. Matter of John, 103 N.Y.S.3d 541 (App. Div. 2019).

218. *See, e.g.*, WASH. REV. CODE ANN. § 26.26A.715 (West 2019) (gestational or genetic surrogacy agreement); VT. STAT. ANN. tit. 15C § 801 (West 2018) (gestational carrier agreements); 15 R.I. GEN. LAWS ANN. § 15-8.1-801 (West 2021) (gestational carrier agreements).

219. *See, e.g.*, UTAH CODE ANN. § 78B-15-801 (West 2008) (similar to 2000 UPA).

220. *See* CAL. FAM. CODE § 7613.5 (West 2020).

forms would help diminish the number of disputes over consents to parentage, non-parentage, and conditions of pregnancy.[221]

In surrogacy settings, there are potentially court records on surrogacy pacts. Clearly, here a record search beyond PRs is warranted and the failure here to undertake a PR regarding such a pact should serve as no barrier to notice and participation in adoption or parental rights termination cases.

*4. Existing Residency/Hold Out Parent*

Each UPA recognizes childcare parentage in those who have resided with living children whom they held out as their own. To date, no UPA (and no state law) has recognized residency/hold out parentage where there is common residency with, and support of, expecting legal parents, that is, those pregnant or those awaiting formal adoption approval.[222]

The 1973 UPA is quite different than the later UPAs on residency/hold out parents. The 1973 Uniform Parentage Act has this parentage presumption:

> (a) A man is presumed to be the natural father of the child if . . .
>
> (4) while the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child.[223]

The 2000 Uniform Parentage Act altered the presumption. It says:

> (a) A man is presumed to be the father of a child if: . . .
>
> (5) for the first two years of the child's life, he resided in the same household with the child and openly held out the child as his own.[224]

The 2017 Uniform Parentage Act altered again the presumption. It says:

> (a) An individual is presumed to be a parent of a child if: . . .
>
> (2) the individual resided in the same household with the child for the first two years of the life of the child, including periods of temporary absence, and openly held out the child as the individual's child.[225]

The 2000 ALI Principles of the Law of Family Dissolution (ALI Principles) also recognize residency/hold out parentage. Like the 2000 and 2017 UPAs but with a different name, the Principles encompass "a parent by estoppel" who "lived with the child since the child's birth" while holding out and accepting full and permanent responsibilities as parent as part of a prior co-parenting agreement with the child's legal

221. Parness, *supra* note 200, at 104. *See also* Guardianship of Keanu, 174 N.E.3d 1228, 1230 (Mass. App. Ct. 2021) (court recognizes a need for legislation on surrogacy pacts given "the risks of an informal surrogacy.").

222. *See, e.g.*, *Ex Parte* Z.W.E., 335 So. 3d 650, 657 (Ala. 2021).

223. UNIF. PARENTAGE ACT § 4(a)(4) (UNIF. L. COMM'N 1973).

224. UNIF. PARENTAGE ACT § 204(a)(5) (UNIF. L. COMM'N 2000) (amended 2002).

225. UNIF. PARENTAGE ACT § 204(a)(2) (UNIF. L. COMM'N 2017).

parent (or, if there are two legal parents, both parents) to raise a child together each with full parental rights and responsibilities.[226]

Many current state laws reflect these UPA policies of these proposed laws. Yet only a few legislatures to date have expressly extended these policies beyond publicly identified opposite sex couples.[227] Nevertheless, residency/hold out parentage is available to an identified female partner of one giving birth due to equality demands.[228] Residency/hold out parentage is generally unavailable to a partner of a man who is a parent at birth as long as the person giving birth remains a legal parent and where state laws disallow three custodial parents.[229]

There are varying state laws reflecting the distinct UPA approaches to residency/hold out parents. In California, following the 1973 UPA, a man is "presumed to be the natural father of a child" if he "received the child into his home and openly holds out the child as his natural child."[230] There is no explicit requirement that a man who

226. PRINCIPLES OF THE L. OF FAM. DISSOLUTION: ANALYSIS AND RECOMMENDATIONS § 2.03(1)(b)(iii) (AM. L. INST. 2002).

227. *See, e.g.*, VT. STAT. ANN. tit. 15C § 401(a)(4) (West 2018) ("person," not man); WASH. REV. CODE ANN. § 26.26A.115(1)(B) (West 2019) ("individual," not man). On the need to treat equally all people involved in residency/ hold out settings, *see* Jeffrey A. Parness, *Marriage Equality: Parentage (In)Equality*, 32 WIS. J. L., GENDER & SOC. 179, 189 (2017).

228. *See, e.g.*, Elisa B. v. Superior Ct., 117 P.3d 660, 670 (Cal. 2005) (finding former unwed lesbian partner a child support parent under California statutory law on presumed natural hold out fathers); Miller-Jenkins v. Miller-Jenkins, 912 A.2d 951, 972 (Vt. 2006) (upon dissolution of civil union of lesbian couple, both women are custodial parents as statute making husband the presumed "natural parent" of a child born to his wife was applicable via a second statute saying that civil union and married couples shall have the "same" rights, 15 VT. STAT. 308(4) and 1204(f)). Similar equality mandates operate when there is common law, rather than statutory, hold out parentage; Wendy G-M. v. Erin G-M., 985 N.Y.S.2d 845 (N.Y. Sup. Ct. 2014). *See also* Nancy D. Polikoff, *From Third Parties to Parents: The Case of Lesbian Couples and Their Children*, 77 LAW AND CONTEMP. PROBS. 195, 212–19 (2014) (even where statutes only explicitly recognize residency/hold out parentage for men, women are sometimes deemed parents under the statutes).

229. In California, though, there can be three legal parents, including the birth mother, her spouse, and a residency/hold out parent. *Compare* CAL. FAM. CODE § 7612(c) (West 2020) (three parents where recognition of only two parents "would be detrimental to the child"), *with* C.G. v. J.R., 130 So. 3d 776, 782 (Fla. Dist. Ct. App. 2014) (Florida law does not support enforcement of an agreement on sharing child custody which was entered into by the married birth mother, her spouse, and the biological father of a child born of sex).

230. CAL. FAM. CODE § 7611(d). The presumption has been sustained when challenged on the ground of interfering with federal constitutional childcare interests. *See, e.g.*, R.M. v. T.A., 182 Cal. Rptr. 3d 836 (Ct. App. 2015) (preponderance of evidence norm used to establish presumption). As to what constitutes receipt into the home, *see also*, S.F. Human Servs. Agency v. A.V. (*In re* N.V.), No. A141323, 2014 Cal. App. Unpub. LEXIS 8870 (Ct. App. Dec. 12, 2014) (reviewing cases).

holds out a child as "his natural child" needs to have any beliefs about his actual biological ties. California cases[231] have recognized as presumed parents those who knew there were no biological ties, but who acted as if there were.[232] Elsewhere, there are state laws recognizing residency/hold out parentage only for those who raise children from birth,[233] following the 2017 UPA.

There are other interstate variations in residency/hold out parentage. Some state laws do not require receipt into the home.[234] Some laws more explicitly require existing legal parents to agree to such matters as residency or hold outs by nonparents who can later become new childcare parents on equal footing with existing legal parents.[235]

State laws also vary on the circumstances allowing, and the standing to present, a challenge to residency/hold out parentage. There can be challenges by nonresident sperm providers who did not know, and could not reasonably have known, that the circumstances of residency/hold out parentage was being undertaken by a nonparent together with an existing legal parent (often the person giving birth). In Vermont, such a provider may challenge a residency/hold out parentage

231. *See, e.g.*, *In re* Jesusa V., 85 P.3d 2, 15 (Cal. 2004) (both Paul (the husband) and Heriberto (the biological father) were each judicially declared to be "presumed" California fathers because each had received Jesusa V. into his home and held her out as his natural child); *see also* Barnes v. Cypert, F049259, 2006 Cal. App. Unpub. LEXIS 10543 (Cal. Ct. App. Nov. 21, 2006) (birth mother's uncle is a presumed parent); *In re* Jerry P., 95 Cal. App. 4th 793, 816 (Ct. App. 2002) (presuming residency/hold out parent need not have, or even claim to have, biological ties).

232. How long an alleged residency/hold out parent must so act is determined on a case-by-case basis. *See, e.g.*, *In re* J.B., No. B291208, 2019 WL 1451304 (Cal. Ct. App. Apr. 2, 2019) (two-day holdout is insufficient for presumed parent status).

233. *Compare* TEX. FAM. CODE ANN. § 160.204(a)(5) (West 2015) (man is a presumed father if "during the first two years of the child's life, he continuously resided in the household in which the child resided and he represented to others that the child was his own"), *and* WASH. REV. CODE ANN. § 26.26A.115(1)(b) (West 2019) (similar), *with* MONT. CODE ANN. § 40-6-105(1)(d) (West 2019) ("person is presumed to be the natural father" if "while the child was under the age of majority, the person "receives the child into the person's home and openly represents the child to be the person's natural child").

234. *See, e.g.*, N.J. STAT. ANN. § 9:17-43(a)(4)-(5) (West 2018) (either "receives the child into his home" or "provides support for the child"); DEL. CODE ANN. tit. 13, § 8-201(c)(3) ("parental role" and "bonded and dependent relationship . . . that is parental in nature").

235. *Compare* D.C. CODE § 16-831.01(1) (2022) (requiring a single parent's "agreement" to same household residency for one wishing to be deemed a de facto parent), *and* VT. STAT. ANN. TIT. 15C, § 401(a)(4) (2022) (stating that a person is presumed to be a residency/hold out parent if in child's first 2 years, where "another parent" of child jointly held child out as presumed parent's child), *with* N.J STAT. ANN. § 9:17-43(a)(4)–(5), *and id.* § 9:17-40 (finding that a man can be "presumed to be the biological father of a child on equal footing with the unwed birth mother, if he "openly holds out the child as his natural child" and either "receives the child into his home" or "provides support for the child").

within two years of "discovering the potential genetic parentage" where there was no earlier actual or reasonably assumed knowledge of the potential due to "material misrepresentation or concealment."[236] Elsewhere, there are different time limits,[237] as well as the unavailability of "concealment" as a condition of extending the normal time limits for a challenge.[238]

No state follows the 2000 ALI Principles on parentage by estoppel all under which a co-parenting pact with a potential residency/hold out parent must be undertaken by existing parents.[239] Yet, the 2000 ALI Principles are wise since one existing legal parent, as in a formal adoption, generally has no agency/common authority to surrender the parental childcare rights of a second existing legal parent.[240]

*5. Existing De Facto Parent*

The 2017 UPA, unlike its UPA predecessors, expressly recognizes "de facto" parenthood as a form of parentage for those without biological or formal adoption ties.[241] Here, parenthood is dependent upon

236. Vt. H.B. 562, 2017–2018 Legis. Sess. (Vt. 2018) (enacted); VT. STAT. ANN. TIT. 15C, § 402(b)(2) (2022).

237. *Compare e.g.*, UNIF. PARENTAGE ACT § 204(a)(2) (UNIF. LAW COMM'N 2017) (presuming parental status if residence/hold out in the child's first two years), *id.* § 204(b), *and id.* § 608(b) (stating that the rebuttal to this presumption usually must be presented before the child turns two), *with* UNIF. PARENTAGE ACT § 4(a)(4) (UNIF. LAW COMM'N 1973) (presuming residence/holdout parental status where the child is "under the age of majority"), *and id.* § 6(b) (stating that the rebuttal of residency/hold out parentage may be brought "at any time" by an "interested party").

238. *Compare e.g.*, UNIF. PARENTAGE ACT §§ 204(a), 204(b), 608(b) (UNIF. LAW COMM'N 2017) (explaining that the two-year limit on residency/hold out parentage of an "individual" does not operate when the individual is "not a genetic parent, never resided with the child, and never held out the child as the presumed parent's child"), *with* UNIF. PARENTAGE ACT §§ 204(b), 607(b) (UNIF. LAW COMM'N 2000) (amended 2002) (stating that the two-year limit on actions to disprove earlier determined presumed residency/hold out parentage in a "man" does not operate when there was, in fact, no cohabitation or sexual intercourse during the probable time of conception and the presumed parent never openly held out the child as his own), *and* UNIF. PARENTAGE ACT §§ 4(a)(4), 6(b) (UNIF. LAW COMM'N 1973) (stating that presumed residency/hold out parentage can be challenged "at any time").

239. PRINCIPLES OF THE L. OF FAM. DISSOLUTION: ANALYSIS AND RECOMMENDATIONS § 2.03(1)(b)(iii) (AM. L. INST. 2002).

240. *See, e.g.*, Parness, *supra* note 158, at 461–78; *see also*, E.N. v. T.R., 255 A.3d 1, (Md. 2021) (holding that each existing legal parent must consent to a third-party de facto parent relationship unless nonconsenting parent is unfit or there are exceptional circumstances); Martin v. MacMahan, 264 A.3d. 1244, 1234 (Me. 2021) (following *E.N.*, because "to hold otherwise would potentially allow the unilateral actions of one legal parent to cause an unconstitutional dilution of another legal parent's rights").

241. The term "de facto" parent did not originate in the 2017 UPA. The Comment to the Act indicates its de facto parentage standard was modeled on Maine and Del-

satisfying far more explicit terms to gain childcare interests than the terms underlying residency/hold out parentage.[242] For de facto parentage, an existing legal parent must have "fostered or supported" a "bonded and dependent relationship" between the child and a nonparent which is "parental in nature;"[243] the nonparent must have held out the child as the nonparent's own child and undertaken "full and permanent" parental responsibilities;[244] and, the nonparent must have "resided with the child as a regular member of the child's household for a significant period of time."[245]

De facto parentage in the 2017 UPA limits who can commence a proceeding to establish such parentage. Commencement may only be undertaken by an "individual" who is "alive" and who "claims to be a de facto parent of the child."[246] Thus, child support from a de facto parent is unavailable.

The 2000 ALI Principles[247] and a 2021 ALI Draft of a Restatement of the Law: Children and the Law[248] also recognize forms of "de facto" parentage for those with no biological or formal adoption ties. Each form requires both residence and consent by an existing legal "parent." But only the 2000 Principles further recognize a "parent by es-

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aware statutes. UNIF. PARENTAGE ACT § 609 cmt. (UNIF. LAW COMM'N 2017). The term was also employed in the 2000 ALI Principles. PRINCIPLES OF THE L. OF FAM. DISSOLUTION: ANALYSIS AND RECOMMENDATIONS § 2.03(1) (AM. L. INST. 2002). *See also* PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION: ANALYSIS AND RECOMMENDATIONS, app. B at 251 (AM. L. INST., Tentative Draft No. 3, Apr. 16, 2021) (noting that §1.72 on de facto parentage is one of the "black letter" sections approved by membership).

242. Expecting legal parents are foreclosed under the 2017 UPA from being bound to any agreements on de facto parentage for children to be born of sex later, as the model law requires, e.g., "a bonded and dependent relationship with the child." UNIF. PARENTAGE ACT § 609(d)(5) (UNIF. LAW COMM'N 2017). Thus, a possible "bonded and dependent relationship" with a fetus, a fertilized egg, or some child of sex yet unconceived is not recognized.

243. *Id.* § 609(d)(5)–(6).

244. *Id.* § 609(d)(4), (3).

245. *Id.* § 609(d)(1).

246. *Id.* § 609(a). This limit on standing, and its problematic contrast with hold out/residency parentage under the 2017 UPA, is discussed in Jeffrey A. Parness, *Comparable Pursuits of Hold Out and De Facto Parentage: Tweaking the 2017 Uniform Parentage Act*, 31 J. AM. ACAD. MATRIM. L. 157, 160–70 (2018).

247. PRINCIPLES OF THE L. OF FAM. DISSOLUTION: ANALYSIS AND RECOMMENDATIONS §§ 2.03(1)(c), 3.02(1)(c) (AM. L. INST. 2002) (listing requirements for de facto parentage, including residence with the child, as well as "the agreement of a legal parent to form a parent-child relationship" unless the legal parent completely fails, or is unable, "to perform caretaking functions").

248. RESTATEMENT OF THE L.: CHILD. AND THE L. § 1.72(a) (AM. L. INST. 2021) (listing requirements, including include residence with the child, as well as establishing that "a parent consented to and fostered the formation of the parent-child relationship").

toppel."[249] A "parent by estoppel" is "not a legal parent," but is an individual who must have lived with the child, without an obligation to pay child support and without "a reasonable, good-faith belief" of biological ties, and who did so with either "a prior co-parenting agreement with the child's legal parent (or, if there are two legal parents, both parents)" or "an agreement with the child's parent (or, if there are two legal parents, both parents)."[250]

The 2000 ALI Principles recognize a "de facto parent" is one who is "other than a legal parent or a parent by estoppel" and who lived with and cared for the child for at least two years under an "agreement of a legal parent to form a parent-child relationship."[251] A de facto parent, unlike a legal parent or a parent by estoppel, has no presumptive right to "an allocation of decisionmaking responsibility" for the child.[252] Further, a de facto parent has no presumptive right of "access to the child's school and health-care records to which legal parents have access by other law."[253]

The ALI Restatement Draft describes a de facto parent as a third party who establishes that the person "lived with the child for a significant period of time;" was "in a parental role" long enough that they established "a bond and dependent relationship . . . parental in na-

249. Under the 2000 ALI Principles, a legal parent, a parent by estoppel and a de facto parent each has standing to pursue/participate in an action involving judicial allocation of custodial and decisionmaking responsibility for a child. PRINCIPLES OF THE L. OF FAM. DISSOLUTION: ANALYSIS AND RECOMMENDATIONS § 2.04(1)(a) (AM. L. INST. 2002). A "legal parent" is "an individual who is defined as a parent under other state law." *Id.* § 2.03(1)(a).

250. *Id.* § 2.03(1)(b).

251. PRINCIPLES OF THE L. OF FAM. DISSOLUTION: ANALYSIS AND RECOMMENDATIONS § 2.03(1)(c) (AM. L. INST. 2002). Alternatively, a de facto parent is one who is other than a legal parent or a parent by estoppel and who lived with and cared for the child for at least two years "as a result of a complete failure or inability of any legal parent to perform caretaking functions." *Id.*

Precedents predating the 2000 ALI Principles recognize the concept of de facto parentage in different settings. *See e.g.*, *In re* Kieshia E., 859 P.2d 1290, 1296 (Cal. 1993) (evaluating the standing of a de facto parent in a juvenile delinquency proceeding); *In re* Dependency of J.H., 815 P.2d 1380, 1384–86 (Wash. 1991) (holding in a delinquency case, permissive intervention, not intervention as of right, is available to some foster parents claiming de facto (or psychological) parent status); *In re* B.G., 523 P.2d 244, 254 n.21 (Cal. 1974) (declining to resolve whether a de facto parent may have the same rights of notice, hearing or counsel as have natural parents in Juvenile Court Law proceedings under due process or equal protection principles). The Reporter's Notes to the 2000 ALI Principles observes the "law that most closely approximates the criteria for a 'de facto' parent relationship is that of Wisconsin" where visitation (but not custody) may be awarded "to an individual who has formed a 'parent-like relationship' with a child." PRINCIPLES OF THE L. OF FAM. DISSOLUTION: ANALYSIS AND RECOMMENDATIONS § 2.03 cmt. c (AM. L. INST. 2002).

252. PRINCIPLES OF THE L. OF FAM. DISSOLUTION: ANALYSIS AND RECOMMENDATIONS § 2.09(2) (AM. L. INST. 2002).

253. *Id.* § 209(4).

ture;" they had no "expectation of financial compensation;" and, "a parent" consented to third party's parental-like role.[254] Thus, the ALI Restatement Draft, but not the 2000 Principles, condone a childcare parentage designation adversely impacting the childcare interests of an existing and nonconsenting parent.[255]

Before and since the 2017 UPA, the 2000 ALI Principles, and the ALI Draft Restatement, there are state statutes and common law precedents on nonmarital, nonbiological, and nonadoptive childcare parentage follow certain of the suggested de facto parent norms. For example, before 2017, there were quite comparable Maine and Delaware statutes,[256] as well as a less comparable Wisconsin Supreme Court precedent,[257] that were utilized by the drafters of the 2017

254. RESTATEMENT OF THE L.: CHILD. AND THE L. § 1.72(a) (AM. L. INST. 2021) (stating that proof by clear and convincing evidence is required).

255. The 2021 ALI Draft, like the 2017 UPA, on de facto parentage invites substantive Due Process violations of the childcare interests of existing and nonconsenting legal parents. *See* Jeffrey A. Parness, *Unconstitutional Parenthood*, 104 MARQ. L. REV. 183, 203–05 (2020); E.N. v. T.R., 255 A.3d 1 (Md. 2021) (holding that de facto parenthood requires consent by two legal parents or a finding of unfitness in a nonconsenting parent or "exceptional circumstances"); Martin v. MacMahan, 264 A.3d 1224, 1235 (Me. 2021) (following *E.N.*).

256. ME. REV. STAT. ANN. tit. 19-A, § 1891 (2022); DEL. CODE ANN. tit. 13, § 8-201(c) (2022).

257. *In re* Custody of H.S.H.–K., 533 N.W.2d 419 (Wis. 1995) (holding that a parental-like relationship can prompt visitation rights when in child's best interests). There are common law precedents elsewhere. In 2008 the South Carolina Supreme Court, adopting a Wisconsin high court analysis, determined that a nonparent was eligible for psychological parent status if a four-prong test was met. Marquez v. Caudill, 656 S.E.2d 737 (S.C. 2008) (following *H.S.H.–K.*, 533 N.W. at 435–36 which set out norms for nonparent child visitation orders). *See also* Conover v. Conover, 146 A.3d 443, 446–47 (Md. 2016) (using *H.S.H.–K.* in recognizing de facto parent doctrine). And in 2009, a federal appeals court noted that the Mississippi Supreme Court had long recognized that a person standing "in loco parentis," meaning "one who has assumed the status and obligations of a parent without a formal adoption," has the same "rights, duties and liabilities" as a natural parent. First Colony Life. Ins. Co. v. Sanford, 555 F.3d 177, 182–83 (5th Cir. 2009) (relying on, *inter alia*, Farve v. Medders, 128 So.2d 877, 879 (Miss. 1961)).

By contrast, in some U.S. states where there are no de facto parent statutes, courts choose not to develop precedents because any new de facto parentage norms are the responsibility of state legislators. *See, e.g.*, Jeffrey A. Parness, *State Lawmaking on Federal Constitutional Childcare Parents: More Principled Allocations of Powers and More Rational Distinctions*, 50 CREIGHTON L. REV. 479, 480 (2017). For a forceful argument on the need for continuing the common law "equitable parenthood doctrine" even where there are statutes, see Jessica Feinberg, *Wither the Functional Parent? Revisiting Equitable Parenthood Doctrines in Light of Sam-Sex Parents' Increased Access to Obtaining Formal Legal Parent Status*, 83 BROOK. L. REV. 55 (2017).

UPA.[258] Since 2017, a few states have statutorily recognized 2017 UPA de facto parenthood.[259]

On occasion, state statutes recognize both residency/hold out and de facto parents. Thus the Maine Parentage Act of 2016 provides for presumed parents who resided since birth with a child for at least two years and "assumed personal, financial, or custodial responsibilities,"[260] as well as for de facto parents who, inter alia, resided with the child "for a significant period of time," established with the child "a bonded and dependent relationship," and "accepted full and permanent responsibilities as a parent . . . without expectation of financial compensation."[261] Similarly, there are both residency/hold out and de facto parents in Delaware,[262] Washington,[263] and Vermont.[264]

## V. REFORMING STATE PARENT REGISTRY LAWS

### A. Introduction

Given the limits in current PR laws and the (r)evolution in expecting and existing legal parentage, PR law reforms are needed. Changes are necessary regarding those afforded PR opportunities and PR uses.

As to PR opportunities, state laws should encompass more fully expecting and existing legal parents. Thus, PRs should be available to those who assert expecting legal parentage as prebirth VAP signors or those who assert existing legal parentage as intended parents of children born of assisted reproduction.[265]

As to PR uses, state laws should be employed in parentage cases beyond adoptions and parental rights termination proceedings. Possible uses of PR registrants include in tort and probate proceedings. If there is a continuing absence of federal legislation, more cooperative interstate efforts should be undertaken, at least in adoption and ter-

258. UNIF. PARENTAGE ACT § 609 cmt. (UNIF. LAW COMM'N 2017).
259. *See, e.g.*, WASH. REV. CODE § 26.26A.440(4) (2022); VT. STAT. ANN. tit. 15C, § 501 (2022).
260. ME. REV. STAT. ANN. tit. 19-A § 1881(3) (2015) (effective July 1, 2016) (amended 2021).
261. *Id.* § 1891 (effective July 1, 2016) (amended 2021).
262. DEL. CODE ANN. tit. 13, § 8-204(a)(5) (2022) (presuming parental status according to residency/hold out); *id.* § 8-201(c) (explaining the requirements for de facto parentage).
263. WASH. REV. CODE § 26.26A.115(1)(b) (2018) (presuming residency/hold out parent "for the first four years"); *id.* § 26.26A.440 (stating how to establish de facto parent).
264. VT. STAT. ANN. tit. 15C, § 401(a)(4) (2022) (presuming residency/hold out parent after "the first two years"); *id.* § 501(a) (establishing the grounds for de facto parentage).
265. PRs should be effective upon execution (and not later, as upon recording). *See, e.g.*, Porter *ex rel.* Porter v. Porter, Nos. 1200682 & 1200683, 2021 WL 5858403 (Ala. Dec. 10, 2021) (finding marital status upon execution of the marriage document, not upon its recording).

mination of parental rights settings. In multistate conduct cases, interstate travel should not cause a subversion of the goals underlying PRs on protecting the familial interests of parents and children.

### B. Expanding Parent Registry Opportunities

As noted, current state parent registry laws typically do not provide registrations of parental intentions or parental-like actions by varying types of expecting and existing legal parents. Whether parental interests under law are contingent, as with intended parents under genetic surrogacy pacts, or established, as with VAPs and spousal parentage, these parents should be afforded the opportunity to utilize PRs in order to protect their interests in later cases involving their parental interests.

For contingent legal parentage arising from a genetic surrogacy pact, there may be one or more intended parents who should be able to register so that notice is given, at the least, regarding any adoption proceeding initiated by the surrogate right at birth. These pacts prompt existing legal parentage for intended parents after the expiration of the time for a surrogate's decision to rescind consent to parental rights termination.

Similarly, VAPs prompt contingent parentage when signed before birth. Prebirth VAPs prompt existing legal parentage at birth, though such parentage may be later rescinded or challenged. VAP signatories should be able to utilize PRs.

Some legal parentage forms only operate post-birth. For example, to date residency/hold out parentage cannot arise solely due to prebirth acts.[266] Comparably, de facto parent-child relationships cannot arise between an expecting parent and a future child. But after birth, these parentage forms can encompass both expecting (i.e., residency with child since birth, but for a bit less than two years) and existing (i.e., residency with child since birth and for over two years) legal parenthood.

How might expanded PR opportunities be afforded a broader range of expecting and existing legal parents? To start, expanded opportunities should be afforded for unilateral (i.e., one person) registrations. As noted, current PR laws chiefly operate for unwed biological fathers of children to be born, or born, of consensual sex who wish to be notified when their children are subject to adoption or parental rights termination proceedings. Who else should be able to register oneself?

Unilateral PR registration should be available to an expecting or existing legal parent whose child will be or has been born to a genetic

266. *See, e.g.*, *Ex parte* Z.W.E., 335 So. 3d 650, 657 (Ala. 2021).

surrogate who may no longer wish parental interests and who places the child for adoption.[267]

Similarly, unilateral PR registration should be available to those who signed VAPs which make them expecting or existing legal parents, including, at times, signatories without biological ties arising from consensual sex.[268]

Further, unilateral PR registrations should be available to those who reasonably believe they have achieved existing legal parent interests in certain children due to hold out/residency or de facto parent laws (or similar doctrines like parentage by estoppel or equitable adoptive parentage).[269]

In addition, bilateral PR registrations (i.e., two or more persons) should be available to those who have shared parental interests in a child to be born or born to a surrogate; to those with shared parental interests due to their joint executions of VAPs; and to those who reasonably believe one of the registrants has achieved existing parental interests due, for example, to hold out/residency parent, de facto parent, or comparable parentage norms.[270]

Expanded PR registrations would facilitate later factfinding in legal parenthood disputes requiring determinations of parental-like acts and intentions. Recognitions of earlier parent registrations by a non-birth giver need not be dispositive but would certainly aid courts in resolving difficult questions of who, what, where, and how.

### C. Expanding Parent Registry Uses

In recognizing more PR opportunities for both expecting and existing legal parents, state PR laws could be used in cases beyond for-

267. *See, e.g.*, UNIF. PARENTAGE ACT § 814(a)(2) (UNIF. LAW COMM'N 2017) (stating that a genetic surrogate has only seventy-two hours after a child's birth to withdraw consent to intended parentage in another).

268. Not all VAP laws expressly require non-birth-giving signatories to have biological ties. *See, e.g.*, *id.* § 301 ("[W]oman who gave birth . . . and an . . . intended parent" [under Article on assisted reproduction] may sign a VAP); *see generally*, Jennifer P. Schrauth, *She's Got to Be Somebody's Baby: Using Federal Voluntary Acknowledgements to Protect the Legal Relationship of Married Same-Sex Mothers and Their Children Conceived Through Artificial Insemination*, 107 IOWA. L. REV. 903 (2022).

269. As children can be placed for adoption long after their birth, there can be existing legal parentage in non-birth-givers due to their parental-like relationships developed after birth. *See, e.g.*, UNIF. PARENTAGE ACT § 204(a)(2) (UNIF. LAW COMM'N 2017) (establishing parental status through hold out/residency for the first two years of a child's life); *id.* § 609 (stating the requirements for de facto parental status).

270. While in the surrogacy setting two signors have similar parental interests (as expecting or existing legal parents), in the latter two settings, where there is typically a living child, usually one signor is an existing legal parent while the other signor is an expecting legal parent.

mal adoption and/or termination of parental rights. Their expanded coverage should also be facilitated by more interstate cooperation, as through compacts. The result would be that in legal parentage cases involving multistate conduct, parentage would be more fairly and properly determined in accordance with relevant state policy interests and private expectations.

*1. Beyond Adoption and Parental Rights Proceedings*

Legal parentage issues can first arise in proceedings beyond adoption and parental rights termination. Here too, PR registrations can aid courts in protecting alleged and actual parental interests. In probate, the estates of children who die intestate typically are distributed to parents (and perhaps others). Parentage here is sometimes said by statute to be guided by the state UPA, which can recognize parentage not dependent upon biology, marriage, or adoption. Locating such parents can be facilitated if PR registrations are available to probate courts. Where a state's probate laws do not reference the UPA on parenthood, there may still be parentage in probate that is not dependent upon biology, marriage, or adoption. In Illinois, such parentage is unavailable in the childcare setting; but an "equitable adoption" doctrine operates in the probate setting.[271] A PR registration by an alleged equitable adoptive parent would facilitate a just resolution of a probate case in Illinois.

In probate outside Illinois, state laws vary on whether some or all of an estate of an intestate decedent can pass to a biological, or nonbiological, nonmarital child who was never formally adopted.[272] In California, a child can pursue estate distribution by providing clear and convincing evidence that the decedent "openly held out the child as his own," even if "grudgingly" and even if the decedent would not have wanted the child to inherit.[273] A child in California whose genetically-related parent dies intestate may not be able to recover from an estate if the parent had not "openly" held out the child as one's own.[274] In

271. *In re* Scarlett Z.-D., 28 N.E.3d 776, 792 (Ill. 2015).

272. Laws on the effects of posthumous conception on heirship in probate proceedings involving intestate decedents are reviewed in Alexis C. Mejia, Comment, *A Piece of You and I: Posthumous Conception and Its Implications on Texas Estates Law*, 13 EST. PLAN. AND CMTY. PROP. L. J. 509, 515–26 (2021). In Illinois, when a self-identified or publicly identified man dies with a will, nonmarital children born of sex can challenge the will even where the children were earlier adopted by the spouse of the person giving birth. *In re* Estate of Snodgrass, 784 N.E.2d 431, 432 (Ill. App. 4th 2003).

273. Estate of Burden, 53 Cal. Rptr. 3d 390 (Cal. Ct. App. 2007) (finding that the inheritance statute allows parenthood to be established via unrebutted presumption of parent and child relationship under Uniform Parentage Act).

274. Estate of Britel, 186 Cal. Rptr. 3d 321 (Cal. Ct. App. 2015). In California, the wrongful death statute incorporates the probate statute's definition of a child

Tennessee, a nonmarital child may be able to recover in the event of an intestate biological father's death as the statute requires only clear and convincing proof of "paternity."[275] In an Alabama case, a child could not recover from an intestate biological father's estate where the child already had a presumed father under law (then, a husband) who had not disclaimed his paternity.[276] And in Georgia, though there may have been no presumed childcare parentage in a spouse because there were no biological ties, that spouse's parentage for estate distribution purposes could be established posthumously, via that spouse's "virtual adoption" of the natural child of the spouse who gave birth.[277]

Relatedly, in a veteran's benefits case, a federal court found that the governing agency regulation required "a biological relationship" between the deceased veteran and the child in order for the child to recover from the deceased veteran's estate.[278] Here, evidently, the death of a veteran, who was a de facto or presumed parent on equal footing with the birth mother in childcare and child support settings under state law, would not prompt a recognition of a parental loss for the child for federal veteran benefit purposes.

In tort, post-death parentage determinations are sometimes required in statutory wrongful death or survival actions. Consider a case where an alleged parent has died as a result of the wrongful act or omission of another: the child's parentage has not yet been determined legally (as is often the case with a nonmarital child whose biological parent dies not long after the child's birth);[279] and a surviving child of the decedent, upon proof of parentage, can recover for their own losses, as well as possibly receive additional money, including survival action damages recovered by the decedent's estate via intestate succession laws (benefitting a surviving child of a decedent who dies with-

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when an alleged parent dies intestate. *See, e.g.*, Stennett v. Miller, 245 Cal. Rptr. 3d 872, 879 (Cal. Ct. App. 2019).

275. TENN. CODE. ANN. § 31-2-105(a)(2)(B) (2022) (stating that a similar paternity finding is not made when the nonmarital child dies intestate and the biological father or his "kindred" seek to inherit); *see* Walton v. Young, 950 S.W.2d 956, 958 (explaining the need for "clear and convincing" evidence of paternity).

276. Swafford v. Norton, 992 So. 2d 20, 29 (Ala. Civ. App. 2008).

277. Sanders v. Riley, 770 S.E.2d 570 (Ga. 2015) (stating that evidence could support a "virtual adoption," even where the child had developed, later in her life, a relationship with her biological father). On the contours of equitable adoption in probate, see *In re* Estate of North Ford, 200 A.3d 1207, 1215 (D.C. 2019) (stating that a child must prove by clear and convincing evidence that decedent who died intestate "objectively and subjectively stood in the shoes" of a parent).

278. McDowell v. Shinseki, 23 Vet. App. 207, 212 (2009), *aff'd per curiam*, 396 Fed. App'x. 691 (Fed. Cir. 2010).

279. The statutory issues dividing two types of parents are distinct. *See, e.g.*, Estate of Elkins v. Pelayo, No. 1:13-CV-1483 AWI SAB, 2022 WL 1233117, at *7–8 (E.D. Cal. Apr. 14, 2022) (finding that stepchildren may recover in wrongful death of stepparent only if they lived in the decedent's household for 180 days preceding the death, per CAL. CIV. CODE § 377.60 (2022)).

out a will). In Alaska, when a person dies as a result of the "wrongful act or omission of another," the decedent's personal representative may sue the wrongdoer under a single statute "exclusively for the benefit of the decedent's spouse and children, or other dependents." Damages can cover "loss of contributions for support," "loss of consortium," and "loss of prospective training or education," as well as "medical and funeral expenses."[280] Thus, damages go for injuries incurred by the decedent prior to death, like hospital bills where recovery goes to the decedent's estate, as well as for injuries incurred by the decedent's child after death, like the loss of prospective training and education. While the Alaska statute does not define "children," PRs could supply helpful information on who is a decedent's offspring.

In the Delaware wrongful death/survival setting, there is only a remedy for certain nonmarital children, including children whose parentage by a deceased parent has been "judicially determined" or where parentage was acknowledged or "openly and notoriously recognized" by the decedent before the decedent's death.[281] A PR registration could be such an acknowledgment.

In Idaho, a deceased man's "illegitimate child" is only included in the wrongful death statute if "the father has recognized a responsibility for the child's support."[282] Thus, biological ties alone may not support wrongful death claims for all alleged biological children of deceased parents whose estates recover on survival claims. Again, PRs would help.

There are sometimes separate wrongful death and survival statutes. In Louisiana, under one statute the "surviving spouse and child or children of the deceased, or either the spouse or the child or children," can pursue a survival action on behalf of an injured person who dies, where any recovery inures to the decedent's estate and is "heritable."[283] A second statute recognizes a wrongful death claim on behalf of certain persons for damages they personally sustained as a result of the death of another. Claimants include the surviving child or chil-

280. ALASKA STAT. § 09.55.580(c) (2022). Similar are OR. REV. STAT. § 30.020 (2022) ("Wrongful death action") and N.C. GEN. STAT. § 28A-18-2 (2022) ("Death by wrongful act of another").

281. DEL. CODE. ANN. tit. 10 § 3724(f) (2022). Somewhat comparable is *Greenfield v. Daniels*, 51 So. 3d 421 (Fla. 2010) (holding that a child born into an intact marriage may recover in survival action for the death of a nonmartial biological father who "acknowledged responsibility for support").

282. IDAHO CODE § 5-311(b) (2022).

283. LA. CIV. CODE ANN. art. 2315.1 (2022).

dren of the deceased.[284] Post-death parentage determinations are necessary here.[285] PRs would be helpful when disputes arise.

A 2014 Mississippi Supreme Court decision demonstrates statutory language can prompt differences in applying varying death statutes covering injury claims. There, an "in loco parentis child" was deemed ineligible for recovery for the wrongful death of a parent, although such a child could recover under either the workers' compensation statute or the federal Longshoremen's and Harbor Workers' Compensation Act.[286] While such distinctions seem irrational,[287] PRs would help resolve parentage issues.

Where wrongful death legislation does not expressly address child recoveries for parental deaths, judicial precedents can recognize such claims. Thus, in Connecticut, an executor or administrator of an estate may recover "just damages" from one "legally at fault" for "injuries resulting in death."[288] This has been read to allow "filial consortium" claims for children arising from parental deaths.[289] PR registrations can be employed to benefit children of deceased or injured PR registrants in common law cases.[290]

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284. *Id.* at 2315.2; *see also In re* Estate of Panec, 291 Neb. 46, 54, 864 N.W.2d 219, 225 (2015) (stating that wrongful death and survival claims are "distinct" though they are "frequently joined in a singly action" by a decedent's personal representative).

285. There are comparable post death parentage settings akin to, but distinct from, torts. For example, post death parentage determinations are required in cases where there is a need to decide whether a nonmarital child of a deceased worker is entitled to workers' compensation benefits. *See e.g.*, Uninsured Employer's Fund v. Bradley, 244 S.W.3d 741 (Ky. Ct. App. 2017); *see also* Doe *ex rel.* Rodgriguez v. Cnty. of L.A, No. 20-cv-3218 DDP (JPRx), 2021 WL 1627486, at *2 (C.D. Cal. Apr. 26, 2021) (holding that a federal law claim for child's loss of alleged parent caused by defendants is sustained where there is proof of the decedent's "ongoing involvement" and "participation in child-rearing activities").

286. Estate of Smith v. Smith *ex rel.* Rollins, 130 So. 3d 508, 510–12, 515 (Miss. 2014). The wrongful death statute only referenced the children's "blood" parents or adoptive parents, not "in loco parentis" parents. *Id.* at 511–12 (referencing MISS. CODE. ANN. § 11-7-13 (2022)). The other two laws explicitly referenced in loco parentis children. MISS. CODE. ANN. § 71-3-3(1) (2022); 33 U.S.C. § 902(14).

287. See e.g., Jeffrey A. Parness, Irrationalities in Legal Parentage: Gender Identity and Beyond, 51 U. BALT. L. REV. 353, 394 (2022).

288. CONN. GEN. STAT. § 52-555(a) (2022).

289. Campos v. Coleman, 123 A.3d 854 (Conn. 2015). The statute has been extended to parental consortium claims for deceased children. *See* Lynch v. State of Connecticut, No. HHDCV166067438, 2021 WL 3487733 (Conn. Super. Ct. June 28, 2021).

290. Beside parent-child issues in tort cases, there can be issues as to who is in the "immediate family" of a decedent entitled to recover. *See, e.g.*, Greene v. Esplanade Venture Partnership, 168 N.E.3d 827 (N.Y. 2021) (holding that a grandmother qualified as a child's immediate family member under the "zone of danger" rule).

*2. Enhancing Interstate Cooperation*

Interstate sharing of PR information would enhance the fairness in legal parentage determinations involving multistate conduct, be they in adoption, parental rights termination, tort, or probate cases. Enhancement can be accomplished through a national parent registry scheme created by Congress or by an interstate compact on sharing PR information which standardizes registration opportunities while respecting interstate differences in legal parentage norms, as exist in such realms as surrogacy assisted reproduction, de facto, and residency/hold out parenthood.

A national parent registry scheme applicable in formal adoption proceedings has been considered for some time.[291] In the 109th Congress, a proposed Senate bill, set forth by Senator Landrieu in 2006, would have encouraged—not mandated—all states "to develop compatible registries . . . communicating with a national database."[292] It was founded on Congressional spending authority and was tied to federal subsidies.[293] In the 112th Congress, Senator Landrieu circulated a discussion draft of a bill that would establish a National Responsible Father Registry, not unlike the registry in the 2006 proposal, that would assure "possible" fathers of state actions involving child "placement," including pending adoption cases.[294]

While helpful in child placement proceedings wherein parentage establishments and disestablishments must first be considered, such proposed registries would not assist those involved in parentage disputes outside the child placement context, as in tort, probate, and child support cases. Federal voluntary PR requirements that go far beyond child placement proceedings, however, might operate in unchartered waters, perhaps overreaching the Spending Clause authority of Congress.

An interstate compact would not have the benefit of providing new federal subsidies to participating states. But it could extend its reach beyond child placement to tort, probate, and child support settings. Traditionally, these settings have been recognized as within state (not federal or local governmental) authority. A current interstate compact could serve as a model for interstate cooperation on PRs.

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291. *See* Beck & Biesterfeld, *supra* note 3, at 298–305 (discussing Senator Landrieu's proposed Proud Father Act, S. 3803, 109th Cong. (2006)).

292. *Id.* at 298–99.

293. *Id.* Congressional spending authority had been utilized to prompt states to undertake VAP schemes under Social Security Act norms. *See, e.g.*, Parness & Saxe, *supra* note 170, at 179–80.

294. Discussion Draft, presented by Senator Landrieu (on file with author; thank you, Mary Beck, for the help).

## VI. CONCLUSION

As with state recognized voluntary acknowledgements of parentage and state recognized assisted reproduction pacts on childcare parentage for future or current children, state parent registries, often labeled putative paternity registries or putative father registries, embody declarations of expecting or current legal parenthood. Yet declarations about children in parent registries involve unilateral assertions, unlike dual parenthood declarations in voluntary parent acknowledgments and assisted reproduction pacts. Actual parenthood for many parent registry declarants is uncertain because there are no simultaneous assertions by a second interested expecting or existing legal parent on the parenthood of the registering parent.

Parent registries are further limited. They generally provide that those who register receive notice and an opportunity to be heard in any later adoption proceeding, parental rights termination proceeding, or a combination of the two involving a child to be born or born to another. Thus, the expecting and existing legal parenthood interests of those who declare parentage are protected in only some settings. For example, PR declarations generally do not prompt a notice/hearing opportunity in any later probate or tort proceeding containing parentage issues.

In addition, parent registry opportunities are not explicitly afforded to all expecting and existing legal parents whose children are or may be subject to adoptions or parental rights terminations. Parent registry laws are often limited to "paternity" or "father" registrations even though adoption and termination proceedings can also foreclose nonpaternity and nonfather parental interests (contingent or current).

State parent registry laws should be reformed so that more expecting and existing legal parents can assert parental rights/interests. In such reforms, registry opportunities should be expanded to reflect the legal changes recognizing increased parenthood opportunities and parenthood for those with no biological, marital or formal adoptive ties. Further, parent registry laws should be reformed so that they are consulted in cases with non-childcare parentage disputes, as in probate and tort.