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Amending State Putative Father Registries: Affording More Rights and Protections To America's Unwed Fathers

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NOTE

AMENDING STATE PUTATIVE FATHER REGISTRIES: AFFORDING MORE RIGHTS AND PROTECTIONS TO AMERICA'S UNWED FATHERS

I. INTRODUCTION

In 1994, a three-year-old boy was ripped out of the hands of the only parents he ever knew.[1] Baby Richard was born to two European immigrants.[2] Richard's mother, Daniella, told the biological father, Otakar, that the baby had died.[3] However, the baby was very much alive; Daniella lied to Otakar so she could put the baby up for adoption.[4] Otakar was devastated; he was eagerly anticipating the arrival of his first child.[5] However, he had suspicions that the child had not died, so he called Daniella, her family, the hospital, and whomever else he thought would be able to help him find information about his baby.[6] Ultimately, Otakar learned the truth—his baby was living with an adoptive family, the Does.[7] After years of custody litigation, the Supreme Court of Illinois ruled in favor of Otakar.[8] While it may have felt like a victory, not many people were celebrating.[9] The Does lost their son, whom they

1. *In re* Doe, 638 N.E.2d 181, 182-83 (Ill. 1994).

2. *In re* Doe, 627 N.E.2d 648, 649 (Ill. App. Ct. 1993). Richard is a fictitious name used to protect the child's identity. *Id.* at 649 n.1.

3. *Id.* at 649.

4. *Id.* at 649-50. Otakar traveled to Czechoslovakia for thirteen days because his grandmother was ill. *Id.* at 649. While there, Otakar's aunt called Daniella and told her that Otakar rekindled his relationship with a former girlfriend and that they got married. *Id.* Despite Otakar's insistence that his aunt lied to her, Daniella moved out of the apartment she shared with Otakar. *Id.* Shortly after moving out of the apartment, Daniella decided that she would place her baby up for adoption. *Id.*

5. *Id.* at 649-50.

6. *Id.* at 650.

7. *Id.* at 650-51.

8. *In re* Doe, 638 N.E.2d 181, 182 (Ill. 1994) (holding that the law requires a "good-faith effort to notify the natural parents of the adoption proceedings," and that fault lies with the adoptive parents and their attorney by proceeding with the adoption, despite knowing that the biological father "had been denied knowledge of his baby's existence").

9. *See* Susan Swingle, Comment, *Rights of Unwed Fathers and the Best Interests of the Child: Can these Competing Interests Be Harmonized? Illinois' Putative Father Registry Provides*

had grown to adore and love over the three years he had lived with them.[10] The baby lost the only family and home he had ever known, and Otakar was reunited with a son who considered him a stranger.[11] The scenario depicted in Baby Richard's case is the reality for many families due to the inconsistency in laws protecting the rights of unwed fathers, adoptive parents, and, most importantly, children.[12]

It has become increasingly common over the past four decades for children to be born to unmarried parents.[13] In fact, the National Center for Health Statistics reported that from 2007 to 2013, about four in ten U.S. births were to unmarried women.[14] Historically, unmarried fathers had minimal rights when it came to their children.[15] However, in response to the growing population of unwed fathers, as well as a few landmark U.S. Supreme Court cases,[16] many state legislatures have

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an Answer, 26 LOY. U. CHI. L.J. 703, 733-34 (1995) (explaining that the media captured the public's outrage regarding the results of this case); *see, e.g.*, Bob Greene, *Supreme Injustice for a Little Boy*, CHI. TRIB. (June 19, 1994), http://articles.chicagotribune.com/1994-06-19/features/9406190204_1_illinois-supreme-court-adoptive-parents-justices; Patty Uihlein, *His 'True' Parents*, CHI. TRIB. (Nov. 19, 1994), http://articles.chicagotribune.com/1994-11-19/news/9411190038_1_baby-richard-young-boy-justice-system. In support of her position that Richard should be returned to the Does, one commenter asked:

> For how many days must we weep for the children of America? How much longer do we watch them suffer? The news gets worse each day, for they are drowned like a litter of unwanted kittens, beaten to death by abusive parents or given away by a court system that has less regard for their rights than for a bale of hay.

Id.

10. *See In re Doe*, 638 N.E.2d at 182-83; Uihlein, *supra* note 9 (noting that the adoptive parents "cared for and protected him when his biological parents turned away").

11. *See In re Doe*, 638 N.E.2d at 182-83; *see also* Greene, *supra* note 9 (emphasizing that Richard, who lived a happy life with his adoptive parents, is now ordered to live with his biological father whom he has never even met).

12. *See Putative Father Registries*, NAT'L CONF. OF ST. LEGIS., http://www.ncsl.org/documents/cyf/putative_father_registries.pdf (showing the different state laws regarding putative father registries).

13. *See* Sally C. Curtin et al., *Recent Declines in Nonmarital Childbearing in the United States*, 162 NAT'L CTR. FOR HEALTH STATS. DATA BRIEF (Centers for Disease Control and Prevention, Hyattsville, M.D.), Aug. 2014, at 1 (finding that steady increases in nonmarital childbearing began in the 1980s); *see also* CHILD WELFARE INFO. GATEWAY, THE RIGHTS OF UNMARRIED FATHERS 1 (2014), https://www.childwelfare.gov/systemwide/laws_policies/statutes/putative.pdf.

14. *See* Curtin et al., *supra* note 13, at 1. In 2013, there were a total of 1,605,643 births to unmarried women. *Id.* For more information regarding data on all U.S. births in 2013, see generally Brady E. Hamilton et al., *Births: Preliminary Data for 2013*, 63 NAT'L VITAL STATS. REPS., May 29, 2014.

15. *See* Karin Dwelle, *Adoption Without Consent: How Idaho is Treading on the Constitutional Rights of Unwed Fathers*, 39 IDAHO L. REV. 207, 209-10 (2002).

16. *See* Lehr v. Robertson, 463 U.S. 248, 265 (1983) ("The legitimate state interests in facilitating the adoption of young children and having the adoption proceeding completed expeditiously that underlie the entire statutory scheme also justify a trial judge's determination to require all interested parties to adhere precisely to the procedural requirements of the statute.");

enacted statutes creating putative father registries.[17] A putative father registry, also referred to as a paternity registry, is a state-run program with which a man can register if he believes that he is, or might be, the father to a child born out of wedlock.[18] These registries were enacted in order to promote the states' policies of placing children in permanent and stable homes as expeditiously as possible,[19] while also allowing a putative father[20] to set forth his right to notification of any adoption or parental rights termination proceedings.[21]

Generally, these statutes mandate that, if a putative father meets the statutory obligations and files with the state's putative father registry, he will be entitled to notice of any adoption or termination of parental rights proceedings.[22] These statutes have successfully increased the rights awarded to putative fathers by allowing them to affirmatively "grasp[] [the] opportunity"[23] to make a constitutionally protected connection with their children.[24] However, these statutes do contain a hefty caveat for these men: if an unwed father fails to register with the paternity registry, his failure will often be considered irrevocable implied consent to the aforementioned proceedings.[25]

While these registries have certainly extended unwed fathers' due process rights,[26] this Note argues that the current statutes do not go

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Caban v. Mohammed, 441 U.S. 380, 394 (1979) (invalidating a New York statute that made a distinction between unwed mothers and unwed fathers); Quilloin v. Walcott, 434 U.S. 246, 255 (1978) (stating "we cannot say that the State was required in this situation to find anything more than that the adoption, and denial of legitimation, were in the 'best interests of the child'"); Stanley v. Illinois, 405 U.S. 645, 658 (1972) (holding that "all Illinois parents are constitutionally entitled to a hearing on their fitness before their children are removed from their custody. It follows that denying such a hearing to Stanley[, an unwed father,] and those like him while granting it to other Illinois parents is inescapably contrary to the Equal Protection Clause").

17. Alexandra R. Dapolito, Comment, *The Failure to Notify Putative Fathers of Adoption Proceedings: Balancing the Adoption Equation*, 42 CATH. U. L. REV. 979, 990 (1993).

18. Dale Joseph Gilsinger, *Requirements and Effects of Putative Father Registries*, *in* 28 A.L.R. 6TH ANNOTATIONS AND CASES 349, 362 (2007).

19. *See In re* J.D.C., 751 N.E.2d 747, 752 (Ind. Ct. App. 2001) (explaining the purpose of Indiana's putative father registry statute).

20. A putative father is defined as "[t]he alleged biological father of a child born out of wedlock." BLACK'S LAW DICTIONARY 683 (9th ed. 2000). The terms "putative father" and "unwed father" will be used interchangeably throughout this Note.

21. *In re* Baby Girl S., 407 S.W.3d 904, 906 (Tex. Ct. App. 2013).

22. *See* Lauren Standlee, Note, *In re* N.L.B. v. Lentz*: The Missouri Supreme Court's Unwarranted Extension of a Putative Father's Constitutional Protections*, 72 MO. L. REV. 1437, 1446 (2007).

23. Lehr v. Robertson, 463 U.S. 248, 262 (1983). For further explanation of the *Lehr* Court's holding, see discussion *infra* Part II.A.2.

24. *See* Dwelle, *supra* note 15, at 222-23.

25. *See, e.g.*, ALA. CODE. § 26-10C-1(i) (2014).

26. Standlee, *supra* note 22, at 1441.

nearly far enough to protect the rights of these men.[27] Oftentimes, individuals can be precluded from registering, as many state registries mandate heightened requirements for registration, such as an acknowledgement of liability for contribution to the support of the child[28] or a guarantee of paternity.[29] This Note argues that these heightened requirements of registration are not only contrary to the purpose of the paternity registries, but are also unconstitutional.[30] Additionally, despite data showing that most individuals have never even heard of the putative father registry, let alone all the requirements and deadlines that go along with registering,[31] the U.S. Supreme Court has ruled that such ignorance of the law is no excuse or defense.[32] Thus, by the time most fathers learn about the filing requirements of the registry, it is too late, and their parental rights have already been terminated.[33] This Note addresses the problems regarding lack of knowledge and overall awareness of the registries, and how this deficit of information regarding the registries is contrary to public policy.[34] Moreover, the process of registering can be a confusing and onerous one for the average unmarried American man.[35] This Note argues that filing with the state registries should be made easier and more accessible to encourage increased use of the system.[36]

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27. *See* discussion *infra* Part III. Problems with the putative father registry statutes are only a few of the issues unmarried fathers face in regards to their lack of rights. For an analysis on the effect of safe haven laws on unwed fathers' rights, see Robbin Pott Gonzalez, *The Rights of Putative Fathers to Their Infant Children in Contested Adoptions: Strengthening State Laws that Currently Deny Adequate Protection*, 13 MICH. J. GENDER & L. 39, 53-56 (2006). For an explanation of the issue regarding granting *pendente lite* custody of infants to pre-adoptive parents, see *id.* at 56-61.

28. *See, e.g.*, FLA. STAT. ANN. § 63.054(1) (West 2012); NEB. REV. STAT. § 43-104.01(2)(e) (2014).

29. *See, e.g.*, Tamar Lewin, *Unwed Fathers Fight for Babies Placed for Adoption by Mothers*, N.Y. TIMES, Mar. 19, 2006, at 1; *What Unwed Fathers Need to Know . . .*, N.Y. ST. OFF. CHILD. & FAM. SERVS., http://www.ocfs.state.ny.us/main/publications/Pub5040.pdf (last visited Feb. 15, 2016) (stating that "[i]f you are not sure that you are the father, *do not sign* or submit" any forms to the registry).

30. *See* discussion *infra* Part III.A.

31. One journalist reported: "In many states, fewer than 100 men register each year—not surprising, adoption experts say, because most young men have never heard of the registries." Lewin, *supra* note 29, at 23.

32. Lehr v. Robertson, 463 U.S. 248, 264 (1983); *In re* Baby Girl S., 407 S.W.3d 904, 915 (Tex. Ct. App. 2013).

33. *See* Diane Walker, *Fathers of Children Out of Wedlock in VA Lose Rights if Name Not on Registry*, NBC 12 (Feb. 26, 2014, 11:18 PM), http://www.nbc12.com/story/24834792/fathers-of-children-out-of-wedlock-in-va-lose-rights-if-name-not-on-registry.

34. *See* discussion *infra* Part III.B.

35. *See* Kevin Noble Maillard, *Sex and the Single Man: What If Your Partner Has a Kid?*, ATLANTIC (Apr. 21, 2014), http://www.theatlantic.com/national/archive/2014/04/sex-and-the-single-man/360979.

36. *See* discussion *infra* Part IV.B.

State legislatures are given the discretion to enact their own statutes relating to putative father registries.[37] This Note proposes legislative amendments that would increase the utilization, accessibility, and effectiveness of the registries.[38] These modifications would not only meet constitutional standards, but would also be in the best interest of children, mothers, and fathers nationwide.[39]

Part II of this Note will provide a brief overview of the history of putative father registries in the United States.[40] Additionally, it will outline the structure and purpose of the registries, while highlighting some of the similarities and differences among the states' separate systems.[41] Part III describes the flaws of the currently enacted putative father registry statutes.[42] It explains the unconstitutionality of the heightened enrollment requirements for some of the state paternity registries, with a specific focus on the requirements of complete assuredness of paternity and a promise to pay child support.[43] Part III continues with a description of the problem posed by most men's lack of knowledge and awareness of the registries, as well as the consequences that arise as a result.[44]

Part IV offers a solution to these legal problems by suggesting changes legislatures should adopt.[45] These proposed modifications would make the registration process simpler and less restrictive.[46] Moreover, these amendments would mandate that the paternity registries be well-promoted and publicized through a variety of means, including a requirement for public schools to add a component about its state registry to their curriculum.[47] Finally, Part V concludes with the hope that states will take the suggested action to not only ensure rights for unwed fathers, but also to secure happy and permanent placement for children nationwide.[48]

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37. Laura Oren, *Unmarried Fathers and Adoption: "Perfecting" or "Abandoning" an Opportunity Interest*, 36 CAP. U. L. REV. 253, 265-66 (2007).
38. *See* discussion *infra* Part IV.
39. *See* discussion *infra* Part IV.
40. *See* discussion *infra* Part II.
41. *See* discussion *infra* Part II.
42. *See* discussion *infra* Part III.
43. *See* discussion *infra* Part III.A.
44. *See* discussion *infra* Part III.B.
45. *See* discussion *infra* Part IV.
46. *See* discussion *infra* Part IV.
47. *See* discussion *infra* Part IV.
48. *See* discussion *infra* Part V.

II. PUTATIVE FATHER REGISTRIES IN THE UNITED STATES

Throughout American history,[49] unwed fathers have been denied many rights that all other parents are granted.[50] However, in the past five decades, a few influential Supreme Court cases have addressed the rights of unwed fathers, beginning with *Stanley v. Illinois*,[51] *Quilloin v. Walcott*,[52] and *Caban v. Mohammed*.[53] These all led up to the landmark case of *Lehr v. Robertson*,[54] the leading authority in defense of state putative father registry statutes.[55] Below, this Part addresses the history of unwed fathers' rights by analyzing these cases in greater detail.[56] Further, this Part explains the structure and purpose of putative father registries around the country, with a focus on the distinctions between different statutes.[57]

A. Putative Father Registries: A Brief History

In early U.S. history, a putative father did not have any rights to his offspring as long as the child remained illegitimate.[58] Thus, only a mother's consent was required for adoption of a child born to unwed parents.[59] However, starting in the late 1960s, the rights of an unwed father with regard to his illegitimate children began to change due to the new interpretations of the Equal Protection Clause of the Fourteenth Amendment, which put a stop to numerous discriminatory laws

49. While this Note only addresses the rights of unwed fathers in the United States, the lack of rights for putative fathers is a global problem. For more information regarding the rights of unwed fathers in other countries, see generally Margaret Ryznar, *Two to Tango, One in Limbo: A Comparative Analysis of Fathers' Rights in Infant Adoptions*, 47 DUQ. L. REV. 89 (2009), and Alexandra Maravel, *Intercountry Adoption and the Flight From Unwed Fathers' Rights: Whose Right is it Anyway?*, 48 S.C. L. REV. 497 (1997).

50. Dwelle, *supra* note 15, at 208.

51. 405 U.S. 645 (1972).

52. 434 U.S. 246 (1978).

53. 441 U.S. 380 (1979).

54. 463 U.S. 248 (1983); *see* Dwelle, *supra* note 15, at 215-16 ("Following *Stanley*, *Quilloin*, and *Caban*, the rights of putative fathers who had formed established relationships with their children appeared to be on the rise. The 1983 case of *Lehr v. Robertson* drove home the concept that parental participation is an important element in whether the Court accords a putative father a legally protected parental interest.").

55. *See* discussion *infra* Part II.A.2.

56. *See* discussion *infra* Part II.A.

57. *See* discussion *infra* Part II.B.

58. Karen R. Thompson, Comment, *The Putative Father's Right to Notice of Adoption Proceedings: Has Georgia Finally Solved the Adoption Equation?*, 47 EMORY L.J. 1475, 1477 (1998) (recognizing society's belief that unmarried men were unfit to be fathers as the reason behind these lack of rights).

59. *Id.* at 1477-78.

pertaining to issues such as inheritance.[60] This change of perception set the stage for the Supreme Court to grant certiorari to cases evaluating the rights of unwed fathers.[61]

1. Emergence of Putative Father Rights Prior to *Lehr*

Three major Supreme Court cases that were decided between 1972 and 1979 began to sculpt the rights for putative fathers in America.[62] *Stanley* was the first case addressing the right of a putative father to reach the Supreme Court.[63] The statute at issue was an Illinois statute that presumed all unmarried fathers were "unfit" to be a parent to their children.[64] Under the statute, unmarried fathers did not have the right to a hearing regarding their fitness as parents prior to losing their parental rights.[65] The reasoning behind this law was that the unwed father was not deemed to be a "parent" to his child, as putative fathers were presumed to be "neglectful" and "unsuitable."[66] However, the Court noted that there was nothing to justify a conclusion that these negative assertions were applicable to all unwed fathers as a class.[67]

One purpose of the challenged statute was to encourage quick adoption procedures.[68] The State argued that invalidating the statute and allowing unwed fathers to adopt children would hinder potential adoptive parents from pursing adoption.[69] The Court commented on the State's concerns about adoption, explaining:

> The establishment of prompt efficacious procedures to achieve legitimate state ends is a proper state interest worthy of cognizance in constitutional adjudication. But the Constitution recognizes higher

60. Dwelle, *supra* note 15, at 210.

61. Stanley v. Illinois, 405 U.S. 645, 647 (1972).

62. Caban v. Mohammed, 441 U.S. 380 (1979); Quilloin v. Walcott, 434 U.S. 246 (1978); *Stanley*, 405 U.S. at 645; Dwelle, *supra* note 15, at 215-16.

63. *Stanley*, 405 U.S. at 649; *see also* Dwelle, *supra* note 15, at 211-13. Joan and Peter Stanley lived together for eighteen years, but never married. *Stanley*, 405 U.S. at 646. The couple had three children. *Id.* When Joan passed away, the State removed the children from Peter's custody. *Id.* A dependency proceeding was instituted and the Stanley children were then declared wards of the state. *Id.* Peter then challenged the constitutionality of the Illinois statute. *Id.*

64. *Stanley*, 405 U.S. at 648-50 (citing ILL. REV. STAT., c. 37, §§ 701-14, 702-1, -4, -5).

65. *Id.* at 649-50 (citing ILL. REV. STAT., c. 37, §§ 701-14, 702-1, -4, -5).

66. *Id.* (noting that the State defined "parents" to mean "the father and mother of a legitimate child, or the survivor of them; or the natural mother of an illegitimate child, and includes any adoptive parent"); *see also* Elizabeth Buchanan, *The Constitutional Rights of Unwed Fathers Before and After* Lehr v. Robertson, 45 OHIO ST. L.J. 313, 326 (1984) (noting that the State claimed that that men are not "naturally inclined to childrearing" and that unwed fathers are "not interested" in their children the way that married fathers are); Dwelle, *supra* note 15, at 211-13.

67. *Stanley*, 405 U.S. at 654; *see also* Buchanan, *supra* note 66, at 326.

68. *Stanley*, 405 U.S. at 656; *see also* Dwelle *supra* note 15, at 212-13.

69. *Stanley*, 405 U.S. at 656.

> values than speed and efficiency. Indeed, one might fairly say that of the Bill of Rights in general, and the Due Process Clause in particular, that they were designed to protect the fragile values of a vulnerable citizenry from the overbearing concern for efficiency and efficacy.[70]

The Supreme Court held that the Illinois statute was unconstitutional, as it was a violation of the Due Process and the Equal Protection Clauses.[71] The statute was in violation of the Due Process Clause because every parent has a right to a parental fitness hearing before his parental rights can be terminated.[72] The Court also held that the statute violated the Equal Protection Clause because it provided for a parental fitness hearing for unwed mothers, as well as married, separated, and divorced parents, but not unwed fathers.[73] Finally, the Court held that the statute had allowed the State to disregard an unwed father's parental role in the life of his children for no justifiable policy reason.[74]

Stanley was the first case to hold that at least some unwed fathers are granted constitutionally protected rights with respect to relationships with their children.[75] However, this holding was only applicable to custodial fathers that played a significant role in their children's upbringing.[76] Thus, following this ruling, interested parties were left wondering whether non-custodial unwed fathers would be granted similar rights.[77]

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70. *Id.*

71. *Id.* at 657-58.

72. *Id.*

73. *Id.* at 658. The Court quoted Justice Frankfurter's concurrence in *Kovacs v. Cooper*, 336 U.S. 77, 95 (1949) and held:

> The private interest here, that of a man in the children he has sired and raised, undeniably warrants deference and, absent a powerful countervailing interest, protection. It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children "come[s] to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements."

Id. at 651; *see* Dwelle, *supra* note 15, at 212 (noting that Peter's "essential, and quite traditional" involvement in his children's life influenced the Court's holding, as they believed that taking the children from Peter would undermine the primary intent of the statute: providing a stable environment for children).

74. *Stanley*, 405 U.S. at 652-53. The Court noted that "the State spites its own articulated goals when it needlessly separates [the unwed father] from his family." *Id.*; *see also* Dapolito, *supra* note 17, at 986-87 (discussing the holdings of *Stanley*).

75. *Stanley*, 405 U.S. at 658; *see also* Dapolito, *supra* note 17, at 987 n.44 ("*Stanley* . . . marked the end of constitutional indifference to unwed fathers. The decision shifted the emphasis from the equal treatment of children to the rights of unmarried parents." (quoting EVA R. RUBIN, THE SUPREME COURT AND THE AMERICAN FAMILY 38 (1986))).

76. *Stanley*, 405 U.S. at 657 n.9.

77. *See* Dwelle, *supra* note 15, at 213; *see also* Dapolito, *supra* note 17, at 987 (noting that

Quilloin was the second Supreme Court case to address questions regarding the rights and responsibilities of unwed biological fathers.[78] In *Quillion*, the putative father was unmarried, and the child's stepfather petitioned for adoption of the eleven-year-old.[79] The putative father attempted to thwart the adoption, but the Georgia statute did not allow him to do so; thus, he challenged the law.[80] Georgia's statute required only the mother's consent for the adoption of a child born out of wedlock, but both parents' consent was needed if the child was born to married parents.[81]

Unlike in *Stanley*, the Court in *Quillon* found the statute to be constitutional and in accordance with the Due Process Clause and the Equal Protection Clause.[82] The Court based its decision on the fact that the putative father did not attempt to take on any "significant responsibility with respect to daily supervision, education, protection, or care of the child."[83] Thus, the Court held that a putative father would only receive constitutional protection if he had "shouldered any significant responsibility" for the care of the child.[84] The Court also notably distinguished this case because the child was being adopted by a step-parent—not by a completely new set of parents.[85] Additionally, this case was unique because it involved an eleven-year-old, not an infant.[86]

Caban, the third significant Supreme Court case, also involved adoption proceedings.[87] The statute in question was a New York law that

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cases that came after *Stanley* showed that the *Stanley* holding was intended to only apply to the father who had a substantial interest in a relationship with his child, and thus, *Stanley* did not give all putative fathers the right to stop an adoption proceeding).

78. Quilloin v. Walcott, 434 U.S. 246, 247 (1978); *see* Standlee, *supra* note 22, at 1440.

79. *Quilloin*, 434 U.S. at 247, 249-50. The child has lived in the custody of his mother for the entirety of his life. *Id.* at 247.

80. *Id.* at 249-50. The Court notes that Quilloin did not attempt to seek actual or legal custody of his son for the first eleven years of his life. *Id.* at 256.

81. *Id.* at 248 & n.3 (citing GA. CODE ANN. § 74-403(3) (2015)) ("Illegitimate children.—If the child be illegitimate, the consent of the mother alone shall suffice"); *see also* Dapolito, *supra* note 17, at 988 (explaining that the policy behind the Georgia statute was based on the state's interest in raising children in traditional family settings).

82. *Quilloin*, 434 U.S. at 256; *see* Claudia Serviss, Comment, Lehr v. Robertson*'s "Grasp the Opportunity:" For California's Natural Fathers, Custody May Be Beyond Their Grasp*, 18 W. ST. U. L. REV. 771, 784 (1991) (mentioning that the Court distinguished *Quilloin* from *Stanley* because Stanley was a custodial parent, whereas Quilloin never had custody during the entire eleven years of his child's life).

83. *Quilloin*, 434 U.S. at 256; *see* Serviss, *supra* note 82, at 784 (noting that "Quilloin was not a father who 'at any time had, or sought, actual or legal custody of his child'").

84. *Quilloin*, 434 U.S. at 256.

85. *Id.* at 255; *see* Dapolito, *supra* note 17, at 988 n.52 (mentioning that stepparent adoption is becoming increasingly common due to the increased divorce and remarriage rates).

86. *Quilloin*, 434 U.S. at 249.

87. Caban v. Mohammed, 441 U.S. 380, 381-82 (1979). Caban lived with his two children

allowed a mother to withhold her consent to an adoption but did not offer that same right to an unwed, putative father.[88] There was no statutory exception for putative fathers who had developed a "substantial relationship" with the child.[89] Thus, the Court found the statute to be unconstitutional as a violation of the Equal Protection Clause.[90]

The Court in *Caban* also stated that "[p]arental rights do not spring full-blown from the biological connection between parent and child. They require relationships more enduring."[91] Thus, the Court noted that a putative father is afforded some constitutional protection when he bears part of the responsibility in the child's future and develops a substantial relationship with the child.[92] The Court found that such substantial constitutional protection exists when a putative father is actively protecting his interest in a relationship with his biological child.[93]

2. The Landmark Case of *Lehr*

In response to the newly-acknowledged rights of unmarried fathers, many states enacted legislation to afford these men a means of notification and consent.[94] Some states, including New York, established putative father registries.[95] These registries served as a mechanism by

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and their mother for a few years. *Id.* at 382. The mother decided to move out with the children and she soon married someone else. *Id.* Caban maintained his relationship with his children by visiting and corresponding with them often. *Id.* at 382-83. The mother's new husband filed to adopt Caban's two children. *Id.* at 383. While Caban did receive notice of the proceedings, the adoption petition was granted, despite Caban's objection. *Id.* at 383-84; *see also* Dapolito, *supra* note 17, at 989 (summarizing the facts of *Caban*).

88. *Caban*, 441 U.S. at 385-87 (citing N.Y. DOM. REL. LAW § 111(b), (c) (McKinney 1977)) ("[C]onsent to adoption shall be required as follows: . . . Of the parents or surviving parent, whether adult or infant, of a child born in wedlock; [and] Of the mother, whether adult or infant, of a child born out of wedlock . . . .").

89. *Id.* at 393-94 (holding that the statute hindered "loving fathers from full participation in the decision whether their children will be adopted and, at the same time, enable[d] some alienated mothers arbitrarily to cut off parental rights of fathers").

90. *Id.* at 394; *see also* Dapolito, *supra* note 17, at 989 (describing the reasoning of the New York statute as being based on the presumption that putative fathers only complicate and hinder the adoption process); Ryznar, *supra* note 49, at 93 (explaining that the Court invalidated the statute because its sex-based discrimination was not serving any important state interest).

91. *Caban*, 441 U.S. at 397 (Stewart, J., dissenting).

92. *Id.* at 392. The Court held that states could continue to pass statutes that prevent non-custodial putative fathers from hindering adoptions; however, now, states are prohibited from enacting legislation that discriminates against fathers who hold themselves out as the father by acknowledging their parental role. *Id.* at 392-94, 393 n.13.

93. *Id.* at 394; *see also* Dapolito, *supra* note 17, at 990 (explaining that after *Caban*, it was evident that states could not discriminate against unwed fathers who "acknowledged their paternity and took an active part in their children's lives").

94. *See* Dapolito, *supra* note 17, at 990.

95. *See* Gonzalez, *supra* note 27, at 45.

which men could register to receive notice of any adoption or parental termination proceedings involving their children.[96] To date, *Lehr* is the only Supreme Court case addressing a putative father registry statute.[97]

Lehr, an unmarried man, filed a lawsuit in New York to legally establish paternity and visitation for his two-year-old daughter.[98] However, while his case was pending, another court terminated his parental rights, and his daughter was adopted by her stepfather without Lehr's knowledge or consent.[99] The governing statute in this case specified that an unwed father neither had the absolute right to notice, nor the opportunity to be heard, before his parental rights were terminated and his child was adopted.[100] In order to qualify to receive notice, the statute mandated that Lehr file with the state's putative father registry.[101] Lehr subsequently challenged this statute on constitutional grounds.[102]

The Court upheld the statute as constitutional, and determined that the "mere existence of a biological link" does not warrant substantial constitutional protection for a putative father.[103] To receive protection under the Due Process Clause, a putative father would need to make a showing of commitment to the responsibilities of being a parent by "coming forward to participate in the rearing of his child."[104] Nevertheless, the Court emphasized that there is some significance in the biological link between a father and his child:

> The significance of the biological connection is that it 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 and make uniquely valuable contributions to the child's development. If he fails to do so, the Federal Constitution will not automatically compel a State to listen to his opinion of where the child's best interests lie.[105]

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96. *See* Dapolito, *supra* note 17, at 990-92.

97. Lehr v. Robertson, 463 U.S. 248, 255 n.10 (1983); *see* Mary Beck, *Toward a National Putative Father Registry Database*, 25 HARV. J.L. & PUB. POL'Y 1031, 1057 (2002).

98. *Lehr*, 463 U.S. at 250, 252.

99. *Id.* at 253. Lehr was informed that the adoption order was signed when his attorney called the judge seeking a stay in the adoption matter, pending the outcome of the paternity decision. *Id.*

100. *Id.* at 251, 251-52 n.5 (citing N.Y. DOM. REL. LAW §§ 111-a(2), (3) (McKinney 1977 & Supp. 1982-1983)).

101. *Id.*

102. *Id.* at 255.

103. *Id.* at 261.

104. *Id.* (citing Caban v. Mohammed, 441 U.S. 380, 392 (1979)).

105. *Id.* at 262. The Court continues this reasoning by holding the following:

> [A] natural father who has played a substantial role in rearing his child has a greater

With this holding, the Court confirmed that constitutional protection would not be awarded to a putative father who fails to establish a "substantial relationship" with his biological child.[106]

In upholding New York's putative father registry statute,[107] the Court noted that, because of the registry, notice was well within the control of the putative father, and that "[t]he 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."[108] Lehr argued that he was not aware of the putative father registry and its requirements.[109] The Court held, however, that "ignorance of the law cannot be a sufficient reason for criticizing the law itself."[110]

While *Lehr* addressed some issues regarding putative father statutes, this holding does not address various other issues that can arise in states' paternity registry laws and, therefore, cannot be applied broadly.[111] For instance, *Lehr* did not dictate any specific time frame that an unwed father needs to abide by in order to successfully "grasp the opportunity."[112] The Supreme Court has not provided much guidance to the state courts and legislatures regarding how to protect the rights of

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> claim to constitutional protection than a mere biological parent. New York's statutory scheme reflects these differences, guaranteeing notice to any putative father who is living openly with the child, and providing putative fathers who have never developed a relationship with the child the opportunity to receive notice simply by mailing a postcard to the putative father registry.

Id. at 262 n.18.

106. *Id.* at 267 (reaffirming the holdings of *Quilloin* and *Caban*).

107. *Id.* at 267-68. The Court explained that the registry fulfills many purposes, such as establishing constitutionally sound guidelines for notice to unwed fathers, ensuring finality in adoption proceedings, and expediting the placement of children into adoptive homes. *Id.* at 263-64 n.20l; *see* Standlee, *supra* note 22, at 1441-42 (summarizing the Court's holdings in *Lehr* regarding the putative father registry).

108. *Lehr*, 463 U.S. at 263-65. The Court held that the "right to receive notice was completely within appellant's control. By mailing a postcard to the putative father registry, he could have guaranteed that he would have received notice of any proceedings to adopt [his daughter]." *Id.* at 264.

109. *Id.* at 264.

110. *Id.*; *see also* Beck, *supra* note 97, at 1050 (reaffirming the Court's holding that an unwed father's ignorance of the statute's registry requirement was not enough to excuse his inaction, nor did it make the law unconstitutional).

111. *See, e.g.*, Timothy L. Arcaro, *No More Secret Adoptions: Providing Unwed Biological Fathers With Actual Notice of the Florida Putative Father Registry*, 37 CAP. U. L. REV. 449, 467 (2008) (commenting that the *Lehr* Court did not rule that putative father registry statutes were deemed constitutional when they require timely filing with the registry as the unwed father's only way to assert parenthood); Gonzalez, *supra* note 27, at 46 (explaining that the Supreme Court has never ruled on a putative father's rights when the child is an infant).

112. *See* Serviss, *supra* note 82, at 783.

putative fathers.[113] Specifically, there is a deficit regarding those unwed fathers who claim they did not have the time to "grasp the opportunity" to create a substantial relationship with their children.[114] Thus, post-*Lehr*, states retain ample discretion to decide what rights to afford to those putative fathers who do not fit within the *Lehr* criteria.[115]

B. Purpose and Structure of State Paternity Registries

Pursuant to the Federal Social Security Act, all fifty states are required to create procedures that allow for the establishment of paternity of a child.[116] The states have the discretion to regulate the rights of an unwed father at adoption and termination of parental rights hearings.[117] Enacting statutes that regulate a putative father registry is one way a state can fulfill this requirement.[118] About half of the states have enacted statutory provisions establishing paternity registries.[119] Generally, the overall structure of the registry is similar across states, but each statute has its own nuances.[120]

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113. *See* Gonzalez, *supra* note 27, at 46.

114. *See* Oren, *supra* note 37, 265-66 (2007) (describing the lack of Supreme Court guidance regarding rights of men who claim they have been blocked from establishing a relationship with their children needed to award them constitutional protection).

115. *Id.*

116. 42 U.S.C. § 666(a)(5)(A) (2012). The law states:

> (a) Types of procedures required
> In order to satisfy section 654 (20)(A) of this title, each State must have in effect laws requiring the use of the following procedures, consistent with this section and with regulations of the Secretary, to increase the effectiveness of the program which the State administers under this part:
> (5) Procedures concerning paternity establishment.—
> (A) Establishment process available from birth until age 18.—
> (i) Procedures which permit the establishment of the paternity of a child at any time before the child attains 18 years of age.
> (ii) As of August 16, 1984, clause (i) shall also apply to a child for whom paternity has not been established or for whom a paternity action was brought but dismissed because a statute of limitations of less than 18 years was then in effect in the State.

Id.

117. *See* Rebecca Miller, *The Parental Kidnapping Prevention Act: Thirty Years Later and of No Effect? Where Can the Unwed Father Turn*, 40 PEPP. L. REV. 735, 753-54 n.160 (2013) (citing MARGARET C. JASPER, THE LAW OF ADOPTION 44 (2008)).

118. *See* Gonzalez, *supra* note 27, at 45; discussion *infra* Part II.B.1.

119. Alabama, Alaska, Arizona, Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Louisiana, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Mexico, New York, North Dakota, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and Wyoming have all established putative father registries. *See* CHILD WELFARE INFO. GATEWAY, *supra* note 13, at 2 & n.6.

120. *Compare* ALA. CODE. § 26-10C-1 (2014) (mandating that the registry is the exclusive procedure available for an unwed father to receive notice), *with* ARK. CODE ANN. § 20-18-702

1. Purpose of Putative Father Registries

Putative father registries came about, in part, due to the requirement for states to create means for establishing paternity.[121] However, there is a deeper purpose to their existence.[122] Paternity registries serve several functions.[123] Many state statutes dictated that putative father registries were created in an attempt to provide greater protection to a putative father's rights.[124] The registries seek to protect the right to notice of adoption and of proceedings for termination of parental rights.[125] The most vital right available to unwed fathers with regards to adoption of his biological child is the ability to either consent or object to a proposed adoption.[126]

Additionally, putative father registries do not just benefit unwed fathers; they also benefit the children involved.[127] It has been shown that "[c]hildren have an interest in being raised by responsible biological parents."[128] The Supreme Court has recognized the importance of the biological relationship, holding that "it is cardinal with us that the custody, care, and nurture of the child reside first in the parents."[129] Putative father registries, if properly complied with, allow for the putative father to receive notice of any adoption or termination of parental rights hearings, and ultimately provide him an opportunity to be a part of his biological child's life, even if he was not aware that the child existed.[130]

(2015) (making no mention of the registry being the only means of asserting paternity); *see also* discussion *infra* Part II.B.2.

121. *See* 42 U.S.C. § 666(a)(5)(A) (2010).

122. *See* Kimberly Barton, Comment, *Who's Your Daddy?: State Adoption Statutes and the Unknown Biological Father*, 32 CAP. U. L. REV. 113, 140-43 (2003) (explaining that these registries serve to benefit all interested parties—the biological mother, the biological father, the adoptive parents, the state, and the child).

123. *See* JOAN HEIFETZ HOLLINGER, ADOPTION LAW AND PRACTICE §§ 2.04A, 7(b) (2000), (describing that the purpose of the registries is to allow putative fathers a way to secure their rights to notice of adoption or termination of parental rights proceedings, and also to aid trial judges in adoption proceedings in finding the putative fathers).

124. *See, e.g.*, ARK. CODE ANN. § 20-18-702(2); GA. CODE ANN. § 19-11-9(d)(3) (2015).

125. HOLLINGER, *supra* note 123, § 7(b).

126. *See id.*; *see also* B.W. v. D.B., 908 N.E.2d 586, 587 n.3 (Ind. 2009) (discussing a purpose of the putative father registry as serving "in part to preserve a father's right to oppose an adoption while simultaneously assuring the biological mother and adoptive parents that, when a putative father fails to register after a set time, an adoption can proceed without apprehension that it might later be upended").

127. Karen Greenberg et al., *A National Responsible Father Registry: Providing Constitutional Protections For Children, Mothers and Fathers*, 13 WHITTIER J. CHILD & FAM. ADVOC. 85, 87, 92 (2014); *see also* Beck, *supra* note 97, at 1037.

128. Thompson, *supra* note 58, at 1500.

129. *Id.*

130. HOLLINGER, *supra* note 123, § 7(b)-(c).

Other intended beneficiaries of paternity registry statutes are the adoptive parents.[131] With the putative father involved in the proceedings, there is less fear for adoptive parents that the biological father will turn up down the road and contest the adoption.[132] States have a clear policy interest in finding and establishing permanent placement for children into caring and secure homes as efficiently as possible.[133] The earlier a child is placed into a stable and permanent home, the better off the child will be in the short-term and long-term.[134]

States that do not have putative father registries have other means of asserting paternity.[135] Many of those other means involve court intervention.[136] This intervention is likely not in the best interest of the fathers, the children, or the adoptive parents, as litigation can be extremely lengthy and financially draining.[137] Paternity registries are an easier way for men to assert paternity, essentially because some states make it as simple as "mailing a postcard"[138] or filling out an online form.[139]

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131. *See* Protecting Adoption and Promoting Responsible Fatherhood Act of 2013, H.R. 2439, 113th Cong. § 2(a)(7).

132. The drafters of the Protecting Adoption and Promoting Responsible Fatherhood Act of 2013 found:

> One of the biggest risks to the finalization of an adoption is the inability of the parties to an adoption proceeding to timely locate the possible fathers. When possible fathers are not provided with timely notice of an adoption proceeding related to a child they may have fathered and discover such proceeding later, the adoption proceeding often is delayed or disrupted. In addition to causing emotional stress and significant costs associated with this problem, such cases, particularly when they attract media attention, create a chilling effect on adoption in that prospective adoptive parents may decide not to pursue the option of adoption for fear that they will be involved in such a case.

H.R. 2439.

133. *In re* J.D.C., 751 N.E.2d 747, 752 (Ind. Ct. App. 2001).

134. *Id.* at 751 (citing *In re* Baby Boy K., 546 N.W.2d 86, 97 (S.D. 1996), where the Supreme Court of South Dakota held that "children require early and consistent nurturing of their emotional as well as physical needs").

135. *See, e.g.*, ME. REV. STAT. ANN. tit. 18-A, § 9-201 (2015) (mandating that court intervention is necessary in establishing paternity); HOLLINGER, *supra* note 123, § 3(d) (explaining that in South Dakota, a state without a putative father registry, in order for an unwed father to assert paternity over a child, he must either be named on the child's birth certificate or must commence a paternity proceeding in court).

136. *See, e.g.*, ME. REV. STAT. ANN. tit. 18-A, § 9-201; HOLLINGER, *supra* note 123, § 3(d).

137. *See Paternity Suits FAQs*, FINDLAW, http://family.findlaw.com/paternity/paternity-suit-faqs.html (last visited Feb. 15, 2016) (noting that paternity suits can be expensive).

138. Lehr v. Robertson, 463 U.S. 248, 262 n.18 (1983) (stating that putative fathers have the "opportunity to receive notice simply by mailing a postcard to the putative father registry").

139. *See, e.g.*, FLA. STAT. ANN. § 63.054(3) (West 2012); *The Putative Father Registry, Frequently Asked Questions*, OHIO DEP'T JOB & FAMILY SERVS., http://jfs.ohio.gov/prf/index.stm (last visited Feb. 15, 2016).

2. Structure of Putative Father Registries Throughout the States

Putative father registries are set up and run differently in each state.[140] For the most part, all states require similar information from the enrollee to the extent that it is known, including: his name, social security number, address, the name of the mother of the child and her last known address, and the name and birth date of the child.[141] Some states permit the putative father to fill out a form online.[142] Other states mandate that the form be notarized and mailed to the registry.[143] All statutes governing the registries indicate a deadline for registration.[144] If a father fills out all of the required information correctly, and registers by the deadline, he should be considered enrolled in the putative father registry of that state.[145] Since there is no national putative father registry, an unwed father is advised to register in a few different states, depending on where he thinks his child and the biological mother may reside.[146] Generally, once a putative father registers, his registration stays within the system. However, all registries dictate that if the unwed father changes his address, he must update it with the registry, and that failure to do so could revoke the rights granted to him by the state registry.[147]

III. THE SHORTCOMINGS OF PUTATIVE FATHER REGISTRIES

The existing putative father registries, while having a noble purpose,[148] fall short of extending enough protection to unwed fathers.[149]

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140. *See* Gonzalez, *supra* note 27, at 46 (pointing out that "[s]tates have enjoyed vast discretion in developing a variety of strategies").

141. *See, e.g.*, ALA. CODE § 26-10C-1(4)(c) (2014); FLA. STAT. ANN. § 63.054(3); 750 ILL. COMP. STAT. 50/12.1(a) (2013).

142. *See, e.g.*, FLA. STAT. ANN. § 63.054(3); *The Putative Father Registry, Frequently Asked Questions*, *supra* note 139.

143. *See, e.g.*, IND. CODE ANN. § 31-19-5-10 (West 2015); *Notice of Intent to Claim Paternity Putative Father Registry*, MO. DEP'T HEALTH & SENIOR SERVS., http://www.16thcircuit.org/Data/Sites/1/media/family_court/Documents/forms/notice-of-intent-to-claim-paternity.pdf (last visited Feb. 15, 2016).

144. *See, e.g.*, ALA. CODE § 26-10C-1(i) (requiring registration to be filed within thirty days on or before the birth of the child); IND. CODE ANN. § 31-19-5-12 (mandating that a putative father register either no later than thirty days after the child's birth or by the date of the filing of an adoption or termination of parental rights petition, whichever of the two dates occurs later).

145. *See, e.g.*, ARK. CODE ANN. § 20-18-702(a)(2), (b)(1) (2015); DEL. CODE ANN. tit. 13 § 8-402(a), -403.

146. *See* Greenberg et al., *supra* note 127, at 99 (noting that it is fairly common for pregnant women to move to a different state during their pregnancies).

147. *See* HOLLINGER, *supra* note 123, § (7)(d).

148. *See* discussion *supra* Part II.B.1.

149. *See* discussion *infra* Part III.A–B; *see also* Gonzalez, *supra* note 27, at 46 (explaining that current state statutes range from "satisfactory protection to failing to provide even minimum protection for such rights," and most states are inadequate at best in their protection of putative father's rights).

In addition to the requirements of submitting the mandated information regarding the putative father, the mother or potential mother, and the child or potential child,[150] some statutes call for even more requirements to be fulfilled by the unwed father for successful enrollment in the registry.[151] This Note argues that these heighted enrollment requirements are unconstitutional and contrary to the purpose of the paternity registries.[152] There is a strong public policy benefit in increasing the participation and enrollment in these registries.[153] Thus, the statutes should make the registries more accessible to the majority of unwed fathers.[154]

Below, this Part details a different problem regarding the registries—the general public's overwhelming lack of knowledge and awareness of them.[155] In order to receive the benefits and protections that paternity registries provide, the putative father needs to know about the existence of these registries.[156] Yet, the reason many fail to register is the lack of awareness of the registry itself.[157] Some states have included

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150. *See* discussion *supra* Part II.B.2.

151. *See, e.g.*, ARIZ. REV. STAT. ANN. § 8-106.01(A) (2013) (requiring that any man who seeks to file with the putative father registry also file a notice of "willingness and intent to support the child to the best of his ability"); NEB. REV. STAT. § 43-104.01 (2014) (mandating that a Request for Notification of Intended Adoption must be accompanied by a statement "by the putative father that he acknowledges liability for contribution to the support and education of the child after birth and for contribution to the pregnancy-related medical expenses of the mother of the child").

152. *See* discussion *infra* Part III.A.

153. One commentator noted that

> [a]doptions involving a child born to an unwed mother must seek to balance the interests of all parties involved. These include the biological father's interest in a legally recognized relationship with his child, the mother's privacy rights, and the child's interest in expeditiously finding a stable adoptive home. The mechanics of a putative father registry are designed to protect all of these interests. By placing the right to automatically receive notice of an impending adoption entirely within the putative father's control, such registries protect a mother's privacy rights while providing prompt and constitutionally adequate notice of an impending adoption to a putative father.

Standlee, *supra* note 22, at 1449.

154. *See* Dwelle, *supra* note 15, at 229-30 (recalling that Justice Stevens, in *Lehr*, stated that a state statue which was "likely to omit many responsible fathers . . . might be thought procedurally inaccurate").

155. *See* discussion *infra* Part III.B.

156. *See* Rebeca Aizpuru, Note, *Protecting the Unwed Father's Opportunity to Parent: A Survey of Paternity Registry Statutes*, 18 REV. LITIG. 703, 727 (1999). In addressing the problem of lack of awareness, Aizpuru says:

> Paternity registries operate on the assumptions that men are aware of both the paternity registry and the existence of the child. If either of those underlying assumptions is false, paternity registries necessarily pose problems to fathers. States should therefore ensure that both of these assumptions are true before they use paternity registries as vehicles for terminating constitutionally protected rights.

Id.

157. Beck, *supra* note 97, at 1049.

requirements for greater publicity of their registries within their statutes.[158] Unfortunately, these efforts are modest at best.[159] Another similar problem is a lack of access to the registry.[160] As will be discussed below, a number of serious consequences arise from this lack of awareness and access.[161]

A. Heightened Requirements of Registration Are Contrary to the Purpose of Registries and Are Unconstitutional

Most state statues allow any unmarried male, who thinks he may be the father of a born or unborn child, to register with the state's putative father registry.[162] The primary reason for a putative father to file with the registry is to ensure that he receives notice of any adoption or termination of parental rights proceedings for a child he presumes to be his.[163] However, many of these registries have extremely strict

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158. Georgia, Indiana, Minnesota, Missouri, Montana, Nebraska, and Ohio are some of the states that have statutes enacted that include a publicity requirement for their state's registry. *Id.* at 1049 n.71. For example, the Missouri law states:

> The department of health and senior services shall: (1) Prepare forms for registration of paternity and an application for search of the putative father registry; (2) Produce and distribute a pamphlet or publication informing the public about the putative father registry, including the procedures for voluntary acknowledgment of paternity, the consequences of acknowledgment and failure to acknowledge paternity pursuant to section 453.010, a copy of a statement informing the public about the putative father registry, including to whom and under what circumstances it applies, the time limits and responsibilities for filing, protection of paternal rights and associated responsibilities, and other provisions of this section, and a detachable form meeting the requirements of subsection 2 of this section addressed to the putative father registry. Such pamphlet or publication shall be made available for distribution at all offices of the department of health and senior services. The department shall also provide such pamphlets or publications to the department of social services, hospitals, libraries, medical clinics, schools, universities, and other providers of child-related services upon request; (3) Provide information to the public at large by way of general public service announcements, or other ways to deliver information to the public about the putative father registry and its services.

MO. REV. STAT. § 192.016(9) (2015).

159. *See* FLA. STAT. ANN. § 63.054(3) (West 2012) (mandating that The Florida Office of Vital Statistics of the Department of Health shall "within existing resources, make these forms available through local offices of the Department of Health and the Department of Children and Family Services, the Internet websites of those agencies, and the offices of the clerks of the circuit court"). *But see* Arcaro, *supra* note 111, at 453 (reporting that in 2004, the Florida Health Department was apparently not effective in publicizing the registry because only forty-seven men registered, despite 90,000 children born to unmarried parents).

160. *See* Aizpuru, *supra* note 156, at 727-28.

161. *See* discussion *infra* Part III.B.

162. *See The Putative Father Registry, Frequently Asked Questions*, *supra* note 139; CHILD WELFARE INFO. GATEWAY, *supra* note 13, at 2.

163. *See* Beck, *supra* note 97, at 1039; *see also* Elizabeth Brandt, *Cautionary Tales of Adoption: Addressing the Litigation Crisis at the Moment of Adoption*, 4 WHITTIER J. CHILD &

requirements that a putative father must meet before he can register.[164] These burdensome statutory requirements result in far fewer registrations by interested men, which is unacceptable[165] because such restrictions are counter-intuitive to the purpose of these registries.[166] Most putative father registries were enacted to provide a way for unwed fathers to secure their right to receive notice of any adoption or termination of parental rights hearing.[167] The right to receive notice of the proceedings is not the same as the right to intervene in an adoption proceeding, and the distinction between the two rights is an important one.[168] A successful registration should only result in the right to receive notice of any adoption or termination of parental rights proceeding involving the putative child.[169] The notice a putative father receives would not give him the right to withhold his consent to an adoption.[170] If, after receiving notice, a father chooses to move forward in an attempt to thwart the adoption, and to ultimately gain parental rights, then, and only then, would it be reasonable for the additional restrictions to be imposed upon these individuals.[171]

FAM. ADVOC. 187, 222 (2005) (arguing that "there is a growing expectation by men that they will be involved in parenting their children, [so] any system that finalizes an adoptive placement without notifying the father risks increased litigation at the moment of adoption").

164. *See* Dwelle, *supra* note 15, at 231 (noting that under Idaho's putative father registry statute, a man's parental rights will be terminated without notice, unless the putative father is in strict compliance with all the statutory requirements).

165. *See id.* at 229-30 (noting that Justice Stevens, in the *Lehr* decision, opined that if a statute would omit responsible fathers, then it could be considered "procedurally inadequate").

166. *See* discussion *supra* Part II.B.1 (regarding the purpose of the registries).

167. HOLLINGER, *supra* note 123, § (7)(b).

168. *See* Gonzalez, *supra* note 27, at 48 (commenting that registration provides only a guarantee to the father that his child will not be adopted without him receiving notice of the proceedings).

169. *See* GA. CODE ANN. § 19-11-9(d)(3) (2015) (clarifying that successful registration "shall be used to provide notice of adoption proceedings or proceedings to terminate the rights of a biological father who is not a legal father but that registration *without further action* does not enable the registrant to prevent an adoption or termination of his rights by objecting" (emphasis added)); *see also* Standlee, *supra* note 22, at 1449 (noting that the registries were designed so that unwed fathers will automatically receive notice of an impending adoption by filing with the registry).

170. GA. CODE ANN. § 19-11-9(d)(3) ("[R]egistration without further action does not enable the registrant to prevent an adoption or termination of his rights by objecting.").

171. *See* Dwelle, *supra* note 15, at 231 n.109 (opining that while "providing child support is an important responsibility that the putative father *should* undertake, it is disturbing that a putative father *must* submit himself to these proceedings in every case where he wishes to maintain his rights"). In referencing IDAHO CODE § 16-1513(1), (4) (2001), which requires a putative father to commence paternity proceedings in order to successfully register with the putative father registry, Dwelle states:

> In essence, the statute requires that any man who has had past intimate relations with a woman, if he desires to preserve his rights to any possible progeny of that relationship, must determine whether his former lover is carrying his child (raising all sorts of interesting harassment issues) and must legally admit his paternity before the issue of

However, not all unwed fathers seeking to receive notice of a proceeding are also seeking to intervene in the adoption proceeding.[172] Some of these individuals would just like to be aware of the proceedings, or even just be made aware that they have a child at all.[173] This practice is one that should be encouraged by the state governments, as their involvement during the adoption is extremely beneficial to all of the parties involved.[174]

Some argue that the difficulty many men face with registering is not a mistake, but rather a conscious decision made by lawmakers.[175] Many states' statutes rely on an old presumption that unwed fathers are not capable of caring for their children, or that they are not interested in taking on that role.[176] This preference leads many to draw the conclusion that it is in the best interest of an illegitimate child to be adopted rather than to be raised by her single, biological father.[177] This presumption

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adoption even arises. What if he is unsure as to his former lover's constancy? Must he legally admit paternity before the child is even born, and thus before any genetic testing can be conducted, essentially saddling himself with the duty to pay child support for a child who may not even be his, if he wishes to preserve his parental rights?

Dwelle, *supra* note 15, at 231-32.

172. *See* Greenberg et al., *supra* note 127, at 87 (noting that fathers may choose to participate in the proceeding rather than contest it).

173. *Id.* (commenting that registries "[level] the playing field so a father may assert his parental rights to choose to be a father and take an active role in making decisions for the health, welfare and best interests of his child without the father's rights being obstructed").

174. *Id.* at 87, 107; *see, e.g.*, *Biological Father Medical, Social and Family History*, FRIENDS IN ADOPTION, http://www.friendsinadoption.org/fia_pdf_files/fia-birth-father-history.pdf (noting that information regarding the biological father's medical social, and family history "will prove to be very helpful to the adoptive family in parenting [the biological father's] child").

175. *See* Brandt, *supra* note 163, at 223 (stating that "[a]s a matter of policy, however, not notifying the adoptive father is a shortsighted method of accomplishing the policy objective of stabilizing adoptive placement").

176. *See* Gonzalez, *supra* note 27, at 64-65. Gonzalez states:

> Many states' inadequate attempts at protecting putative fathers' rights to their infant children suggest that states presume unwed fathers are unfit parents and children are not safe in their care. It may be true that many unwed fathers are not interested or not capable of properly caring for their children. But this is an overbroad assumption that the states use to circumvent establishing that an individual father is unfit. When the state is dealing with an infant whose father wants custody, the father is the only one with a constitutional interest at stake and federal policy explicitly prefers that children stay within their biological family if there is no potential of harm to the child. If the state has no evidence of a father's unfitness at the time a father contests the adoption of his infant child, the state should not be allowed to rely on the stereotypical assumption that all unwed fathers of infants are unfit.

Id.

177. *Id.* at 62. Gonzalez explains:

> There is a demonstrated need for adoption; nonetheless, because of the potential for serious psychological damage, adoption should be resorted to only after all reasonable alternatives have failed. When a biological father is interested in his infant child, some states violate this principle through their inadequate means of protecting his rights;

treads on the constitutionality of these fathers' parental rights.[178] The legislative motive is to expedite adoption placements for illegitimate children; however, this results in a potential denial of the putative fathers' due process rights.[179] Many state statutes, as currently enacted with the unnecessary filing requirements, are insufficient in their protection of unwed fathers' rights to their putative children.[180]

B. Lack of Knowledge and Awareness of Putative Father Registries

As held in *Lehr*, and many other state court cases,[181] ignorance of the law is not an excuse or a defense against failure to register with a state putative father registry.[182] Failure to register can lead to loss of notice of an adoption proceeding, and even a termination of an unwed father's parental rights.[183] However, most individuals are completely unaware of the law, the putative father registry, or the requirements of that registry.[184] Oftentimes, individuals only learn about the registry and

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consequently, children with no need for adoptive families are nevertheless being placed in them.

Id. at 63-64.

178. Stanley v. Illinois, 405 U.S. 645, 656-57 (1972). The Court in *Stanley* stated:

Procedure by presumption is always cheaper and easier than individual determination. But when . . . the procedure forecloses the determinative issues of competence and care, when it explicitly disdains present realities in deference to past formalities, it needlessly risks running roughshod over the important interests of both parent and child. It therefore cannot stand.

Id.

179. Gonzalez, *supra* note 27, at 49 (noting that since the putative father registry statutes are backed by the judicial system, many states utilize the registries to guarantee adoptions of children born out of wedlock by "expeditiously discarding the father's rights in the matter").

180. *Id.* at 64-65, 68 (commenting that "[putative father registries], some argue, are a less intrusive means of addressing a state's compelling interest in identifying infants' fathers. But . . . most [putative father registries] fall short of adequately protecting a putative father's rights or of providing him due process before those rights are terminated"). For examples of unnecessary filing requirements, see ARIZ. REV. STAT. ANN. § 8-106.01 (2013) (requiring a putative father to file an affidavit of his "willingness and intent to support the child to the best of his ability"); ARK. CODE. ANN. § 20-18-702(a)(3) (2015) (mandating that in order for a putative father to gain rights, he must "establish a significant custodial, personal, or financial relationship with the child"); FLA. STAT. ANN. § 63.062(2)(b) (West 2012) (providing that in Florida, in addition to executing the registration forms, a putative father must also file an affidavit asserting his ability and willingness to take responsibility for the child, and additionally, for putative fathers who had knowledge of the pregnancy, they must have contributed a "fair and reasonable amount" towards the mother's pregnancy expenses).

181. *See, e.g.*, Sanchez v. L.D.S. Soc. Servs., 680 P.2d 753, 755 (Utah 1984); Walker, *supra* note 33 (reporting that a court in Virginia denied a man's paternity petition based on his failure to file with the registry because he had never heard of it and was unaware of its existence).

182. Lehr v. Robertson, 463 U.S. 248, 264 (1983).

183. *See* ALA. CODE § 26-10C-1(i) (2014).

184. Beck, *supra* note 97, at 1050.

its requirements once the deadline for filing has passed.[185] Below, this Subpart examines the main reasons putative fathers do not register with the state paternity registries[186]—namely that they are generally unaware that a child was conceived or born, that there is an obligation to enroll in the registry, or that an adoption is being arranged.[187] Subsequently, this Subpart highlights the significant problem of lack of awareness of paternity registries by examining state statutes that establish filing with the registry as the exclusive means of establishing the putative father's right to notice.[188]

1. Lack of Knowledge and the Failure to Register

Many state courts have held that, even when a mother fraudulently misrepresents pregnancy status, an unwed father still needs to register with the putative father registry to be awarded his rights.[189] Some of these state courts have interpreted their state statutes to mean that the actions of the mother are not an excuse for a putative father's failure to establish a relationship with a child,[190] despite the fact that in some of these cases, the father was led to believe that the child did not even exist.[191]

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185. Lewin, *supra* note 29, at 23.

186. *See* discussion *infra* Part III.B.1.

187. Beck, *supra* note 97, at 1049. Beck finds that "[t]he most litigated civil rights issues raised by putative father registries relate to the putative father's ignorance of the conception, the birth, or of the registry requirement, and the burdens of the registry requirement." *Id.* at 1050.

188. *See* discussion *infra* Part III.B.2.

189. Beck, *supra* note 97, at 1067-68.

190. Arcaro, *supra* note 111, at 454-55. Referring to Florida's 2003 Adoption Act, Timothy Arcaro states:

> The statute also clearly provided that fraud on the birth mother's part could not serve as grounds to excuse an unwed birth father's failure to register. While there may be civil or criminal sanctions to address such fraud, the unwed birth father could not use a fraud-based argument to excuse his failure to register. Stated affirmatively, fraud by the birth mother and even the adoption entity could not excuse an unwed birth father's failure to register because he was presumed to know the Registry requirements. Under the statute, court inquiry was limited to a determination of whether an unwed birth father had registered . . . .

Id.

191. *See In re* A.A.T., 196 P.3d 1180, 1185 (Kan. 2008) (finding that a man fathered the child unknowingly, and the mother falsely told the man that she had an abortion). The court held:

> Even though the father may be blameless in this failure that was induced by the natural mother's fraud, his belated attempt to assert a parental interest beginning 6 months after the adoption was final, cannot overcome the fully matured interest of the State and the adoptive family in the permanency and stability of the adoption.

Id.; *see also In re* Baby Girl S., 407 S.W.3d 904, 915 (Tex. Ct. App. 2013) (finding that even though the putative father did not know the woman was pregnant and "may not have known of the registry[, he is not relieved] of the requirement to follow the law").

Most people are unaware of the existence of putative father registries.[192] Courts have held that an unmarried man should be on notice that a pregnancy could occur from the moment he engages in sexual intercourse with an unmarried woman, thus triggering a need for the man to assert his parental obligations—that is, filing with the state putative father registry.[193] However, the presumption that unmarried men should know of this obligation is misguided.[194] With the limited publicity regarding the registries, it is likely that large classes of men will never learn of them, and thus, will never receive the constitutional protection the registries provide.[195] Some have argued that this is unconstitutional, as the *Lehr* court ruled on a statute that did not make timely registration with the putative father registry the exclusive test of parenthood.[196]

Of all the states that have some form of putative father registry, only eight impose a publication requirement.[197] For example, Florida law mandates that the Department of Health utilize its resources to distribute pamphlets regarding the registry at every office of the Health Department, the Bureau of Vital Statistics, and the Department of Children and Families.[198] However, many of these registries are under-

192. *See* Lewin, *supra* note 29, at 23 (reporting that experts state that the majority of young men are unfamiliar with these registries).

193. Arcaro, *supra* note 111, at 465; *see In re Baby Girl S.*, 407 S.W.3d at 915 (holding that the putative father and the mother of the child "engaged in unprotected sex more than 100 times over a period of several months, and [the putative father] said he knew having unprotected sex could lead to pregnancy").

194. Heart of Adoptions, Inc. v. J.A., 963 So. 2d 189, 207-08 (Fla. 2007); Arcaro, *supra* note 111, at 465. Justice Lewis, in his concurring opinion in *Heart of Adoptions, Inc. v. J.A.*, stated:

> Such notice, if the act of sexual intercourse can be considered notice at all, is entirely inadequate to protect the inchoate interest of a known, unmarried biological father in the opportunity to develop a relationship with his child placed for adoption at birth. A father cannot be deemed to have failed to grasp something of which he was entirely unaware and completely precluded.

963 So. 2d at 207 (Lewis, C.J., concurring).

195. *See* Aizpuru, *supra* note 156, at 727. When referencing the criticisms of putative father registries, Aizpuru comments:

> Paternity registries have not been widely publicized thus far. As long as this remains the case, only those men who have the resources to stay abreast of legal technicalities will be protected by the registry system. Because many unwed fathers do not have access to legal resources, and because a paternity registry should minimize the effects of socioeconomic class on one's ability to make a parental claim, this must change.

Id.

196. Lehr v. Robertson, 463 U.S. 248, 265 (1983); *see also* Arcaro, *supra* note 111, at 465-67 (stating that *Lehr* held that New York's putative father registry was only one way to help fathers "protect the inchoate interest in [their] offspring; it was not, however, the exclusive means").

197. Beck, *supra* note 97, at 1049 & n.197 (citing to the publication requirements in statutes from Georgia, Indiana, Minnesota, Missouri, Montana, Nebraska, Ohio, and Oklahoma).

198. FLA. STAT. ANN. § 63.054(3) (West 2012); *see also* Lewin, *supra* note 29, at 23.

funded or not funded at all.[199] Thus, the registries are unable to meet the distribution and publication requirements these statutes mandate.[200] This was made evident when students from Florida State University went searching for the brochures. Not only were they unable to find them, they could not find one person who knew any details regarding Florida's putative father registry either.[201] While lack of awareness is the main reason unwed fathers do not file with the registry, another issue with registration is just how difficult it can be for some men to comply.[202]

2. Filing with the Putative Father Registry as the Exclusive Means for Establishing a Right to Notice

Approximately half of the states have established putative father registries as a means for establishing paternity.[203] Many states with these registries utilize filing with the registry as one option for putative fathers to assert certain rights.[204] However, Alabama, Florida, Georgia, Illinois, Indiana, Minnesota, Missouri, Montana, New Hampshire, South Carolina, Tennessee, and Virginia all have statutes mandating that filing with their state putative father registry is the sole means for establishing a putative father's right to notice.[205] In these states, regardless of whether the father has instituted any other legal proceedings to establish his parental rights, a putative father who did not timely register with the state's putative father registry is presumed to have abandoned his child and waived all of his parental rights.[206] Some states view failure

199. *See* John CotM, *Dads Call Obscure Adoption Law Unfair*, SUN SENTINEL (Mar. 12, 2006), http://articles.sun-sentinel.com/2006-03-12/news/0603110358_1_putative-father-registry-adoption-agencies-parental-rights (noting that legislators have never funded the Florida Registry).

200. *Id.*

201. Lewin, *supra* note 29, at 23.

202. *See* Maillard, *supra* note 35 (pointing out that "[e]ven for fully-informed men with the best of intentions, the honest desire to be a parent may get lost in red tape").

203. *See* CHILD WELFARE INFO. GATEWAY, *supra* note 13, at 2.

204. *See, e.g.*, ARK. CODE ANN. § 20-18-702 (2012) (dictating that "[t]he 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"); DEL. CODE ANN. tit. 13 § 8-402 (2014) (mandating that "a man who desires to be notified of a proceeding for adoption of, or termination of parental rights regarding, a child that he may have fathered must register in the registry of paternity before the birth of the child or within 30 days after the birth of the child").

205. *See* CHILD WELFARE INFO. GATEWAY, *supra* note 13, at 2 & n.8.

206. *See, e.g.*, IND. CODE ANN. § 31-19-5-18 (West 2015) (establishing that a putative father's failure to register with the Indiana putative father registry constitutes a waiver of his notice of any adoption proceedings and that his waiver "constitutes an irrevocably implied consent to the child's adoption"); Amy Karan, *Judge Amy Karan on Florida's Putative Father Registry*, 2008 EMERGING ISSUES 2195 (2008) (stating that strict compliance with the registry statute is the sole means of preserving any rights, and thus filing any paternity action is not enough to ensure that the putative father will be joined as a party in any court proceeding). Additionally, Arcaro explains that

to register with the state putative father registry to be the same as pre-birth abandonment.[207] In these states, it is crucial that all unmarried men know about these laws and the registry, because if they do not abide by the requirements, they have no other alternative to establish their right to notice.[208]

IV. MODIFYING CURRENT STATE STATUTES

As this Note has detailed, the current putative father registry statutes provide unwed fathers only the bare minimum of protection and rights.[209] Putative father registries were established to provide putative fathers with a mechanism for taking action to preserve their right to notice in adoption and parental termination proceedings.[210] However, despite the seemingly good intentions of the legislators, these statutes are not enough.[211] It is time for the state legislators to take action to remedy this injustice.[212]

This Part will propose a solution to the problems with the existing state statutes and their putative father registries.[213] First, this Part highlights the importance of amending the statutes to remove unnecessary restrictions that unwed fathers face in order to qualify for notice.[214] The proposed solution continues with suggested legislative modifications that should be enacted by state legislators in order to provide more awareness of the registries, as well as an easier filing process.[215]

> [t]imely registration in Florida was the only way an unwed biological father could transform his inchoate interest in his offspring to a constitutionally protected relationship when the child was being placed for adoption prior to six months of age. Failure to timely register constituted a complete and final waiver of parental rights.

Arcaro, *supra* note 111, at 452.

207. *See* Beck, *supra* note 97, at 1054-55. In his dissenting opinion in *Lehr*, Justice White expressed:

> Today the Court indulges in a similar and equally offensive presumption—that an unwed father who has not filed a notice of intent to claim paternity has abandoned his child and waived any right to notice and hearing. This presumption operates regardless of the fact that the father has instituted legal proceedings to establish his rights and obligations.

Lehr v. Robertson, 463 U.S. 248, 275 n.7 (1983) (White, J., dissenting).

208. *See, e.g.*, ALA. CODE § 26-10C-1(i) (2014); 750 ILL. COMP. STAT. 50/12.1(h) (2013).

209. *See* discussion *supra* Part III.A–B.

210. *See* discussion *supra* Part II.B.1.

211. *See* discussion *supra* Part III.A–B.

212. *See* discussion *supra* Part II.B (describing that putative father registries are state mechanisms that are created by state statutes).

213. *See* discussion *infra* Part IV.

214. *See* discussion *infra* Part IV.A.

215. *See* discussion *infra* Part IV.B.

A. Repealing Unnecessary Filing Requirements for Notice

Many state putative father registry statutes impose burdensome and unnecessary requirements on unwed fathers seeking to file with the registry.[216] Such restrictions are counter-intuitive to the purpose of these registries, which is to provide unwed fathers with notice of any adoption or parental termination proceedings regarding their putative children.[217] The notice a father receives would not give him the right to withhold his consent to an adoption.[218] These requirements should be removed from the statutes that govern registries.[219] Men should not be required to swear to support the child, be responsible for costs associated with pregnancy and childbirth, or commence paternity proceedings to receive notice of an adoption proceeding.[220] Any statute that contains this type of language should be amended to reflect this necessary policy change.[221] The state's legislature should enact an entirely separate statue regarding contesting adoption proceedings.[222] This new statute governing adoption challenges could mandate requirements, like the ones described below, in order for a father to have standing to contest any adoption proceeding.[223] However, it is important that the statute regarding a father's objection to an adoption be separate from the statute governing the putative father registry.

To maintain this important distinction, it is imperative that states remove unnecessary barriers to registration so that all putative fathers can receive notice of any adoption or parental termination proceeding.[224] Below, this Subpart proposes repealing the requirement to submit an affidavit of willingness and intent to support the child at the time of registration.[225] Furthermore, it also suggests removing the requirement of simultaneously commencing paternity proceedings at the time of filing.[226] Finally, this Subpart discusses the importance of making the

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216. *See, e.g.*, ARIZ. REV. STAT. ANN. § 8-106.01 (2013); ARK. CODE ANN. § 20-18-702 (2012).

217. *See* discussion *supra* Part II.B.1 (regarding the purpose of the registries).

218. *See* discussion *supra* Part III.A (discussing the distinction between right to notice and right to intervene).

219. *See* Dwelle, *supra* note 15, at 232 (commenting that many eager fathers are likely to be deprived of their rights to build relationships with their children "due to the unnecessarily strict requirements" of the state's statute).

220. *See* discussion *infra* Part IV.A.

221. *See* discussion *infra* Part IV.A.

222. For further explanation on the significance of the differentiation between the right to notice and the right to intervene, see discussion *supra* Part III.A–F.

223. *See* discussion *infra* Part IV.A.1–3.

224. *See* discussion *infra* Part IV.A.1–3.

225. *See* discussion *infra* Part IV.A.1.

226. *See* discussion *infra* Part IV.A.2.

forms simpler, specifically by removing the requirements to provide excessive information regarding the birth mother and putative child in order to successfully register.[227]

1. Repealing the Affidavit of Willingness and Intent to Support the Child Requirement

Some state statutes mandate that, in addition to submitting the filing form, a father must also file an additional affidavit to be considered successfully registered.[228] This affidavit requires the father to sign a legally binding document stating that he is intending and willing to provide support for his putative child for up to eighteen years.[229] Why should a father be required to promise to support his biological child if he is consenting to adoption proceedings?[230] The legislative intent of this affidavit requirement likely was to ensure that, if a putative father wants to contest an adoption proceeding and obtain custody, he is willing to provide for the child.[231] This is a reasonable mandate, since the putative father would be depriving the child of the chance to be adopted by parents, who, through the adoptive process, show their intent to support the child.[232] However, as currently enacted, this requirement is unreasonable.[233] A man seeking to file with the putative father registry, in an attempt to merely secure notice of a proceeding, should not be required to submit this type of affidavit.[234]

Additionally, some states go a step further and require the putative father to agree to pay for expenses related to the pregnancy and birth of the child.[235] There are numerous instances in which this is not even feasible for the putative father.[236] In many cases, the unwed fathers are not aware of the pregnancy, or at least are not aware of the pregnancy from the time of the child's conception.[237] Alternatively, the pregnant woman could refuse to accept the support from the putative father.[238] If the putative father is unaware of the pregnant woman's whereabouts, it

227. *See* discussion *infra* Part IV.A.3.

228. *See, e.g.*, FLA. STAT. ANN. § 63.054(1) (West 2012); NEB. REV. STAT. § 43-104.01(2) (2014).

229. *See* FLA. STAT. ANN. § 63.054(1); NEB. REV. STAT. § 43-104.01(2).

230. *See* discussion *supra* Part II.B.1.

231. *See* Dwelle, *supra* note 15, at 231 n.109.

232. *See* discussion *supra* Part II.B.1.

233. *See* Dwelle, *supra* note 15, at 231.

234. *See id.* at 231 n.109 (remarking that it is "disturbing" to require a man to provide child support in order to preserve his rights, particularly where paternity has not yet been established).

235. *See* NEB. REV. STAT. § 43-104.01 (2014).

236. *See* Thompson, *supra* note 58, at 1484.

237. *See* Gonzalez, *supra* note 27, at 51-52; Thompson, *supra* note 58, at 1484.

238. *See* Thompson, *supra* note 58, at 1484.

seems rather impossible that he would be able to provide any kind of support.[239] These are all reasons why the general requirement for putative fathers to pay for expenses incurred by pregnancy and childbirth are unreasonable.[240] Moreover, adoptive parents, as part of their adoption agreement, are often required to provide support to the birth mother for costs associated with the pregnancy.[241] Thus, if the child were to be adopted, the putative father should not be required to pay for these expenses if they are already being covered.[242]

2. Removal of the Paternity Proceeding Requirement

A few states require that at the time of filing with the registry, a putative father must also file a paternity proceeding in order to be considered successfully registered.[243] Paternity proceedings can be very expensive for the individual involved.[244] This is an unnecessary hurdle for putative fathers to undertake if they are only seeking notice of an adoption.[245] Statutes requiring the filing of a paternity claim to successfully register with the putative father registry should be amended to do away with this requirement.[246] The requirement for establishing paternity is a logical one, as it would only make sense for a man to establish paternity over the child before obtaining custody and parental status.[247] However, this requirement has no place in the process of filing with the putative father registry, and statutes should be amended to provide for the requirement of commencing a paternity proceeding only in cases where the putative father is contesting the adoption or seeking custody of the child.[248]

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239. *See id.*

240. *See supra* notes 236-39 and accompanying text.

241. *IAC Adoption Fees*, INDEP. ADOPTION CTR., http://www.adoptionhelp.org/adoption-fees-in (last visited Feb. 15, 2016) (reporting that pregnancy-related expenses adoptive parents typically cover can include rent, utilities, food, and maternity clothes, and they typically range up to $10,000).

242. *Id.*

243. *See* Dwelle, *supra* note 15, at 231-32 (referencing Idaho's putative father registry statute, IDAHO CODE § 16-513 (2001), which requires the putative father to file a paternity proceeding in addition to filing with the state registry).

244. *Paternity Suit FAQs*, *supra* note 137.

245. *See* discussion *supra* Part III.A (discussing the distinction between right to notice and right to intervene).

246. For an example of a coherent putative father registry statute that does not require paternity proceedings to be brought in conjunction with registration, see GA. CODE ANN. § 19-11-9(d)(2) (2015) (allowing putative fathers to "indicate the possibility of paternity without acknowledging paternity").

247. *See* Dwelle, *supra* note 15, at 231-32.

248. *Id.*

3. Simplifying the Registration Forms and Requirements

In order to properly file with a putative father registry, the putative father must fill out a form and supply information about himself, the birth mother, and the putative child.[249] This ensures that the state organization in charge of the registry can successfully notify the putative father of any proceedings that have been filed or commenced regarding his putative child.[250] However, some of these forms request information that could be unknown to the father at the time of his filing.[251] Many states, through legislation and court decisions, have indicated that a man is on notice to file with the state registry upon engaging in sexual intercourse.[252] However, there are many instances in which a man and a woman can engage in sexual intercourse without knowing their partner's social security number or driver's license number.[253] Additionally, some state's putative father websites and forms indicate that a man should not file with the registry unless he is completely sure that he is the father of that child.[254] Without a paternity test, it is virtually impossible for a man to be absolutely certain that he is the biological father.[255] Moreover, courts have held that putative fathers are on notice to register from the moment sexual intercourse took place.[256] At the moment of intercourse, it would be impossible for a man to even know whether a child had been conceived.[257] Thus, it is counter-intuitive that a man should not only be absolutely sure that a child has been conceived, but also that the potential child is biologically his.[258]

Thus, putative fathers should be allowed to register and fill out the putative father registry form to the best of their ability, and the lack of

249. *See The Putative Father Registry, Frequently Asked Questions*, *supra* note 139.

250. *See* discussion *supra* Part II.B.1.

251. *See* Maillard, *supra* note 35 (noting that some states require men to submit the birth mother's height, weight, social security number, and other information).

252. *See* Arcaro, *supra* note 111, at 465.

253. *See* Maillard, *supra* note 35.

254. *See What Unwed Fathers Need to Know . . .*, *supra* note 29.

255. *See Fathers' Rights: You're a Parent Too!*, LAWYERS.COM, http://family-law.lawyers.com/paternity/shes-your-child-too.html (last visited Feb. 15, 2016); *Paternity Testing*, AM. PREGNANCY ASS'N, http://americanpregnancy.org/prenatal-testing/paternity-testing (last visited Feb. 15, 2016) (stating that paternity testing is "the only way to accurately know who the father is").

256. *See* Arcaro, *supra* note 111, at 465; *supra* notes 193-94 and accompanying text.

257. *See How Soon Can I Do a Pregnancy Test?*, NAT'L HEALTH SERV. UK, http://www.nhs.uk/chq/pages/948.aspx?CategoryID=54&SubCategoryID=127 (last visited Feb. 15, 2016) (explaining that human chorionic gonadotropin, the pregnancy hormone in the woman's body, could be noticeable about seven days after conception, but it usually takes two weeks after a child is conceived to detect it).

258. *See Paternity Testing*, AM. PREGNANCY ASS'N, http://americanpregnancy.org/prenatal-testing/paternity-testing (last visited Feb. 15, 2016) (stating that the earliest any paternity testing can be done is the ninth or tenth week of a woman's first trimester of pregnancy).

knowledge a man has about the birth mother or putative child should not be a barrier to registration.[259] State statutes should provide that the lack of information on these forms will not preclude an individual from successfully registering.[260]

B. Proposing Legislative Action for Publicity, Education, and Increased Ease of Use of Registries

Putative father registries could be an extremely effective resource for ensuring unwed fathers' rights to receive notice about adoption proceedings or parental termination proceedings for their putative children.[261] However, most individuals have never even heard about the registries, let alone how the filing process works and what is required of them.[262] Legislation should be passed that would require a state to promote the registry to its citizens.[263] Additionally, states should create easier and more accessible filing options.[264] Finally, a national registry would be a beneficial way to improve the effectiveness of the existing putative father registries.[265]

1. Promoting, Publicizing, and Educating the Public on State Putative Father Registries

There is a strong public policy reason for why courts have upheld the termination of putative fathers' rights by their lack of filing.[266] States have a strong interest in placing children in permanent and stable homes through prompt adoption proceedings.[267] There is a powerful public interest in upholding the finality of adoption decrees, because if adoption decrees need to be re-litigated, individuals may be less inclined to become adoptive parents for fear of losing their child.[268] However, if the rules regarding putative father registries and their requirements were more publicized, children and families would have more stability, and

259. *See* 750 ILL. COMP. STAT. 50/12.1(a) (2013) (requiring the putative father to provide the mother's social security number and date of birth on the registration form); Maillard, *supra* note 35.

260. *See also* Maillard, *supra* note 35 (pointing out the difficulty in obtaining the information some forms require).

261. *See* discussion *supra* Part II.B.1.

262. *See* Aizpuru, *supra* note 156, at 727; *see also* Thompson, *supra* note 58, at 1504-05 (discussing the results of an informal survey conducted at the Emory University School of Law, which found that only three men out of the fifty-two polled knew of the existence of the putative father registry, and those three had only heard of the registry through their legal education).

263. *See* discussion *infra* Part IV.B.1.

264. *See* discussion *infra* Part IV.B.2.

265. *See* discussion *infra* Part IV.B.3.

266. *See* Standlee, *supra* note 22, at 1449.

267. *In re* Adoption of A.A.T., 196 P.3d 1180, 1185 (Kan. 2008).

268. Dapolito, *supra* note 17, at 1020 & n.254.

there would be less litigation over failure to file with or lack of knowledge of the registry.[269]

Congress should enact statutes mandating that any state that has a putative father registry must actively and aggressively promote, publicize, and educate the public on its respective registries and its requirements.[270] This can be accomplished through state media campaigns, public service announcements, or other forms of communication.[271] Additionally, more material should be made available to the public at many different locations, such as state offices, hospitals, schools, and other high-traffic public locations.[272] These materials should include information regarding what the registry is, what filing with the registry does and does not provide a registrant, and how to file with the registry.[273] It is also important to keep the contact information in the materials up to date.[274] Additionally, state legislatures should enact statutes that would require public schools to add information about putative father registries to their curriculum.[275] The in-school component would need to address what the registries are, what the requirements are, who should register, how to register, and when to register, with a large focus on promoting registration generally.[276]

269. *See* Gonzalez, *supra* note 27, at 51 (commenting that some individuals think better publicity would alleviate some of the problems associated with the putative father registries).

270. *See* Aizpuru, *supra* note 156, at 727.

271. *See* Protecting Rights of Unknowing Dads and Fostering Access to Help Encourage Responsibility (Proud Father) Act of 2006, S. 3803, 109th Cong. (proposing that in order to receive a grant, states would have to regularly and frequently publicize, through advertising campaigns, educational literature, and public service announcements the availability of putative father establishment services to inform both potential fathers and unwed mothers of its existence, and that putative fathers should register with the state putative father registry).

272. *See* Thompson, *supra* note 58, at 1494.

273. *See* Aizpuru, *supra* note 156, at 727 (citing lack of accessibility and awareness of use as problems associated with lack of registration).

274. *Id.*

275. *See* Gonzalez, *supra* note 27, at 51 (discussing that problems exist for "legally unsavvy" men who are not aware of these processes); *see, e.g.*, Thompson, *supra* note 58, at 1507-08 (proposing publicizing the Georgia registry by means of dissemination of information by high school guidance counselors and sex education programs, in hopes to increase the likelihood that putative fathers have the requisite knowledge to protect their rights to their offspring).

276. *See* CotM, *supra* note 199 (noting that some statutes mandate an in-school component, but lack of funding is an issue prohibiting implementation); *see also* Maillard, *supra* note 35 (citing lack of awareness as a factor for why people are not registering).

2. Simplification of the Registration Process

The putative father registration process can be a difficult and confusing one, leaving many interested individuals "lost in red tape."[277] States need to create easier and more accessible filing options in order to remedy this problem.[278] Filing options should be expanded, so that there is an accessible way to file for all interested individuals. Whether it be by mailing the forms, hand-delivering them, submitting them over the Internet, or some other easy method, all options should be available to fathers interested in utilizing the registries.[279] This would provide a fair chance for all interested putative fathers to secure their right to notice, as creating more available options for filing is non-discriminative and is much less confusing to the average filer.[280] Also, many states have extremely restrictive filing deadlines.[281] These short windows of time were made with good intentions—the quicker the deadline, the more expeditious the adoption proceeding can be, and the sooner the child can be in a stable home.[282] However, some of the existing deadlines seem extremely burdensome to abide by, particularly for those fathers who are unaware of their children's existence and only learn of it towards the end of the pregnancy, or even after the baby has been born.[283] States have a public policy interest in providing stable homes for these children as expeditiously as possible, but there should also be an interest and a focus on allowing men the chance to avail themselves of the putative father registry, so that these putative fathers can secure their rights.[284] To satisfy both these purposes, the states with the short filing windows should increase their filing deadlines until at least any time before the adoption of the child.[285]

277. *See* Maillard, *supra* note 35.

278. *Id.*

279. *See* Aizpuru, *supra* note 156, at 727-28 (commenting that registration forms should be made more widely available and suggesting that states should consider making registration possible by telephone).

280. *Id.* (noting that in order to be fair, registries must become "part of popular consciousness" and that in order to do so the process of registering must be made much simpler).

281. The deadline to register with the Montana putative father registry is only seventy-two hours after the child's birth. MONT. CODE ANN. § 42-2-206 (2015). In Nebraska, a putative father must file with the registry no later than five business days after the birth of the child. NEB. REV. STAT. § 43-104.02 (2014).

282. *See* Standlee, *supra* note 22, at 1449 (explaining the strong interest in finding illegitimate children stable, adoptive homes as expeditiously as possible).

283. *See* Serviss, *supra* note 82, at 783.

284. *See* Gonzalez, *supra* note 27, at 64-65.

285. *See* Maillard, *supra* note 35.

3. Enacting a Mandate for a National Putative Father Registry Database

Currently, all putative father registries are entities of the states.[286] There is no federal registry database.[287] This lack of national unity creates many problems for the men who register.[288] If a man successfully fills out the putative father registration form in the state in which the biological mother lives, it may not be enough to guarantee him his right to notice.[289] If that biological mother gives birth in a different state and adoption proceedings take place in that same state, and the putative father did not register there, he will not receive notice of that adoption proceeding.[290] This fallacy is contrary to the purpose of the registries.[291] However, that scenario is not uncommon, as some critics of the state-only putative father registry scheme note that adoption agencies and mothers often take advantage of this system by going to other states to give birth and commence the adoption proceedings.[292]

In 2006, a National Putative Father Registry was proposed in the federal legislature.[293] It would be beneficial for Congress to adopt this Bill, or one like it.[294] If adopted, the possibility of mothers fleeing the state would be a non-issue.[295] Adopting that Bill would afford many more rights to unwed fathers.[296]

V. CONCLUSION

Putative father registries have provided clear constitutional protection to unwed fathers who previously had very little means of protecting rights in regards to their children.[297] The registries have also been incredibly beneficial in advancing the states' goal of securing safe

286. *See* discussion *supra* Part II.B.

287. *See* Beck, *supra* note 7, at 1071-73 (explaining why the federal government should create a national putative father registry).

288. *Id.*

289. *See* Greenberg et al., *supra* note 127, at 99-100.

290. *Id.*

291. *See* discussion *supra* Part II.B.1.

292. *See* Beck, *supra* note 97, at 1037-38.

293. Protecting Rights of Unknowing Dads and Fostering Access to Help Encourage Responsibility (Proud Father) Act of 2006, S. 3803, 109th Cong.

294. *See* Greenberg et al., *supra* note 127, at 92, 106-09.

295. *See* Beck, *supra* note 97, at 1038-39.

296. *See* Greenberg et al., *supra* note 127, at 95-96, 106-09.

297. *See* Dwelle, *supra* note 15, at 210-11.

and effective homes for children through prompt adoption proceedings.[298] However, these registries are far from perfect.[299] There are many issues with the statutes as currently enacted.[300] The statutes require putative fathers to fulfill many additional requirements that are not only contrary to public policy, but are also likely unconstitutional.[301]

Problems arise when states view the putative father registries as more than a mechanism for guaranteeing notice.[302] The putative father registries should serve solely as a means for men to register to receive notice of any adoption or termination of parental rights proceedings.[303] Issues arise due to the lack of distinction between the right to have notice of the proceedings and the right to intervene in them.[304] Since the purpose of the registry is to provide notice, the extra requirements of commencing a paternity proceeding, swearing to support the child and the mother during pregnancy and child birth, and needing to submit a plethora of potentially unknown information regarding the birth mother and the putative child are unnecessary and extremely burdensome.[305] State and federal legislatures should work to change the statutes to reflect this distinction and to remove the onerous requirements for filing with the putative father registries.[306]

Additionally, these registries are completely under-utilized, in large part due to a lack of awareness, publicity, and knowledge regarding the existence of these state putative father registries.[307] Enacting state legislation that would require states to publicize the registries and educate the public on how to best utilize them would be extremely beneficial, as more unwed fathers will be able to protect their rights, and more individuals could feel secure in the adoption process.[308] By enacting these proposed changes, unwed fathers will have more

298. *See In re* J.D.C., 751 N.E.2d 747, 752 (Ind. Ct. App. 2001).
299. *See* discussion *supra* Part III.
300. *See* discussion *supra* Part III.
301. *See* discussion *supra* Part III.
302. *See* discussion *supra* Part III.
303. *See supra* notes 169-71 and accompanying text.
304. *See supra* notes 169-71 and accompanying text.
305. *See* discussion *supra* Part III.A.
306. *See* discussion *supra* Part IV.
307. *See* discussion *supra* Part III.B.
308. *See* discussion *supra* Part IV.B.

rights and the fathers, mothers, children, adoptive parents, and states would benefit.[309] It is time to stop treating these registries as secrets. The legislatures must act in order to better the lives of many American families.[310]

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309. *See* discussion *supra* Part IV.

310. *See* discussion *supra* Part IV.

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