

# **A NATIONAL RESPONSIBLE FATHER REGISTRY: PROVIDING CONSTITUTIONAL PROTECTIONS FOR CHILDREN, MOTHERS AND FATHERS**

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## **I. INTRODUCTION**

The United States Supreme Court initially acknowledged the right to raise children in 1923 when it held that the liberty interest referred to in the Fourteenth Amendment was “not merely freedom from bodily restraint but also the right of the individual to ...establish a home and bring up children ....”<sup>1</sup> Despite this well recognized right, many parents chose to place their children for adoption for a myriad of reasons.<sup>2</sup> Over the years, adoption in the United States has become

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1. Meyer v. Nebraska, 262 U.S. 390, 399 (1923); *see also* Troxel v. Granville, 530 U.S. 57, 65 (2000) (where the Court wrote that “the liberty interest...of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by this Court.”).

2. UNIF. ADOPTION ACT § 1, 9 U.L.A. 12 (1999) (“Adoption offers significant legal, economic, social and psychological benefits not only for children who might otherwise be homeless but also for parents who are unable to care for their children, for adults who want to nurture and support children, and for state governments ultimately responsible for the well” -being of children.”).

more recognized, legally structured and more common. In fact, today every November is National Adoption Awareness Month.<sup>3</sup> In many states, the Probate and Family Courts set a specific day as National Adoption Day and judges make a concerted effort to clear their dockets to finalize the adoption of children who have been in state foster care.<sup>4</sup>

There is a voice in the adoption process that is often unheard. Often to the detriment of children, that voice belongs to the unknown or unnamed father. Many possible fathers are never given the opportunity to decide whether to parent their child or participate in the adoption planning. Why is this so? Quite simply, many states have no adequate process of notifying the father, or expectant father, other than the mother's identification. For instance, the Massachusetts statute states that for a possible father to preserve his rights, he must take action *prior* to the termination of the mother's rights.<sup>5</sup> The statute presupposes that the mother has identified the father and that he is aware of the mother's pregnancy and adoption plan. If the father is not notified by the mother of her pregnancy and plan to adopt, the father's rights to the child can be terminated before he ever knows they exist.<sup>6</sup> Consequently, the father is in the precarious position of relying upon the mother to have his voice heard.

A solution to this problem is a National Responsible Father Registry (hereinafter "NRFR"). This is a confidential database where a possible father of a child to be born, or of a child who has been born out of wedlock, may file notice of intent to claim paternity within a prescribed time.<sup>7</sup> A NRFR would protect the right of a possible father to receive notice of any proceedings involving paternity, termination of rights, or a pending or planned adoption of a child he may have fathered.<sup>8</sup> The registry would also give him notice of the child entering

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3. *National Adoption Month 2013*, CHILD. BUREAU, U.S. DEP'T OF HEALTH & HUMAN SERV., <https://www.childwelfare.gov/adoption/nam/> (last visited Mar. 23, 2014).

4. *Massachusetts to Celebrate National Adoption Day, November 16*, S. END NEWS (Nov. 7, 2012), *available at* <http://www.mysouthend.com/index.php?ch=news&sc=&sc2=news&sc3=&id=138792>; *see also* NAT'L ADOPTION DAY (Nov. 23, 2013), <http://www.nationaladoptionday.org/>.

5. MASS. GEN. LAWS ch. 210, § 4A. (2014).

6. *Id.*

7. Protecting Adoption and Promoting Responsible Fatherhood Act of 2013, H.R. 2439, 113th Cong. § 445C(a)(2)(b)(1)(introduced June 19, 2013).

8. *Id.* at § 2(a)(5) & § 445B(a)(2).

into state custody.<sup>9</sup> With the notice that a child has been born, the father may also come forward and assert his parental rights and the opportunity to parent his child.

A NRFR also relieves the mother of having to identify the father, should she not want to, for whatever reason.<sup>10</sup> For example, she would not have to disclose to anyone that she did not know the father, or that she is afraid that disclosing the father's identity will jeopardize her safety or that of the child.<sup>11</sup> With an active and well thought-out NRFR, the mother will not circumvent the child's or father's parental rights, whether intentionally or unintentionally.<sup>12</sup>

Having the father involved from the outset has many advantages for the child, including the possibility of an early adoption into a stable family environment. Gone will be the fear of adoptive parents that a father may show up later and disrupt the adoption.<sup>13</sup> The placement will be a permanent one. Additionally, in situations where the father chooses to participate in the adoption process, more reliable medical history and other notable information will be available.

A NRFR does not compel a possible father to identify himself.<sup>14</sup> It simply levels the playing field so a possible 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.<sup>15</sup> All of the participants who can and want to contribute to placing children in safe and loving homes deserve a voice in the process.

There are responsible father registries in at least 33 states.<sup>16</sup> This

9. *Id.*

10. Mary Beck, *Toward a National Putative Father Registry Database*, 25 HARV. J. L. & PUB. POL'Y, 1031, 1072 (2002).

11. *Id.*

12. Mary Beck, *A National Putative Father Registry*, 36 CAP. U.L. REV. 295, 309-10 (2007).

13. *Adoption Disruption and Dissolution*, CHILD WELFARE INFORMATION GATEWAY 1.1 (2012), [https://www.childwelfare.gov/pubs/s\\_disrup.pdf](https://www.childwelfare.gov/pubs/s_disrup.pdf) (the Child Welfare Information Gateway defines adoption disruption as "an adoption process that ends after the child is placed in an adoptive home and before the adoption is legally finalized, resulting in the child's return to (or entry into) foster care or placement with new adoptive parents.").

14. Protecting Adoption and Promoting Responsible Fatherhood Act § 445(a)(3)(A) & (4)(A)(B) & (5).

15. *Id.* at § 445(a)(2)(B)(i).

16. Beck, *supra* note 12, at 299; Beck, *supra* note 10, at 1036-37.

article addresses the importance of establishing a NRFR which, by its very nature, will allow possible fathers to exercise their parental rights if a pregnancy and eventual birth results from sexual relations with a woman while balancing the constitutional rights of all those involved in the pregnancy. Part II of this Article will discuss the trends in adoption in the United States as well as the rise in state-run father registries. Part III will discuss the constitutional concerns presented in the absence of a NRFR, the constitutional challenges that the state-run father registries have confronted and the efforts that have been made to date to establish a NRFR. Part IV will conclude by discussing the need for a NRFR and the constitutional balance a NRFR provides among all those involved in the adoption proceeding.

## II. BACKGROUND

### A. *Trends in Adoption in the United States: New Concerns Regarding the Putative Father's Constitutional Rights.*

At common law, adoption was not formally recognized, and there were no procedures in place to govern the adoption process.<sup>17</sup> As a result, most procedures governing the process of adoption were created by the enactment of state statutes, with the first statute enacted by Massachusetts in 1851.<sup>18</sup> Even at this early stage of adoption law the Massachusetts statute made the “welfare of the child its primary concern,” and this notion has become a reoccurring feature “in all adoption regulations in the United States.”<sup>19</sup>

Today, because of the prevalence of adoptions, states across the country have well-developed and fine-tuned adoption statutes and proceedings. Although the statutes and proceedings may vary from state to state, one of the first legal steps that must be taken in order to effectuate an adoption in all states is the termination of the previous parents’ parental rights.<sup>20</sup> In some cases this termination is done

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17. Steve Mulligan, *Inconsistency in Illinois Adoption Law: Adoption Agencies’ Uncertain Duty to Disclose, Investigate, and Inquire*, 39 LOY. U. CHI. L.J. 799, 802 (2008).

18. *Id.* at 802-03.

19. *Id.* at 803.

20. Up until the 1970s, where the child was born to unwed parents, the putative father had no rights or interests in the adoption process. In 1972 and since, Courts have recognized several rights of unwed fathers, yet have struggled with how to balance

voluntarily by the previous parents; however, the previous parents always have the right to contest the adoption and have a right to a hearing on their fitness as parents before their rights can be terminated.<sup>21</sup> Accordingly, in some cases the adoption is contested and the court must determine whether the previous parental rights should be terminated. While this sounds straightforward and fairly simple to implement—the previous parents either consent to terminating their rights or they contest it and the court decides<sup>22</sup>—the process is complicated when the father of the child is unknown or the identity is withheld by the mother.<sup>23</sup> Because termination of the previous parents' rights is a required condition precedent of effectuating an adoption, an unknown father creates sticky situations<sup>24</sup> with which legislatures and courts have struggled to deal with.<sup>25</sup>

These “sticky situations” have become more prevalent and more pressing in light of two intersecting facts—single women deliver nearly 36% of the nations' children every year and single mothers are

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those rights and interests with the rights and interests of the other parties involved. *See, e.g.* Stanley v. Illinois, 405 U.S. 645 (1971) (lack of parental fitness violation of putative father's due process rights.); Quilloin v. Walcott, 434 U.S. 246, 256 (1978) (Constitution does not protect an unwed father who “has never exercised actual or legal custody over his child”); Caban v. Mohammed, 441 U.S. 380, 393 (1979) (unwed father established substantial relationship with child and admitted paternity, state may not treat the father differently than the mother); Lehr v. Robertson, 463 U.S. 248, 250 (1983) (putative father has no absolute right to notice and an opportunity to be heard before child adopted).

21. Elizabeth Buchanan, *The Constitutional Rights of Unwed Father Before and After Lehr v. Robertson*, 45 OHIO ST L. J. 313, 314-16 (1984); Santosky v. Kramer, 455 U.S. 745, 759 (1982) (“parental rights termination proceeding is end to a liberty interest”).

22. Anthony Abear, *Contested Adoption: Arguments, Factors and Preferences*, 16 J. DUPAGE COUNTY B. ASS'N (2003-04).

23. Alexandra R. Dapolito, *The Failure to Notify Putative Fathers of Adoption Proceedings: Balancing the Adoption Equation*, 42 CATH. U. L. REV. 979, 982 (1993) (in some cases, the father is unknown because the “mothers may provide inaccurate or incomplete information to the agency in an effort to avoid the putative father's participation.”); *Id.* at n.12.

24. Laura Oren, *Thwarted Fathers or Pop-up Pops?: How to Determine When Putative Fathers Can Block the Adoption of their Newborn Children*, 40 FAM. L.Q. 153, 153 (Summer, 2006) (“Even after significant constitutional developments in the latter part of the twentieth century, unmarried fatherhood has remained problematic in legal doctrine.”).

25. Dapolito, *supra* note 23, at 979-80 (“Putative fathers pose a great challenge to those responsible for ensuring the proper balance among all parties to an adoption.”).

the most likely to make adoption plans for their children.<sup>26</sup> Thus, it is becoming more common for single women to place children for adoption without any involvement or knowledge on the part of the child's putative father.<sup>27</sup>

The Supreme Court dealt with this issue head on in the 1980's when several putative fathers asserted their rights to raise their children well after the child had been adopted and living in a stable home, resulting in the child being uprooted from their adoptive home and being placed with a father with whom they had no prior relationship.<sup>28</sup> In *In re Interest of B.G.C.*, an unwed mother placed her child for adoption without allowing notice of the adoption proceeding to be given to the biological father.<sup>29</sup> When the father learned of the adoption, he petitioned the court to assert his rights to raise his daughter.<sup>30</sup> The court granted the father's petition and the two-year-old girl was placed with her father.<sup>31</sup> While this may, on its face, appear to be a "happily ever after story," the real effect of the father asserting his rights to raise his child resulted in a two-year-old girl being taken from the only family she ever knew and placed in the home of a stranger.<sup>32</sup> Such a disruption in the home has significant emotional repercussions for the child.<sup>33</sup> This case, as well as other similar cases that followed,<sup>34</sup>

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26. Beck, *supra* note 12, at 296; Victor E. Flango & Mary M. Caskey, *Adoptions, 2000-2001*, 8 ADOPTION Q., 23, 33 (2005) (showing that Americans adopt between 118,000 and 127,000 children per year).

27. Beck, *supra* note 12, at 300 (a putative father is "a man who has had sexual relations with a woman to whom he is not married and is therefore [on notice] that such woman may be pregnant as a result of such relations." A presumed father is a man who is married to the child's mother. An adjudicated father is a man who has been determined by the courts to be the father of the child. An acknowledged father is a man who has executed an affidavit of paternity and filed it with the appropriate state agency).

28. See *In re Interest of B.G.C.*, 496 N.W.2d 239, 240-41 (1992).

29. *In re Interest of B.G.C.*, 496 N.W.2d at 240-41.

30. *Id.* at 241.

31. *Id.*

32. *In re Baby Girl Eason*, 358 S.E. 2d 459, 460, 462-63 (1987) ("There are competing interests of overwhelming value at stake in the outcome of [a child's placement]. A biological father may have ties to the child which demand careful analysis in giving them legal effect. The adopting parents who have developed strong emotional connections through their custody of the child, beginning very soon after birth, have interests they likely value beyond measure. The child's future well-being is at risk.").

33. Karen R. Thompson, *The Putative Father's Right to Notice of Adoption*

caught the attention of the public,<sup>35</sup> signaling a problem that needed to be addressed. States began to determine how best to deal with these problems and, ultimately, came up with a solution by creating putative father registries.<sup>36</sup>

### B. Putative Father Registries

A putative father registry is a confidential database in which a putative father can register his information to ensure that he is notified of any legal proceedings that might affect his legal rights to a child that he believes to be his. "Any man not a legal father under the statutory scheme who desires to assert his paternity and parental rights must take the initiative to provide the registry with all necessary information."<sup>37</sup> The registry protects the putative father's right to be notified of any proceeding that might terminate his parental rights, which affords him the opportunity to assert his paternity while protecting the privacy of mothers by not forcing them to identify possible fathers.<sup>38</sup> Father

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*Proceedings: Has Georgia Finally Solved the Adoption Equation?* 47 EMORY L.J. 1475, 1501 (1998) ("An adoption occurring as soon as possible after the child's birth increases the chance that the child will develop a 'psychological relationship' with her adoptive parents. The chance that such a relationship will develop decreases if the adoption occurs later in the child's life or is an adoptive placement is disrupted or terminated.").

34. See, e.g. *In re Doe*, 638 N.E.2d 181 (1994) ("Baby Richard" case) (tragic results were produced for all parties involved, "the adoptive parents lost custody of Richard, a child who they raised as their own; the biological father must now attempt to build a parent-child relationship with a child he has never met; and Richard must adapt to living away from the only home he has ever known."); Susan Swingle, *Rights of Unwed Fathers and the Best Interests of the Child: Can These Competing Interests Be Harmonized? Illinois' Putative Father Registry Provides An Answer*, 26 LOY. U. CHI. L.J. 703, 747 (1995).

35. See Joan Biskupic, *High Court Refuses to Intervene in Custody Case*, WASH. POST, Jul. 31, 1993, at A3; *Illinois Father Granted Custody of Baby Richard*, WASH. POST., Jan. 26, 1995, at A4 ("For the second time, the Illinois Supreme Court has given custody of Baby Richard to his biological father, taking the child from his adoptive parents..."); Dirk Johnson, *Father Who Won Custody Case over Adopted Boy Moves Out*, N.Y. TIMES, Jan 22, 1997, at A10.

36. Dapolito, *supra* note 23, at n.71 ("Almost every state's adoption law provides for some type of participation by the putative father in the adoption scheme. Some states have a putative father registry... Other states merely require the consent of the putative father if he can be located or if he has made the court aware of his interest.").

37. Dapolito, *supra* note 23, at 1021.

38. Michelle Kaminsky, Comment, *Excessive Rights for Putative Fathers: Heart of Adoptions Jeopardizes Rights of Mother and Child*, 57 CATH. U. L. REV. 917, 919-20

registries have been established in more than 30 states to provide the supposed father with “a way to protect [his] interests in preserving a parent-child relationship when a child is or may be placed for adoption; and to promote stability in adoptive placements by ensuring that a child’s adoptive placement is not disrupted by a putative father initiating late or untimely legal proceedings.”<sup>39</sup>

While these putative father registries have been successful in resolving several of the issues pointed out above, constitutional concerns continue to arise relating to the state putative father registries. These constitutional concerns, which center upon the right to privacy, the equal protection clause, the due process clause and the right to travel, could be alleviated through the creation of a NRFR. As such, the creation of a NRFR balances the competing constitutional rights of all those involved in the adoption process—the mother, the father, the adoptive parents, the child and the state—while keeping the main focus on the best interests of the child.

### III. ANALYSIS

#### A. *Constitutional Concerns in the Absence of a National Responsible Father’s Registry.*

##### 1. *Violation of Right to Privacy*

Although the Constitution does not explicitly mention any right of privacy, the Court in deciding *Roe v. Wade*,<sup>40</sup> and as recently as *NASA v. Nelson*,<sup>41</sup> recognized a right of personal privacy, or a guarantee of certain areas or zones of privacy. The Court, or individual Justices, have found the basis of the right to privacy in the First Amendment, *Stanley v. Georgia*,<sup>42</sup> in the Fourth and Fifth Amendments, *Terry v. Ohio*,<sup>43</sup> *Katz v. United States*,<sup>44</sup> *Boyd v. United*

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(2008).

39. *Minnesota Fathers’ Adoption Registry Frequently Asked Questions*, MINN. DEP’T OF HEALTH, <http://www.health.state.mn.us/divs/chs/registry/faq.htm> (last visited Mar. 24, 2014).

40. *See, e.g.*, *Roe v. Wade*, 410 U.S. 113 (1973) (citing *Union Pacific R. Co. v. Botsford*, 141 U. S. 250, 251 (1891) and other cases).

41. *See, e.g.*, *NASA v. Nelson*, 131 S. Ct. 746 (2011).

42. *See, e.g.*, *Stanley v. Georgia*, 394 U. S. 557, 564 (1969).

43. *See, e.g.*, *Terry v. Ohio*, 392 U.S. 1, 8-9 (1968).

44. *See, e.g.*, *Katz v. United States*, 389 U. S. 347, 350 (1967).



*States*,<sup>45</sup> *Olmstead v. United States*,<sup>46</sup> in the penumbras of the Bill of Rights, *Griswold v. Connecticut*,<sup>47</sup> in the Ninth Amendment, *Griswold v. Connecticut*,<sup>48</sup> or in the concept of liberty guaranteed by the first section of the Fourteenth Amendment, *Meyer v. Nebraska*.<sup>49</sup>

The guarantee of personal privacy is afforded to protect personal rights when such rights are considered “fundamental” or “implicit in the concept of ordered liberty.”<sup>50</sup> The cited cases also make clear that the right to privacy has some application to activities relating to marriage, *Loving v. Virginia*,<sup>51</sup> procreation, *Skinner v. Oklahoma*,<sup>52</sup> and contraception, *Eisenstadt v. Baird*.<sup>53</sup>

Currently, in those states which do not have some form of a parental registry, if the presumed father is not actively participating in the pregnancy or proposed parenting plan for adoption of the child, notice may be by publication.<sup>54</sup> Publication results in the presumed father’s name being published in a newspaper, attached to a notice of the birth of a child. This is notice of a very private and personal event for which the named supposed father may or may not be responsible. Whether or not he fathered the child, is publication of his name a possible legal violation of his personal privacy?

An expectant mother is afforded the same privacy protections. Clearly, a woman should not be forced to reveal such intimate information even when a pregnancy is not the product of rape, or the father has a history of violence. It is a woman’s right to privacy that must allow her to not reveal the supposed father’s identity, especially to the public at large. Nonetheless, such safeguards violate the supposed father’s constitutionally protected rights and can be contrary to equitable principles and fair-mindedness. A NRFR protects both the mother’s and putative father’s privacy rights by creating a confidential database where this personal and private information can be stored.

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45. See, e.g., *Boyd v. United States*, 116 U. S. 616, 622 (1886).

46. See, e.g., *Olmstead v. United States*, 277 U. S. 438, 478-79 (1928) (Brandeis, J., dissenting).

47. See, e.g., *Griswold v. Connecticut*, 381 U.S. 479, 484 (1965).

48. *Id.* at 486-87 (Goldberg, J., concurring).

49. See, e.g., *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).

50. *Palko v. Connecticut*, 302 U.S. 319, 324-25 (1937).

51. See, e.g., *Loving v. Virginia*, 388 U.S. 1, 12 (1967).

52. See, e.g., *Skinner v. Oklahoma*, 316 U.S. 535, 541-42 (1942).

53. See, e.g., *Eisenstadt v. Baird*, 405 U.S. 438, 448-54 (1972).

54. See, e.g., MASS. GEN. LAWS ch. 210, §4. (West 2014).

## 2. *Violation of the Equal Protection Clause.*

The Fourteenth Amendment to the United States Constitution provides: “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”<sup>55</sup> Several cases in which children are born out of wedlock link the Equal Protection Clause of the Fourteenth Amendment to certain acts related to parental rights. For example, in the seminal case of *Stanley v. Illinois*, the Court held that the plaintiff, a father of a child born out of wedlock, was denied equal protection when he was deprived of a hearing on his fitness before his child was removed from his custody.<sup>56</sup> The Court stated that all parents were constitutionally entitled to a hearing on their fitness before their children were removed from their custody.<sup>57</sup> Thus, plaintiff, as an unwed father, was also entitled to a hearing.<sup>58</sup>

In *Caban v. Mohammed*, the Court applied the Equal Protection Clause, ruling the applicable New York statute was unconstitutional because of its inherent sex-based distinction.<sup>59</sup> The statute provided that an unwed mother in certain circumstances may withhold her consent to the adoption, which for all intents and purposes grants her the authority to block the adoption.<sup>60</sup> The statute, Section 111 of the N.Y. Dom. Rel. Law (McKinney 1977) does not provide the father the same right.<sup>61</sup> The only available remedy for the father is to prove that the best interests of the child would not permit the child’s adoption by the petitioning couple.<sup>62</sup>

In *M.L.B. v. S.L.J.*, the Court applied the Equal Protection Clause in reversing the mother’s appeal of a trial court decision permanently terminating her parental rights.<sup>63</sup> The trial court’s decision was based on her failure to pay record transcription costs as a result of her

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55. U.S. CONST. amend. XIV, § 1.

56. *Stanley v. Illinois*, 405 U.S. 645, 649 (1972).

57. *Id.* at 658.

58. *Id.*

59. *Caban v. Mohammed*, 441 U.S. 380, 394 (1979).

60. *Id.* at 386.

61. *Id.* at 386-87.

62. *Id.* at 387.

63. *M.L.B. v. S.L.J.*, 519 U.S. 102, 119-124 (1996).

poverty<sup>64</sup>. The Court reasoned that an indigent's right to a transcript at the state's expense for purposes of appeal — an absolute right in criminal cases, hardly ever applied in civil cases — should exist particularly when the case involved termination of parental rights.<sup>65</sup>

In states where there is no registry, a father who has not maintained a relationship with the mother is dependent upon the mother to identify him so that he can be given proper notice of any proceeding that may affect or terminate his rights as the father. Unfortunately, it is not uncommon for the mother, for various reasons, to foreclose the father from any information with regard to the pregnancy. There are many cases where a fathers' opportunity to participate in parental decisions has been frustrated or obstructed as a result of the mother's actions, including refusing to name the supposed father, lying about his identity, or claiming not to know whom the father was.<sup>66</sup> There is also ample opportunity for misrepresentation to the father — the mother miscarried, aborted the pregnancy, or the child failed to survive the birth. By simply moving to another state, the mother can also thwart the father's chance to be an active participant.

The ability of the mother to unilaterally take such measures is a violation of the Equal Protection Clause. Once the child is born, the mother has all of the knowledge and controls the decision-making with regard to the child. The father has none. In too many such cases, at the onset, the father is denied his right to notice about the pregnancy and birth of the child. Only the mother is secure in that knowledge. With the rapid decline of marriage as an institution, an unmarried father is given fewer protections regarding the termination of his parental rights.<sup>67</sup> By contrast, a mother can create protections for herself and her child, whether such protections are warranted or not. Having a NRFR will alleviate these concerns of equal protection violations because it will allow for the putative father to take action separate and apart from the mother in order to protect his rights. No longer is the putative father at the mercy of the mother with respect to notification of his rights.

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64. *Id.*

65. *Id.* at 104

66. *In re Adoption of S.M.F.*, No. M2004-00876-COA-R9-PT, 2004 WL 2804892, at \*9 (Tenn. Ct. App. 2004); *In re Adoption of Baby Boy Doe*, 717 P.2d 686, 691 (Utah 1986); Beck, *supra* note 12, at 321-22, 335.

67. *The Decline of Marriage and Rise of New Families*, PEW RESEARCH CTR., (Nov. 18, 2010), <http://pewsocialtrends.org/files/2010/11/pew-social-trends-2010-families.pdf>.

Now, the putative father can take it upon himself to ensure that his constitutional rights are not violated.

### 3. *Violation of the Due Process Clause*

The Equal Protection Clause provides, in pertinent part “...nor shall any State deprive any person of life, liberty, or property, without due process of law ...”<sup>68</sup> Simply put, the Due Process Clause mandates a regular course of proceedings in which notice is given of the asserted claim and an opportunity afforded to defend against it. The Due Process clause does not necessitate that the proceedings in a state court should be by a particular mode, but only that there shall be a regular course of proceedings in which notice is given of the claim asserted and an opportunity afforded to defend against it.<sup>69</sup>

Compliance with the Fourteenth Amendment’s Due Process Clause is of key concern in cases challenging parental rights. Sufficiency of notice to the parent is often the first inquiry as to whether parental rights were properly terminated when the judgment is challenged. However, states that lack a viable responsible father registry (and the lack of a NRFR) point to serious flaws in their notice requirements.

The United States Supreme Court has deemed notice constitutionally sufficient if it was reasonably calculated to reach the intended recipient when sent.<sup>70</sup> In the absence of a father registry, if actual notice cannot be accomplished, constructive notice by certified mail served on an agent or family member and/or publication is required. Certified mail may be an option that gives proper notice to the supposed father, but this method depends upon an accurate or current address. Notice by publication relies upon the probability that the notice is seen in the newspaper and the assumption that the person who signs off on the receipt of notification either is the correct person or, if not, is someone who will give the notification to the correct person. Both service methods are more fictional than reliable and do not ensure proper notice will actually reach the intended recipient.

In *Mullane*, the Court emphasized that “when notice is a person’s

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68. US CONST. amend. XIV, § 1.

69. *Simon v. Craft*, 182 U.S. 427, 437 (1901).

70. *E.g.*, *Dusenbery v. United States*, 534 U.S. 161, 168 (2002); *Mullane v. Central Hanover Bank & Trust*, 339 U.S. 306, 314 (1950).

due . . . [t]he means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it,” and that assessing the adequacy of a particular form of notice requires balancing the “interest of the State” against “the individual interest sought to be protected by the Fourteenth Amendment.”<sup>71</sup> In *Dusenbery* and *Mullane*, the Court noted that “[t]he reasonableness and hence the constitutional validity of [the] chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected.”<sup>72</sup>

The Court has also commented that notice by publication is adequate only “where it is not reasonably possible or practicable to give more adequate warning.”<sup>73</sup> The Court in *Jones v. Flowers*, found notice by publication that is dependent upon “[c]hance alone [to] bring[] a person’s attention to an advertisement in small type inserted in the back pages of a newspaper,” is inadequate.<sup>74</sup>

The Court’s rationale and holding in *Jones* is particularly useful in understanding why notice procedures in the termination of parental rights violate the Fourteenth Amendment’s Due Process Clause.<sup>75</sup> In *Jones*, the state sought to take the owner’s property for failure to pay taxes.<sup>76</sup> The lower court held that the state’s attempt to provide notice by certified mail, although returned unclaimed, satisfied due process in the circumstances presented.<sup>77</sup> The Court held that “when mailed notice of a tax sale is returned unclaimed, the [s]tate must take additional reasonable steps to attempt to provide notice to the property owner before selling his property, if it is practicable to do so[] [u]nder the circumstances presented [] [and] additional reasonable steps [are] available to the State.”<sup>78</sup> Thus, in *Jones*, “[f]ollowing up by publication was not constitutionally adequate under the circumstances presented [] because... it was possible and practicable to give Jones more adequate warning of the impending tax sale.”<sup>79</sup>

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71. *Mullane*, 339 U.S. at 314-15.

72. *Id.* at 315; *Dusenbery*, 534 U.S. at 162.

73. *Id.* at 317.

74. *Jones v. Flowers*, 547 U.S. 220, 237 (2006) (citing *Mullane*, 339 U.S. at 315 (1950)).

75. *Id.* at 237-38.

76. *Id.*

77. *Id.* at 224-25.

78. *Id.* at 225.

79. *Id.* at 237.

In parental rights cases where the notice is returned, even in states that have a father registry, there are no further reasonable steps to attempt to provide notice. Having a NRFR would eliminate the uncertainty of whether adequate notice had been served. Instead, responsibility rests with the supposed father to register to ensure notice of any proceeding regarding termination of parental rights.

#### 4. *Violation of the Right to Travel*

The right to travel throughout the United States is a recognized basic right under the Constitution.<sup>80</sup> As stated in *Kent v. Dulles*,

The right to travel is a part of the 'liberty' of which the citizen cannot be deprived without due process of law under the Fifth Amendment. . . Freedom of movement across frontiers in either direction, and inside frontiers as well, was a part of our heritage. Travel abroad, like travel within the country . . . may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of values.<sup>81</sup>

This right can be traced as far back as Magna Carta, Article 42 which reads:

In future it shall be lawful for any man to leave and return to our kingdom unharmed and without fear, by land or water, preserving his allegiance to us, except in time of war, for some short period, for the common benefit of the realm. People that have been imprisoned or outlawed in accordance with the law of the land, people from a country that is at war with us, and merchants - who shall be dealt with as stated above - are excepted from this provision.<sup>82</sup>

"It is... well-settled [law] that the right of a United States citizen to travel from one State to another and to take up residence in the State of his [or her] choice is protected by the Federal Constitution."<sup>83</sup> "The

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80. *United States v. Guest*, 383 U.S. 745, 758 (1966). *See also* *Passenger Cases*, 48 U.S. 283, 492 (1849); *Crandall v. Nevada*, 73 U.S. 35, 43-44 (1868); *Paul v. Virginia*, 75 U.S.168, 180 (1869); *Edwards v. California*, 314 U.S. 160, 178 (1941); *Kent v. Dulles*, 357 U.S. 116, 126 (1958); *Shapiro v. Thompson*, 394 U.S. 618, 629-31 (1969).

81. *See Dulles*, 357 U.S. at 125-26.

82. *The Text of Magna Carta*, FORDHAM UNIVERSITY \* (42), [HTTP://WWW.FORDHAM.EDU/HALSALL/SOURCE/MAGNACARTA.ASP](http://www.fordham.edu/halsall/source/magnacarta.asp) (last visited April 21, 2014).

83. *Jones v. Helms*, 452 U.S. 412, 418-19 (1981).

right to travel has been described as a privilege of national citizenship and as an aspect of liberty that is protected by the Due Process Clauses of the Fifth and Fourteenth Amendments.”<sup>84</sup> As the court held in *Saenz v. Roe*, the right to travel protects the right of citizens to move freely between states, to be treated equally in all states when visiting, and the right of a new citizen to be treated like long-term citizens.<sup>85</sup> Nevertheless, situations such as when a person has been convicted of a crime, or there is probable cause to justify an arrest and temporary detention, a State may prevent a citizen from leaving.<sup>86</sup>

It is not unusual for a woman who is pregnant to leave the state in which she resides to live in another state, even if just for the remaining term of her pregnancy. Reasons such as family support and access to superior medical resources often make out-of-state travel a logical and wise option. A desire to keep the pregnancy unknown to others may also be a motivating force. Whether she is driven by a threat from the supposed father, a desire to avoid friends, family, acquaintances, or merely wanting no involvement from the supposed father or family members, the mother has the fundamental right to leave her home state, so long as the motivation is not related to criminal activity.

The mother’s fundamental right to travel obstructs the rights of the supposed father to play any part in the pregnancy, birth, and ultimate decisions about the child. The supposed father’s exclusion rests solely with the mother’s prerogative, whether compelling or not. The mother’s ability to relocate to another state or to move from state to state, poses the largest hurdle for the state father registries. As is illustrated by the cases, if a putative father does not register with the father registry in the state where the adoption proceeding is to take place, he almost certainly loses his right to contest the adoption and file a paternity petition. This is the case even if he does register to preserve his rights in a different state where he believes the adoption is going to occur. The most sensible system to avoid this consequence and prevent the infringement of either the mother’s or supposed father’s fundamental rights is a mechanism which automatically prevents this outcome. A NRFR solves this dilemma. A national registry, unlike a state registry, has no state boundaries to impede a presumed father from registering and thus receive notice, no matter where the mother

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84. *Id.* at 419-20.

85. *See Saenz v. Roe*, 526 U.S. 489 (1999).

86. *Jones*, 452 U.S. at 420.

delivers.

*B. Constitutional Challenges to the Responsible Father Registry*

The constitutionality of the state-run putative father registries has been under attack since the establishment of such registries. One of the most notable challenges was addressed by the United State Supreme Court in *Lehr v. Robertson*.<sup>87</sup> The Court in *Lehr* held as constitutional and not a violation of due process the requirement that an out-of-wedlock father register as a putative father in order to receive notice of any proceeding to adopt his child.<sup>88</sup> The Court in *Lehr* supported a putative father registry under New York law as adequately designed to protect an “unmarried father’s interest in assuming a responsible role in the future of his child,” assuming that the father complied with the statute.<sup>89</sup>

*Lehr v. Robertson* addressed several aspects of a putative father registry and concluded that, assuming the father complied with the statute, the registry was adequately designed to protect an “unmarried father’s interest in assuming a responsible role in the future of his child...[noting] the right to receive notice of a proposed adoption was within the unmarried father’s control.”<sup>90</sup> The registry would require that the putative father mail a post card to the registry in order to ensure that the putative father receive notice of any adoption proceedings, and the court found that this requirement did not place an unduly burden on the unwed father.<sup>91</sup> The court further found that the possibility that the unwed father fails to place his name on the registry because he is unaware of the law that requires him to do so is not sufficient to criticize the law.<sup>92</sup> As such, “*Lehr* established that in order to be entitled to a heightened degree of constitutional protection, a natural father who has not asserted paternity must either file with a state’s registry or participate in the rearing of his child and demonstrate a substantial commitment to the responsibilities of parenthood.”<sup>93</sup>

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87. See generally *Lehr v. Robertson*, 463 U.S. 248 (1983).

88. *Napier v. Adoption Parents of Cameron*, 153 Ohio App.3d 687, 690 (2003).

89. *Lehr*, 463 U.S. at 265.

90. *Napier*, 153 Ohio App.3d at 693.

91. *Id.*

92. *Id.*

93. Lauren Standlee, *In re N.L.B. v. Lentz: The Missouri Supreme Court’s Unwarranted Extension of a Putative Father’s Constitutional Protections*, 72 Mo. L.



Where a father does not commit to these responsibilities, the Constitution will not require that his opinion be given weight when determining the best interests of the child.<sup>94</sup>

In *Sanchez v. L.D.S. Soc. Servs.*, the court addressed an issue that was raised in *Lehr*—whether a putative father’s ignorance of the putative father registry is a defense to his failure to register.<sup>95</sup> The *Sanchez* court held that:

[i]t is not too harsh to require that those responsible for bringing children into the world outside the established institution of marriage should be required either to comply with those statutes that accord them the opportunity to assert their parental rights or to yield to the method established by society to raise children in a manner best suited to promote their welfare.<sup>96</sup>

Thus, a putative father’s “lack of knowledge of the registry” is not a valid defense in the event he fails to register.<sup>97</sup>

Consistent with the court’s holding in *Sanchez*, courts have routinely upheld the need for strict compliance with each state’s laws regarding the father registry. In *In re Petition to Adopt O.J.M.*, the court held that even where a birth mother misrepresents the father’s identity, the father’s failure to comply with the requirements of the registry will not be excused.<sup>98</sup> In *Burns v. Crenshaw*, the court did not allow a father to set aside an adoption decree, even though the father never received notice of the adoption, because the father never registered on the father registry.<sup>99</sup> In *Beltran v. Allan*, the court granted summary judgment to terminate the father’s parental rights even though the father had filed a paternity action weeks before the child’s birth because the father’s failure to register on the putative father registry was fatal.<sup>100</sup> In *A.F.L. v. Department of Child and Family Services*, the court ruled that where a putative father fails to timely

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REV. 1437, 1442 (2007).

94. *Id.*

95. *Sanchez v. L.D.S. Soc. Servs.*, 680 P.2d 753, 754 (Utah 1984).

96. *Id.* at 756.

97. *Id.*; e.g., *In re Reeves*, 831 S.W.2d 607, 608 (1992) (holding that “the possibility the father may have failed to register because of his ignorance of the law was not a sufficient reason for criticizing the law itself”).

98. *Petition of K.J.R.*, 293 Ill.App.3d 49, 55 (1997).

99. *See Burns v. Crenshaw*, 733 P.2d 922 (Ore. App. 1987).

100. *See Beltran v. Allan*, 926 P.2d 892, 895 (Utah Ct. App 1996).

assert his parental rights by complying with the state's father registry, the father ceases to be a party to the adoption proceeding and his consent to the adoption is not required.<sup>101</sup> Thus, not only has the court held that state putative father registries are constitutional;<sup>102</sup> they have also made it clear that strict compliance with the laws regarding the putative father registry is mandatory.<sup>103</sup>

Strict compliance with the registry statutes has proven to be beneficial to putative fathers in some cases. In *Bowers v. Pearson*, the Georgia appellate court upheld a putative father's parental rights even though the putative father did not provide support to the child because he filed with the putative father registry and attempted to legitimize the child prior to the child's birth.<sup>104</sup> Similarly, in *In re Adoption of Baby F.*, the putative father's rights were protected where he filed with the putative father registry and provided some maternity clothes, diapers and money to the mother.<sup>105</sup>

However, strict compliance has not boded well for putative fathers who wish to assert their parental rights when the mother relocates to a different state without informing the putative father. While fathers can protect their rights by registering in the father registry, their rights will only be protected if they register in the correct

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101. See *A.F.L. v. Dep't of Child and Services*, 927 So. 2d 101, 103 (Fla.App 5 Dist. 2006) (generally, statutory deadlines to assert rights are strictly enforced, except in cases where actual fraud is shown); See, e.g., *In re Alexandra Rose Nesbitt*, 17 P.3d 1090 (Or. 2001) (attributing fraud of adoption agency to adoptive parents and allowing biological father to contest the adoption even though he did not file his notice in the registry within the time constraints).

102. See e.g., *M.V.S. v. V.M.D.*, 776 So. 2d 142, 150 (Alaska Ct. App. 1999) ("We do not think it violates the constitutional guarantees of due process, or that it is even harsh, to require those responsible for bringing children into the world outside of marriage to comply with those statutes that give them the [right] to assert parental rights).

103. *Hunter v. Doe*, 751 N.E.2d 747, 752 (Ind. App. Ct. 2001) ("In the interest of providing stability and performance for children, Indiana provides a statutory scheme with a specified time by which a putative father must register...Such stringent requirements are not punitive but are instead necessary to advance the State's policy interest of establishing early and permanent placement of children into loving and stable homes.").

104. *Bowers v. Pearson*, 609 S.E. 2d 174, 178 (Ga. Ct. App. 2005).

105. See *In re Adoption of Baby F.*, No. 03AP-1092, 2WL 771575, at \*1, \*3 (Ohio Ct. App. 2004) (the putative father's rights were protected even though the putative father had been sent to jail for violating a protective order and being in prison for theft at the time the baby was born).

father registry. Thus, where the putative father does not know that the mother has relocated to a new state or has no reason to think that the mother has moved to a new state, it is likely that he will register in the wrong state and accordingly fail to receive notice of any legal proceedings involving his child. Because a mother could travel to any state at any time, this seems to open the flood gates of possibility as to where the mother might relocate.<sup>106</sup> For example, in *Heidbreder v. Carton*,<sup>107</sup> the Minnesota Supreme Court upheld the requirement that a putative father failed to register with the Minnesota Fathers Adoption Registry no later than 30 days after birth of child, even though the mother concealed her relocation to another state. The need for a NRFR is underscored by the Minnesota Court's stance that the mother's failure to disclose her location to the putative father does not constitute fraudulent concealment because the birth mother does not owe a fiduciary duty to provide such information to the putative father.<sup>108</sup> The most effective way to right this wrong is through the establishment of a NRFR.

In *In re Adoption of Baby Boy B.*, the Arkansas Supreme Court found that the trial court erred in holding that consent was not required from a putative father whose attempts to establish relationship with his child were thwarted by the mother during pregnancy and after birth.<sup>109</sup> In this case, the father was able to establish that he followed and anticipated the mother's numerous out-of-state relocations, registered in each state's registry, and the steps he took to form a significant custodial, personal and financial relationship with the child, albeit, while the child was *in utero*.<sup>110</sup> It is notable that the supposed father was fortunate enough to determine to which states the mother would relocate. Had this not been the case, his efforts to establish a relationship before the child's birth would have been for naught.

While father registries have generally been upheld as constitutional, technical procedural registry guidelines and statutes have resulted in courts finding that *as applied* the requirements are

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106. The Uniform Parentage Act § 411 (2000) (states that putative fathers "should also register in another State if conception or birth of the child occurred in the other state.").

107. *Heidbreder v. Carton*, 645 N.W.2d 355, 369 (Minn. 2002).

108. *Id.* at 370.

109. *In re Adoption of Baby Boy B.*, 2012 Ark. 92394 S.W.3d837, 844 (Ark. 2012).

110. *Id.* at 843-44.

unconstitutional. In *In Re Baby Girl T*, the Utah Supreme Court held that the state's putative father filing provision, as applied to the putative father in that case, violated the father's due process rights when the state negligently handled his filing and, in doing so, precluded him from contesting the child's adoption.<sup>111</sup> The putative father filing provision referred to two separate filings: the filing by the father and the filing when the notice of paternity was entered in to the confidential registry by a registry employee.<sup>112</sup>

The problem resulting in the court's finding lied within the requirement of these two filings: one filed by the father and the other filed by a registry employee. The father's filing is merely an acknowledgement of his interest. The controlling filing, done by a registry employee tolls the date of the filing. In this case, the first filing was proper; the second was late, and therefore disqualified the father. The father has no control over the sufficiency of that filing, and if the filing proves to disqualify him it is through no fault of his own. Clearly for the Utah Registry to maintain its constitutionality, changes to the filing process are necessary.

In *Jeremiah J v. Dakota D*, the Nebraska appellate court was faced with a scenario where the mother of a child actively concealed the child's birth from the putative father so that he was unable to file any paternity petition within five days of the child's birth, as is required under the Nebraska adoption statutes.<sup>113</sup> The court stated that:

[i]n Nebraska, if a biological mother withholds or misrepresents information about the child's birth to a putative father, the adoption statutes are inadequate to ensure he has an opportunity to

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111. *In re Baby Girl T*, 298 P.3d 1251, 1260 (Utah 2012).

112. *Id.* at 1257.

113. *Jeremiah J. v. Dakota D.*, 826 N.W.2d 242, 248-49 (Neb App. Ct. 2013); Neb. Rev. Stat. § 43-104.02 (2008) states:

A Notice of Objection to Adoption and Intent to Obtain Custody shall be filed with the biological father registry under section 43-104.01 on forms provided by the Department of Health and Human Services (1) within five business days after the birth of the child or (2) if notice is provided after the birth of the child (a) within five business days after receipt of the notice provided under section 43-104.12 or (b) within five business days after the last date of any published notice provided under section 43-104.14, whichever notice is earlier. Such notice shall be considered to have been filed if it is received by the department or postmarked prior to the end of the fifth business day as provided in this section.

claim paternity. This is true because if the mother withholds or misrepresents information about the child's birth, a putative father will usually not have an opportunity to timely file a notice of his objection to an adoption and intent to seek custody.<sup>114</sup>

The court went on recognize that most states have a 30-day period after the birth of the child before which the putative father must assert his rights and that most state statutes had an exception to the time limit where the putative father did not receive notice of the child's birth.<sup>115</sup> The court remanded the lower court's decision with the following instructions: "I would hold that if the court finds that Jeremiah could not have filed the postbirth notice of objection because of Dakota's deceptions, it cannot constitutionally apply the adoption statutes to bar his claims that he is the child's father and that his consent to the adoption is required."<sup>116</sup>

### C. *Legislative Efforts to Enact a National Responsible Father Registry*

In June, 2012 the Protecting Adoption and Promoting Responsible Fatherhood Act of 2012 was introduced (112<sup>th</sup> Congress, 2011-2013), sponsored by Representative Laura Richardson [D-CA37].<sup>117</sup> It was referred to the House Ways and Means Committee but died in committee.<sup>118</sup> This bill was a re-introduction of H.R. 6298(111<sup>th</sup>) (September 29, 2010). S. 3321 (112<sup>th</sup>).<sup>119</sup> Protecting Adoption and Promoting Responsible Fatherhood Act of 2012 was introduced June 20, 2012 (112<sup>th</sup> Congress, 2011-2013), sponsored by Senator Mary Landrieu [D-LA].<sup>120</sup> This bill was also referred to committee (Senate Finance) where it died as well.<sup>121</sup> This bill was also

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114. *Jeremiah J.*, 826 N.W.2d at 251.

115. *Id.* at 253.

116. *Id.* at 255.

117. Protecting Adoption and Promoting Responsible Fatherhood Act of 2012, H.R.6035, 112<sup>th</sup> Cong. (died, 2012) [hereinafter *Fatherhood Act of 2012, H.R. 6035*].

118. *Id.*

119. Protecting Adoption and Promoting Responsible Fatherhood Act of 2010, H.R. 6298, 111<sup>th</sup> Cong. (died, 2010) [hereinafter *Fatherhood Act of 2010, H.R. 6298*].

120. Protecting Adoption and Promoting Responsible Fatherhood Act of 2012, S. 3321 112<sup>th</sup> Cong. (introduced on June 20, 2012) [hereinafter *Fatherhood Act of 2012, S. 3321*].

121. *Id.*; see also S.3321 (112<sup>th</sup>): *Protecting Adoption and Promoting Responsible Fatherhood Act of 2012*, GOVTRACK.US,

a re-introduction of S. 939(111<sup>th</sup>) (April 30, 2009).<sup>122</sup>

The two bills were identical, requiring that sexual relations constitutes notice of a possible pregnancy; protecting a mother's privacy interest by not requiring that she name her sexual partners or the possible father; funding a national education campaign, and providing that the state in which the father registered determine the timing regarding when the supposed father had to register. The bills left certain aspects to the state's discretion such as defining pre-birth abandonment, amending the long arm statute to assume personal jurisdiction over the registered father, and determining whether the registry would be used for child support enforcement purposes.<sup>123</sup>

The bills had two major exclusions. The first exclusion recognized the constitutional protection of a non-marital father's rights to form a "significant custodial, personal, or financial relationship."<sup>124</sup> The second exclusion addressed the inability to fully eradicate the mother's ability to "deceive" the father regarding the birth of their child—lying about a due date or misrepresenting the end of the pregnancy as a result of death, miscarriage or abortion.<sup>125</sup> With a NRFR, forum shopping would no longer be an option for the birth mother to deliberately circumvent the supposed father who registers.

#### IV. CONCLUSION

A NRFR is critical for the health, safety and well-being of all parties linked to the pregnancy. It relieves the mother of any embarrassment or fears associated with the pregnancy. She would no longer be compelled to name the supposed father, regardless of the circumstances of conception. Further, she would not have to disclose her reasons for her lack of knowledge, or hesitancy to disclose. Her constitutional protection to travel to another state would not be

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<https://www.govtrack.us/congress/bills/112/s3321> (last visited April 21, 2014).

122. Protecting Adoption and Promoting Responsible Fatherhood Act of 2009, S. 939 111<sup>th</sup> Cong. (died 2009).

123. See *Fatherhood Act of 2012*, H.R. 6035, *supra* note 118; see *Fatherhood Act of 2012*, S. 3321, *supra* note 121; see also MARC ZAPPALA, ON THE BENEFITS OF A NATIONAL PUTATIVE FATHER REGISTRY, 28 CHILD. L. PRAC. 91 (2009) (it is hoped that the registry will not be used for child support purposes, because to do so, would deter many supposed fathers to register).

124. *Lehr v. Robertson*, 463 U.S. 248, 262 (1983); see also *Fatherhood Act of 2010*, H.R. 6298, *supra* note 120.

125. *Fatherhood Act of 2010*, H.R. 6298, *supra* note 123.

characterized as a means of thwarting the rights of the supposed father, whether she intends it or not.<sup>126</sup> And, most importantly, her decision to make an adoption plan for her child would not be disrupted by a supposed father, claiming that his rights were violated, or that she deceived or tricked him.

Having a NRFR means possible fathers are immediately relieved of any apprehension about or dependence upon the mother to identify them. Should the possible father not want any involvement, there would be none. No unwanted letters, telephone calls, or publication in a newspaper naming him as a possible father would result. If the supposed father wants participation, the ability to do so rests solely with him. Should the mother question the father's fitness, or question his abilities to parent a child, the veracity of her statements can be challenged by the possible father. The registered father will have the option to confront and disprove concerns about his ability, capacity, fitness and readiness to parent a child. He will have the opportunity to speak for himself and bring forward supporting evidence.

Another critical aspect for the father is his ability to participate in the process, be it by proving his ability to care for and raise the child, assisting in choosing a suitable family, or sharing his, and his family's medical and psycho-social history for the good of his child's future. The supposed father may play a role in the life of the child, so long as he registers. Moreover, if the supposed father is a caring and loving father who wants to be involved in raising his child and is able to do so, there are ample studies that prove placement with biological parents is extremely beneficial to a child's upbringing.<sup>127</sup>

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126. Where it has been found that the adoption agency or some other third party is responsible for the obstruction of the father's ability to assert his rights, courts have suggested with the possibility of bringing a claim for damages against those third party interferers for a violation of due process. See *In re Baby Boy C.*, 581 A.2d 1141, 1180 (D.C. 1990) (stating that the court "should not foreclose the possibility of a damages remedy, however inadequate, for violations of the father's statutory and constitutional rights that may have caused the prejudicial delay.").

127. Thompson, *supra* note 33, at 1500 ("Children have an interest in being raised by responsible biological parents."); Margaret Beyer & Wallace J. Mlyniec, *Lifelines to Biological Parents: Their Effect on Termination of Parental Rights & Permanence*, 20 FAM. L. Q. 233, 237 (1986) (biological parents provide a "source of identity" to a child that an adoptive family cannot.); Daniel C. Zinman, *Father Knows Best: The Unwed Father's Right to Raise his Infant Surrendered for Adoption*, 60 FORDHAM L. REV. 971, 998 (1992). ("There is a strong psychological need for people to discover their biological identities and ancestries; this knowledge is essential for a full

Establishing a NRFR is unquestionably a child-centered approach for several reasons. Most importantly, with an appropriate statutory scheme, the termination of parental rights will no longer be tainted with uncertainty. The child's placement will not be disrupted by someone claiming his constitutional rights were violated. The child's opportunity to have his or her father participate in his planning will not be foreclosed by a decision made someone other than his father. It may be determined that it is proper and in the child's best interests to be parented by his father. If an adoption plan is made, the child will have his or her health history from both his mother and father.<sup>128</sup> The child will also have the satisfaction of knowing that his or her father chose to be a part of the decision-making.<sup>129</sup>

Having a NRFR gives emphasis to a father's important and critical role in the life of a child. Even-handed treatment, characterized by deference and a willingness to do what is right, will address the constitutional double standards and ignite more than a superficial spark of encouragement for fathers to continue to grow in their roles as responsible parents. A NRFR recognizes the liberty interest of children by protecting those men who want to be fathers and want to participate in the planning for their child. It protects the father's due process rights and rights under the equal protection clause by giving him the opportunity to assert his right to raise his child. It also protects the

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understanding of who we are.”).

128. Marianne Brower Blaire, *The Uniform Adoption Act's Health Disclosure Provisions: A Model That Should Not Be Overlooked*, 30 FAM. L. Q. 427, 432-33 (Summer 1996) (“[A]doption professionals now understand that compiling and disclosing a complete medical and genetic history is vital to children with no apparent health problems at the time of placement, because accurate medical information is critical to proper diagnosis, treatment, and preventative measures throughout an adoptee's lifetime.”); *Id.* at 437-38 (The Uniform Adoption Act, which has been partially adopted by most states, recognized the important of medical information from both biological parents as it requires “any known disease and hereditary disposition to disease and addiction to drugs or alcohol by genetic relatives,” as well as “information regarding the health of the birth mother and the health of each [birth] parent at the time of birth.”).

129. Beck, *supra* note 10, at 313 (“The child is the biggest winner in the nationalization of a putative father registry, because either she is assured of an earnest father who wishes to participate in her custodial care and financial support or she is assured of a prompt placement with an adoptive family with a home study attesting to their fitness to parent. It is critical in aiding the child's development that the registry provides for a prompt determination of who will assume the child's permanent parenting.”).



father's privacy rights by having an anonymous registry. A NRFR also protects the mother's privacy, as it does not force her to identify the father, and protects her unfettered right to travel so that she is not blamed later for trying to deceive a supposed father by relocating or traveling to a new state. And, most importantly, it protects the child's right to a stable and loving upbringing. By creating a national father registry that ensures the father's ability to assert his rights regardless of actions taken by the mother, the father will either assert or forgo his rights to raise his child very early in the child's life, allowing the child to develop and grow with his or her adoptive family without disruptions.

Every child has a mother and every child has a father, regardless of how the child was conceived. The realities of pregnancy demand that the rights of mothers, fathers, and children must be protected if our laws are to be perceived as fair, relevant, and workable. And, ultimately, with every parties' constitutional interests protected, it is hoped that the parents will make decisions in the best interests of the child. As stated in *Parham vs. J.R.*

The law's concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions. More important, historically it has recognized that natural bonds of affection lead parents to act in the best interests of their children.<sup>130</sup>

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130. *Parham v. J.R.*, 442 U.S. 584, 602 (1979).