

At-Birth Childcare Parentage in Assisted Reproduction Births

JEFFREY A. PARNES*

Assisted reproduction births in the United States are on the rise. These births can prompt parentage rights at birth in the “care, custody, and control” of children. Here, more than with children born of sex, parentage need not depend upon marriage or genetic ties. Rather, at-birth parentage often depends on consent, parental-like acts, or intentions. Congress has not spoken much on childcare parents at birth. The U.S. Supreme Court has generally yielded to state lawmakers, be they legislators or judges, on determining at-birth parentage.

State lawmaking has prompted significant interstate variations in and outside of artificial insemination. State laws differ on the import of marriage and genetic ties. Laws differ further on parentage arising from insemination into the vagina, insemination into the uterus, or implantation of fertilized eggs. As written, laws now also differ on parentage arising in same sex couples, opposite sex couples, and single intended parent settings. Further, laws differ on the nature of any necessary parental-like acts and on the proper forms of consent (including on the “record,” express, and implied). Finally, current laws distinguish between surrogacy and non-surrogacy births, as well as between genetic and gestational surrogates.

There are a few limits on at-birth childcare parentage laws arising from U.S. Supreme Court precedents. Additional limits arise in some states under state court precedents founded on independent constitutional interpretations. Separation of powers principles have prompted broad state general assembly discretion, with little room for state non-constitutional common law developments. Upon reviewing the limits on state lawmaking, this Article surveys current laws on at-birth childcare parentage in artificial insemination births. It demonstrates state usages of the three different Uniform Parentage Acts and the significant interstate variations. This Article concludes with suggested law reforms, including changes in the laws on genetic, voluntary acknowledgment, spousal, non-marital, non-surrogacy, and surrogacy parentage.

* Professor Emeritus, Northern Illinois University College of Law. B.A., Colby College; J.D., The University of Chicago.

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INTRODUCTION

Assisted reproduction in the United States is increasingly receiving public policy attention.¹ Children born from assisted reproduction have at least a single childcare parent at the time of birth, the gestating parent. Those who provided the sperm or the eggs prompting the birth may or may not be a second or third childcare parent at birth. A person not genetically tied to the child may or may not be a second childcare parent at birth. Non-genetic parentage at birth (or shortly thereafter) can arise from

1. See, e.g., Exec. Order No. 14,216, 90 Fed. Reg. 10451 (Feb. 18, 2025) (policy to “ensure reliable access to IVF treatment”). Data is hard to come by for artificial insemination’s done privately. Herein assisted reproduction encompasses acts of a sperm provider/donor who prompts a pregnancy and birth without sexual intercourse, where there may (fertilized egg implantation) or may not (artificial insemination) be an accompanying egg provider/donor. With artificial insemination, there may be insemination into the vagina (intracervical insemination), the most common method of artificial insemination, entailing the introduction of unwashed or raw semen (fresh or frozen) into the vagina at the entrance of the cervix, usually by means of a needleless syringe. The other method of insemination is through the uterus (intrauterine insemination), involving injection of washed sperm directly into the uterus with a catheter. Only the latter method now requires medical assistance. For more on artificial insemination see, for example, Catherine R. Dukelow, Note, *Who’s Your Daddy: The Lack of Regulations on America’s Sperm Banks*, 71 *DRAKE L. REV.* 917, 918–22 (2025) (reviewing current artificial insemination practices). Sperm or egg *providers* can be designated as childcare parents at birth if intended parenthood prompted their providing of gametes, while sperm or egg *donors* are those who waived parental childcare rights or interests upon providing gametes.

marriage to the gestating parent or from intended parentage actions, with the gestating parent's assent, including a voluntary parentage acknowledgment or some form of agreement, including surrogacy and non-surrogacy assisted reproduction pacts.

Childcare parentage laws operating at birth for children born of assisted reproduction chiefly appear in state statutes. These laws vary widely. There are some related constitutional (federal and state) limitations and some special congressional limitations. This Article addresses the differing state laws on assisted reproduction parentage at birth after examining both constitutional and congressional limits. It concludes with suggested reforms that will better protect children and better promote parental intentions.

In particular, this Article demonstrates the failure of state assisted reproduction laws to address possible judicial oversights of problematic conduct by intended parents post-insemination or post-implantation. It also shows legislative failures to define more clearly the requisites for consent needed to prompt assisted reproduction parenthood in an intended non-gestating parent, including the lack of mandatory, or at least suggested, forms on consent that would diminish later contentious disputes over future parental intentions.

II. PROTECTED PARENTAL CHILDCARE RIGHTS AND INTERESTS

A. Federal Constitutional Protections

State parentage laws are limited by federal constitutional precedents. Following is a review of the major federal constitutional liberties encompassing both the rights and the interests of expecting and existing childcare parents.² Constitutional limits on parentage recognitions can vary by context, as between childcare parenthood³ and child support parenthood.⁴

2. These liberties will not likely disappear, as did the abortion right in *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022). See, e.g., Jeffrey A. Parness, *Dobbs and Unenumerated Parental Custody Rights and Interests*, 14 CONLAWNOW 117, 125–30 (2023). For other views on the post-*Dobbs* status of federal constitutional childcare liberties, see generally Michael Farris, *Rethinking Parental Rights: It's Time to Move to Procedural Due Process*, 18 LIBERTY UNIV. L. REV. 911 (2024) (proposing that parental rights cases should be decided under the framework of procedural due process, without reliance on substantive due process) and Elizabeth Price Foley, *Dobbs and the Future of Substantive Liberty*, 64 SANTA CLARA L. REV. 159 (2024) (explaining the “deeply rooted” test and evaluating how different areas of substantive due process doctrines might fair post-*Dobbs*).

3. *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality opinion) (childcare interests encompass “care, custody, and control”); *id.* at 77 (Souter, J., concurring) (indicating that “a parent’s interests in the nurture, upbringing, companionship, care, and custody of children” has long been recognized by the Due Process Clause.”).

4. See, e.g., *In re Adoption of Baby A.*, 944 So. 2d 380, 395 n.21 (Fla. Dist. Ct. App. 2006) (noting “substantially different approaches” in Florida “to the rights and responsibilities of biological fathers of children born to unmarried mothers depending upon the issue at stake,” and that a man may be obligated for child support, but his rights in an adoption “are guarded”); *N.E. v. Hedges*, 391 F.3d 832, 836 (6th Cir. 2004) (holding that genetic relationship between a father and his offspring is “constitutionally sufficient to support . . . child support

In 2000, a majority of the U.S. Supreme Court recognized, in *Troxel v. Granville*, 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 the Court.⁵ This unenumerated parent childcare “interest” was said to date back at least a century.⁶ It has prompted no significant resistance by later federal or state courts or by federal or state legislators.⁷ The continuing recognition of this unenumerated constitutional interest was raised only by Justice Thomas in *Dobbs*.⁸ There, he noted that no party asked for a reconsideration of the “entire Fourteenth Amendment jurisprudence” on unenumerated rights.⁹

While there is some confusion in utilizing both the terms interests and rights in childcare parent settings, the recognition of constitutional guarantees for parental childcare under *Troxel* is clear. A *liberty interest* is accompanied by the recognition of a constitutional *liberty opportunity* of certain persons in establishing childcare parentage in a child with whom there are genetic ties.¹⁰ In *Lehr v. Robertson*, the U.S. Supreme Court recognized that an unwed genetic father of a child born of consensual sex to an unwed mother has “an opportunity that no other male possesses to develop a relationship with his offspring” which, once grasped, allows the father to “enjoy the blessings of the parent-child relationship.”¹¹ Seemingly, an egg provider whose contribution prompts the birth of a child to another has a comparable

requirements,” but not childcare opportunities); *In re Stephen Tyler R.*, 584 S.E.2d 581, 585 (W. Va. 2003) (upholding child support duty for man though his parental custody and visitation rights were ended).

5. 530 U.S. at 65 (plurality opinion); *see also id.* at 77 (Souter, J., concurring) (“We have long recognized that a parent’s interests in the nurture, upbringing, companionship, care, and custody of children are generally protected by the Due Process Clause . . .” (citing *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923); *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 535 (1925) (enjoining as unconstitutional the Compulsory Education Act)).

6. *See, e.g., id.* at 65–66 (plurality opinion) (parental control over education of children is “a constitutional dimension to the right of parents to direct the upbringing of their children” (citing *Prince v. Massachusetts*, 321 U.S. 158 (1944) (parental freedom and authority in matters of conscience and religious conviction)).

7. While general recognition of parental childcare interests has been widespread, there have been significant interstate differences in the breadth of such interests, as with parental interests in determining non-parental visitations with their children. *See id.* at 73 (holding that Washington statute unconstitutionally infringed on fundamental rights of parents) Limits on any laws guiding non-parent child visitation remained unclear, however, as the plurality did not consider whether a showing of harm or potential harm to a child is a condition of non-parental child visitation). *Id.*; *see also id.* at 76 (Souter, J., concurring) (“[N]o need to decide whether harm is required . . .”).

8. *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 332 (2022) (Thomas, J., concurring) (“[I]n future cases, we should reconsider all of this Court’s substantive due process precedents . . .”).

9. *Id.* at 332 (quoting *McDonald v. City of Chicago*, 561 U.S. 742, 813 (2010) (Thomas, J., concurring in part); *accord Troxel*, 530 U.S. at 80 (Thomas, J., concurring)).

10. *See Troxel*, 530 U.S. at 66.

11. *Lehr v. Robertson*, 463 U.S. 248, 262 (1983).

opportunity interest, especially when the contributor and birth giver agree ahead of the fertilized egg implantation that there would be dual parentage upon birth.¹²

Since *Troxel* and *Lehr*, the liberty interests in actual and potential childcare parentage continue. But also continuing is the U.S. Supreme Court's unwillingness to articulate in more precise terms who qualifies as a parent possessing these interests and whether parentage is recognized prebirth, at birth, or long after birth.¹³

To date, the precedents only speak expressly to parental custody interests in children born of consensual sex, whether in or outside of marriage.¹⁴ The precedents do not speak to how custodial parentage can arise exclusively from post-birth acts beyond the generalities in *Lehr* on seizing the parental opportunity by a genetic father¹⁵ in a state-authorized adoption.¹⁶ They have never spoken of custodial parentage arising from assisted reproduction births, whether or not surrogates were employed.¹⁷

12. See generally, e.g., *Johnson v. Calvert*, 851 P.2d 776 (Cal. 1993) (stating that the husband and wife whose genetic material prompted a birth to a surrogate were “the child’s natural parents”); *D.M.T. v. T.M.H.*, 129 So. 3d 320 (recognizing two parents as woman who provided the egg and woman who gave birth). But see *In re S.D.S.*, 539 P.3d 722 (Or. 2023) (holding that egg donor for a child born to a surrogate, where the surrogate eschewed parentage, is not automatically a parent; here, there was no intended dual parent pact with sperm donor, though there may have been an agreement that the egg donor have certain non-parental visitation rights). A reluctance to utilize *Lehr* in assisted reproduction settings is promoted by parentage laws that distinguish genetic contributions to childbirth in consensual sex settings. See, e.g., UNIF. PARENTAGE ACT § 412 (UNIF. L. COMM’N 2017) [hereinafter 2017 UPA] (no parental registry interests where a child is or is to be born of assisted reproduction).

13. See, e.g., Jeffrey A. Parness, *Federal Constitutional Childcare Parents*, 90 ST. JOHN’S L. REV. 965, 968 (2016) (finding no reasonable justification for “extreme deference” to state laws defining federal constitutional parents, resulting in “significant interstate variations” which prompt “many problems” for children and their caretakers).

14. On the difficulties with current laws on parent custody rights when sex with a gestating parent is not, or is arguably not, consensual, see generally, for example, Karen Syma Czapanskiy, *The Constitution, Paternity, Rape, and Coerced Intercourse: No Protection Required*, 35 J. AM. ACAD. MATRIM. LAWS. 83 (2022).

15. In *Lehr*, the court indicated an unwed genetic father could seize this opportunity in an adoption proceeding, prompting notice and hearing opportunity rights, by following a state law requiring such fathers to do something affirmatively, like secure a paternity adjudication, secure placement on a birth certificate, openly live with the child, or file a notice of intent to claim paternity. *Lehr*, 463 U.S. at 251 n.5.

16. On adoptions, the Court has been chiefly concerned with securing fair procedures for possible male genetic parents when their children may be adopted by others. See Czapanskiy, *supra* note 14. The Court has also focused on ensuring fair procedures in terminations of recognized parental rights/interests. See *Santosky v. Kramer*, 455 U.S. 745, 767–68 (1982) (indicating a “clear and convincing” evidence standard is appropriate when childcare parentage might be ended).

17. Analyses of possible federal constitutional rights and interests in childcare for children born of assisted reproduction appear, for example, in Courtney Megan Cahill, *Reproduction Reconceived*, 101 MINN. L. REV. 617, 620 (2016) and John A. Robertson, *Procreative Liberty and the Control of Conception, Pregnancy and Childbirth*, 69 VA. L. REV. 405, 463 (1983).

As to the person giving birth to a child born of sex, the Court has long recognized automatic custodial rights. It reasoned in the *Quilloin* case that the gestating parent was a custodial parent because she necessarily “exercised actual or legal custody” and “shouldered . . . significant responsibility with respect to the daily supervision, education, protection, or care of the child.”¹⁸ The Court has never applied this recognition, however, to a person giving birth via assisted reproduction, utilizing either solely artificial insemination or fertilized egg implantation (FEI).¹⁹

As for a birth arising from consensual sex with one who is married to another, in the *Michael H.* case, the Court recognized the validity of, but did not require, a state law presuming, whether rebuttably or not, custodial parentage in the spouse.²⁰ State laws have long recognized such presumptions, but do vary a bit on when such presumptions arise.²¹ State laws also differ in important ways in how spousal parent presumptions can be rebutted, if at all.²²

18. *Quilloin v. Walcott*, 434 U.S. 246, 256 (1978) (holding that the biological father was not deprived of constitutional rights because he did not meet this criteria of connection with the child); *see also* *Tuan Anh Nguyen v. INS*, 533 U.S. 53, 64 (2001) (“[T]he use of gender specific terms takes into account biological difference between the [genetic] parents.”).

19. With FEI, not artificial insemination, the Court may someday face competing constitutional claims to motherhood by a genetic parent and a gestational surrogate (i.e., a biological, not genetic parent). *See generally, e.g.*, Jeffrey A. Parness, *American Constitutions and Artificial Insemination Births*, 13 CONLAWNOW 125 (2022) (reviewing Due Process and Equal Protection constraints on parentage laws for such births). Here, statutory language may be able to draw lines. *See, e.g.*, 750 ILL. COMP. STAT. 50/1 (2025) (“biological parent,” “birth parent,” or “natural parent” of a child are interchangeable terms that means a person who is biologically or genetically related to that child as a parent.”); CAL. FAM. CODE § 7601(a) (West 2025) (defining “natural parent” as “a nonadoptive parent established under this part, whether biologically related to the child or not”).

20. *Michael H. v. Gerald D.*, 491 U.S. 110, 129–30 (1989) (plurality opinion) (“It is a question of legislative policy and not constitutional law whether California will allow the presumed parenthood of a couple desiring to retain a child conceived within and born into their marriage to be rebutted.”). One justice assumed there were constitutional custodial interests in sperm provider settings, *id.* at 132–36 (Stevens, J., concurring), while four other justices recognized such interests, *id.* at 136–39 (Brennan, J., dissenting); *id.* at 157–58 (White, J., dissenting).

21. The similarities in spousal parentage establishment seemingly result from state employments of the Uniform Parentage Acts (UPAs), whether the 1973, 2000 or 2017 version, which all have a spousal parent presumption arising for a child “born during the marriage” or within 300 days after the termination of a marriage. UNIF. PARENTAGE ACT § 4(a)(1) (UNIF. L. COMM’N 1973) [hereinafter 1973 UPA]; UNIF. PARENTAGE ACT § 204(a)(2) (UNIF. L. COMM’N 2000) [hereinafter 2000 UPA]; 2017 UPA, *supra* note 12, § 204(a)(1)(A)-(B). The Acts do vary on how a marriage is terminated; they all include death, annulment, declaration of invalidity, divorce, and a court decree of separation, while the 2017 UPA also includes a court decree of separate maintenance.

22. *See Callender v. Skiles*, 591 N.W.2d 182, 185–86 (Iowa 1999) (state constitutional parental childcare interest of genetic father in a child born into an intact and a continuing marital home); *K.E.M. v. P.C.S.*, 38 A.3d 798, 810 (Pa. 2012) (wed mother can seek child support from adulterous biological father, but only where it serves the child’s best interests). *Compare, e.g.*, *Strauser v. Stahr*, 726 A.2d 1052, 1056 (Pa. 1999) (where marriage continued, genetic father could not seek to rebut husband’s spousal parentage), *with Kinnett v. Kinnett*,

As for a birth arising from consensual sex with an unwed mother, the Court has recognized, in *Lehr*, a parental opportunity interest in the sperm provider.²³ In *Lehr*, the interests were not seized under state law, as by putative father registration or by a paternity suit, in a setting where an adoption of the child was sought by the gestating parent's post-birth spouse.²⁴ Parent childcare custody interests outside of an adoption case, as in a paternity suit, can also be lost under state laws due to a sperm provider's failure to seize parenthood, leaving the gestating parent as the sole custodial parent.²⁵

Protected childcare rights and interests also emanate from Supreme Court precedents that expand otherwise limiting state statutory or common law parentage laws, as with rulings founded on equality or human rights principles. The Court has noted that "equality of treatment and the due process right to demand respect for conduct protected by the substantive guarantee of liberty are linked in important respects."²⁶ And, it has ruled that an aspect of liberty protected by due process is "a right of personal privacy, or guarantee of certain areas or zones of privacy," including "the interest in independence in making certain kinds of important decisions," like decisions "relating to marriage . . . procreation . . . contraception . . . family relationships . . . and child rearing and education."²⁷

As to equality, the Court has further said the following:

If under *Griswold* the distribution of contraceptives to married persons cannot be prohibited, a ban on distribution to unmarried persons would be equally impermissible. It is true that in *Griswold* the right of privacy in question inhered in the marital relationship. Yet the marital couple is not an independent entity with a mind and heart of its own, but an association of two individuals each with a separate intellectual and emotional makeup. If the right of privacy means anything, it is the right

366 So. 3d 25, 28–30, 39–40 (La. 2023) (statute could limit genetic father's avowal action to a claim filed within a year of child's birth). State rebuttal laws, and their possible reforms, are reviewed in Jessica Feinberg, *Restructuring Rebuttal of the Marital Presumption for the Modern Era*, 104 MINN. L. REV. 243, 246 (2019) and Mary J. "Janie" Nichols, *The Privilege of a Presumption: A Proposal for the Equal Application of the Presumption of Parentage to Same-Sex Couples*, 58 FAM. L.Q. 45 (2024-2025).

23. *Lehr v. Robertson*, 463 U.S. 248, 262 ("[A]n opportunity that no other male possesses to develop a relationship with his offspring.").

24. *Id.* at 250 (the gestating parent married the person who petitioned for adoption eight months after the child's birth).

25. For example, there are time bars to paternity actions by sperm providers seeking parental custody. *See, e.g.*, 1973 UPA, *supra* note 21, § 7 (granting alleged father three years after birth to seek a determination of the father and child relationship where there is no presumed father); UNIF. PARENTAGE ACT § 607(a)(1) (UNIF. L. COMM'N 2002) [hereinafter 2002 UPA] (alleged father usually has two years after birth if there is no presumed father); 2017 UPA, *supra* note 12, § 607 (parent action by alleged genetic parent "before child becomes an adult"); *id.* at § 608(b) (limits on alleged genetic father overriding parentage presumption in another after the child attains two years of age). Similarly, an egg provider's failure to seize parenthood, under state laws on FEI births, might prompt a loss of a parental opportunity interest.

26. *Lawrence v. Texas*, 539 U.S. 558, 575 (2003).

27. *Carey v. Population Servs., Int'l*, 431 U.S. 678, 684–85 (1977).

of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child.²⁸

As to equality and human rights, the Court, in a case touching on “sensitive and important areas of human rights,” long ago observed the following:

We are dealing here with legislation which involves one of the basic civil rights of man. Marriage and procreation are fundamental to the very existence and survival of the race. . . . [O]ur view that strict scrutiny of a classification which a State makes in a sterilization law is essential, lest unwittingly or otherwise invidious discriminations are made against groups or types of individuals in violation of the constitutional guaranty of just and equal laws.²⁹

As with compelled sterilization laws, strict scrutiny should regularly be used when judges review laws limiting human procreation, including procreation via assisted reproduction, benefiting especially those with few or no other avenues to parenthood.

B. State Constitutional Protections

While state laws may not counter the federal constitutional precedents on parental “care, custody and control” and on parental “opportunity” interests, federal constitutional parental rights can be expanded through state constitutional protections.³⁰ Here, too, there are limits on state parentage statutes (and on non-constitutional parentage law precedents).

State constitutional expansions can come via state due process clauses reaching beyond the Fourteenth Amendment of the federal constitution. Exemplary is an Iowa high court ruling extending a genetic father’s opportunity to pursue parental childcare notwithstanding the fact that his child’s birth, arising from consensual sex, was into a then intact family, which continued to rear the child.³¹ The rationales underlying the *Michael H.* ruling on due process liberty were not accepted for state law purposes.³²

28. *Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972) (citing *Stanley v. Georgia*, 394 U.S. 557 (1969); *Skinner v. Okla. ex rel. Williamson*, 316 U.S. 535 (1942); *Jacobson v. Massachusetts*, 197 U.S. 11, 29 (1905)).

29. *Skinner*, 316 U.S. at 541.

30. State laws can also expand federal rights and interests by extending federal constitutional precedents beyond the precise holdings of those precedents. *See, e.g., In re. Baby M.*, 537 A.2d 1227, 1253–54 (N.J. 1988) (reading *Skinner* to encompass the right to procreate “whether through sexual intercourse or artificial insemination”).

31. *Callender v. Skiles*, 591 N.W.2d 182, 192 (Iowa 1999) (despite “the presence of an existing family,” a putative genetic father can challenge the husband’s presumptive parentage arising from his marriage to the birth mother). After a remand to the trial court, the Iowa Supreme Court recognized a visitation schedule for the genetic father, with the husband not appealing the trial court’s disestablishment of his spousal parentage. *Callender v. Skiles*, 623 N.W.2d 852, 854 (Iowa 2001).

32. *Callender*, 591 N.W.2d at 189–92 (“[T]he due process rights of the putative father

Beyond variations in interpreting comparably worded due process clauses, state constitutional precedents on parental childcare rights can arise from explicit state constitutional provisions that are not found in the federal constitution. For example, several state constitutions expressly recognize “privacy” protections.³³ To date, explicit state constitutional privacy protections have not played a major role in defining at-birth childcare parentage in assisted reproduction births.³⁴

C. Congressional Protections

Congress can limit state parentage laws. The federal Indian Child Welfare Act (ICWA) contains special parentage laws for children who are born in the United States to one or both parents with American Indian tribal connections.³⁵ American Indian tribal connections are established by proof of genetic ties, regardless of how conception occurred (consensual sex or assisted reproduction).³⁶ The ICWA often operates in proceedings involving foster care placement or termination of parental rights.³⁷ Some state laws supplement the ICWA by setting higher standards, affording even greater protections of relationships between American Indian parents, their tribes, and American Indian children.³⁸

III. CURRENT LAWS ON AT-BIRTH CHILDCARE PARENTAGE FOR ASSISTED REPRODUCTION BIRTHS

State assisted reproduction parentage laws can recognize both expecting parents and existing parents at birth. These laws sometimes distinguish between non-surrogacy and surrogacy births, often founded on the variations in the model laws

must prevail.”).

33. See, e.g., CAL. CONST. art. I, § 1 (inalienable right to pursue privacy); WASH. CONST. art. I, § 7 (“[N]o person shall be disturbed in his private affairs . . .”); LA. CONST. art. I, § 5 (“[E]very person shall be secure . . . against . . . invasions of privacy.”); ILL. CONST. art. I, § 12 (“[E]very person shall find a certain remedy in the laws for all injuries . . . he receives to his . . . privacy . . .”).

34. But see, *Davis v. Davis*, 842 S.W.2d 588, 600 (Tenn. 1992) (finding, in a dispute over pre-embryos, under the state constitution TENN. CONST. art. I, § 1, “the right of procreation” to be “a vital part of an individual’s right to privacy,” with federal privacy found “to the same effect”).

35. 25 U.S.C. §§ 1902, 1911–1912.

36. See, e.g., *id.* § 1901(3) (“[N]o resource . . . more vital to the continued existence and integrity of Indian tribes than their children . . .”); 25 U.S.C. § 1902 (federal policy is “to protect the best interests of Indian children”); *id.* § 1911(a) (jurisdiction of Indian tribe over “an Indian child who resides or is domiciled within the reservation of such tribe”).

37. See, e.g., *id.* § 1912(d) (no placement or termination without “active efforts . . . to prevent the breakup of an Indian family”).

38. See, e.g., *id.* § 1902; OKLA. STAT. TIT. 10, § 40.1 (2025) (Indian tribe interest in Indian children); N.M. STAT. ANN. § 32A-28 (2025) (New Mexico Indian Family Protection Act); MICH. COMP. LAWS § 712B.5 (2025) (Michigan Indian Family Protection Act); MINN. STAT. § 260.751 (2025) (Minnesota Indian Family Protection Act); WIS. STAT. § 48.028(4) (2025) (Wisconsin Indian Child Welfare Act).

suggested in the three Uniform Parentage Acts.³⁹ Unlike the laws on childcare parentage arising from conduct occurring mainly after birth, which significantly appear in both statutes and judicial precedents,⁴⁰ the laws on at-birth childcare parents in assisted reproduction births are chiefly statutory. The laws' attributes are surveyed below.⁴¹

A. Non-Surrogacy Parentage

Children born of non-surrogacy assisted reproduction often have two expecting parents, potentially recognized preconception, during pregnancy, or at birth. After birth, expecting parents usually become existing parents who are comparably treated under the law with parents of children born of consensual sex (illustrated by current parentage law models and laws). The models in the three UPAs are chiefly reviewed here because they are frequently employed by state lawmakers.⁴²

In non-surrogacy settings, the 1973 UPA does not address many of the “complex and serious legal problems raised by the practice of artificial insemination.”⁴³ The 1973 UPA only recognizes an artificial insemination birth undertaken by a married, opposite sex couple who employed “semen donated by a man” other than the husband.⁴⁴ Here, the donor is always “treated in law as if he were not the natural

39. The Uniform Parentage Acts were recognized by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 1973 and 2000 (revised in 2002) and by the newly named Uniform Law Commission in 2017. *See generally A Report on the Uniform Parentage Act (UPA 2017): Developments in State Law Regarding the Rights of Children*, 37 J. AM. ACAD. MATRIM. LAWS. 1 (2024) [hereinafter *Report on the Uniform Parentage Act*] (including survey of state laws implementing key provisions of the 2017 model act).

40. *See* Jeffrey A. Parness, *Nonadoptive Second Parent Choices After Birth*, 72 DRAKE L. REV. (forthcoming 2025) (review of state afterbirth childcare parentage laws, often drawn from one of the three Uniform Parentage Acts, on adoptive, marital, residency/hold out, and de facto parenthood).

41. As noted, constitutional and congressional limits on state parentage laws operate, in and outside of artificial insemination births. Where state statutes violate these limits, judicial precedents can expand those who can be deemed parents at birth. For example, where statutory distinctions between wed and unwed couples, or between men and women, are stricken, courts can extend parental rights and interests to those wrongly excluded from the written laws. *See, e.g.,* Elisa B. v. Superior Ct., 117 P.3d 660, 667 (Cal. 2005) (noting statute presuming that a “man” is a parent if he receives a child into his home and holds out the child as his own applies equally to women); Matter of S.D.S., 539 P.3d 722, 737 (Or. 2023) (involving artificial insemination statute on semen donor’s lack of childcare parentage applied to egg donor).

42. *See generally Report on the Uniform Parentage Act*, *supra* note 39 (survey of state laws following UPAs). *See also* Michael R. Clisham & Robin Fretwell Wilson, *American Law Institute’s Principles of the Law of Family Dissolution, Eight Years After Adoption: Guiding Principles or Obligatory Footnote?*, 42 FAM. L.Q. 573 (2008) (indicating that the tide may turn as the American Law Institute is now considering a Restatement of the Law: Children and the Law, following up on its 2000 ALI *Principles of the Law of Family Dissolution*, which was not widely adopted).

43. 1973 UPA, *supra* note 21, § 5 cmt.

44. *Id.* § 5(a).

father.”⁴⁵ The husband is only “treated in law as if he were the natural father” if insemination occurred “under the supervision of a licensed physician and with the consent” of the husband, which is reflected in a “confidential” and “sealed file” in a state record that was certified by the physician.⁴⁶

The 2000 UPA (as revised in 2002) expands parentage opportunities for non-spousal sperm donors,⁴⁷ as well as non-donor men,⁴⁸ who consent to non-surrogacy “assisted reproduction” with the intent to be the parent.⁴⁹ Such consenting donors and non-donor men are expecting parents whose parentage arises when children are born.⁵⁰ The “husband” of a “wife” who gives birth via assisted reproduction has limited opportunities to “challenge his paternity”⁵¹ in settings where there is no resulting parentage at birth for a non-spousal sperm donor or for a non-donor man who consented to assisted reproduction with “the intent to be the parent.”⁵² Here, as in the 2017 UPA, the “assisted reproduction” provision replaces the “artificial insemination” provision, thus encompassing all forms of assisted reproduction births, including FEI births.

The 2017 UPA also further expands parentage opportunities in non-surrogacy assisted reproduction settings. Article 7 (assisted reproduction) of the 2017 UPA is “substantively similar” to the 2000 UPA, but it is updated to apply “equally to same-sex couples.”⁵³ Thus, an “individual” (not just a “man”) who consents with a woman to be an intended parent of a child conceived by the non-surrogacy “assisted reproduction” is an expecting parent who later is “a parent of the child.”⁵⁴ In assisted reproduction births with no person who consented, there is limited opportunity for the spouse of the person giving birth to challenge parentage.⁵⁵

The 2017 UPA expansion is further laudable, as it explicitly recognizes that voluntary “parentage” acknowledgment processes are available for intended assisted reproduction parents.⁵⁶ Acknowledgment processes provide another way for intended parents in non-surrogacy assisted reproduction births, including both artificial insemination and FEI, to express their consent to parentage.⁵⁷

45. *Id.* § 5(b).

46. *Id.* § 5(a).

47. 2000 UPA, *supra* note 21, § 703 (characterizing donor as “man who provides sperm”).

48. *Id.* (a “man who . . . consents to assisted reproduction”).

49. *Id.* § 704(a) (consent “must be in a record” that is signed).

50. *Id.* § 703 (a “parent of the resulting child”).

51. *Id.* § 705(a)(1)–(2) (outlining one opportunity involving a lack of consent, “before or after birth of the child,” shown in a proceeding brought “within two years after learning of the birth”); *id.* § 705(b)(1)–(3) (outlining another opportunity involving a challenge at any time where there was either no sperm donation or no consent, no cohabitation “since the probable time of assisted reproduction,” and no open hold out of the child as one’s own).

52. 2000 UPA, *supra* note 21, § 703.

53. 2017 UPA, *supra* note 12, art. 7 cmt.

54. *Id.* §§ 701, 703 (hinting that “assisted reproduction” seemingly entails both artificial insemination and FEI).

55. *Id.* § 705(a) (spouse “at the time of a child’s birth”).

56. *Id.* § 301.

57. The requisite for acknowledgment and non-acknowledgment consents differ. *See id.* § 102(18), 304(b) (providing for an acknowledgment undertaken before birth, as well as an assisted reproduction (artificial insemination or FEI) “record”—meaning information

The 2017 UPA recognizes that a sperm donor is not always a parent of a child conceived by non-surrogacy assisted reproduction.⁵⁸ For there to be two legal parents, a consent to parentage must be signed by the person giving birth and “an individual who intends to be a parent,” though the “record” need not be certified by a physician.⁵⁹ Seemingly, “consent in a record” can be undertaken “before, on, or after birth of the child.”⁶⁰ The lack of this form of consent does not foreclose childcare parentage for an intended parent where there is clear and convincing evidence of an “express agreement” between the individual and the person giving birth, “entered before conception.”⁶¹ Additionally, the lack of such consent or agreement does not foreclose an individual’s parentage where the child was held out as the individual’s own in the child’s first two years.⁶² The non-parental status of one married to a person giving birth to a child born by assisted reproduction, even if shown to be a gamete donor, may be established, within two years of birth, by a showing of a lack of consent.⁶³ More than two years after birth, disestablishment of spousal parentage requires that the spouse not be a genetic parent, not have consented, not have cohabited with the birth mother “since the probable time of assisted reproduction,” and not have “held out the child as the spouse’s” own.⁶⁴

Childcare parentage for intended parents in non-surrogacy assisted reproduction settings, as noted, often involves express consents.⁶⁵ Generally, there are no state-

inscribed in a “retrievable” and “perceivable” form). However, the acknowledgment comes in a state agency prescribed form, while an assisted reproduction “record” is not in a state prescribed form. *Id.* § 102(18), 312.

58. *Id.* §§ 701–04.

59. *Id.* § 704(a).

60. *Id.* § 704(b).

61. It is not clear why an “express agreement” undertaken post-conception does not also prompt comparable childcare parentage. Here, there is a much greater certainty that a child will be born, so an agreement is far less speculative. Perhaps, for a preconception agreement, the 2017 UPA contemplated a prebirth voluntary parentage acknowledgment, as it recognizes that an “intended parent” can sign such an acknowledgment. 2017 UPA, *supra* note 12, § 304(b). Yet, an “intended parent” in many states has no prebirth parentage acknowledgment access, as the states follow the 1973 UPA or 2000 UPA, which only authorize post-birth (paternity) acknowledgments. *See* 2017 UPA, *supra* note 12, § 704(b)(1); 1973 UPA, *supra* note 21, § 4 (“paternity” acknowledgment “of the child” in a “writing filed with” the state, which is not disputed by “the mother”); 2002 UPA, *supra* note 25, § 301 (“man claiming to be the genetic father of the child” signs together with the “mother of a child”).

62. 2017 UPA, *supra* note 12, § 704(b)(2).

63. *Id.* § 705(a).

64. *Id.* § 705(b).

65. *See* 2017 UPA, *supra* note 12, § 704(a)–(b) (stipulating that in a non-surrogacy assisted reproduction birth where there is no “consent in a record,” parentage depends on clear and convincing evidence of a preconception “express agreement”); *cf. In re W.L.*, 475 P.3d 338, 381–82 (Kan. 2020) (holding that no need for the same-sex romantic partner of a woman bearing a child in a non-surrogacy assisted reproduction birth to prove parentage by a written or oral coparenting pact, as long as she shows by a preponderance of the evidence that she notoriously recognized her own maternity with the birth mother’s consent). There are factual issues, including issues of parental intentions, when parentage depends on post-birth actions. *See* 2017 UPA, *supra* note 12, § 704(b)(2) (indicating that residency/holdout parentage dependent upon parental-like acts for “the first two years of the child’s life”). Factual disputes

required forms for express consents to artificial insemination or FEI parentage. However, in California, in some settings, there are statutorily-recommended consent forms that may be used.⁶⁶ Regardless of the required content of valid non-surrogacy assisted reproduction pacts, state-formulated consent forms should be made available in artificial insemination and FEI birth settings, as actual informed consent would be better assured, and there would be greater certainty regarding party intentions.⁶⁷ Such forms could be comparable in some ways to the required forms for voluntary parentage acknowledgments, though the forms, as with acknowledgement forms, may vary between states since state non-surrogacy assisted reproduction laws differ.⁶⁸ However, unlike acknowledgments, artificial insemination intended parent forms should be available, but filing with the state when completed should not be required. Here, privacy interests would be protected in settings where no disputes over childcare parentage arise.

Non-surrogacy assisted reproduction—including both artificial insemination and FEI—parentage norms in the UPAs are now reflected in some state statutes⁶⁹ and in

are more likely to arise when there is non-surrogacy assisted reproduction without medical or clinical assistance. *See generally, e.g., Gatsby v. Gatsby*, 495 P.3d 996 (2021) (criticized in Jeffrey A. Parness, *DIY Artificial Insemination: The Not-So-Great Gatsby*, 55 CREIGHTON L. REV. 465 (2022)).

66. CAL. FAM. CODE § 7613.5(d)–(e) (West 2025) (providing optional forms, including forms on assisted reproduction pacts titled “Two Married or Two Unmarried People Using Assisted Reproduction to Conceive a Child;” “Unmarried, Intended Parents Using Intended Parent’s Sperm to Conceive a Child;” “Intended Parents Conceiving a Child Using Eggs from One Parent and the Other Parent Will Give Birth;” and “Intended Parent(s) Using a Known Sperm and/or Egg Donor(s) to Conceive a Child”).

67. *See generally* Jeffrey A. Parness, *Formal Declarations of Intended Childcare Parentage*, 92 NOTRE DAME L. REV. ONLINE 87 (2017) (urging the creation of state-formulated consent forms related to artificial insemination or FEI parentage).

68. *See, e.g.,* Jeffrey A. Parness & Zachary Townsend, *For Those Not John Edwards: More and Better Paternity Acknowledgments at Birth*, 40 BALT. L. REV. 53, 63–87 (2010) (reviewing similarities and differences in state-generated voluntary paternity acknowledgment forms). At times, some written parentage acknowledgments operate, though state-generated forms were not utilized. *See, e.g.,* D.C. CODE § 16-909(a)(4) (2025) (providing for presumption that a man is the father of a child if he “has acknowledged paternity in writing”); N.M. STAT. ANN. § 40-11A-204(A)(4)(c) (2025) (providing that a man is presumed to be the father of a child if he married the birth mother after the child’s birth and “he promised in a record to support the child as his own”); KAN. STAT. ANN. § 23-2208(a)(4) (2025) (providing that a man is presumed to be the father of a child if he “notoriously or in writing recognizes paternity of the child,” including but not limited to acts in accordance with the voluntary acknowledgement statutes).

69. *See* TEX. FAM. CODE ANN. § 160.7031 (West 2025) (declaring that an unwed man who, intending to be father, “provides sperm to a licensed physician and consents to the use of that sperm for assisted reproduction by an unmarried woman,” is the father of the “resulting child” where consent is in a record signed by man and woman and kept by the physician); N.H. REV. STAT. ANN. § 5-C:30(I)(b) (2025) (unwed mother has sperm donor “identified on birth record” where “an affidavit of paternity” has been executed); DEL. CODE ANN. tit. 13, § 8-704(a) (2025) (“Consent by a woman and an intended parent of a child conceived via assisted reproduction must be in a record signed by the woman and the intended parent.”); WYO. STAT. ANN. § 14-2-904(a) (2025) (like Delaware’s statute); N.M. STAT. ANN. § 40-11A-

precedents untethered to statutes,⁷⁰ with significant interstate variations.⁷¹ The 2017 UPA provisions have been enacted in a few states.⁷²

Unfortunately, some state laws continue to embody the problematic limits on assisted reproduction parentage for non-gestating parents to spouses⁷³ or to men.⁷⁴ Aforenoted equality principles have been read by some courts (but not yet the U.S. Supreme Court) to extend assisted reproduction opportunities to unwed couples, notwithstanding statutory language limited to wed couples.⁷⁵ The 2017 UPA's suggested language, where enacted, is more encompassing of those able to undertake assisted reproduction.⁷⁶

As well, there are problematic artificial insemination provisions in some state statutes, as they only address artificial insemination facilitated by a licensed physician, thus not expressly covering do-it-yourselfers.⁷⁷

703 (2025) (“A person who provides eggs, sperm or embryos for or consents to assisted reproduction as provided in Section 7-704 [record signed before the placement] . . . with the intent to be the parent of a child is a parent of the resulting child.”).

70. See *Shineovich v. Kemp*, 214 P.3d 29, 39–40 (Or. Ct. App. 2009) (holding that the assisted reproduction statute, as written solely for married opposite sex couples, applied to same sex domestic partners to avoid constitutional infirmity); *Jason P. v. Danielle S.*, 226 Cal. App. 4th 167, 176–78 (2014) (interpreting statute on presumed parentage so that, though it indicated explicitly a lack of paternity for this particular semen donor when his unwed partner delivered a child conceived via assisted reproduction, one who receives a child (either male or female) into the home and openly holds out the child as one's own natural child can support—in certain circumstances—legal paternity for the semen donor); *Ramey v. Sutton*, 362 P.3d 217, 218–22 (Cal. 2015) (holding that unwritten preconception agreement prompts in loco parentis childcare status for former lesbian partner of birth mother, though she contributed no genetic material); *Brooke S.B. v. Elizabeth A.C.C.*, 61 N.E. 3d 488, 497–501 (N.Y. 2016) (agreement between lesbian partners can prompt parentage in non-birth mother).

71. See generally Deborah L. Forman, *Exploring the Boundaries of Families Created with Known Sperm Providers: Who's In and Who's Out?*, 19 U. PA. J.L. & SOC. CHANGE 41 (2016) (reviewing and critiquing the laws).

72. The 2017 UPA suggested assisted reproduction statutes involving non-surrogacy births, appearing at sections 701–708, are followed in WASH. REV. CODE § 26.26A.610 (2025) and VT. STAT. ANN. tit. 15C, § 701 (2025).

73. See, e.g., TEX. FAM. CODE ANN. § 160.704 (West 2025) (consent by a married woman and her husband to assisted reproduction); N.C. GEN. STAT. § 49A-1 (2025) (similar); ALASKA STAT. § 25.20.045 (2025) (spousal consent to artificial insemination); IDAHO CODE § 39-5405 (2025); UTAH CODE ANN. § 81-5-701 (LexisNexis 2025); ALA. CODE § 26-17-704 (2025); OHIO REV. CODE ANN. § 3111.95 (LexisNexis 2025) (similar); OKLA. STAT. tit. 10, § 551 (2025) (similar).

74. See, e.g., N.D. CENT. CODE 14-20-62 (2025) (men who consent to assisted reproduction).

75. See, e.g., *In re R.C.*, 775 P.3d 27, 29–35 (Col. 1989) (unwed opposite sex couple); *D.M.T. v. T.M.H.*, 129 So. 3d 320 (Fla. 2013) (unwed same sex female couple).

76. 2017 UPA, *supra* note 12, § 703 (“An individual who consents . . . to assisted reproduction by a woman with the intent to be a parent of the child conceived by assisted reproduction is a parent of the child.”).

77. See, e.g., TEX. FAM. CODE § 160.704(a) (West 2025) (married man and woman consent to assisted reproduction facilitated by “a licensed physician”); MONT. CODE ANN. § 40-6-106 (2025) (similar); N.J. STAT. ANN. § 9:17-44 (2025) (similar).

B. Surrogacy Parentage

The 1973 UPA does not speak to assisted reproduction parentage via surrogacy agreements.⁷⁸ The 2000 UPA recognizes that a "prospective gestational mother" may agree with "intended" parents, who are a "man" and a "woman," that "the intended parents become parents of the child."⁷⁹ An agreement must be validated by a court in a proceeding commenced by "the intended parents and the prospective gestational mother."⁸⁰ The opportunity for intended parentage under a gestational agreement is not available if pregnancy is planned through sexual intercourse.⁸¹ As well, unless waived by the court, intended parents must undergo a "home study" by a state agency and must be found to "meet the standards of fitness applicable to adoptive parents."⁸² While there is yet no pregnancy, a validated agreement may be terminated by the prospective gestational mother, her husband, or either of the intended parents.⁸³ Before or (seemingly) after pregnancy, a "court for good cause shown may terminate the gestational agreement."⁸⁴ Upon the birth of a child pursuant to an earlier validated gestational agreement, a court shall issue an order "confirming that the intended parents are the parents of the child."⁸⁵ A gestational agreement "that is not judicially validated is not enforceable."⁸⁶ Should a prospective gestational mother deliver a child allegedly not conceived through assisted reproduction, "genetic testing" is used to "determine the parentage of the child."⁸⁷

78. 1973 UPA, *supra* note 21, § 5 cmt. ("This Act does not deal with many complex and serious legal problems raised by the practice of artificial insemination," though it singles out and covers the "frequently" occurring "fact situation" involving parentage for a child born of a wife's insemination by a non-spousal donor).

79. 2000 UPA, *supra* note 21, § 801(a) (signatories also include the "husband" of the prospective gestational mother and "a donor or the donors").

80. *Id.* § 802(a).

81. *Id.* § 801(d). If there is a gestational surrogacy agreement that is not judicially validated under the conditions of the 2000 UPA, "the parent-child relationship" is determined under the Act's provisions on parentage for children born of sex. *Id.* § 809(b).

82. *Id.* § 803(b)(2). This is followed in Texas. TEX. FAM. CODE § 160.756(b)(3) (West 2025).

83. 2000 UPA, *supra* note 21, § 806(a).

84. *Id.* § 806(b). Cause for termination is left undefined. *Id.* § 806(b) cmt. The validating court perhaps is authorized, under the 2000 UPA, to terminate for good cause a "gestational surrogacy agreement until a child born to the gestational mother during the period governed by the agreement attains the age of 180 days." *Id.* § 805. It is unclear whether such post-birth termination must be based solely on violations of the gestational surrogacy agreement or can be based on post-birth acts that are not expressly governed by the agreement, such as child abuse by intended parents.

85. *Id.* § 807(a) (notice filed with court by the intended parents). The drafters added an alternative filing avenue in the 2002 revision. 2002 UPA, *supra* note 25, § 807(c) (notice filed with court by the gestational mother or the appropriate state agency).

86. 2000 UPA, *supra* note 21, § 809(a).

87. *Id.* § 807(b). *See also id.* § 801(d) ("A gestational agreement does not apply to the birth of a child conceived by means of sexual intercourse."); *id.* § 809(b) (parentage determined under Article 2 where there is a gestational agreement that is not validated).

While the 2000 UPA comparably treats surrogacy agreements where the prospective gestational mother utilized one or two donors,⁸⁸ the 2017 UPA distinguishes between gestational (i.e., both semen and egg donors)⁸⁹ and genetic (i.e., only semen donor)⁹⁰ surrogacy. Some requirements are comparable,⁹¹ as with the need for assisted reproduction to prompt the pregnancy,⁹² signatures in a record “attested by a notarial officer or witness;”⁹³ independent legal counsel for all signatories;⁹⁴ and execution before implantation.⁹⁵

Other surrogacy requirements differ, with genetic surrogacy having more stringent requirements.⁹⁶ Thus, expecting surrogacy parentage distinguishes between assisted reproduction children born of artificial insemination and of FEI. The 2017 UPA does not require, as does the 2000 UPA,⁹⁷ that all surrogacy agreements be validated by a court in a proceeding containing all the relevant parties.⁹⁸ But, a genetic surrogacy agreement generally is enforceable only when validated by a court “before assisted reproduction.”⁹⁹ Validation arises upon a finding that “all parties entered into the agreement voluntarily” and understood its terms,¹⁰⁰ though a genetic surrogate cannot be ordered by a court to “be impregnated, terminate or not terminate a pregnancy, or submit to medical procedures.”¹⁰¹

The lack of judicial validation in gestational surrogacy settings under the 2017 UPA means there will be no court review, as there was under the 2000 UPA, on the intended parents’ suitability as adoptive parents.¹⁰² While proceedings to validate genetic surrogacy pacts under the 2017 UPA “must be commenced before [the

88. *Id.* § 801(a) (written agreement including “a donor or the donors”).

89. 2017 UPA, *supra* note 12, § 801(2) (woman using “gametes that are not her own”).

90. *Id.* § 801(1) (woman using “her own gamete”).

91. *See, e.g., id.* § 802(a)(1)–(5) (21 years old, previously gave birth, and independent legal representation); *id.* § 803 (process for executing an agreement).

92. *Id.* § 801(1)–(2) (covering both genetic and gestational surrogates).

93. *Id.* § 803(6).

94. *Id.* § 803(7).

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

96. *Compare id.* § 814(a)(2) (genetic surrogate may withdraw consent any time before 72 hours after the birth), *with id.* § 808(a) (termination of agreement “any time before an embryo transfer”).

97. 2000 UPA, *supra* note 21, § 802(a).

98. The relevant parties to all surrogacy agreements under the 2017 UPA include each intended parent, the surrogate, and the surrogate’s spouse, if there is one. 2017 UPA, *supra* note 12, § 803(3).

99. *Id.* § 813(a). Exceptions to this validation requirement include when all parties agree to judicial validation of an agreement after assisted reproduction has occurred, but before the birth of the child. *Id.* § 816(b). *See also id.* §§ 816(d), 818 (parentage determination guidelines when there is an unvalidated genetic surrogacy agreement or a breach of the agreement).

100. *Id.* § 813(a)–(b).

101. *Id.* § 818(b).

102. *See id.* § 802(b).

assisted reproduction] related to the surrogacy agreement,”¹⁰³ provisions on eligible intended parents do not include state agency findings that the parents meet the state’s formal adoption eligibility requirements.¹⁰⁴

Significant, as well, is the effective characterization in the 2017 UPA of an intended parent or intended parents in a genetic surrogacy setting as legal parents only after three days following the surrogate giving birth, since the surrogate has seventy-two hours to withdraw consent to the surrogacy agreement.¹⁰⁵ Upon the genetic surrogate’s withdrawal of consent within the three-day period, the surrogate establishes a “parent-child relationship” as the surrogate is “the individual” who gave birth to the child.¹⁰⁶ So, artificial insemination (genetic) surrogates are distinguished from FEI (gestational) surrogates.¹⁰⁷

In genetic surrogacy settings, someone might also establish a parent-child relationship with a gestating parent who withdrew within three days. Thus, a sperm donor seemingly can become a legal parent shortly after birth if the sperm donor and the one-time genetic surrogate each sign a parentage acknowledgment that is not rescinded and unchallenged.¹⁰⁸

The 2000 and 2017 UPA surrogacy parentage norms are now both reflected in state statutes¹⁰⁹ and precedents untethered to statutes.¹¹⁰ Certain provisions of the

103. *Id.* § 813(a).

104. *See id.* § 802. *But see* 2000 UPA, *supra* note 21, § 803(b)(3) (state agency finding required). The 2017 Act does require “each intended parent, whether or not genetically related to the child,” to “complete a medical evaluation . . . by a licensed medical doctor” and to “complete a mental-health examination by a licensed mental health professional.” 2017 UPA, *supra* note 12, § 802(b)(2)–(3). As no judicial proceeding to validate a gestational surrogacy pact is always necessary, no court may ever review such a required evaluation or examination. *Id.* § 811(a) (“[A] party to the agreement may commence a proceeding . . .”).

105. 2017 UPA, *supra* note 12, § 814(a)(2).

106. *Id.* § 815(c) (upon withdrawal, “parentage of the child” is determined under Articles 1 through 6); *id.* § 201(1) (parent-child relationship for individual who gives birth).

107. *See* sources cited *supra* note 17 and accompanying text. Federal constitutional rights and interests might be distinguished in the future.

108. 2017 UPA, *supra* note 12, § 815(c) (upon withdrawal, “parentage of the child” is determined upon Articles 1 through 6); *id.* § 201(5) (parent-child relationship for individual who acknowledges parentage); *id.* § 301 (woman giving birth and “alleged genetic father” may sign acknowledgment); *id.* § 304(b)–(c) (acknowledgment signed before birth becomes effective at birth); *id.* § 308–309 (procedures for rescission and challenge of an acknowledgment).

109. *See, e.g.,* WASH. REV. CODE § 26.26A.715 (2025) (addressing gestational and genetic surrogacy pacts).

110. Courts have recognized judicial discretion to enforce surrogacy arrangements. *See In re Paternity of F.T.R.*, 833 N.W.2d 634, 653 (Wis. 2013) (enforcing surrogacy pact between two couples as long as child’s best interests were served, while urging the legislature to “consider enacting legislation regarding surrogacy” to insure “the courts and the parties understand the expectations and limitations under Wisconsin law”); *In re Baby*, 447 S.W.3d 807, 833–34 (Tenn. 2014) (“traditional surrogacy contracts do not violate public policy as a general rule” where surrogate artificially inseminated with sperm of intended father, who was not married to intended mother); *In re Amadi A.*, No. W2014–01281–COA–R3–JV, 2015 WL 1956247, at *7–*10 (Tenn. Ct. App. Apr. 24, 2015) (finding support for gestational surrogate’s name for married couple to be placed on birth certificate, as said to be required by

2017 UPA have been enacted in a few states.¹¹¹ Elsewhere, major sections of the 2000 UPA on surrogacy operate.¹¹² As yet, there are no state-required or suggested forms on intended parentage in surrogacy births, though there are suggested forms on intended parentage in non-surrogacy assisted reproduction births in California.¹¹³ An increased availability of suggested intended parent forms in assisted reproduction settings would significantly diminish the number of disputes over consents to parentage and non-parentage.¹¹⁴

IV. REFORMING THE LAWS ON AT-BIRTH CHILDCARE PARENTAGE FOR ASSISTED REPRODUCTION BIRTHS

Children may be born via non-sexual insemination, involving insertions solely of semen (artificial insemination) or implantations of fertilized eggs (FEI). Subsequent childcare parentage can arise in artificial insemination and FEI births from varying forms of agreements to future, current, or contingent parenthood. Future parenthood usually encompasses a prebirth agreement to become a parent upon birth, as through an assisted reproduction agreement (if not a contract under general legal principles). Current parenthood can arise from a post-birth agreement acknowledging parentage. Contingent parenthood encompasses an agreement to parent a child later born should certain conditions be met.

Thus, a sperm-providing husband of a gestating egg-providing wife can agree to future assisted reproduction parenthood upon a later birth.¹¹⁵ A sperm-providing man

statute where intended father's/husband's sperm used with egg from unknown donor and intended mother/wife was recognized by all parties as legal mother and making plea that the for legislature to enact a comprehensive statutory scheme); *Raftopol v. Ramey*, 12 A.3d 783, 683–717 (Conn. 2011) (holding that a biological father's male domestic partner can also be intended parent of a child born to a gestational surrogate). Beyond enforcing a surrogacy pact in the absence of statute, an intended parent (also the sperm donor) who employed a gestational surrogate was allowed in one case to adopt formally his genetic offspring. *In re John*, 103 N.Y.S.3d 541, 543–50 (N.Y. App. Div. 2019).

111. *See, e.g.*, WASH. REV. CODE § 26.26A.715 (2025) (gestational or genetic surrogacy agreement); VT. STAT. ANN. tit. 15C, § 801 (2025) (gestational carrier agreements); R.I. GEN. LAWS § 15-8.1-801 (2025) (gestational carrier agreements).

112. *See, e.g.*, UTAH CODE ANN. § 81-5-801 (LexisNexis 2025) (similar to 2000 UPA); TEX. FAM. CODE § 160.756(b)(3) (2025) (in gestational surrogacy settings, intended parents must meet adoption “eligibility” norms, as in the 2000 UPA, in order to secure judicial validation of a gestational surrogacy agreement under section 160.755); *id.* § 160.755 (intended parents or the prospective gestational mother may commence a proceeding).

113. *See* CAL. FAM. CODE § 7613.5(a) (2025) (“An intended parent may, but is not required to, use the forms set forth in this section.”). There are four forms for non-surrogacy assisted reproduction (including both artificial insemination and FEI). In forms one through three, one intended parent will “give birth.” The fourth form covers “Intended Parent(s) Using a Known Sperm and/or Egg Donor(s) to Conceive a Child;” this form is not to be used if intended parentage contemplates “using a surrogate.”

114. *See, e.g.*, Parness, *supra* note 67, at 104. *See also* Guardianship of Keanu, 174 N.E.3d 1228, 1230 (Mass. App. Ct. 2021) (recognizing a need for legislation on surrogacy pacts given “the risks of an informal surrogacy”).

115. *See* 2017 UPA, *supra* note 12, § 702 (also includes unwed opposite sex couple).

and a gestating, egg-providing woman can agree to current assisted reproduction parenthood for the two after birth through a signed voluntary paternity acknowledgment.¹¹⁶ And, a person or people can agree prebirth to childcare parentage of a child later born to a genetic surrogate, which depends upon the surrogate not withdrawing her consent.¹¹⁷

State law reforms are particularly needed regarding agreements on childcare parentage for children born of assisted reproduction. Parentage arising from FEI births, for now (as there appear, through cases and other sources, to be no opportunities for do-it-yourselfers), is typically guided by clear guidelines on enforceable parentage agreements that are facilitated by the necessary medical/clinical personnel.¹¹⁸ By comparison, there are far greater uncertainties regarding agreements on parentage for artificial insemination births through do-it-yourself, intracervical insemination.¹¹⁹

Certainly, statutory enactments or judicial precedents reflecting the 2017 UPA policies on opportunities for establishing non-gestating parenthood for both men and women in assisted reproduction birth settings should be considered, though they need to describe the means under the latest UPA for expressing consents to future parenthood beyond declaring agreements must be in a “record.”¹²⁰

But reforms beyond enacting or implementing suggested UPA provisions are also necessary. In particular, laws should expand voluntary parentage acknowledgments for certain assisted reproduction intended parents, perhaps through enacting the 2017 UPA. But the 2017 UPA should be supplemented by state laws to address certain issues not covered in the 2017 Act. New laws should address the interplay of spousal parentage and assisted reproduction parentage norms. Further, new laws should describe better (and expand upon) the methods of consent to non-marital non-surrogacy assisted reproduction births. In particular, new consent laws should be guided by an array of suggested forms that would normally be enforced when properly utilized. Reforms are also needed on the laws covering artificial insemination surrogacy parentage arising from intracervical insemination,¹²¹ where any forms are more likely to be made available (or be subject to mandatory use) by interested parties and where data on such parenthood could be gathered more easily while protecting privacy interests.

Finally, new parentage laws should better reflect some of the differences between assisted reproduction parentage and consensual sex parentage. Only in the former settings are there usually expressed parental intentions (i.e., expecting, but not yet existing, parentage under law) by those not gestating, as well as intentions about non-parentage by some then, or soon to be, gestating parents, as with surrogates. These intentions should prompt special laws on rights/interests/obligations of intended

116. *See id.* §§ 301, 702.

117. *See id.* § 814(a)(2) (withdrawal within 3 days of birth).

118. *See id.* §§ 808–812 (gestational surrogacy pacts); *id.* §§ 813–818 (genetic surrogacy pacts).

119. *See Parness, supra* note 19, at 128–32 (such births can be prompted without medical or clinical assistance).

120. 2017 UPA, *supra* note 12, § 704(b)(1) (non-record consents are recognized for express agreements, proven by “clear-and-convincing evidence,” of intended parentage).

121. *See Parness, supra* note 19, at 140–42.

expecting parents and of expecting (aware and unaware) genetic parents of children born of assisted reproduction.

New laws should sometimes include guidelines on judicial scrutiny of good and bad parental-like behavior of alleged intended assisted reproduction parents toward their unborn children or toward gestating parents prior to birth, in some ways not unlike the scrutiny occurring with prebirth conduct of expecting parents of children born of sex.¹²² Thus, failures of promised prebirth support by an expecting, non-gestating assisted reproduction parent should preclude, at times, at-birth parentage. Further, new laws should sometimes include guidelines on judicial scrutiny of good and bad parental acts of alleged non-gestating intended assisted reproduction parents toward any living children, not unlike the scrutiny occurring with the conduct of those seeking to adopt children. For example, inclusion on a child abuse registry should preclude, most times, at-birth assisted reproduction parentage.¹²³

With these general observations in mind, consider now possible reforms of the laws on at-birth assisted reproduction parentage.

122. Certainly, it is more difficult for the state to inquire into and regulate the behavior of gestating parents during pregnancy. It is far easier to demand parental-like acts of non-gestating expecting (as with presumptive and intended) parents. *See generally* Jeffrey A. Parness, *Arming the Pregnancy Police: More Outlandish Concoctions?*, 53 LA. L. REV. 427 (1992) (advocating for greater state law demands on gestating parents during pregnancies to promote live and healthy births, though recognizing limits imposed by privacy interests); Jeffrey A. Parness, *Pregnant Dads: The Crimes and Other Misconduct of Expectant Fathers*, 72 OR. L. REV. 901 (1993) (advocating for more significant state law demands of prebirth support by expecting non-gestating parents). *See* 2017 UPA, *supra* note 12, § 614(b) (dealing with bad pre-birth behavior of otherwise expecting non-gestating parents of children born of sex, birth mother may seek to preclude from parenthood a man who prompted pregnancy through a “sexual assault”).

123. There are many examples of states precluding registered child abusers from adoption eligibility. *See, e.g.,* MICH. COMP. LAWS § 722.627j(15) (2025) (“A parent or other person responsible for a child, who has reason to believe another caregiver may place that child at risk, may, with appropriate authorization and identification, receive confirmation of central registry placement of that parent, person responsible, or caregiver.”); ALA. CODE § 26-14-8(c) (2025) (“Child abuse and neglect reports and records shall be limited to the purposes for which they are furnished and by the provisions of law under which they may be furnished. The reports and records of child abuse and neglect and related information or testimony shall be confidential, and shall not be used or disclosed for any purposes other than . . . (9) For use by federal, state, or local governmental entities, social service agencies of another state, or any agent of such entities, having a need for the information in order to carry out their responsibilities under law to protect children from abuse and neglect.”); HAW. REV. STAT. § 346-19.7(c) (2025) (“Except as otherwise specified, any person who seeks to become an adoptive parent, including all adults residing in the prospective adoptive home, shall . . . (2) Be subject to criminal history record checks . . . and child abuse and neglect registry checks. . . . Information obtained . . . shall be used by the department for the purpose of determining whether or not a person is suitable to be an adoptive parent.”); S.D. CODIFIED LAWS § 26-8A-12.3 (2025) (“Upon the receipt of a written request from a licensed child welfare agency or a private child welfare agency . . . the Department of Social Services shall conduct a check of the central registry for child abuse and neglect for kinship, foster care, adoption, or employment applicants and shall provide the results to the requesting agency.”).

A. Voluntary Parentage Acknowledgments

Voluntary parentage acknowledgments can reinforce, or initially complete, the legally binding nature of agreements on childcare parentage arising from assisted reproduction births. The 1973 UPA seemingly limited such acknowledgments by its recognition of presumptive paternity acknowledgments by signing men¹²⁴ supplemented by its requirements for a wife and husband utilizing “artificial insemination” to employ a “licensed physician” who needed to certify their signatures and then file their consents to his parentage with the state.¹²⁵

The 2000 UPA recognizes a “father-child relationship” when the man consented to non-surrogacy assisted reproduction by a woman,¹²⁶ resulting in birth, with the consent embodying an intent to be the parent, found “in a record signed by the woman and her husband.”¹²⁷ A similar record to support intended parentage cannot be used when the child is “conceived by means of sexual intercourse.”¹²⁸ Yet, a parentage acknowledgment under the 2000 Act is limited to settings where a man, when acknowledging paternity, claims “to be the [genetic] father of the child” and seeks “to establish the man’s paternity.”¹²⁹

The 2017 UPA explicitly extends available parentage acknowledgments beyond men, to include not only an alleged genetic father born of sex, but also an intended assisted reproduction parent and a presumed parent whose parentage depends on either marriage to the birth mother or residency/hold out parenthood.¹³⁰ As for a non-surrogacy assisted reproduction births, a signing, intended non-gestating parent (man or woman) may qualify for parentage via a consent “in a record,” a consent found by a court based on “clear-and-convincing evidence . . . of an express agreement entered into before conception” to dual parentage, or a judicial finding of consent via a determination of residency/hold out parentage. In a non-surrogacy “assisted reproduction” setting, then, the 2017 UPA permits both men (artificial insemination)

124. See 1973 UPA, *supra* note 21, § 4(a)(5) (upon notice, mother had a reasonable time to dispute the acknowledgment).

125. *Id.* § 5(a) (physician’s failure to file “does not affect the father and child relationship”).

126. 2000 UPA, *supra* note 21, § 201(b)(5).

127. *Id.* §§ 703–704(a).

128. *Id.* § 701.

129. *Id.* § 301. Equality principles have been found to require marital parentage for the female spouse of a gestating parent when a child is born of consensual sex since any parentage requirements for either form of artificial insemination do not preempt. See, e.g., *McLaughlin v. Jones*, 401 P.3d 492, 498 (Ariz. 2017); *LC v. MG*, 430 P.3d 400, 411–412 (Haw. 2018). Similarly, in the absence of preemptively exclusive assisted reproduction consent norms, female spouses of gestating parents should be able to acknowledge parentage where their eggs were used to prompt pregnancies arising from FEI. See *Elisa B. v. Superior Ct.*, 117 P.3d 660, 667 (Cal. 2005) (holding that statute on residency/hold out parentage of a “man” applies equally to a “woman”).

130. See 2017 UPA, *supra* note 12, §§ 301, 701, 704 (extending to intended parent of a child of an “assisted reproduction” birth who consents in a record, though not if there is a surrogacy agreement); *id.* § 204(a) (marriage at time of birth; marriage not later than 300 days after birth; certain invalid marriages; and residency with child in same household for child’s first two years while holding out the child as one’s own).

and non-gestating women (FEI) to sign as genetic parents, as well as allows some with no genetic ties to acknowledge parentage together with the birth mother.¹³¹

The 2017 UPA does not expressly permit intended non-genetic parents to sign parentage acknowledgments in assisted reproduction births to surrogates.¹³² Intended non-genetic parents, men and women, can become parents via a surrogacy agreement, whether gestational or genetic. The express requirements for all valid surrogacy pacts go well beyond “consent in a record” for an intended parent in a non-surrogacy assisted reproduction birth.¹³³ Even greater requirements operate in the genetic surrogacy setting than in the gestational surrogacy setting.¹³⁴

Federal constitutional precedents might allow voluntary parentage acknowledgments (as under equality principles) in limited surrogacy settings. Those who bear children are said to obtain automatically parental “care, custody, and management” rights.¹³⁵ Yet the precedents on such mothers are limited to genetically tied women who bear children born of consensual sex. If genetic and non-genetic parents carrying a potential child to term secures for the gestating parents their *Lehr* opportunity interests in childcare,¹³⁶ such interests arguably can be secured through parentage acknowledgments. Yet the non-genetic gestating parents’ opportunity interests can be waived prebirth, or even preconception, as is recognized in the 2017 UPA.¹³⁷

What if the relevant individuals’ circumstances in surrogacy settings change after the gestational surrogacy pact is executed and pregnancy follows? Might waivers of any intended parental opportunities rights be rescinded, or might a gestating parent’s waiver of childcare rights and interests be rescinded? Waivers could arise from parentage acknowledgments, where there are waivers executed, if needed, by egg donors, sperm donors, and intended parents, as well as by affirmative declarations of parental intentions by a gestating parent regarding future childcare. Seemingly, such parentage acknowledgments should be guided by very different state-approved forms than are employed for voluntary parentage acknowledgments of children who are born of, or are to be born of, consensual sex or of non-surrogacy assisted reproduction pacts. Beyond surrogacy settings where parentage acknowledgments can be executed prebirth, methods for some state review of later, troublesome expecting parental conduct should be available, with invalidations of earlier acknowledgments sometimes available.

131. *See id.* § 704(a)–(b)(1).

132. *See id.* § 301 (indicating that acknowledgments by intended parents under Article 7 on assisted reproduction can sign, as Article 7 is inapplicable to assisted reproduction births “under a surrogacy agreement” under Article 8).

133. *Id.* § 802(b) (requiring an intended parent to be at least 21 years of age, complete a medical evaluation and mental health consultation, and have independent legal representation).

134. *See id.* § 814(a)(2) (genetic surrogate may withdraw consent “any time before 72 hours after the birth”).

135. *See Quilloin v. Walcott*, 434 U.S. 246, 248 (1978); *Tuan Anh Nguyen v. INS*, 533 U.S. 53, 64 (2001).

136. *See Lehr v. Robertson*, 463 U.S. 248, 262 (1983).

137. 2017 UPA, *supra* note 12, § 808(a) (“A party to a gestational surrogacy agreement may terminate the agreement, at any time before an embryo transfer . . .”).

As noted, the 2017 UPA authorizes intended parents' use of voluntary parentage acknowledgments for non-surrogacy assisted reproduction births.¹³⁸ Such or similar usage is now permitted in some states, including New York,¹³⁹ Rhode Island,¹⁴⁰ Nevada,¹⁴¹ Massachusetts,¹⁴² and Colorado.¹⁴³ Unfortunately, the laws on challenging voluntary parentage acknowledgments for non-surrogacy assisted reproduction births are the same as the laws on challenges for births arising from consensual sex. The latter norms are driven by federal statutes on state welfare subsidies and generally speak to non-genetic fathers and birth mothers who seek to undo their acknowledgments. Parentage acknowledgments by non-genetic fathers run counter to the *Lehr* interests in paternity opportunities for genetic fathers who are not married to birth givers. These norms require challenging alleged actual genetic fathers and acknowledging non-genetic parents (men and women) to demonstrate fraud, duress, or material mistake of fact in order to succeed in their acknowledgment challenges.¹⁴⁴ The federal norms have been applied, via state legislative enactments of the 2017 UPA, to challenges of acknowledgments founded on intended parentage under assisted reproduction pacts.¹⁴⁵ These norms, however, should not be germane in assisted reproduction birth settings. Yes, perhaps issues of fraud, duress, or mistake are relevant. But their application should be to the problems with the intended parentage agreements, not the problems with the information available before signing on to who had genetic ties to the child born of sex. At least some of the acknowledgment forms in states where assisted reproduction births are eligible for voluntary parentage acknowledgments reflect the 2017 UPA approaches in treating challenges to the different acknowledgment avenues similarly.¹⁴⁶

Incidentally, similar issues attend the norms for signatory challenges to voluntary parentage acknowledgments founded on parentage based upon actual/attempted marriages or residency/hold out parentage. Such an acknowledgment basis is recognized in the 2017 (but not 1973 or 2000) UPA.¹⁴⁷ Again, the 2017 UPA

138. *See id.* §§ 301 (“intended parent” under Article 7); *id.* § 701 (stating that assisted reproduction norms do not apply to children born of sex or born pursuant to a surrogacy agreement under Article 8). Seemingly, acknowledgments can be employed for non-surrogacy artificial insemination and FEI assisted reproduction births.

139. *See* N.Y. PUB. HEALTH LAW § 4135-b(1)(c) (McKinney 2025); N.Y. FAM. CT. ACT § 581-303(a) (McKinney 2025).

140. *See* R.I. GEN. LAWS §§ 15-8.1-301(a)(3), 15-8.1-703 (2025).

141. *See* NEV. REV. STAT. §§ 126.053(1), 126.680 (2025).

142. *See* MASS. GEN. LAWS ch. 209, § 5(b) (2025).

143. *See* COLO. REV. STAT. § 19-4-105(2)(a.5) (2025).

144. *See, e.g.,* VT. STAT. ANN. tit. 15C, §§ 301(a), 308(a)(1) (2025); NEV. REV. STAT. §§ 126.053(3), 126.680 (2025).

145. *See* 2017 UPA, *supra* note 12, §§ 301, 309(a); R.I. GEN. LAWS § 15-8.1-308(a) (2025); NEV. REV. STAT. § 126.053(3) (2025); COLO. REV. STAT. § 19-4-105(2)(c) (2025).

146. *See, e.g.,* WASH. STATE DEP’T OF HEALTH, DOH 422-159, ACKNOWLEDGMENT OF PARENTAGE (2021), <https://doh.wa.gov/sites/default/files/legacy/Documents/Pubs/422-159-AcknowledgmentOfParentage.pdf> [<https://perma.cc/HB5P-HLYH>]; N.Y. STATE DEP’T OF HEALTH, LDSS-5171, ACKNOWLEDGMENT OF PARENTAGE (2021), <https://otda.ny.gov/programs/applications/5171.pdf> [<https://perma.cc/Z5RK-W9XT>].

147. *Compare* 2017 UPA, *supra* note 12, § 301 (referencing “presumed” spousal parent in § 204(a)(1) and “presumed” residency/hold out parent in § 204(a)(2)), *with* 1973 UPA, *supra*

challenge norms for signatories include only “fraud, duress or material mistake of fact.”¹⁴⁸ Yet these norms should operate, if at all, differently in disputed genetic parent settings, disputed marriage settings, and disputed residency/hold out settings.

Further, the 2017 UPA authorizes prebirth voluntary parentage acknowledgments for all eligible signatories.¹⁴⁹ Some legal significance should attach to prebirth acknowledgements beyond their taking “effect on the birth of the child.”¹⁵⁰ Specific articulations of obligatory parental-like duties arising from prebirth acknowledgments, like pregnancy support, are needed. For non-gestating expecting parents, pregnancy support laws (involving, *inter alia*, acts facilitating live and healthy births) should operate for expecting, acknowledged non-gestating parents in assisted reproduction settings. But they should differ from the pregnancy support laws for non-gestating expecting alleged genetic fathers who acknowledge children who are to be born of sex. For children who are to be born of sex, male acknowledgers may be primarily motivated to have a voice in any later adoption proceeding or to have the chance for genetic testing after birth. Acknowledgers in assisted reproduction settings are more often motivated to be deemed legal parents at birth.

As noted, parentage acknowledgments can sometimes reinforce, or initially complete, agreements on childcare parenthood arising from certain assisted reproduction births. Upon signing, they prompt parentage at birth for non-gestating parents.¹⁵¹ But they are not available for some assisted reproduction births. Some state laws do not follow the 2017 UPA expansion of acknowledgment opportunities in assisted reproduction settings.¹⁵² When state acknowledgment laws do encompass assisted reproduction births, they generally omit certain forms of assisted reproduction, as in surrogacy birth settings.¹⁵³

Where acknowledgment laws do not encompass all or certain assisted reproduction births, state lawmakers could permit at-birth declarations of intended parentage by non-gestating parents (with or without affirmations by gestating parents). Here, the at-birth declarations can be employed in later parentage disputes, as with disputes in adoption, child support, or child custody cases.

note 21, § 4(a)(5) (“presumed” paternity for acknowledging man), and 2000 UPA, *supra* note 21, § 301 (acknowledgment by “a man claiming to be the father of the child conceived” and “the mother of [the] child”).

148. 2017 UPA, *supra* note 12, § 309(a). For non-signatory challenges, “the best interest of the child” must be proven in a timely fashion (within 2 years). 2017 UPA, *supra* note 12, §§ 602, 610.

149. *Id.* § 304(b) (signatures “before or after the birth of the child”).

150. *Id.* § 304(c).

151. *See, e.g.*, 2000 UPA, *supra* note 21, § 305 (need signing and filing with birth record agency); 2017 UPA, *supra* note 12, § 305(a) (similar).

152. Under the 2000 UPA, *supra* note 21, § 301, the sole possible signatory beyond the “mother of a child” is a “man claiming to be the genetic father of the child.”

153. *See, e.g.*, 2017 UPA, *supra* note 12, §§ 301, 701 (indicating that an “intended parent” under the article on “assisted reproduction” can sign an acknowledgment but no such signing is permitted by a would-be parent via surrogacy agreement).

One possible form of an intended parentage declaration would involve the transformation of the putative father registry into a putative parent registry.¹⁵⁴ A putative father registry today usually serves to provide notice to an alleged genetic father of a formal adoption proceeding involving his offspring.¹⁵⁵ Here, an accompanying affirmation of actual or possible genetic ties by an expecting or existing birth mother is unnecessary.¹⁵⁶ Transformative usage would allow intended assisted reproduction birth parents, in both surrogacy and non-surrogacy settings, to register their intentions, which could then be employed, as evidence only, in later non-adoption cases wherein parentage disputes arise.

Another form of an intended parentage declaration would involve an assertion within a hospital or a medical or clinical office.¹⁵⁷ Here, as with putative parent registries, legal parenthood would not arise. But the opportunity to secure a later parentage judgment, through the use of the declaration, would be facilitated. State-promulgated forms could be made generally available to expecting gestating and non-gestating parents for children to be born or born of assisted reproduction.

B. Otherwise Agreeing to Assisted Reproduction Parenthood at Birth

1. Initial Observations

As noted, voluntary parentage acknowledgments are now sometimes available for assisted reproduction births. Semen providers, with the consent of birth mothers, can form two-parent families either with later born children or with children already born. Other forms of agreements on assisted reproduction parenthood exist. Here, as with parentage acknowledgments, law reforms are needed.

For any of the other forms of parentage pacts, lawmakers will need to consider or rethink the necessary attributes of agreements. Agreement can be manifested in a number of ways, including through express (written or oral) or implied consents to parenthood, undertaking parental-like acts, creating familial relationships, or signed agreements which may or may not be in a “record” and may or may not be filed with the state.

In forging new laws on parentage consents in assisted reproduction birth settings, Professor Strauss is clearly correct in observing that in these settings, “parentage agreements are not contracts.”¹⁵⁸ As he notes, “parentage agreements rarely involve

154. *See id.* §§ 401-415 (covering “registry of paternity”). While no such scheme is suggested in any UPA or is implemented in any state, the benefits of such a process are outlined in Jeffrey A. Parness, *Expanding State Parent Registry Laws*, 101 NEB. L. REV. 684 (2023).

155. *See, e.g.*, 2017 UPA, *supra* note 12, § 403.

156. *Id.* § 402(a).

157. While no such scheme is suggested in any UPA or is implemented in any state, the benefits of such a process are outlined in Jeffrey A. Parness, *In-Hospital Assertions of Childcare Parentage*, 39 WIS. J.L. GENDER & SOC’Y 155 (2024).

158. Gregg Strauss, *Parentage Agreements Are Not Contracts*, 90 FORDHAM L. REV. 2645 (2022). Professor Strauss concludes “parentage agreement law” has “few doctrinal similarities with contract law” because “these agreements do not satisfy the moral justifications” for binding people to their “expressed intentions.” *Id.* at 2659. *But see* Katherine K. Baker,

promises and instead simply declare one person a parent to the child” while not creating “bilateral duties between the parties.”¹⁵⁹ Such agreements typically do create “rights and duties to the child,” with the duties “fixed . . . by public family law designed to meet the child’s needs.”¹⁶⁰

Further, in considering new laws on at-birth assisted reproduction parentage, the lawmakers in the different states must be distinguished. For judges to act in the absence of, or in the supplementation of, statutory provisions, separation of powers hurdles must be overcome. Where there are no statutes, in some states, the distinct roles of elected legislators on parentage issues have slowed or foreclosed (for now) common law developments.¹⁶¹ Where there are assisted reproduction statutes that fail to address the particular case at hand, as with artificial insemination parentage statutes limited to unwed couples¹⁶² or artificial insemination parentage arising from a do-it-yourself artificial insemination birth,¹⁶³ separation of powers principles again can foreclose expansive common law precedents.¹⁶⁴

Finally, in contemplating new laws on at-birth assisted reproduction parentage, lawmakers must be careful not to discriminate unfairly between intended parents. Few lower courts have addressed the constitutional Due Process limits on assisted reproduction parentage statutes that exclude certain would-be parents. Some of the precedents involve male prisoners seeking state accommodations of their desires to procreate via assisted reproduction.¹⁶⁵ Forbidden inequalities arise when married, but not unmarried, couples, or unmarried couples, but not single persons, are authorized by statute to undertake intended assisted reproduction parentage.¹⁶⁶

Bargaining or Biology?: The History and Future of Paternity Laws and Parental Status, 14 CORNELL J.L. & PUB. POL’Y 1, 42–43 (2004) (“contract theory and doctrine provide a superior framework for determining parental status,” offering a better “structure of argument” on assessing parentage agreements).

159. Strauss, *supra* note 158, at 2672.

160. *Id.* at 2672.

161. See Jeffrey A. Parness, *State Lawmaking on Federal Constitutional Childcare Parents: More Principled Allocations of Power and More Rational Distinctions*, 50 CREIGHTON L. REV. 479, 504–14 (2017).

162. See, e.g., ALA. CODE § 26-17-702 (2025) (“married couple”); IDAHO CODE § 39-5403(1) (2025) (“woman” and “her husband”). But see *Gatsby v. Gatsby*, 495 P.3d 996, 1003 (Idaho 2021) (statute applies to same sex married female couple).

163. See, e.g., IDAHO CODE § 39-5402 (2025) (“Only physicians . . . and persons under their supervision may select artificial insemination donors and perform artificial insemination”); ALA. CODE § 26-17-702 (2025) (requiring “supervision of a licensed physician”).

164. See, e.g., *Gatsby*, 495 P.3d at 1004 (finding that compliance with IDAHO CODE § 39-5401 et seq. is necessary for an artificial insemination non-gestating parent to secure childcare parentage). For a criticism of this decision, see generally Jeffrey A. Parness, *DIY Artificial Insemination: The Not-So-Great Gatsby*, 55 CREIGHTON L. REV. 465 (2022).

165. Cases include *Goodwin v. Turner*, 908 F.2d 1395 (8th Cir. 1990) and *Gerber v. Hickman*, 291 F.3d 617 (9th Cir. 2002). The issues are reviewed in Tanner Minot, *Are We Sterilizing Prisoners?: Why Court Should Prevent Prison Administrators from Denying Prisoners the Fundamental Right to Procreate*, 16 J. GENDER RACE & JUST. 323 (2013).

166. See, e.g., *Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972) (noting “right” of individuals, “married or single,” regarding decisions on having children).

2. Spousal Parentage

There are currently two forms of state statutes on spousal parentage in the United States. One form involves an actual marriage to a birth giver.¹⁶⁷ The other form involves a failed attempt at a marriage to an existing or expecting birth giver.¹⁶⁸

Not unlike the three UPAs, state laws have both forms. But their spousal parent laws do vary.¹⁶⁹ Generally, state spousal parentage statutes do not speak expressly to artificial insemination or FEI births, so they can be read to cover all avenues to birth.¹⁷⁰ Here, however, spousal parent laws perhaps should yield to more particular non-surrogacy assisted reproduction laws, which typically demand express consents by intended non-gestating parents,¹⁷¹ not implicit consents by non-gestators to their spouses' children or children-to-be.

167. State spousal parentage laws on actual marriages are often founded on UPA suggestions. *See, e.g.*, 1973 UPA, *supra* note 42, § 4(a)(1) (“presumption of paternity”); 2000 UPA, *supra* note 21, §§ 204(a)(1)–(2) (“presumption of paternity”); 2017 UPA, *supra* note 12, §§ 204(a)(1)(A) and (B) (“presumption of parentage”). UPA and state spousal parent laws are reviewed in Jeffrey A. Parness, *Evaporating Natural Parent Childcare Liberties Under New Parentage Laws*, 77 ARK. L. REV. 643, 689–92 (2025).

168. State spousal parentage laws on attempted marriages are often founded on UPA suggestions. *See, e.g.*, 1973 UPA, *supra* note 42, § 4(a)(2)–(3) (“presumption of paternity”); 2000 UPA, *supra* note 21, § 204(a)(3)–(4) (“presumption of paternity”); 2017 UPA, *supra* note 12, § 204(a)(1)(C) (“presumption of parentage”).

169. For example, spousal parent laws founded on actual marriages can indicate the marriage existed during pregnancy, at the time of birth, or shortly after birth. *See, e.g.*, GA. CODE ANN. § 19-7-20 (2025) (addressing child “born in wedlock or within the usual period of gestation thereafter”); ARIZ. REV. STAT. ANN. § 25-814(a)(1) (2025) (addressing marriage “at any time in the ten months preceding the birth”); MICH. COMP. LAWS § 722.1433(e) (2025) (addressing marriage at time of conception or birth). *See generally* State v. EKB, 35 P.3d 1224 (Wyo. 2001) (involving two spousal parents as birth mother was married twice during pregnancy; first husband was presumed spousal parent as child was born within 300 days of his divorce, while second husband was presumed spousal parent as he was married to birth mother at the time of birth); *Ex parte Kimbrell*, 180 So. 3d 30 (Ala. Civ. App. 2015) (involving child born to woman and her supposed second husband, though there was no divorce from her first husband; both men were presumed spousal parents). To date, only a few states recognize marital parentage in the female spouse of a birth mother for a child born of sex. *See, e.g.*, WASH. REV. CODE 26.26A.115(1)(a) (2025); VT. STAT. ANN. tit. 15C, § 401(a)(1) (2025). *But see* McLaughlin v. Jones, 401 P.3d 492, 495–96 (Ariz. 2017) (holding that a marital paternity presumption applies to female spouse of birth mother and that Arizona spousal parentage presumption statute, ARIZ. REV. STAT. ANN. § 25-814(A)(1) (2025), does not specifically reference any likelihood of biological ties in the spouse, but rather addresses the spouse’s rights and responsibilities); Henderson v. Box, 947 F.3d 482, 487 (7th Cir. 2020) (holding that a same sex female spouse is a legal parent of child born in wedlock). The best interests of the child, not lack of genetic ties or lack of consent to assisted reproduction, can be key to disallowing a rebuttal of the spousal parent presumption. *See* LC v. MG, 430 P.3d 400, 424–25 (Haw. 2018) (disallowing female spouse to rebut marital parentage despite spouse’s failure to consent to assisted reproduction involving her wife since the child’s best interests require “a child have two parents to provide financial benefits”).

170. *See, e.g.*, 2017 UPA, *supra* note 12, § 204.

171. *Id.* § 704(a)–(b) (requiring non-gestating parent consents via a “record” signed by the

While the 2017 UPA excludes presumed spousal parentage from births arising from surrogacy agreements, it does not exempt from spousal parentage those whose wives bear children through non-surrogacy assisted reproduction, especially artificial insemination.¹⁷² The Act could address whether the more particular assisted reproduction statutory provisions, as on consent, preempt the usage of the general spousal parentage statutes for artificial insemination births.¹⁷³ Without legislative guidance, state courts will continue to struggle.¹⁷⁴

Consider a scenario wherein a non-gestating spouse knows that he or she is clearly not a genetic parent to a child to be or already born to the gestating spouse, as there is known to be male sterility and no stored fertilized eggs. Pregnancy then was prompted by adulterous sex, artificial insemination, or FEI, with no consent by the non-gestating spouse to any method of pregnancy not involving their gametes. Is the non-gestating spouse, initially at least, a presumed parent, or not a parent because artificial insemination or FEI prompted a pregnancy where there was no spousal consent?¹⁷⁵ To apply such different approaches to non-assisted reproduction and assisted reproduction births, dependent on the mode of conception, of course,

woman giving birth and “an individual who intends to be a parent;” via a preconception express agreement on intended parentage; or, via residency/hold out parentage, per section 204(a)(2)).

172. 2017 UPA, *supra* note 12, § 204(a)(1) (“except as provided” under any surrogacy agreement law).

173. For example, statutes could address whether a husband will not be a parent of a child born to his wife during their pregnancy without his consent under the assisted reproduction statutes.

174. *See, e.g.*, LC v. MG, 430 P.3d 400, 424–25 (Haw. 2018) (highlighting differing views in this court and in some out-of-state cases on a woman’s ability to disestablish her spousal parenthood of a child born to her spouse by showing a lack of consent to artificial insemination).

175. Spousal parentage sometimes can be challenged by an alleged genetic father primarily due to lack of genetic ties of the husband. *But see* Michael H. v. Gerald D., 491 U.S. 110, 129 (1989) (holding that the federal constitution does not bar a state marital parentage presumption law where the presumption cannot be rebutted by an unwed genetic parent); *Strauser v. Stahr*, 726 A.2d 1052, 1055–56 (Pa. 1999) (marital presumption not rebuttable by genetic father where marriage is intact); *In re Interest of A.M.*, 223 A.3d 691, 695–96 (Pa. Super. Ct. 2019) (holding that female spouse (who used male pronouns) of birth mother was entitled to marital paternity presumption); *B.S. v. T.M.*, 782 A.2d 1031, 1034–35 (Pa. Super. Ct. 2001) (holding there was no irrebuttable marital parent presumption where the marriage was not intact at relevant times). *See generally, e.g.*, *Waites v. Sanford*, 152 So. 3d 306 (Miss. 2014) (favoring presumption of custody in biological parents as it was not rebutted by husband who stood in loco parentis to child since birth); *Castro v. Lemus*, 456 P.3d 750 (Utah 2019) (refusing to deny challenge opportunity because it would raise constitutional issue, especially where the unwed biological father came forward and provided childcare but constitutional issue is not addressed as the relevant statute allowed a challenge to spousal parentage “by a man whose paternity of the child is to be adjudicated,” under UTAH CODE ANN. § 81-5-602(3) (LexisNexis 2025)). While an unwed biological father may not himself be able to petition for an adjudication of custodial parentage, he may still be able to be pursued by state welfare officials seeking welfare payment reimbursements during an adjudication of child support parentage, even when a husband is disestablished as a presumed custodial parent due to the wife’s infidelity. *See, e.g.*, *Vargo v. Schwartz*, 940 A.2d 459, 469–70 (Pa. Super. Ct. 2007).

presumes the non-gestating spouse/parent or courts can learn how the pregnancy arose.

3. Non-Marital Non-Surrogacy Assisted Reproduction Parentage

Some state assisted reproduction statutes outside of surrogacy sometimes only speak to a married couple undertaking dual parentage.¹⁷⁶ Other state laws directly address a single person undertaking parentage via an assisted reproduction birth¹⁷⁷ or an unwed couple undertaking parentage via an assisted reproduction birth.¹⁷⁸ Statutes could also speak to a couple and a projected gestating mother who wish to form a three-parent family for an assisted reproduction child.¹⁷⁹

Where non-marital non-surrogacy assisted reproduction parentage is undertaken by an expecting gestating parent who has agreed to share future childcare parentage with another or others,¹⁸⁰ any others are expecting parents of future children (yet unconceived or conceived) who can become assisted reproduction childcare parents at birth, assuming the agreement is abided by voluntarily or is judicially enforced.

In the absence of court oversight at the time of birth, what if the circumstances at birth relevant to an intended non-gestating parent's child caretaking abilities have changed for the worse? Can the gestating parent, the other intended parent, be trusted to shield her child? Perhaps not if she and the other intended parent similarly have very diminished child caretaking abilities, as when they now, but not earlier, jointly

176. *See, e.g.*, MONT. CODE ANN. § 40-6-106 (2025); MASS. GEN. LAWS ch. 46, § 4B (2025); TENN. CODE ANN. § 68-3-306 (2025).

177. Single person parenthood surely should be treated differently under assisted reproduction laws if the gestating parent, using sperm donation, is not married as compared to a gestating parent, using sperm donation, who is married. *See, e.g.*, OR. REV. STAT. § 677.365 (2025) (requiring written consent by single woman before performance of artificial insemination).

178. *See, e.g.*, MICH. COMP. LAWS § 722.1704(a) (2025) (addressing a parent-child relationship between a child and an individual who is not a surrogate and who gives birth to the child); OHIO REV. CODE ANN. § 3111.95(B) (2025) (asserting that where a woman is the subject of "a non-spousal artificial insemination," a sperm donor is not "regarded as the natural father"); ARK. CODE ANN. § 9-10-201(c) (2025) (asserting that a child born of artificial insemination to an unmarried woman at the time of birth is the woman's child unless she was a surrogate mother).

179. The couple may have prompted, via gametes, the fertilized egg leading to an FEI birth, or only one of the individuals within the couple may be a relevant gametes provider, or neither of them may be genetically tied to the FEI child. *See, e.g.*, 2017 UPA, *supra* note 12, § 613(c) (Alternative B) ("The court may adjudicate a child to have more than two parents . . . if the court finds that the failure to recognize more than two parents would be detrimental to the child."); CAL. FAM. CODE § 7612(c) (2025) (allowing "court [to] find that more than two persons . . . are parents" if "detriment to the child" would follow a recognition of only two parents); CONN. GEN. STAT. § 46b-475 (2025) (following 2017 UPA, *supra* note 12, § 613(c) (Alternative B)).

180. Consents typically come via a "record" agreement, "an express agreement entered before conception," or the establishment of residency/hold out parentage, which requires, under section 204(a)(2) of the 2017 UPA, conduct in the first two years of the child's life. 2017 UPA, *supra* note 12, § 704(a)–(b).

use illegal drugs? In such a setting, while the gestating parent's continuing parental childcare status after birth can only be terminated upon judicial findings encompassing significant substantive and procedural law norms, the same termination norms may not apply to an intended non-gestating parent, as federal constitutional precedents do not vest that person automatically with childcare parent status at birth.

4. Surrogacy Assisted Reproduction Parentage

As noted, there are state statutes on gestational surrogacy pacts and statutes on genetic surrogacy pacts.¹⁸¹ Statutes are far more limited in recognizing enforceable genetic surrogacy pacts.¹⁸² When statutes do recognize the legitimacy of genetic surrogacy pacts, more stringent requirements often operate together with the general requirements covering gestational surrogacy.¹⁸³ For example, only genetic surrogacy artificial insemination parentage is secured by the intended parent(s) after birth, as there is a three-day, post-birth consent withdrawal option for the surrogate.¹⁸⁴

Gestational surrogacy pacts take effect upon birth, prompting childcare parentage for the intended parent(s).¹⁸⁵ But what if circumstances have changed since the surrogacy pacts were executed or judicially validated prebirth? Where the pacts were breached, judicial enforcement is available.¹⁸⁶ But what if things happened that raise concerns about a child's best interests beyond agreement breaches, as with intervening relevant criminal prosecutions or convictions (i.e., crimes indicating that intended parents will be bad child caretakers) or with parental rights terminations involving other children of intended parents where their proven pattern of neglectful or abusive conduct raises fears for the safety of new children who are placed in their care? As with any intended non-gestating parent in assisted reproduction non-surrogacy births, here too, traditional parental rights termination norms need not apply. So, again, some guidelines on possible judicial oversight of the changed circumstances for some non-gestating intended assisted reproduction parents should be established before at-birth parenthood can arise.

181. State statutes regarding parentage from gestational and genetic surrogacy pacts are listed in Courtney G. Joslin, *(Not) Just Surrogacy*, 109 CAL. L. REV. 401, app. A (2021). Some statutory details on intended parents and intended surrogates are found at appendices B and C. *id.* at apps. B–C.

182. The 2017 UPA, but neither the 1973 UPA nor the 2000 UPA, recognizes genetic surrogacy (as compared to gestational surrogacy). The UPAs on surrogacy are reviewed in *supra* notes 78–114 and accompanying text.

183. See *supra* notes 85–102 and accompanying text. Current genetic surrogacy laws, often modeled on the 2017 UPA, include CONN. GEN. STAT. § 46b-535 (2025), COLO. REV. STAT. § 19-4.5-109 (2025), MASS. GEN. LAWS ch. 209C, § 28L (2025), and WASH. REV. CODE § 26.26A.765 (2025).

184. See, e.g., 2017 UPA, *supra* note 12, § 814(a)(2).

185. *Id.* § 804(a)(4) (asserting that, with some exceptions, the intended parent or parents, jointly and severally, “immediately on birth will be the exclusive parent or parents of the child”).

186. *Id.* §§ 811–12, 818 (allowing gestational surrogacy parentage orders and providing that genetic surrogacy pact breaches can prompt “remedies available at law or in equity”).

CONCLUSION

Assisted reproduction births in the United States are common. These births can prompt parentage rights at birth in the “care, custody, and control” of children. Here, more than with children born of sex, parentage need not depend upon marriage or genetic ties. Rather, at-birth parentage often depends on consent, parental-like acts, or intentions.

Congress has not spoken much on childcare parents at birth. The U.S. Supreme Court has generally yielded to state lawmakers, be they legislators or judges, on determining at-birth childcare parentage. State lawmaking has yielded significant interstate variations in (and outside of) assisted reproduction laws.

State assisted reproduction parentage laws differ on the import of marriage and genetic ties. Laws differ further on parentage arising from artificial insemination into the vagina, insemination into the uterus, or implantation of fertilized eggs. As written, assisted reproduction laws now also differ at times on parentage arising in same sex couples, opposite sex couples, and single intended parent settings. Further, assisted reproduction laws differ on the nature of any necessary parental-like acts and on the proper forms of consent (including on the “record,” express, and implied) to parentage at birth. Current laws do distinguish between surrogacy and non-surrogacy births, as well as between genetic and gestational surrogates.

There are a few limits on at-birth assisted reproduction parentage laws arising from U.S. Supreme Court precedents. Additional limits arise in some states under state court precedents founded on independent constitutional interpretations. Separation of powers principles have prompted broad state general assembly discretion, with little room for state non-constitutional common law developments.

Upon reviewing the congressional and constitutional limits on state lawmaking, this Article surveyed current laws on at-birth childcare parentage in assisted reproduction births. It demonstrated state usages of the three different Uniform Parentage Acts and the significant interstate variations. Suggested law reforms were proposed, including changes in the at-birth assisted reproduction parentage laws on genetic, voluntary acknowledgment, spousal, non-marital, non-surrogacy, and surrogacy parenthood. Suggested reforms include new challenge laws for some voluntary parentage acknowledgments, some use of adoption eligibility standards for at-birth assisted reproduction parentage, and more detailed laws on the forms of consents to at-birth assisted reproduction childcare parentage that may differ between surrogacy and non-surrogacy settings and between gestational surrogacy and genetic surrogacy settings.