Major Privacy Concerns When Minor Sues for Paternity

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Minors commonly bring paternity suits to establish parental support obligations when a father is absent from the child's upbringing. Individuals who do not know their biological parents, like adopted minors or adults, also seek parentage determinations. It is quite unusual, however, for a minor raised since birth by both his biological mother and his mother's husband to bring a paternity action.

In *Sutton ex rel. Minor J. v. Diane J.*,[1] a Michigan teenager sued his biological mother to compel her to disclose the identity of his biological father. Although the teen ultimately did not prevail, if he had, his mother would have been forced, against her wishes, to reveal the identity of his biological father.[2] Cases such as this one balance a parent's interest in privacy against a child's interest in knowing the identity of his or her biological father.

Part I of this Note summarizes the facts of *Sutton*. Part II explores the constitutional development of family privacy, while Part III outlines a minor's contrasting interest in knowing the identity of his or her biological parents, detailing various legal and psychological factors that courts may consider. Part IV overviews relevant statutory

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1. No. 273519, 2007 Mich. App. LEXIS 754 (Mich. Ct. App. Mar. 20, 2007); *cert. denied*, 737 N.W.2d 762 (Mich. 2007).

2. Steve Pardo, *Teen to Continue Fight to Find Father: Appeals Court Says Mom Doesn't Have to Reveal who his Biological Dad Is; Boy Wants to Know Health History*, DETROIT NEWS, Mar. 24, 2007, at 4A. On September 12, 2007, the Michigan Supreme Court considered and denied the teen's motion to appeal a summary disposition of the case in favor of the defendant, his mother. *Sutton*, 737 N.W.2d 762 (Mich. 2007).

authority permitting minors to discover the identity of their birth parents in limited circumstances.

Part V of this Note offers several reasons why the Michigan courts rightly decided *Sutton* and why other similarly situated courts should favor parental privacy over a child's desire to know his or her biological parent(s) based on the laws as they are written. Finally, Part VI offers an approach for courts to use in analyzing issues like the dilemma in *Sutton*, and calls for legislative reform to address the issue, as it will inevitably arise again in similar disputes.

I. *SUTTON*: HOW THE SUIT CAME ABOUT

On April 21, 2006, Minor J. (Minor) with the help of his legal father, Michael J. (Michael), filed a petition in Macomb County, Michigan to determine the identity of Minor's biological father.[3] In the suit, Minor sought to compel his mother, Diane J. (Diane), to reveal the identity of his biological father because of Minor's health concern in knowing his genetic medical history.[4] Michael is Minor's legal father because Michael and Diane were married at the time of Minor's birth.[5] They divorced in 1995 after thirteen years of marriage.[6] Custody of Minor was split between Michael and Diane, but as of July 2006, Minor was living full-time with Michael.[7]

Michael is the only father that Minor has known,[8] but in early 2004, Michael began to question whether he was Minor's biological father.[9] The teen did not look like Michael and suspiciously suffered from asthma.[10] In April 2004, the family had DNA tests

3. *See* Steve Pardo, *Teen Pleads for Dad's Identity: Macomb Judge Will Decide Whether Mother Must Reveal who 'Minor J's' Biological Father Is*, DETROIT NEWS, July 25, 2006, at 4B.

4. *Sutton*, 2007 Mich. App. LEXIS 754, at *1.

5. *See* Steve Pardo & Christina Stolarz, *Teen Sues Mom in Bid to ID Dad: Metro Area 17-Year-Old Finds Man who Raised Him Isn't Biological Dad: They Unite to Seek Genetic History*, DETROIT NEWS, Apr. 28, 2006, at 1A.

6. *See* Pardo, *supra* note 3.

7. *Id.*

8. *See* Brian Dickerson, *An Absent Dad's Letter to a Son He Never Knew*, DETROIT FREE PRESS, July 26, 2006, at 1.

9. *See* Pardo, *supra* note 3.

10. *Id.*

administered[11] to determine if Michael was Minor's biological father.[12] Two separate DNA tests revealed that Michael was not Minor's biological father.[13] Minor's mother offered the name of another man who might have been Minor's biological father, referred to as "Mr. X" in the lawsuit.[14] A subsequent DNA test found that Mr. X was not Minor's father.[15] According to her lawyer, Diane was adamant that Michael is Minor's biological as well as legal father[16] and was not confident in the validity of the DNA tests that dispelled the possibility that Michael was Minor's biological father.[17]

This case presents the balance courts must strike in determining paternity suits by assessing the interest of the parent's right to privacy against the child's interest in knowing his or her biological father. Generally, paternity cases threaten only to infringe on the privacy of an unaware biological father, but this case, unlike most cases, raises the question of the known mother's privacy.[18] Despite these privacy concerns, children like Minor may have a legal right to know their biological fathers[19] because in some cases, the law will put aside parental and family privacy to protect the best interests of the child.[20]

II. FAMILY AND PARENTAL PRIVACY IN THE CONSTITUTION

In 1890, Samuel D. Warren and Louis D. Brandeis first introduced the right to privacy, seeking to protect individuals from outside interference with their personal lives.[21] Later, in his dissent in

11. DNA testing helps courts "determine with near irrefutable surety who is and who is not a child's biological father." Melvin Claxton & Sheila Burke, *Dads Pay Support For Other Men's Kids: DNA Tests Expose Inconsistency in Tennessee Courts*, TENNESSEAN (Nashville), July 22, 2007, at 1A.

12. *See* Pardo & Stolarz, *supra* note 5.

13. *Id.*

14. *Id.*

15. *Id.*

16. *See* Pardo, *supra* note 3.

17. *See* John Masson, *Teen Sues His Mom to Learn Dad's Identity: Experts: Ruling Could Set Harmful Precedent*, DETROIT FREE PRESS, July 25, 2006, at 1.

18. *See infra* Part V.B–C.

19. *See infra* Parts III, IV.

20. *See infra* note 120.

21. *See* Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193 (1890) (finding a cause of action in tort for interference with privacy, by drawing on the common law principles of "protection in person and in property").

Olmstead v. United States,[22] Brandeis introduced the idea of a constitutional right to privacy.[23] Since then, the presence of a constitutional right to privacy has been a point of debate.[24]

Seventy-five years after Warren and Brandeis' proposal, the Supreme Court acknowledged the constitutional right to privacy in *Griswold v. Connecticut*.[25] *Griswold* began a line of cases recognizing the right to privacy[26] in personal and family decision-

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Though Warren and Brandeis were the first to introduce privacy as a legal right, the interest in family privacy stems back to the English Enlightenment with Locke and Montesquieu. Larry Peterman & Tiffany Jones, *Defending Family Privacy*, 5 J.L. & FAM. STUD. 71, 80 (2003). Locke "demonstrates the needfulness of family privacy by arguing essentially that education and moral development cannot proceed, let alone succeed, without it." *Id.* at 80. Using the same principles that support family privacy from the Enlightenment, the United States Supreme Court has ruled numerous times that parents have the right to make decisions about their children without state intervention. *See* cases cited *infra* note 27.

22. 277 U.S. 438 (1928).

23. Nancy C. Marcus, *Beyond Romer and Lawrence: The Right to Privacy Comes out of the Closet*, 15 COLUM. J. GENDER & L. 355, 373 (2006) ("Brandeis described the intent of the Constitution's drafters to protect citizens in their thoughts, beliefs, emotions, and sensations, recognizing that the right to pursue happiness necessarily encompasses such protections. Brandeis famously concluded that 'they conferred, as against the government, the right to be let alone—the most comprehensive of rights and right most valued by civilized men'.").

24. *See* Nicholas Ciappetta, *Florida's Scarlet Letter Repealed: A Retrospective Analysis of the Constitutionality of the Florida Adoption Notification Provision and a Commentary on the Future of the Right to Privacy*, 32 HOFSTRA L. REV. 675, 724 (2003) (concluding that "[d]espite decades of debate and endless scholarly articles, the privacy question remains the Rubic's cube of constitutional law, except that no solution appears imminent").

25. 381 U.S. 479 (1965) (holding that the criminalization of the use of contraception, even by married users, was an unconstitutional violation of the right to privacy). Justice Douglas' majority opinion explains,

> [S]pecific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance . . . . Various guarantees create zones of privacy. The right of association contained in the penumbra of the First Amendment is one, as we have seen. The Third Amendment in its prohibition against the quartering of soldiers "in any house" in time of peace without the consent of the owner is another facet of that privacy. The Fourth Amendment explicitly affirms the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." The Fifth Amendment in its Self-Incrimination Clause enables the citizen to create a zone of privacy which government may not force him to surrender to his detriment. The Ninth Amendment provides: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

Id. at 484 (citations omitted).

26. Privacy in this context refers to both confidentiality and autonomy. The Fourteenth Amendment has been interpreted to protect both kinds of privacy interests: "One is the individual interest in avoiding disclosure of personal matters, and another is the interest in

making.[27] Almost thirty years later, *Planned Parenthood v. Casey*[28] solidified the privacy interests recognized in *Griswold* and its progeny. *Casey* confirmed that the Constitution protects "personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education."[29] The Court found that these things, "involv[e] the most intimate and personal choices a person may make in a lifetime [and] . . . are central to the liberty protected by the Fourteenth Amendment[,] . . . the right to define one's own concept of existence."[30]

The Supreme Court has consistently established privacy rights, particularly within the family.[31] "The right to privacy restricts the

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independence in making certain kinds of important decisions." Whalen v. Roe, 429 U.S. 589, 599–600 (1977).

27. The Supreme Court has interpreted the Constitution to include a guarantee of confidentiality in family decision-making. *See, e.g.*, Eisenstadt v. Baird, 405 U.S. 438, 453 (1972) (holding the private decision to have children extends to both married and unmarried couples); *Griswold*, 381 U.S. at 495 (Goldberg, J., concurring). The Court also found a right of autonomy in family decision-making, allowing adults to make decisions affecting marriage, procreation, and the upbringing of children without government intrusion. *See, e.g.*, Moore v. Cleveland, 431 U.S. 494, 503 (1977) (finding, "the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition"); Roe v. Wade, 410 U.S. 113, 153 (1973) (finding the "right to privacy . . . is broad enough to encompass a woman's decision whether or not to terminate her pregnancy"); Skinner v. Okla. *ex rel.* Williamson, 316 U.S. 535, 543 (1942) (holding compulsory sterilization could not be a sentencing as punishment for a crime); Pierce v. Soc'y of Sisters, 268 U.S. 510, 534–35 (1925) (striking down legislation that "unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control"); Meyer v. Nebraska, 262 U.S. 390, 399 (1923) (finding that the Constitution guarantees "the right of the individual to . . . engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men").

28. 505 U.S. 833 (1992) (invalidating a law that placed an "undue burden" on patients seeking an abortion, and establishing the "undue burden" test for abortion regulations).

29. Lawrence v. Texas, 539 U.S. 558, 574 (2003) (citing *Casey*, 505 U.S. at 851).

30. *Casey*, 505 U.S. at 851 (citing U.S. CONST. amend. XIV). *See also* Troxel v. Granville, 530 U.S. 57, 68–69 (2000).

> [S]o long as a parent adequately cares for his or her children (*i.e.*, is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children.

Id.; Loving v. Virginia, 388 U.S. 1 (1967) (holding a ban on interracial marriage violated the Equal Protection and Due Process Clauses).

31. *See* cases cited *supra* notes 27—30.

government's ability to interfere with intimate personal relationships and activities, and the freedom to make fundamental decisions that involve one's self, family, and relationships with others."[32]

III. DESPITE FAMILY AND PARENTAL PRIVACY, MINORS HAVE PRACTICAL INTERESTS IN KNOWING THEIR BIOLOGICAL PARENTS

Even though the Constitution protects family and parental privacy, which presumably includes a parent's right to remain anonymous,[33] minors who have not been raised by both of their biological parents have an interest in knowing the identity of their absent biological parent(s). In these situations, minors seek the identity of their biological parent(s) to obtain financial support,[34] to ascertain medical information,[35] to determine their biological identity,[36] and to conform to perceived societal norms.[37]

A. Support

A minor may independently,[38] or with his or her mother, seek to establish paternity in order to obtain support from the minor's father. Courts have recognized that minors' rights to support are fundamental,[39] regardless of their parents' marital status. In *Gomez v.*

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32. Claudine R. Reiss, Comment, *The Fear of Opening Pandora's Box: The Need to Restore Birth Parents' Privacy Rights in the Adoption Process*, 28 SW. U. L. REV. 133, 139 (1998) (citing Indus. Found. of the S. v. Tex. Indus. Accident Bd., 540 S.W.2d 668, 679 (Tex. 1976)).

33. If parents did not have a right to remain anonymous it might have a chilling effect on those willing to give up their child for adoption.

34. *See infra* Part III.A. To establish paternal support obligations, a minor may bring suit in conjunction with his or her mother or with individual counsel. Adoptees will typically not seek financial support when trying to identify their biological parent because they have already received financial support from their adoptive family.

35. *See infra* Part III.B.

36. *See infra* Part III.C.

37. *See infra* Part III.D.

38. When minors bring paternity suits on their own behalf, they generally need the help of an attorney or a family member. Alternatively, the state may bring suit on behalf of a minor based on a request from a family member, community member, or social worker.

39. Carlotta P. Wells, *Statutes of Limitations in Paternity Proceedings: Barring an "Illegitimate's" Right to Support*, 32 AM. U. L. REV. 567, 585 (1983).

> Although aware of the complex problems of proof involved in paternity actions, these courts, nevertheless, have held that such problems do not outweigh the child's vital

Perez,[40] "the Supreme Court held that once a state granted legitimate children an enforceable right to parental support, it could not deny illegitimate children the same 'essential' right."[41]

B. Medical

Besides establishing support obligations, a child may have a medical interest in finding his or her parents' identity because many medical disorders are genetic and can be inherited from maternal or paternal lines.[42] If potential defects are determined early in the child's life, there is a possibility that the defects can be prevented or treated to minimize the effects of an inherited disease.[43]

C. Biological Identity

By suing to establish paternity, children may also seek biological identity as "[b]iology is extremely important to children."[44] Children

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> interests in financial support. In reaching this conclusion, these courts have relied on both the public policy reasons underlying the enactment of paternity statutes and the advancements in scientific testing, which now permit an accurate and objective determination of whether a particular defendant fathered the illegitimate child.

Id. at 585.

40. 409 U.S. 535 (1973).

41. Wells, *supra* note 39, at 581 (citing *Gomez*, 409 U.S. at 538).

42. Debi McRae, *Evaluating the Effectiveness of the Best Interest Marital Presumption of Paternity: It is Actually in the Best Interest of Children to Divorce the Current Application of the Best Interest Marital Presumption of Paternity*, 5 WHITTIER J. CHILD & FAM. ADVOC. 345, 374 (2006) (explaining the value of knowing genetic medical history from both maternal and paternal lines).

43. *Id.* at 376. McRae found that the child's best interest is always served by rebutting the marital presumption of paternity because:

> (A) it will always be in the children's best interests to know their accurate family medical history, (B) children who do not know the identity of their biological parents may suffer psychologically, and (C) paternity preclusion will either (1) irreversibly prohibit the children from learning the truth about their biological paternity when they mature and/or their circumstances change or (2) fail to efficiently and fairly provide the children with a resolution to their paternity disputes.

Id. at 373. In addition, a child can alter his or her lifestyle to accommodate or prevent the onset of certain genetic diseases. *Id.* at 375 n.186 (explaining, "if diabetes runs in the [child's] family, they can prevent or minimize the onset of diabetes by improving their diet and exercising"). Furthermore, a child who does not know their biological parent(s) may be concerned about future generations when they have their own offspring.

44. *Id.* at 378 (citing DAVID M. BRODZINSKY ET AL., CHILDREN'S ADJUSTMENT TO

may suffer "genealogical bewilderment" because they cannot construct their biological identity.[45] In addition, children may go through a grieving process due to the "loss" of a biological parent.[46] The grieving process may manifest itself by the child becoming argumentative, disruptive, and intensely angry, thereby causing a strain on the entire family.[47]

D. Social Pressure

Children may also face societal pressure to know both of their biological parents. Families, in the traditional sense, consist of two parents raising their biological child or children.[48] Children may feel pressure from friends at school, from cultural norms on television, or from everyday activities to conform to this traditional family, and may seek the identity of both of their biological parents.[49]

ADOPTION: DEVELOPMENTAL AND CLINICAL ISSUES 1 (1998)) (even adopted children feel a sense of loss without contact with their biological parents).

45. *McRae*, supra note 40, at 378–79. McRae distinguishes children who do not have access to their biological parents from children who have lost a parent. She explains that children who have lost a parent from death or divorce knew the identity of their parent and can more easily complete their grieving process, unlike children who never learn their parent's identity. *Id.* The latter continue to fantasize about their living biological parent, unable to identify with them. *Id.* at 379–80.

46. McRae, *supra* note 42, at 378.

47. *Id.*

48. David D. Meyer, *Family Ties: Solving the Constitutional Dilemma of the Faultless Father*, 41 ARIZ. L. REV. 753, 809 (1999).

> The [Supreme] Court's concept of family accords perfectly with traditional, structural definitions used by government agencies and by sociologists, which "delineate as members (of a family) only those who have established biological or sociolegal legitimacy by virtue of shared genetics, marriage, or adoption." Although the rigidity of this traditional definition is giving way somewhat of late, particularly as age-old consensus about the central place of marriage to both personal happiness and societal stability has begun to fray, it continues to predominate.

Id. (citation omitted).

49. Children that were adopted feel the same societal pressure. *Id.* at 810 (noting that "[t]he social and legal stigma attached to adoption may, in turn, distort dynamics within the family, contributing to what some psychologists and social workers have claimed is an increased incidence of maladjustment among adopted children").

IV. LEGAL RIGHTS TO MAKE PARENTAGE DETERMINATIONS

Despite judicial deference for family privacy in other settings, courts and legislatures are willing to intrude on the family to protect children's best interests, namely, to ensure the "safety and well-being of children unable to care for themselves."[50] Where children are abused or neglected "deference to [decisions made by] the family must yield to the state's interest in protecting" minors.[51]

In addition, the state will intrude on family privacy in favor of child welfare to establish support obligations[52] for single parent children, and where adopted minors or adopted adults seek the identity of their biological parents.[53] In these cases, unlike cases with

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50. Annette R. Appell & Bruce A. Boyer, *Parental Rights vs. Best Interest of the Child: A False Dichotomy in the Context of Adoption*, 2 DUKE J. GENDER L. & POL'Y 63, 64 (1995).

51. *Id.*

52. Under the Uniform Interstate Family Support Act of 2001, a "support order" is defined as:

> [a] judgment, decree, order, or directive, whether temporary, final, or subject to modification, issued by a tribunal for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrearages, or reimbursement, and may include related costs and fees, interest, income withholding, attorney's fees, and other relief.

UNIF. INTERSTATE FAMILY SUPPORT ACT § 102, 9IB U.L.A. 177 (2001).

53. *See* Janet Leach Richards, *Medical Confidentiality and Disclosure of Paternity*, 48 S.D.L. REV. 409, 423–24 (2003) (describing and explaining the method and necessity of this framework for analysis).

> [T]he child's best interest may involve not only the child's immediate medical needs, but also a need to know his or her biological parentage in order to safeguard future health or psychological needs. At the same time, the child's interests may not best be served if the family is disrupted by an untimely disclosure of paternity. An examination of a child's right to know and the possibilities for disruption of the family can be analyzed by examining two different areas of law: (1) opening sealed adoption records and (2) conflicts between legal fathers and biological fathers.

Id.

Though this paper focuses on minors' efforts to establish parentage, states are also increasingly infringing on family privacy in paternity suits brought by legal fathers to disestablish child support obligations when DNA testing proves the legal fathers are not biologically related to their children. Calxon & Burke, *supra* note 11 ("DNA testing has dragged old infidelities and betrayal to the forefront, tearing apart families and forever altering the lives of children."). Courts are increasingly and inconsistently using DNA evidence to terminate parental rights and child support when it is determined that a legal father is not a child's biological father. *Id.*

There is a significant lag in paternity laws that fail to address DNA testing, so conflicts among courts are inevitable. *Id.* "We are going to have these conflicts because there is no

parental abuse or neglect, the parent(s) whose privacy is infringed have caused no direct harm to their child(ren). Rather, the harm to the child that courts and legislatures have sought to remedy is caused indirectly by the absence of the biological parent(s) from the child's life.

A. Suits for Support

Generally, only minors without two legal parents may sue for a paternity determination to establish a father's support obligation.[54] A man is presumed to be the legal father of a child born to his wife during their marriage.[55] (A child born under these circumstances is "legitimate.") When an unmarried mother gives birth to a child (an "illegitimate" child), however, and a father is not identified, the mother may be interested in determining the child's paternity to obtain child support from the father. Under these circumstances, an

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consensus on how important biology is to being declared a legal parent." *Id.* (quoting Joanna Grossman of Hofstra University School of Law). Though paternity suits brought by fathers raise comparable questions of family privacy, this paper focuses on a minor's ability to bring a paternity suit.

54. *See* Christina Stolarz, *Teen Fighting to Find Real Dad: Lawyer For Fraser Boy who Sued Mom to Reveal Biological Father Takes Case to Appeals Court*, DETROIT NEWS, Nov. 20, 2006, at 1B (noting that "Minor J. is considered a 'legitimate' child, [so] he has no standing to bring an action for entry of an order of filiation to name another man his father" because under Michigan law, "the husband at the time of conception and birth is deemed to be the legal father" of the child born to the married couple) (internal quotations omitted).

55. UNIF. PARENTAGE ACT § 204, 9B U.L.A. 16 (Supp. 2005) ("A man is presumed to be the father of a child if . . . he and the mother of the child are married to each other and the child is born during the marriage . . . ."). Furthermore, the Act places strict limitations on paternity suits when the child already has a legal father. UNIF. PARENTAGE ACT § 607, 9B U.L.A. 16 (Supp. 2005).

> Except as otherwise provided . . . a proceeding brought by a presumed father, the mother, or another individual to adjudicate the parentage of a child having a presumed father must be commenced not later than two years after the birth of the child . . . . A proceeding seeking to disprove the father-child relationship between a child and the child's presumed father may be maintained at any time if the court determines that: (1) the presumed father and the mother of the child neither cohabited nor engaged in sexual intercourse with each other during the probable time of conception; and (2) the presumed father never openly held out the child as his own.

Id.

illegitimate child has a limited ability to determine the identity of his or her biological father through court-ordered DNA testing.[56]

1. Legislative Purpose

Congress has enacted legislation allowing children to establish paternity to collect financial support from "deadbeat" dads or moms who neglect their parental responsibilities.[57] The purpose behind parental support statutes is three-fold. First, Congress wanted to decrease the financial strain on welfare payouts to single parents.[58] If neglectful parents were forced to pay child support, the government would no longer absorb the cost of raising children supported by the often inadequate income of a single parent.[59] Second, imposing support obligations on neglectful parents imposes some personal responsibility on "deadbeat" parents who disregard their obligations to their children.[60] In addition, Congress hoped that forcing a parent to pay child support would force neglectful parents to work and in some cases, get "off the streets."[61] Third, Congress had sympathy for children who were supported by only one parent.[62] By imposing an obligation on neglectful parents, Congress was hopeful that the

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56. *See* cases and statutes cited *infra* notes 71–72.

57. *See* Deadbeat Parents Punishment Act of 1998, 18 U.S.C. § 228 (2000) (punishing as a felony the willful failure to pay support for a child living in another state, with a presumption of nonpayment arising when the support has remained unpaid for two years or exceeds $10,000); Darrell Baughn, *Throw the Book at Deadbeat Parents: Criminal Enforcement of Child Support Cases*, FAM. ADVOC., Fall 2000, at 49, 50–51 (examining the Deadbeat Parents Punishment Act ("DPPA")).

> The DP[P]A created a presumption of willful nonpayment that shifts the burden of proof to the nonpaying parent. Ability to pay does not mean ability to earn income. The money could come from worker's compensation, Social Security benefits, or any other source . . . . Recent federal cases have made it clear that if the nonpaying parent admits that a portion of the child support could have been paid, he or she is precluded from arguing inability to pay.

Id.

58. *See* Kerri Harper, Note, *Stereotypes, Childcare, and Social Change: How the Failure to Provide Childcare Perpetuates the Public Perception of Welfare Mothers*, 4 N.Y.U. J. LEGIS. & PUB. POL'Y 387, 400–04 (2001).

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

parents would become more involved in their children's lives, and that it would give children the opportunity to know and interact with both of their parents. The statutory imposition of obligations reflects the value judgment that our society favors families with two parents supporting children, where both parents take some part in raising and supporting their children.[63]

2. Michigan Law[64]

Minors may bring paternity suits to establish paternal support obligations. In Michigan, the right of children to maintain paternity suits was upheld in *Spada v. Pauley*.[65] Before *Spada*, under Michigan law, only mothers, fathers, or the Department of Social Services could bring a paternity action.[66] The *Spada* court reasoned that the previous scheme "unreasonably restrict[ed] an illegitimate child's right to obtain paternal support. Therefore, an illegitimate child may maintain an independent cause of action to determine parentage and support obligations."[67] In addition, the court found its holding was "in accord with the recent judicial and legislative trend to provide illegitimate children with equal protection of the law."[68]

Michigan law details procedures for paternity suits and paternity testing, while establishing limits to paternity proceedings.[69] Under

63. *See* Meyer, *supra* note 48.

64. Though similar laws exist nationwide, Michigan law is used in this Note to address issues in *Sutton.*

65. 385 N.W.2d 746, 748 (Mich. Ct. App. 1986). An illegitimate child can maintain an action to determine parentage because state has compelling interest to insure support for the child. *Id.* This right only applies to "illegitimate" children. *Id. Cf.* Puffpaff v. Hull, 426 N.W.2d 778, 779–80 (Mich. Ct. App. 1988) (a legitimate minor may not bring an action to determine parentage and parental support obligation).

66. *See Spada*, 385 N.W.2d at 748.

67. *Id. See also supra* note 38.

68. *Id.* The trend the court is referring to began with *Gomez v. Perez*, where the United States Supreme Court held "that a state cannot grant marital children a statutory right to paternal support while denying the right to non-marital children." D. KELLY WEISBERG & SUSAN FRELICH APPLETON, MODERN FAMILY LAW 450 (2006) (citing Gomez v. Perez, 409 U.S. 535 (1973)).

69. Though Michigan law is used here, a federal standard governs paternity laws in each state. Congress set standards for states to follow when enacting laws regulating court-ordered DNA testing.

The first of the federal standards passed was the Child Support Enforcement Amendments of 1984 that required states (in exchange for federal funds) to extend their statutes of limitations

Michigan law, a child born to a married mother (a legitimate child) has no standing to establish his or her paternity.[70] Furthermore, blood test evidence to determine parentage may only be used in limited circumstances.[71] A court will only order genetic testing when parties

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to allow for paternity suits up to eighteen years after the child's birth. *See* Family Support Act of 1988, 42 U.S.C. § 666 (2000); Child Support Enforcement Amendments of 1984, 42 U.S.C. § 602 (West Supp. 2002). The Family Support Act of 1988, in addition to allowing suits previously barred under shorter statutes of limitation, requires states to have procedures through which all parties in a contested case must submit to genetic testing. *See* 42 U.S.C. § 666 (2000). There is an exception for individuals who can establish "good cause" for refusing to participate in the testing. *Id.* Under new welfare reform legislation, the Personal Responsibility and Work Opportunity Reconciliation Act ("PRWORA"), states must establish tests to determine paternity for the states to receive federal funds for child support enforcement and welfare programs. *See* 42 U.S.C. § 603 (2000).

> The congressional findings associated with the enactment of the PRWORA highlighted the following factors: 1) "marriage is the foundation of a successful society;" 2) children born out-of-wedlock often burden the social welfare system; 3) young women who bear children out-of-wedlock are more likely than other women to require public assistance and, once enrolled, to depend on it for more years; and 4) children of welfare recipients face significant negative consequences in society. Accordingly, two of the stated purposes of the PRWORA are to "end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage," and to "prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies." Ending the "cycle of dependency" through a mandatory work requirement and decreasing the number of out-of-wedlock children born to women while on welfare will help to alter society's perception of welfare mothers and effect social change.

Harper, *supra* note 58, at 400 (quoting various provisions of the PRWORA).

Under the PRWORA, either parent can obtain a genetic test, unless it is in the child's best interests to preserve the child's ties to his or her presumed father, the father who openly held himself out as the child's father. *See* 42 U.S.C § 666 (2000).

70. Altman v. Nelson, 495 N.W.2d 826, 830 (Mich. Ct. App. 1992).

> In order to have standing to seek relief under the Paternity Act, plaintiff must allege that the child was born out of wedlock. M.C.L. 722.714(6); M.S.A. 25.494(6). "Child born out of wedlock" is defined as "a child begotten and born to a woman who was not married from the conception to the date of birth of the child, or a child which the court has determined to be a child born or conceived during a marriage but not the issue of that marriage." M.C.L. § 722.711(a); M.S.A. § 25.491(a).

Id. See also Puffpaff, 426 N.W.2d at 779–80.

71. Prior to revisions in Michigan's Paternity Act, there was a six year statute of limitations.

> Proceedings in pursuance of this act may be instituted during the pregnancy of the mother or after the birth of the child, but shall not be brought after the lapse of more than [six] years from the birth of the child, unless paternity has been acknowledged by the father in writing in accordance with statutory provisions. If any payment is made

cannot reach an agreement as to who the child's father is *and* the child's father has not acknowledged paternity under the statute.[72]

The purpose of the Michigan statute to establish paternity is to determine support obligations of the biological father.[73] If a child is already financially "supported" by his or her legal father, there is not as great a need to establish biological paternity under the statute.

B. Adoptees' Access to Birth Records

In addition to children raised by only one biological parent, children who were adopted may also seek the identity of their biological parent or parents.[74] There is a notable difference between an adoptee seeking birth record disclosure and a minor seeking a paternity determination—the adoptee is not seeking support from his or her biological parent because the adoptee has already received support from his or her adoptive family. These disclosure laws were

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> for support of the child in the [six]-year period, the proceedings may be commenced any time within [six] years from the last of any such payment. If the defendant is outside the state during the [six]-year period, the time he is so absent shall not be included in the [six]-year period.

MICH. COMP. LAWS § 722.714 (1983) (amended 1998). *See also* Shifter v. Wolf, 327 N.W.2d 429 (Mich. Ct. App. 1982) (blood test results can only be used to exclude paternity under the Michigan Paternity Act); *In re* Paternity of Flynn, 344 N.W.2d 352 (Mich. Ct. App. 1983) (disapproved by Girard v. Wagenmaker, 470 N.W.2d 372 (Mich. 1991)) (criticized in Soumis v. Soumis, 553 N.W.2d 619 (Mich. Ct. App. 1996)).

Currently the Michigan Paternity Act provides, "an action under this act may be commenced during the pregnancy of the child's mother or at any time before the child reaches [eighteen] years of age." MICH. COMP. LAWS § 722.714 (1998). However, there are still limits to the ability of a party to be granted court-ordered DNA testing.

72. "An action to determine paternity shall not be brought under this [A]ct if the child's father acknowledges paternity under the acknowledgement of [P]arentage [A]ct, or if the child's paternity is established under the law of another state." *Id.*

> [If] the parties fail to consent to an order naming the man as the child's father as provided in this act within the time permitted for a responsive pleading, then the family independence agency or its designee may file and serve both the mother and the alleged father with a notice requiring that the other, alleged father, and child appear for genetic paternity testing.

Id.

73. Syrkowski v. Appleyard, 362 N.W.2d 211 (Mich. 1985) (finding the Michigan Paternity Act is a procedural vehicle to establish paternity and support obligations for children born out of wedlock); Tuer v. Niedoliwka, 285 N.W.2d 424 (Mich. Ct. App. 1979) (noting the primary purpose of Michigan Paternity Act is to provide support for illegitimate children).

74. *See* statutes cited *infra* notes 77–80.

designed with sympathy for children seeking information about their biological identity and genetic medical history.[75] Unlike children seeking support, most adult adoptees never knew either of their biological parents. Unless their birth records are disclosed to them, they have neither the ability to establish any biological identity, nor any way of knowing their susceptibility to genetic disorders.

There is wide variance in state laws regulating access to birth records.[76] Some states allow open access to birth records for all adoptees upon reaching a certain age.[77] Other states use voluntary registries[78] and intermediary contacts[79] to give interested adoptees access to their birth records. Michigan allows adults who were adopted as children to obtain their birth records.[80] In these situations,

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75. *See* Caroline B. Fleming, *The Open-Records Debate: Balancing the Interests of Birth Parents and Adult Adoptees*, 11 WM. & MARY J. OF WOMEN & L. 461, 461 n.3 (2005).

76. *See* statutes cited *infra* notes 77–80.

77. WEISBERG & APPLETON, *supra* note 68, at 1092 (citing ALASKA STAT. § 18.50.500 (2004); KAN. STAT. ANN § 65-2423 (2002)). "Alaska and Kansas have long allowed adult adoptees to view their birth records." WEISBERG & APPLETON, *supra* note 68, at 1092. Alabama, New Hampshire, Oregon, and Tennessee also allow "unfettered" access to sealed birth records. Fleming, *supra* note 75, at 461 n.3 (citing state statutes giving full access to birth records: Alabama (ALA. CODE § 22-9A-12 (Michie Supp. 2004)), Alaska (ALASKA STAT. § 18.50.500 (LexisNexis 2004)), Kansas (KAN. STAT. ANN. § 59-2122 (2002)), New Hampshire (N.H. REV. STAT. ANN. § 5-C:16 (2005)); Oregon (OR. REV. STAT. ANN. § 432.240 (West 2003)), and Tennessee (TENN. CODE ANN. § 36-1-127 (LexisNexis 2001)).

Advocates of open access to birth records contend that "adult adoptees have the right to learn about their backgrounds . . . for psychological [reasons,] . . . medical reasons[,] . . . [and] because all other adults are able to access the same type of information without restriction." Fleming, 11 WM. & MARY J. OF WOMEN & L. at 470–71.

78. WEISBERG & APPLETON, *supra* note 68, at 1092 (citing ARK. CODE ANN. § 9-9-503 (2002) that requires both parties to register before divulging birth records).

79. *Id.* (citing IND. CODE ANN. § 31-19-25-8 (West 1999), the Indiana statute allowing an intermediary to contact one party to obtain consent to release information, once the other party registers).

80. MICH. COMP. LAWS § 710.68 (1995). In Michigan, information identifying birth parents may be accessed by an adult adopted person, birth parents, and adult birth siblings. *Id.* Non-identifying information may be provided to adult adoptees, birth parents, adult birth siblings, and the adoptive parents. *Id.* Under § 710.68, adult adoptees' birth records can be released "unless either biological parent has filed, with the state, a written request that the information not be released. . . . A policy decision has been made in favor of disclosure. [The statute requires the] biological parent to prevent disclosure rather than the adoptee to prove its necessity." *In re* Dixon, 323 N.W.2d 549, 552 (Mich. Ct. App. 1982). *See also* Wendy L. Weiss, *Ohio House Bill 419: Increased Openness in Adoption Records Law*, 45 CLEV. ST. L. REV. 101, 129 (1997).

> This law favors adoptees because it requires that the birth parents act affirmatively to retain their confidentiality. By requiring action to close rather than open the records,

only an adult may obtain his or her birth records, unlike children in paternity proceedings.[81]

V. ANALYSIS OF THE COMPETING PRINCIPLES

The Minor in *Sutton* had no standing to pursue his claim.[82] As a child born to a married couple, Minor is a "legitimate" child with a legal mother and legal father.[83] Statutes that allow children to pursue paternity suits were written for children born out of wedlock seeking paternal support.[84] In contrast, Minor was born to married parents and already has a legal father, one he lived with full-time.[85]

Even if Minor had standing to pursue a paternity action, based on the laws as they are written, Minor still should not have prevailed in his case against his mother, compelling her to disclose the identity of his biological father[86]—assuming that his mother even possesses this information. First, the legislative purpose of statutes allowing children to pursue paternity actions is to establish support obligations and to allow adult adoptees to view their birth records.[87] Second, mothers like Diane have a right to privacy that cannot be infringed by

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> Michigan's law overcomes some of the problems of the standard mutual consent registry. This law allows the release of identifying information to most adoptees, as the majority of birth parents in Michigan have not denied the release of this information. However, . . . some adoptees are completely denied access to identifying information if the birth parents have filed a denial of release.

Id.

81. *See* statutes cited *supra* notes 77, 80.

82. *See* Stolarz, *supra* note 54; Sutton *ex rel.* Minor J. v. Diane J., No. 273519, 2007 Mich. App. LEXIS 754 (Mich. Ct. App. Mar. 20, 2007).

83. *Sutton*, 2007 Mich. App. LEXIS 754, at *4 (stating that "Minor J is deemed born in wedlock and legitimate under the Paternity Act"). *Sutton* acknowledged that "regardless of whether Minor J is deemed legitimate or illegitimate, legally he is accorded rights comparable to a legitimate child for purposes of support, and the distinction ultimately makes no difference with respect to our constitutional analysis." *Id.* at *5.

84. *Id.*

85. *See* Pardo, *supra* note 3.

86. The *Sutton* court acknowledged the factors competing against Minor's interest: "Diane's privacy interests, John Doe's interest in personal matters relative to his medical history and information, and the state's interest in protecting family peace and unity, precluding disruption of lives before and after divorce, and keeping the court system unclogged." *Sutton*, 2007 Mich. App. LEXIS 754, at *9.

87. *See infra* Part V.A.

their children seeking the mother's personal information.[88] Mothers may have one or more legitimate reasons not to disclose the identity of their child's biological father, or they simply may not have the information to disclose.[89] Similarly, biological fathers, like Minor's, have a right of privacy from unwanted intrusion by a child they possibly never knew about.[90] Third, the harm to children caused by not knowing their biological father is not as grave as many commentators and courts suggest.[91] Children who, like Minor, already have legal fathers[92] have less of an interest in medical history,[93] have a greater biological identity than other children seeking paternity determinations,[94] and social pressure does not exist for these children the way it may for other children, like adoptees, seeking the identity of their biological parents.[95] Last, if Minor had won his case the flood gates of litigation would be open to any child of a single parent seeking parental disclosure, regardless of the child's motivation.[96]

A. Legislative Purpose

Legislative history reveals that there is no constitutional or statutory right for children to know the identity of both of their parents. The legislative purpose of paternity disclosure laws is for children of single parents to collect support from their absent parent, and adult adoptees to obtain their birth records.[97] Therefore, when children like Minor are not seeking support, the legislative purpose behind support statutes does not assist their claim.

88. *See infra* Part V.B.
89. *Id.*
90. *See infra* Part V.C.
91. *See infra* Part V.D.
92. *See infra* Part V.D.1.
93. *See infra* Part V.D.2.
94. *See infra* Part V.D.3.
95. *See infra* Part V.D.4.
96. *See infra* Part V.E.
97. *See* Richards, *supra* note 53. If it were permissible for children to discover the identity of their biological parents, no matter their need for financial support, there would be no reason for states to limit adopted minors access to their birth records, which they do. *Cf.* statutes cited *supra* notes 77–80.

Moreover, though the desires for biological identity and medical history justify disclosure laws for adoptees, the same reasons are not as compelling for Minor or children like Minor seeking parentage determinations. With one biological parent, non-adopted children, unlike adult adoptees, can obtain half of their biological identity and genetic medical history from the parent they know (usually the birth mother). In addition, the parent they know may have knowledge about the other parent and be able to provide the child with enough non-identifying information about the absent parent that the child can form a full biological identity. The parent that the child knows may also have information about the absent parent's health, genetic diseases, and other important non-identifying medical information.

B. Mother's Right to Privacy

There is no constitutional right for children or adult adoptees to know the identity of their parents—the right was created by state legislative value judgments.[98] The Constitution does, however, guarantee the right to privacy for everyone, children and parents alike.[99] "Children have no legal right to force their parents to disclose family secrets—such as family histories and inherited traits. . . . [H]eritage . . . is not so intimately personal as to fall within the zones of privacy implicitly protected in the penumbra of the Bill of Rights."[100] A child's state statutory right to know the identity of his or her parents does not trump the constitutional guarantee of a parent's right to privacy, upheld numerous times by the Supreme Court.[101]

In addition, the mother may have a legitimate reason not to disclose the identity of the child's biological father.[102] First, the

98. *See supra* Part V.A.; *see also* Richards, *supra* note 53, at 423–24.

99. *See* cases cited *supra* notes 26, 27.

100. Reiss, *supra* note 32, at 142 (citation omitted).

101. *See* cases cited *supra* notes 25, 27.

102. In such a case, a child is seeking to establish paternity either against his or her mother's wishes or because his or her mother refuses to bring the paternity proceeding. *Spada* noted that a mother refusing to bring suit on behalf of her child may wish to avoid contact with the father, seek to avoid family or community disapproval, wish to support the child on her own, "be subject to emotional strain and confusion that often attends the birth of an illegitimate

mother may not know the identity of the child's biological father because she engaged in sexual intercourse with multiple men near the time of the child's conception, or because she does not remember who she had sexual intercourse with at the time of the child's conception.[103] Second, the child could have been conceived through anonymous donor insemination and the mother may not have access

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child," or have a continuing affection for or relationship with the father. Spada v. Pauley, 385 N.W.2d 746, 750 (Mich. Ct. App. 1986).

In addition, the mother may decide not to initiate a paternity action because she does not know the identity of the father (may not know who impregnated her) or cannot obtain records of the father's identity (may have been artificially inseminated at a fertility clinic that keeps the identity of sperm donors private). Stephen Sass explains that a mother's multiple sexual partners at the probable time of her child's conception can be a defense to a paternity suit. Stephen L. Sass, *The Defense of Multiple Access (Exceptio Plurium Concubentium) in Paternity Suits: A Comparative Analysis*, 51 TUL. L. REV. 468 (1977). "The defense is sometimes referred to as the 'defense of multiple access,' or *exceptio plurium concubentium*: 'the plea (or defense) of several lovers.'" *Id.* at 468. Sass notes the disparity in the use of the defense in different countries:

> The examination of the prevailing laws of paternity suits in West Germany, France, Hungary, the Soviet Union, and the United States has revealed that the mother's multiple sexual connections during the probable period of conception are treated in three substantially different ways:
>
> (1) They are an absolute bar to the adjudication of paternity in the majority of the United States' jurisdictions and in certain instances in France (notorious misconduct (*inconduit notaire*) in a status action and debauchery in an action for child support).
>
> (2) They are a relevant circumstance with diverse consequences: (a) in West Germany, and in the United States under the Uniform Parentage Act, the identified third person or persons may be brought into the proceedings and subjected to scientific examinations to ascertain nonpaternity or the probability of paternity; (b) in France an identified third person or persons can also be subjected to blood tests and other medical examinations to establish whether their paternity is excluded; if it is not excluded, the plaintiff cannot prevail in a status action; in an action for child support, however, all of the participants may be obligated to contribute to the child's care and education if they have committed a tortious act against the mother in connection with the intercourse, or if they have promised to support the child; (c) in Hungary, where a status action is based on an extended, steady sexual relationship, a similar relationship between the mother and another man (provided that the paternity of the other is not excluded) or her promiscuous behavior exclude the application of section 38(2)(b) of the Family Code since such acts undermine its rationale: determination of a high probability of the defendant's paternity; it can be established, if at all, only on the ground of section 38(2)(c), requiring the proof of a rather high probability.
>
> (3) They are entirely irrelevant: in Hungary, in status actions based on lasting cohabitation and in support actions; and in the Soviet Union . . .

Id. at 507.

103. *See* text accompanying *supra* note 102.

to sperm donor records. Third, the child could be a product of a rape—information that the mother wants to remain private.[104] Similarly, if the mother is a victim of domestic violence, she may fear abuse from her husband, from her child's biological father, or from another abuser if she discloses the identity of her child's biological father. Fourth, the child could be a product of an extramarital affair that the mother does not want to divulge.[105]

Compelling a mother to disclose this information could fulfill her child's genuine curiosity to learn where he or she came from, but a categorical rule imposing the obligation on all mothers would be unfair. There could be very good reasons why a mother wishes to keep her child's biological father's identity private, and her privacy should be protected.[106]

C. Biological Father's Right to Privacy

Single mothers, as well as mothers who raise their children with a man not biologically related to their children, may choose not to inform the child's biological father that he is the father of her child, or even that she was pregnant with his child. The oblivious biological father should not be punished later with paternal obligations for a child he never knew about,[107] particularly when the child already has

104. Victims of rape should never be compelled by the state to disclose the identity of their rapist, or even the experience of their rape because those who choose to disclose that they were raped are not protected from public exposure. Florida Star v. B. J. F., 491 U.S. 524 (1989) (upholding a newspaper's right to publish the name of a rape victim when the name was legally obtained from a police report). Furthermore, disclosure of rape can tear families apart. For example, rape victim Anna Creed wanted to keep her rape experience private, as well as the resulting pregnancy, and her relinquishment of the baby conceived by the rape to adoption. *48 Hours: Part III-Family Secret; Unhappy Ending of Reunion with Birth Mother* (CBS television broadcast Apr. 15, 1992). Creed and her family were emotionally destroyed when the child produced from the rape found his birth records and contacted the Creed family, uncovering the terrifying secret. *Id.*

105. Strom Thurmond fathered an African-American child in 1925, but because he was a powerful white man in the old South and later a U.S. Senator, the identity of Thurmond as the child's father was not revealed by the child's mother or by the child until after Thurmond's death, 78 years later. Nikitta A. Foston, *Strom Thurmond's Black Family*, EBONY, March, 2004, at 162.

106. *See supra* notes 102, 104–05.

107. *See generally* Meyer, *supra* note 48, at 771 (noting, "[a]n unwed father who had never been permitted contact with his child, for example, could not be guilty of abuse or neglect."); Julie Rowe, *So Who's Your Daddy?*, TIME, Jan. 29, 2007, at 50 (explaining the idea that "duped

a legal father who cares for him or her. Several years after the child's conception, in Minor's case seventeen years later, the biological father may not be willing to accept the child as his own and may not want contact with the child.[108] Disclosure would not serve the child's goal of developing a biological identity and possible relationship with his or her biological father.

Furthermore, it could be difficult to locate or identify the child's biological father. If a child like Minor were to win his suit and compel his mother to disclose the identity of his biological father, the child may have a difficult time finding his biological father. For example, his biological father could be in a different geographic location, could be living in conditions that do not allow him to have contact with the child (if incarcerated or institutionalized), or may have passed away.

D. Not as Harmful as Suggested

1. Existing Father

Children like Minor already have two parents. In *Sutton*, Minor was seeking more than two parents; he sought the identity of a third, biological parent.[109] If Minor had won his suit, the decision would have broken precedent with the majority of court decisions and deviated from the purpose of the majority of state laws—namely to establish support.[110] Court holdings and state statutes allowing children to know their biological parents serve children with only one parent, not a child like Minor with a mother and legal father.[111]

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dads . . . should be treated as victims of fraud").

108. *See generally* Katharine K. Baker, *Bargaining or Biology? The History and Future of Paternity Law and Parental Status*, 14 CORNELL J.L. & PUB. POL'Y 1, 69 (2004). Barber explains and supports the trend away from genetic determinations of parenthood towards contractual determinations of parenthood by reconciling "paternity precedent with technological advances, legal norms with parenting practices, and sexual mores with parental obligations." *Id.* Parenthood according to contact, which includes the intent to become a parent, "makes every parent-child relationship a wanted parent-child relationship." *Id*.

109. Though the law is changing, historically and traditionally, children are limited to two parents under the law.

110. *See supra* note 52 and accompanying text.

111. *See* rules cited *supra* note 55.

Though Minor may seek some biological identity from his genetic father, Michael could serve all the other functions of Minor's father by providing support, attention, parental connection, and love.

2. Medical History

Minor and other children of single parents do not have as great an interest in finding their missing biological medical history, and cannot use this justification for determining parentage, as might an adult adoptee.[112] First, these children already know fifty percent of their family medical history from their mother's side of the family (or father's side, if the father is the known parent).

Second, the parent raising the child may know something about the medical history and health of the other biological parent.[113] The parent raising the child can provide that non-identifying information to the child upon the child's request. Even though this information may not provide a child with his full medical history, it may be enough to determine his medical susceptibilities. In cases where a single parent cannot provide the child with the other parent's medical history, the parent can take extra precaution with the child's medical care, knowing that there are gaps in the child's family medical history that could cause medical problems later in life. Moreover, there are children who already know both of their biological parents, but do not know their biological propensities; and there are parents who do not know their own biological medical histories. Even if Minor won his suit and obtained his biological father's identity, there is no assurance that his biological father would know about his own medical propensities.

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112. The *Sutton* court explained that, "[t]here is no indication whatsoever that Minor is in the midst of a health crisis necessitating the sought after information, nor that he is contemplating having children at this time." Sutton *ex rel.* Minor J. v. Diane J., No. 273519, 2007 Mich. App. LEXIS 754, *10 (Mich. Ct. App. Mar. 20, 2007).

113. Even if the child was conceived using alternative reproductive technologies, such as donor insemination, the clinic providing donor eggs or sperm may have provided the known parent non-identifying information about the unknown donor parent.

3. Biological Identity

Children of single parents or children like Minor raised by one biological and one non-biological parent still have fifty percent of their biological identity from their known parent and that parent's family. Unlike adopted children seeking biological identity, these children have some sense of their genetic origin. Furthermore, one's identity does not just stem from his or her biological connections.[114] Identity comes from relationships, experiences, personality, values, knowledge, and many other sources.[115] Though biological identity may be a piece of a person's total self, it does not completely define one's identity.[116] Minor may only know half of his biological identity, but he can easily know himself and his character without knowing his biological father. For example, Minor can associate his nature with his legal father, mother, friends, family, and other individuals present in his life.

4. Social Pressure

Social pressure to find biological paternity faced by children like Minor is minimal or non-existent. Minor and children like him already live in the traditional two-parent family accepted by society.[117] Although under the surface there may not be the same biological connection between the child and one of the parents, they live a "normal," traditional family life. Adopted children on the other hand, who know they are adopted, are likely to feel societal pressure much more than children like Minor.[118] There are enough single-parent families in society that a child like Minor should not feel social pressure to know both of his biological parents.

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114. *See generally* Carol J. Guardo & Janis Beebe Bohan, *Development of a Sense of Self-Identity in Children*, 42 CHILD DEV. 1909 (1971).
115. *Id.*
116. *Id.*
117. *See* Meyer, *supra* note 48.
118. *Id.* at 810.

E. Flood Gates of Litigation

If Minor had won his appeal against his mother, and she was compelled to disclose the identity of Minor's biological father, any child or adult would be permitted to sue one parent to disclose the identity of an absent parent. This would include any child raised by a single parent—either mother or father—when the child never knew his or her other biological parent. This would also include children conceived through anonymous donor insemination, violating the donor's right to privacy as well as the privacy of the known parent.[119] Though Minor has some genuine reasons for seeking the identity of his biological father, it was proper to preclude him from doing so.

VI. AN APPROACH FOR COURTS

Although the Michigan courts rightly decided Minor's case in favor of his mother based on current law, there are conceivably different circumstances where a child's attempt to discover the identity of his biological parent is more compelling. It is conceivable that a child must know something about his or her absent biological parent, if the child suffers from an imminent life threatening medical disorder that must be treated early in the child's life for the child to survive. Accordingly, courts should apply a narrow form of the child's best interests test that takes into account the constitutional right of parental privacy, and awards parental disclosure only in limited situations.[120] This test would require courts to weigh factors such as "stability of the child's current home environment, whether there is an ongoing family unit, . . . the child's physical, mental, and emotional needs[,] . . . the child's past relationship with [his or her] putative father[,] . . . [and] the child's ability to ascertain genetic information for the purpose of medical treatment and genealogical history," against the parent's privacy interest.[121]

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119. *See* cases cited *supra* notes 25, 27.

120. The child's best interest test predominates state laws governing child and parent relationships. Jeffrey A. Parness, *New Federal Paternity Laws: Securing More Fathers at Birth for the Children of Unwed Mothers*, 45 BRANDEIS L.J. 59, 77 (2006) (discussing the prominence of the child's best-interest test in state laws).

121. Turner v. Whisted, 607 A.2d 935, 940 (Md. 1992) (identifying factors to weigh in

If a court determined that a child's best interests were served by acquiring information about his or her absent biological parent, the court could award the child *non-identifying information* about the parent. An award of non-identifying information would protect the privacy of both biological parents, yet provide the child with necessary medical or psychological information about the absent biological parent. Practically implementing this judgment would require the biological parent raising the child to disclose the non-

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disputed paternity cases). Michigan law delineates similar factors for a child's best interest custody disputes.

> As used in this [A]ct, "best interests of the child" means the sum total of the following factors to be considered, evaluated, and determined by the court:
>
> (a) The love, affection, and other emotional ties existing between the parties involved and the child.
>
> (b) The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any.
>
> (c) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.
>
> (d) The length of time the child has lived in a stable, satisfactory environment, and the desirability
>
> of maintaining continuity.
>
> (e) The permanence, as a family unit, of the existing or proposed custodial home or homes.
>
> (f) The moral fitness of the parties involved.
>
> (g) The mental and physical health of the parties involved.
>
> (h) The home, school, and community record of the child.
>
> (i) The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.
>
> (j) The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and
>
> the parents.
>
> (k) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.
>
> (l) Any other factor considered by the court to be relevant to a particular child custody dispute.

MICH. COMP. LAWS § 722.23 (1971). Under these factors, a court could easily determine that Minor's best interests are served by not learning the identity of his biological father.

identifying information to the child or disclose the information to an intermediary[122] who may disclose non-identifying information to the child. If a mother does not know the identity of the biological father (presumably a present biological father would more easily know the identity of an absent biological mother), a court could appoint an intermediary to investigate and determine the biological father's identity, then disclose non-identifying information about the father to the child.[123] An investigation by an intermediary could be expensive and should be ordered in very limited circumstances.

The balancing test suggested will help courts with these cases, but to adequately address all of the competing interests at stake, legislative reform must be implemented. Most laws lag as science redefines the concept of family. Laws must be updated, taking into account accurate DNA paternity testing, alternative reproductive technologies, and other scientific advances, while respecting a mother's and putative biological father's constitutional right to privacy. Though science can provide clear answers to questions of biological relations, science also has the potential to rip apart families and destroy family autonomy. Courts and legislatures are faced with tough challenges, and must tread carefully to address all the interests at stake.

CONCLUSION

Though this Note advocates parental privacy over a child's desire to know his or her biological parents, it explains that a categorical rule should not be applied in all cases, where different factors could justify a different outcome. Any rule adopted by courts or legislatures on this matter must account for changing families and alternative forms of conception, while maintaining a proper balance between children's desire to know their biological parents, and parents' right to privacy.[124]

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122. Some states use intermediaries to facilitate communication and contact between an adoptee and his or her parent(s) when both parties agree to disclosure of their identities. *See* IND. CODE ANN. § 31-19-25-8 (West 1999) (use of an intermediary in adoption questions).

123. Even then, there is no guarantee that the biological father will be aware of his own medical propensities.

124. Rules and laws affecting the family must be flexible, as different factors,

If Minor had won his case against his mother, dangerous precedent would have been set in Michigan for children to sue their parents. In addition, courts from around the country could have used that decision to undermine parental privacy throughout the United States. The Michigan courts hearing Minor's case rightly proceeded with caution. One can only assume that the courts had in mind the ramifications of a decision in favor of Minor. This case had the potential to remove parental privacy from constitutional protection.

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relationships, consequences, and outcomes could lead to tragic or inadequate results in any given case.